

1 THE STATE OF WASHINGTON
2 OFFICE OF THE INSURANCE COMMISSIONER

3 CHW GROUP, INC., doing business as
4 CHOICE HOME WARRANTY and
5 www.ChoiceHomeWarranty.com,
6 VICTOR MANDALAWI, "JAMES
7 MOSS," DAVID BAILEY, STEVEN
8 SAFDIEH, MICHAEL GUTHOLC
9 Unauthorized Individuals and Entities,
10 Respondents.

Docket No. 10-0199

OIC'S RESPONSE AND
OPPOSITION TO CHOICE HOME
WARRANTY'S REQUEST FOR A
DISCRETIONARY STAY

11 I. INTRODUCTION

12 The Washington State Office of the Insurance Commissioner ("OIC") received a
13 Washington consumer's complaint about Choice Home Warranty and its contracts. After
14 learning that Respondents had sold dozens of such contracts to dozens of Washington
15 residents and that none of the Respondents had licenses or other authority to transact
16 insurance or provide service contracts in the State of Washington, OIC entered an Order to
17 Cease and Desist ("Order.")

18 OIC's Order properly instructed the Respondents immediately to stop transacting the
19 unauthorized business of insurance and stop acting as an unregistered service contract
20 provider. To protect the at least dozens of directly impacted Washington residents, the Order
21 also appropriately directed Respondents to send each such Washington resident a copy of the
22 Order within ten days. In addition, since unauthorized insurers must also pay premium taxes,
23 the Order also appropriately directed the Respondents to inform the OIC of the total amount
of Washington premium monies they have collected to date.

Respondents since filed a "letter brief" ("Respondents' Letter Brief"), objecting to the
Order and asking for a "discretionary stay." But none of their reasons for a stay has merit:

- They ask for a stay because, essentially, they think the Order is moot. They assert that since they already stopped selling new contracts in Washington, except for "continued fulfillment" of existing contracts, there is no need for an order, so the Order should be stayed. However, Respondents have provided no evidence to

1 back their assertions, even if it is true that no new contracts are being issued, nor
2 have they given legal grounds why alleged mootness of an order would support
staying that order.

- 3 • They ask for a stay because they believe the Order's requirement to mail a copy to
4 existing Washington customers "far exceeds the OIC's statutory powers" and will
5 cause "irreparable damage to [Choice Home Warranty's] business and goodwill."
Not only are such arguments baseless,¹ they are unsupported by evidence,
unaccompanied by supporting legal authority, and are even contrary to the Code.
- 6 • They ask for a stay because they think the Order is "entirely too broad" by finding
7 that their product is "insurance" (and "entirely erroneous," to boot), and they
8 speculate that the Order will cause "imminent threat of litigation from consumers,
9 potential criminal prosecution, and potential tax liabilities." Such fears are not
10 grounded in any facts in the record. As with the rest of their arguments, this one is
also not supported by evidence or citation to any supporting legal authorities.
Respondents submitted no credible evidence to prove that specific litigation,
prosecution, or 'tax liability' is even remotely *possible*, let alone "imminent," and
because of the OIC's Order.
- 11 • They ask for a stay because their attorney writes that he thinks that three of their
12 "employees" (with "Vice President" titles) David Bailey, Steven Safdieh, and
13 Michael Gutholc "may be subject to lawsuits against them personally," and "may
14 have their personal credit impacted negatively if the Order is recorded against
them." Again, such speculation has no needed evidentiary support, nor has
Respondents' Letter Brief cited any legal authority that would purportedly support
this as a good reason to grant their request for a stay.

15 On the other hand, there are numerous questions as to various unsupported assertions
16 in the Letter Brief. For example, page 1 represents that "CHW believed that its activities in
17 Washington were exempt from regulation pursuant to RCW 48.110.015(1)(a),"² and then
18 asserts "but in an abundance of caution CHW contacted OIC to provide it with the
19 information necessary to obtain the appropriate registration in the State of Washington[...]."

20 ¹ Not only is the OIC authorized to include such a requirement in its Order, but Choice Home Warranty's
21 assertion that it has *any* "goodwill" seems refuted by reading some of the volume of consumer complaints easily
22 found through a simple Internet search using Google and search terms like "Choice Home Warranty and fraud"
or "Choice Home Warranty and scam," for example. See e.g., Decl. Singer Exhs. L and M.

23 ² The Letter Brief makes this representation without reconciling the definition of "warranty" contained in RCW
48.110.020(21). Nor does the Letter Brief supply any evidence to explain or prove the veracity of the "belief"
Choice Home Warranty supposedly held as to its exemption under RCW 48.110.015(1)(a).

1 Yet, the facts of record appear to show that OIC only began investigating Choice Home
2 Warranty *after* a Washington consumer's complaint to OIC about Choice Home Warranty and
3 its alleged refusal to pay claims, not before. *See* Decl. Singer Exhs. A-B.³ And while the
4 Letter Brief also asserts that "in the interest of full disclosure, CHW provided OIC with a list
5 of employees working for CHW and a description of the titles within the company," the
6 evidence of record disputes this. The evidence shows that this list was given to OIC only in
7 response to a request for all Choice Home Warranty "owners, officers, and principals," not its
8 employees, and that other known employees were not included in this supposedly "full
9 disclosure" of 'employees.' *See, e.g.,* Decl. Singer Exhs. D, E, and F.

10 This all amplifies the conclusion that there are not good grounds for a stay. Not only
11 does Respondents' Letter Brief fail to dispute that they are not licensed or authorized by OIC,
12 it even appears to concede the Code violations forming the basis of the Order: "at most, CHW
13 is a service contract provider." *See* Letter Brief at p. 2-3. No stay should be granted.

14 **II. EVIDENCE RELIED UPON**

15 This Response and Opposition relies upon the declaration of Alan Michael Singer
16 ("Decl. Singer"), and the Chief Hearing Officer's files and records herein.

17 **III. STATEMENT OF FACTS**

18 On May 28, 2010, a Washington consumer wrote a complaint to OIC about Choice
19 Home Warranty, alleging that the company wrongly denied claims and may have been
20 operating in violation of the Washington Insurance Code. Decl. Singer Exh. A. The New
21 Jersey Better Business Bureau apparently gave the company an "F" rating, and indicated
22 "James Moss" is Choice Home Warranty's President. Decl. Singer Exh. B.⁴ OIC Investigator

23 ³ In fact, Choice Home Warranty eventually affirmed that it believed its denial of the Washington consumer's
claims was "proper." Decl. Singer Exh. K.

⁴ *See also* Choice Home Warranty's website blog, Decl. Singer Exh. N.

1 Michael Bertrand wrote a June 15, 2010 letter to “James Moss” and asked the company to
2 answer a number of questions about its activities in Washington. Decl. Singer Exh. C.

3 On July 13, 2010, after the company failed to respond to Investigator Bertrand’s letter,
4 OIC staff made further attempts to ask Choice Home Warranty questions about its activities in
5 Washington. Decl. Singer Exhs. D-E. The company was asked about the status of the
6 company’s responses to the various questions posed in Mr. Bertrand’s letter, and was also
7 asked several further questions. One such question asked the company to please provide “a
8 list of [Choice Home Warranty’s] owners, officers, and principals,” not its employees. Decl.
9 Singer Exh. E.

10 On July 26, 2010, Choice Home Warranty’s (prior) counsel, Art Chartrand, provided
11 the first responses to some of the OIC’s earlier unanswered questions to Choice Home
12 Warranty. Decl. Singer Exh. F. Consistent with New Jersey incorporation records for the
13 parent entity “CHW Group, Inc.,” Mr. Chartrand’s letter identified the company’s “officers”
14 as including Victor Mandalawi – who was also Choice Home Warranty’s “principal” and
15 “sole stockholder/owner” – and several “Vice Presidents,” David Bailey, Steven Safdieh, and
16 Michael Gutholc. *Id.* However, “James Moss” was not among them. *Id.*

17 On August 9, 2010, Mr. Chartrand was asked a few follow-up questions based on
18 some responses in his July 26, 2010 letter. Decl. Singer Exh. G. On August 11, 2010, Mr.
19 Chartrand sent a responsive e-mail alluding to rolling the Washington Choice Home Warranty
20 customers into some other, unnamed “corporation” entity. Decl. Singer Exh. H. His
21 responsive e-mail also attached a PDF document listing “80-some” actual “current”
22 Washington residents to whom Choice Home Warranty had sold contracts. *Id.*

23 Meanwhile, on July 23, 2010, the California Insurance Commissioner had issued a
four-page cease and desist order against Choice Home Warranty. Decl. Singer Exh. I. The
order also notified the company that it could face possible monetary penalties as well. *Id.* On
August 19, 2010, the California Insurance Commissioner entered another order, this one

1 making its July 23 order against Choice Home Warranty “final,” and directing the company to
2 show cause why monetary penalties should not also be imposed. *Id.* On October 12, 2010,
3 the California Insurance Commissioner issued yet another order, this one purporting to
4 impose a \$3,530,000 penalty against Choice Home Warranty. *Id.*

5 On September 1, 2010, the OIC received Victor Mandalawi’s August 31, 2010
6 Application for Registration as a Service Contract Provider in the State of Washington for the
7 corporation entity, “Home Warranty Administrators. Decl. Singer Exh. J. Mr. Mandalawi’s
8 biography submitted with this application failed to indicate he had any connection to Choice
9 Home Warranty, though. *Id.*; *cf.* Decl. Singer Exh. F. And even though the State of
10 California had by then issued at least two separate cease and desist orders against Choice
11 Home Warranty and “its officers, directors, employees, trustees, agents, affiliates and service
12 representatives” (*see* Decl. Singer Exh. I), Mr. Mandalawi’s application failed to mention
13 such orders existed. Decl. Singer Exh. J. In fact, the application failed to mention “Choice
14 Home Warranty” or “CHW Group, Inc.” at all in his application. On September 15, 2010, Mr.
15 Mandalawi withdrew the application. *Id.*

16 In one threaded consumer complaint on the Internet concerning “National Home
17 Protection,” some comments alleged a possible connection between Choice Home Warranty
18 and National Home Protection. *See* Decl. Singer Exh. O. “James Moss” denied any such
19 connection. Decl. Singer Exh. M. On August 31, 2010, Mr. Chartrand was asked to provide
20 a copy of a driver’s license of “James Moss” and answer questions about connections between
21 Choice Home Warranty and one of National Home Protection’s principals, Victor Hakim.
22 While he promised to provide answers by Friday September 10, 2010, but on Monday,
23 September 13, 2010, Mr. Chartrand withdrew. *See* Decl. Singer at ¶10 and Exhs. P, Q.

On October 18, 2010, Choice Home Warranty provided a letter to the Washington
consumer whose complaint led to OIC’s investigation, denying nearly all the consumer’s
claims and indicating that it believed denial was “proper.” Decl. Singer Exh. K.

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IV. ARGUMENT

A. The OIC is authorized to issue a cease and desist order to unauthorized insurers or unregistered service contract providers.

The Commissioner “must enforce” the Insurance Code and, in doing so, may “conduct investigations to determine whether any person has violated any provision of this code.” RCW 48.02.060(2) and (3)(b); *see also* RCW 48.110.120(1). If the Commissioner finds that a person has violated the Code by having issued insurance or service contracts without being properly authorized or registered, the Commissioner may issue a cease and desist order. *See, e.g.*, RCW 48.15.023(5)(a)(i), RCW 48.02.080(3)(a), and RCW 48.110.120(2). Protecting Washington consumers is of prime importance. *See, e.g.*, RCW 48.01.030.

B. Choice Home Warranty’s contract is both “insurance” and a “service contract.”

Under Washington’s Insurance Code it seems clear that Choice Home Warranty’s contract is both “insurance” and a “service contract.” The contract’s operative terms require consumers to pay an amount over and beyond the home purchase price, for coverage that lasts for a set period or duration.⁵ In exchange, Choice Home Warranty undertakes to indemnify the consumer or pay a specified amount upon determinable contingencies. Clearly, this meets RCW 48.01.040’s definition of “insurance,” but it is also meets RCW 48.110.020(17)’s definition of a “service contract” because Choice Home Warranty promises to pay for the repair or replacement of covered items’ failure due to normal wear and tear. This requires Choice Home Warranty to be fully compliant with Chapter 110 of the Code in order to become exempt from other Code provisions. RCW 48.110.033(2).

C. OIC acted well within its authority to issue the Order against Respondents.

OIC learned about Choice Home Warranty because a Washington consumer filed a complaint not unlike the many other complaints about the company on the Internet. *Compare* Decl. Singer Exh. A with Exhs. K-M. Choice Home Warranty solicits its home warranties

⁵ The contract is included in the attached Exhibit F to the Declaration of Alan Michael Singer, filed herewith.

1 through a website (http://www.choicehomewarranty.com/homeowners_whats_covered.php).
2 which indicates that a wide variety of systems and appliances within the home are supposedly
3 “covered” in the event of failure due to normal wear and tear. *See, e.g., Decl. Singer Exh. F.*
4 Yet, despite the website’s suggestion of providing broad coverage, many consumer
5 complaints on the Internet appear to allege that the company has acted unfairly and has relied
6 on extensive limitations, conditions, and exclusions from the coverage it purports to offer.
7 *See Decl. Singer Exh. F; see also Decl. Singer Exhs. K-M.* Respondents’ counsel informed
8 OIC that Victor Mandalawi, David Bailey, Steven Safdieh, and Michael Gutholc were
9 “officers” of the business, and Mr. Chartrand also informed OIC that Respondents had sold
10 dozens of contracts to residents of Washington. Decl. Singer Exhs. F and H. In the
11 complaining Washington consumer’s case, Choice Home Warranty felt its denial of almost all
12 of the Washington consumer’s claims was “proper.” Decl. Singer Exh. K.

12 In addition, other questions about Choice Home Warranty remain unanswered. For
13 example, despite references to its “President” being “James Moss” (*see e.g., Decl. Singer*
14 *Exhs. M and N and <http://www.pr.com/press-release/166783>) and possible connections to*
15 *National Home Protection ([see \[http://www.ag.ny.gov/media_center/2009/dec/dec15a_09.html\]\(http://www.ag.ny.gov/media_center/2009/dec/dec15a_09.html\)](http://www.ag.ny.gov/media_center/2009/dec/dec15a_09.html)*
16 *and Decl. Singer Exhs. B, M, N, and O), Respondents never explained who “James Moss” is*
17 *or detail what connections, if any, exist or existed between the principals or business of*
18 *Choice Home Warranty and any other home warranty companies, including National Home*
19 *Protection. *See, e.g., Decl. Singer Exhs. P and Q.* In addition, Mr. Mandalawi’s recent*
20 *Chapter 110 registration application failed to note any connection to Choice Home Warranty*
21 *and incorrectly suggested there were no regulatory actions taken, despite the California*
22 *department’s recent actions. *See Decl. Singer Exhs. I, J.**

23 Nevertheless, as indicated above, Respondents’ contracts are both “insurance” and
“service contracts.” And since none of the Respondents has any license or authority to

1 transact insurance or provide service contracts in the State of Washington, the OIC's Order
2 was appropriate.

3 **D. Respondents have not presented grounds for a stay.**

4 On the other hand, Respondents' Letter Brief fails to make a credible case for a stay.
5 It fails to offer evidence or citation to legal authority supporting the stay request. In fact, the
6 Letter Brief even arguably undercuts Respondents' position by apparently conceding that
7 Choice Home Warranty is, "at most, [...] a service contract provider." Letter Brief at p. 2-3.
8 Consistent with this seeming admission that the Order is at least partly well-founded, Mr.
9 Mandalawi surreptitiously applied for a Chapter 110 registration using a new company name.⁶
10 Nor does OIC's Order appear to articulate any unique findings or conclusions, particularly
11 considering the California insurance regulator's recent orders against Choice Home
12 Warranty.⁷ None of these facts supports a stay. Nevertheless, Respondents' Letter Brief
13 raises a number of arguments for why they believe a stay should issue.

14 One argument for a stay in Respondents' Letter Brief is that they think the Order
15 somehow improperly concluded that Choice Home Warranty's contract is both "insurance"
16 under RCW 48.01.040 and a "service contract" under RCW 48.110.020(17) and (19). Not
17 only does the Letter Brief fail to provide cogent analysis why this is supposedly so, the
18 argument is also incorrect. No Code provision or other law precludes OIC's conclusion that
19 Choice Home Warranty's contract is both "insurance" and a "service contract." In fact, at
20 least one Code provision actually supports OIC's conclusion. This provision, RCW
21 48.110.033(2), provides that the way for persons to become "exempt from the other
22 provisions of this title" – including provisions like RCW 48.01.040 and RCW 48.15.023 – is
23 for them to "comply[] with this chapter." Thus, the Code allows a service contract provider to
be exempt from many of the various insurance provisions of the Code, but only if it complies

⁶ However, this application was soon withdrawn. See Decl. Singer Exh. J.

⁷ See Decl. Singer Exh. I.

1 fully with all requirements contained in Chapter 110. If not, nothing prevents *any* other Code
2 provisions from applying – including RCW 48.01.040.

3 Respondents also argue that a stay is warranted because the OIC lacks authority to
4 require Respondents to mail a copy of the Order to directly impacted Washington consumers.
5 This argument seems nothing short of astonishing not only because Respondents seem to be
6 trying to prevent a copy of the Order from reaching the hands of the Washington customers
7 who are directly and personally impacted by it, but also because it seems to suggest that the
8 OIC is powerless to share or order to be shared a copy of the Order with those consumers. On
9 both counts, Respondents are wrong. First, RCW 48.02.060(1) not only authorizes the
10 Commissioner to act as *expressly* authorized, but also “as reasonably implied from the
11 provisions of” the Insurance Code. And further, if dozens of known Washington consumers
12 have purchased a product that appears to have been offered illegally, it would be inconsistent
13 with the Insurance Code to not tell them about it immediately. Further, since Washington
14 courts are loathe to construe one statute in such a way as to render other related statutes
15 meaningless,⁸ it would be inappropriate to determine that RCW 48.02.060(1) does not
16 authorize it to require unauthorized insurers to share a copy of a cease and desist order with its
17 Washington customers who are directly impacted. For example, RCW 48.15.030 empowers
18 Washington consumers to choose whether to keep illegally effectuated contracts or instead
19 void them to take refunds. If consumers aren’t made aware that their contracts may have been
20 illegally effectuated by an unauthorized insurer, those consumers can never choose to seek to
21 void it. A stay would only forestall Washington consumers learning about the Order and
22 thereby prejudice those consumers’ rights, since they one day may face the same fate as the
23 Washington consumer whose complaint led to OIC’s Order – they could make claims only to

⁸ See, e.g., *Edmonds Shopping Ctr. v. Edmonds*, 117 Wn. App. 344, 356, 71 P.3d 233 (2003) (Washington law requires courts to “construe statutes as a whole to give effect to all the language and to harmonize all provisions”) and *Davis v. Dep’t. of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (“[S]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.”)

1 find them denied. Respondents fail to show why impacted consumers must not receive a
2 copy of the Order *before* their contracts expire or claims arise, rather than after.

3 Moreover, not only does RCW 48.02.060 authorize the OIC to order illegal insurers
4 and service contract providers to share a copy of the Order with Washington consumers they
5 sold to, it also makes good sense here. Unauthorized entities are uniquely capable of
6 communicating with their customers. They know who their customers are, and often, no one
7 else does. And nothing prevents Respondents from including a letter of their own that sets
8 forth their own position when they send the Order to their Washington customers. If they do
9 this, they can assuage any fears they think could arise. While nothing prevents OIC from
10 sending a copy of the Order to the Washington consumers who bought Choice Home
11 Warranty's products, no one is in a better position to do this than the Respondents.

12 Finally, the Respondents' Letter Brief also speculates that a number of calamitous
13 events will come true because of the Order if no stay is granted – things like litigation,
14 criminal prosecution, tax liability, personal liability, and so forth. But no evidence supports
15 these dire predictions. And if Respondents send a letter with the Order, explaining their
16 views, such speculative fears become wholly illusory.

17 **E. Established standards dictate against a stay.**

18 RCW 48.04.020(2) contemplates that the Commissioner may entertain a written
19 request for a stay and that an aggrieved person may apply to Thurston County Superior Court
20 if the Commissioner declines to grant the request. Such a request seems akin to a request in a
21 court action for a preliminary injunction, the requirements for which are summarized in
22 *Kucera v. Department of Transportation*, 140 Wn.2d 200, 209-210, 995 P.2d 63 (2000):

23 An injunction is distinctly an equitable remedy and is “frequently termed ‘the strong
arm of equity,’ or a ‘transcendent or extraordinary remedy,’ and is a remedy which
should not be lightly indulged in, but should be used sparingly and only in a clear and
plain case.” 42 Am. Jur. 2d Injunctions sec. 2, at 728 (1969) (footnotes omitted).
Accordingly, injunctive relief will not be granted where there is a plain, complete,
speedy and adequate remedy at law. *State v. Ralph Williams’ N.W. Chrysler
Plymouth, Inc.*, 87 Wn. 2d 298, 312, 553 P.2d 423 (1976).

1 The applicable requirements for issuance of a preliminary injunction are well settled:
2 "One who seeks relief by temporary or permanent injunction must show (1) that he
3 has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate
4 invasion of that right, and (3) that the acts complained of are either resulting in or will
5 result in actual and substantial injury to him." Since injunctions are addressed to the
6 equitable powers of the court, the listed criteria must be examined in light of equity
7 including balancing the relative interests of the parties and, if appropriate, the interests
8 of the public. *Tyler Pipe Indus., Inc. v. Department of Revenue*, 96 Wn.2d 785, 792,
638 P.2d 1213 (1982) (quoting *Port of Seattle v. International Longshoremen's &
Warehousemen's Union*, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958); see also RCW
7.40.020 (grounds for issuance of preliminary injunction). (footnote omitted.) If a
party seeking a preliminary injunction fails to establish any one of these requirements,
the requested relief must be denied. *Washington Fed'n*, 99 Wn.2d at 888.

8 Applying the above considerations here yields the conclusion that no stay should issue.

9 Respondents have "a plain, complete, speedy and adequate remedy at law" since they will
10 receive a hearing. Even assuming Respondents meet the first *Tyler Pipe* element above, they
11 give no evidence to prove a "well-grounded fear of immediate invasion of that right," nor that
12 not staying the Order "will result in actual and substantial injury." The "public interest" –
13 which includes, at minimum, the interest of the dozens of Washington residents who were
14 identified as Choice Home Warranty customers – also weighs heavily against a stay. This is
15 particularly true here, given the "public interest" mandate to "preserv[e] inviolate" the public
16 by preventing deception, dishonesty, and unfairness. RCW 48.01.030.

16 V. CONCLUSION

17 Based on the foregoing, the OIC's order should not be subjected to any stay.
18 Respondents should be ordered to issue a copy of the Order to all impacted Washington
19 consumers within five days, and be reminded that they can simply accompany the Order with
20 their own letter to assuage their customers. The Respondents' stay request should be denied.

21 DATED this 29th day of November, 2010.

22 OFFICE OF INSURANCE COMMISSIONER

23 By: _____

Alan Michael Singer

1
2 **CERTIFICATE OF SERVICE**

3 The undersigned certifies under the penalty of perjury under the laws of the State of
4 Washington that I am now and at all times herein mentioned, a citizen of the United States, a
5 resident of the State of Washington, over the age of eighteen years, not a party to or interested
6 in the above-entitled action, and competent to be a witness herein.

7 On the date given below I caused to be served the foregoing RESPONSE AND
8 OPPOSITION TO CHOICE HOME WARRANTY'S REQUEST FOR A DISCRETIONARY
9 STAY on the following individuals in the manner indicated:

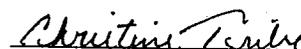
10 Copy to:

11 Darren Oved, Esq.
12 Oved & Oved, LLP
13 101 Avenue of the Americas
14 15th Floor
15 New York, New York 10013
(XXX) Via U.S. Mail
(XXX) Via E-Mail (Darren@ovedlaw.com)

16 Original to:

17 Hon. Patricia Petersen
18 Chief Hearing Officer
19 Hearings Unit
20 Washington State Office of the insurance Commissioner
21 5000 Capitol Blvd.
Tumwater, WA 98501
(XXX) Via Hand Delivery
(XXX) Via E-Mail to Nicole Kelly (NicoleK@oic.wa.gov)

22 **SIGNED** this 29th day of November, 2010, at Tumwater, Washington.

23 
Christine Tribe