



FILED

OFFICE OF
INSURANCE COMMISSIONER

2011 MAY 24 P 12:48

HEARINGS UNIT
Fax: (360) 664-2782

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Paralegal
(360) 725-7002
hearings@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	
)	No. 11-0021
Mathew J. King, Jr.)	
)	FINDINGS OF FACTS, CONCLUSIONS
)	OF LAW AND FINAL ORDER
Applicant.)	ON HEARING
_____)	

TO: Matthew J. King, Jr.
24 Van Etten Blvd.
New Rochelle, NY 10804

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Esq., Deputy Commissioner, Legal Affairs Division
Andrea Philhower, Esq., Staff Attorney, Legal Affairs Division
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Jeff Baughman, Licensing & Education Manager, Consumer Protection Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 48.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Office of Insurance Commissioner for the state of Washington commencing, by telephone, at 10:00 a.m. PST on April 25, 2011. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner was represented



by Andrea L. Philhower, Staff Attorney in her Legal Affairs Division. Mathew J. King, Jr. appeared pro se.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's denial of Mathew J. King, Jr.'s application for a Washington nonresident life and health insurance producer license should be confirmed, set aside or modified. Said denial, documented in the Insurance Commissioner's email letter dated and transmitted on February 7, 2011, is based primarily on the fact that Mr. King has been disciplined by the Financial Industry Regulatory Authority for his conduct in the securities business. Mr. King requested this hearing to contest the Insurance Commissioner's denial.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto. Based on the request of Mathew J. King, Jr. (Applicant), and with the agreement of the Insurance Commissioner (OIC), the Applicant appeared by telephone.

2. On February 7, 2011, the OIC transmitted a letter by email to the Applicant advising him that the OIC had denied his application for a Washington nonresident life and health insurance producer license. On February 7, 2011, the Applicant transmitted a letter by email, bearing a date of January 7, 2011, requesting a hearing to contest the OIC's decision. Accordingly, undersigned mailed the Applicant a Notice of Receipt of Request for Hearing which detailed the hearing procedures to be followed and on March 10 the undersigned held a prehearing teleconference which included all parties and the undersigned. The OIC was represented by Andrea L. Philhower, Staff Attorney in the OIC's Legal Affairs Division, and the Applicant represented himself. During said prehearing teleconference, the undersigned outlined procedure to be expected at hearing, and answered all questions and concerns of the parties. At that time, the parties agreed that the hearing should commence on April 25, and pursuant to Notice of Hearing entered thereafter the hearing was held on April 25 with the Applicant appearing by telephone as detailed above.

3. The Applicant is a 68 year old individual who is a resident of the state of New York. For approximately 30 years he has been licensed by the state of New York, among other states, to conduct the businesses of insurance and securities. Prior to being employed with S.W. Bach and Company (S.W. Bach) in December 2003, the Applicant states that he was employed for 15 years with Citicorp Investment Services in Mamaroneck, New York. [Testimony of Applicant Mathew J. King, Jr.; Ex. 1, Demand for Hearing; Ex. 1, OIC Application letters of explanation.]

FINDINGS OF FACTS, CONCLUSIONS OF LAW
AND FINAL ORDER ON HEARING

Matthew J. King, Jr., Docket No. 11-0021 - Page 3

However, the Financial Industry Regulatory Authority (FINRA) [formerly called National Association of Securities Dealers], which exercises regulatory authority over securities agents and businesses nationally, states that the Applicant was only registered as a securities broker with Citicorp Investment Services, and was only employed there, for four and one-half years (May 1999 to December 2003) [Ex. 6, FINRA BrokerCheck Report, pg. 4] so his tenure there is uncertain although not particularly relevant. During his employment with Citicorp Investment Services, the Applicant only dealt with New York clients and New York applications. [Testimony of Applicant; Ex. 1, Application letters of explanation.] No evidence or argument was presented that he experienced any problems during that time.

4. In December 2003, the Applicant took a position with S.W. Bach in New York City where he practiced as a licensed insurance agent and licensed securities broker. In that position, the Applicant handled applications for annuities for clients who were residents of various states other than New York. The Applicant was the sole individual handling insurance transactions, excluding some supervisors. [Testimony of Applicant; Ex. 1, letters of explanation.] No evidence or argument was presented that during those two and one-half years, the Applicant experienced any claims or complaints.

5. After the Applicant had been employed by S.W. Bach for two and one-half years, the Securities and Exchange Commission conducted an audit and the Applicant passed that audit without problems. [Testimony of Applicant.] He left S.W. Bach for apparently unrelated reasons. [Testimony of Applicant; Ex. 1, letters of explanation.] Following his departure from S.W. Bach, FINRA audited S.W. Bach and during that time S.W. Bach went out of business and filed for bankruptcy. [Testimony of Applicant; Ex. 1, letters of explanation.] During its audit, FINRA asserted - and while the Applicant neither admitted nor denied this in the FINRA proceeding, he did testify to its truth in this proceeding before the undersigned and therefore it is here found based upon the Applicant's testimony in this proceeding - that during his employment with S.W. Bach 1) the Applicant prepared twenty-four different applications for variable annuity policies where the proposed state of issue was New York. In each application, where it asks where the customer signed the application, the Applicant himself wrote in that the customer had signed the application in New York when the customer had not signed the application in New York and the customer was not a resident of New York. Additionally, 2) apparently S.W. Bach and/or the insurer(s) to which the applications related had a rule that individuals could only apply for variable annuity policies if they had held accounts with S.W. Bach for at least six months. In each application, the question is asked how long the client had held an account with S.W. Bach and in twenty of these applications the Applicant wrote in the information that the customer had held an account with S.W. Bach for at least six months when these twenty customers had not held accounts with S.W. Bach for at least six months. [Testimony of King; Ex. 1.]

6. As to the twenty-four applications detailed above, three supervisors at S.W. Bach also reviewed and signed these annuity applications. Further, the undersigned asserts, and there is no evidence to the contrary, that he was advised by Travelers Insurance Company and Hartford Insurance Company that if he placed business with Travelers and Hartford and the client lived in another state but had a brokerage account and relationship with S.W. Bach in New York and

FINDINGS OF FACTS, CONCLUSIONS OF LAW
AND FINAL ORDER ON HEARING

Matthew J. King, Jr., Docket No. 11-0021 - Page 4

signed a nexus form acknowledging this, he could use a New York application (i.e. an application where the proposed state of issue was New York). [Testimony of Applicant; Ex. 1, Application letter of explanation dated February 7, 2011.] The applications were reviewed and signed by three supervisors at S.W. Bach. [Testimony of Applicant; Ex. 1, Application letter of explanation dated February 7, 2011.] The applications were also approved by the insurance carriers who then issued the annuity policies. While the Applicant entered New York as the state where the applicants had signed the various annuity applications, the actual state of residence of these applicants is also included in the application. Therefore, the Applicant's supervisors at S.W. Bach and also the insurance carriers who reviewed the New York applications and issued the New York-approved annuity policies could see that the applicants resided in states other than New York. [Testimony of Jeff Baughman; Testimony of Applicant; Ex. 1, Application letter of explanation dated February 7, 2011.] Generally, in order to sell a variable annuity policy to an applicant, the insurer issuing the contract must request and obtain approval from the state where that applicant resides, regardless of where the applicant signed the application. [Testimony of Jeff Baughman.] The annuity policies at issue herein had not necessarily been approved by the states of residence of the applicants as required. It is curious to note, and this issue was considered by Mr. Baughman, the Applicant and the undersigned at hearing, that the carriers involved in reviewing and issuing these variable annuity policies seem to believe that if applicants sign their applications in New York, although it is clear they do not reside in New York, then the carrier is entitled to issue those applicants a New York-approved policy regardless of the fact that the applicants reside elsewhere.

7. After its audit of S.W. Bach, FINRA commenced disciplinary action against the Applicant, FINRA Case No. 2006003892301- District 10A. On December 22, 2008, the case was settled prior to adjudication by execution of a Letter of Acceptance, Waiver and Consent by the Applicant and FINRA on September 5, 2008 and December 19, 2008, respectively. [Exs. 1 and 2, Letter of Acceptance, Waiver and Consent.] In this Letter, the Applicant accepted and consented *without admitting or denying the findings, and solely for the purposes of this proceeding ... prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA: ... From August 2004 through August 2005, King falsified variable annuity policy applications for twenty-four customers by representing that the customers had signed the applications in the proposed state of issue [New York] when they had not; and with respect to twenty of those customers, King falsified the variable annuity policy applications by representing that the customers had accounts with S.W. Bach for at least six months when they did not. King then submitted the applications to S.W. Bach, who submitted them to the issuer of the policies.* [Exs. 1 and 2, FINRA letters dated December 23, 2008, January 6, 2009 and Letter of Acceptance, Waiver and Consent.] Additionally, FINRA stated that the disciplinary action did not *constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.* [Ex. 6, FINRA BrokerCheck Report on King summarizing the action and resolution, at pg. 9.] In said Letter of Acceptance, Waiver and Consent, the Applicant agreed that he would be suspended from association with any FINRA member in any capacity from January 20, 2009 through January 19, 2010 and agreed to pay a fine of \$10,000. [Exs. 1 and 2, FINRA letters dated December 23, 2008, January 6, 2009 and Letter of Acceptance, Waiver and Consent; Ex. 6, FINRA BrokerCheck Report.] FINRA reported that there had been no prior disciplinary

actions against the Applicant. [Ex. 6, FINRA BrokerCheck Report.]

8. Just prior to April 2009, Metropolitan Life Insurance Company terminated the Applicant's appointment to represent it, for cause, based on the FINRA action. On April 6, the North Carolina Department of Insurance (NCDOI) inquired into the Metropolitan's termination of the Applicant's appointment, i.e. the FINRA action. On April 22 the NCDOI advised the Applicant that he could voluntarily surrender his North Carolina license (without advising him he could request a hearing). On April 25 the Applicant voluntarily surrendered his North Carolina license effective April 22. [Ex. 8, April 6, 22 and May 11, 2009 letters from NCDOI to Applicant.] On August 19, the NCDOI informed the Applicant that the agency had made a procedural mistake in this matter in that it should have afforded the Applicant the right to hearing to explain the FINRA situation but that it had failed to do so and that, it would (and did) contact the National Association of Insurance Commissioners to remove the RIRS (disciplinary) action (i.e. a NCDOI revocation of the Applicant's North Carolina nonresident agent license) from the Applicant's record. [Ex. 8, August 19, 2010 letter from NCDOI to Applicant.] On September 27, the NCDOI advised the California DOI that it had mistakenly reported a RIRS action, that there was in fact no RIRS action, that the RIRS action had by that time been removed from the Applicant's record, and that the NCDOI believed the RIRS action was the reason that the Applicant's application for a California nonresident agent license was being hindered. [Ex. 8, September 27, 2010 letter from NCDOI to California DOI.] The California DOI issued a nonresident life and health agent license to the Applicant. [Testimony of Applicant; Ex. 1, Application letters of explanation from Applicant.]

9. In April 2010, following the expiration of his one year suspension ending January 2010, the Applicant began employment with National Securities Corporation (National Securities) in New York City as a Senior Investment Executive and Insurance Licensed Representative. Based on their concern caused by the Applicant's FINRA disciplinary action, the Supervision Department of National Securities has the Applicant under a Heightened Supervision Plan whereby all new account agreements must be signed by the client and approved by the Branch Manager prior to submission; the Applicant may not place trades on behalf of customers prior to the submission and acceptance of such account by the Branch Manager; Option Agreements must be signed by the client and approved by a principal before option trades are placed; no discretionary authority can be given to the Applicant regarding trading or opening of accounts; the Applicant must allow National Securities access to his branch phone records with clients on demand; the Regional Supervisor and Branch Manager have right to monitor any and all of the Applicant's phone calls; the Applicant is subject to a quarterly review regarding his securities and/or insurance activity memorialized by a memorandum as to its nature and any problems noted; the Insurance Licensed Principal and others must review all insurance paperwork prior to forwarding it to National Security's Insurance Supervisory Officer (ISO) for review, the Applicant's superiors McQuade and Dreskou must confirm all state specific documentation reflecting the Applicant's current insurance licensing; the Applicant's current and state specific insurance license must be included with each application submitted to National Securities' ISO who will contact each client prior to submission of final documentation approved by Messrs. McQuade and Drekou to the insurance carrier to confirm that each client understands the product being purchased and that state related documentation signed by the client is accurate; at the

FINDINGS OF FACTS, CONCLUSIONS OF LAW
AND FINAL ORDER ON HEARING

Matthew J. King, Jr., Docket No. 11-0021 - Page 6

discretion of the supervisors, National Securities may institute additional procedures which require that the Branch Manager verify customer authorization of all orders placed by the Applicant and maintain a written record of such verification, among other precautions. [Ex. 1, National Securities Heightened Supervision Plan.]

10. On November 22, 2010, the Applicant applied for a Washington nonresident life and health insurance producer license. He answered "yes" to Question No. 2, which asks *Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?* and, as requested in the OIC application, attached his November 23, 2010 letter of explanation of the FINRA action, copies of letters between himself and FINRA regarding this action documenting FINRA's findings, its one year suspension of his FINRA license and \$10,000 fine, a copy of the Letter of Acceptance, Waiver and Consent, and a copy of the Heightened Supervision Plan under which he was by that time working. [Ex. 1, Washington Application for Nonresident Producer License with attached letter and documents; Ex. 2, same documents.] On February 7, 2011, the Applicant provided the OIC with more information about the FINRA situation. [Ex. 1, February 7, 2011 letter from Applicant to OIC.] However, nine hours before the Applicant faxed this additional information, the OIC transmitted an email letter to the Applicant that it had denied his application based upon RCW 48.17.530(1)(h).

11. It is unclear in its original letter whether the OIC was relying solely on the FINRA action in denying the Applicant a Washington nonresident producer license. However, at hearing, the OIC also argued that there was other activity in North Carolina and California which the Applicant should have disclosed to in his Washington application. As to North Carolina, as found above, the activity in North Carolina was based entirely on Metropolitan Life's termination of his appointment, which was based entirely on the FINRA action. [Ex. 8.] By the time of his Washington Application, the NCDOI had advised him it had failed to follow its own procedures in this activity, and also that it had mistakenly reported a RIRS action against him which it withdrew, advising both the applicant and the California DOI that there was no RIRS action and withdrew the mistakenly reported action from the NAIC's database. For these reasons, while the Applicant should have disclosed the NCDOI activity and included all these explanations and withdrawal of the RIRS action report, the activity came into question by the NCDOI itself and in any case the Applicant's failure to report this NCDOI activity in his Washington application is insufficient reason to deny his Washington nonresident license at this time. As to any California action, the only evidence presented is that California inquired into the NCDOI action when considering whether to issue the Applicant a California nonresident agent license, and based on the information it received from the NCDOI California issued the Applicant a California nonresident agent license. [Ex. 1; Ex. 8.] While the OIC raised an issue of a New York action, the Applicant holds a New York resident agent license and there is no New York action. [Ex. 7.]

12. Since the end of the suspension imposed by FINRA for the activities involving S.W. Bach detailed above, and there being no evidence to the contrary, FINRA has again granted him a securities license (with the Heightened Supervision Plan entered on that license) and the states of Washington, New York, New Jersey, California and Maryland have issued him licenses to

FINDINGS OF FACTS, CONCLUSIONS OF LAW
AND FINAL ORDER ON HEARING

Matthew J. King, Jr., Docket No. 11-0021 - Page 7

practice the business of securities in those states. Further, Metropolitan Life Insurance Company has once again appointed the Applicant to represent it. Finally, along with holding his resident insurance license in New York, the Applicant holds nonresident life and disability insurance agent licenses in California, New Jersey, Connecticut, Maryland and Ohio. [Testimony of Applicant; Ex. 1, Application for Washington Nonresident Producer License with letters of explanation.]

13. While the Applicant neither admitted nor denied committing the above actions in his employment at S.W. Bach, he admitted committing them in the proceeding herein. However, for these violations, FINRA imposed the very significant penalties of a \$10,000 fine and one-year suspension from affiliation with any and all FINRA members. He has paid the fine, completed his one-year suspension and has now obtained new employment under a Heightened Supervision Plan which is entered onto his FINRA license. He has worked in the business of both insurance and securities for decades through licenses issued to him by many states, he had no prior FINRA disciplinary actions against him at the time of the single FINRA action in December 2008, and there is no evidence that he has been the subject of any state or other disciplinary actions other than the December 2008 FINRA action for which he has already been seriously penalized. Given this situation, it is not reasonable to deny the Applicant a Washington insurance producer license at this time.

14. Jeff Baughman, OIC Licensing Manager, testified on behalf of the OIC. Mr. Baughman presented his testimony in a clear and credible manner and exhibited no apparent biases.

15. Matthew J. King, Jr., the Applicant, appeared as a witness on his own behalf of the Applicant. Mr. King presented his testimony in a clear and credible manner and exhibited no apparent biases.

16. Based on the above activity, including the fact that the Applicant has paid the fine and complied with the suspension imposed by FINRA, obtained new employment where his new employer is aware of the FINRA action and resolution, been reappointed by Metropolitan Life Insurance Company and has been reissued both securities and insurance agent's licenses in many states, it is reasonable that the OIC's denial of a Washington nonresident producer's license should be set aside and that the Applicant should be granted the license.

CONCLUSIONS OF LAW

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW, Title 34 RCW and regulations applicable thereto.

2. Pursuant to RCW 48.17.530(1)(h), the OIC may refuse to issue an insurance producer's license if the Applicant has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere. Pursuant to the above Findings of Fact, the Applicant neither admitted nor denied the facts set forth in the

FINRA Letter of Acceptance, Waiver and Consent referenced above. However, in his testimony before the undersigned, the Applicant did admit engaging in the activities set forth above, and provided additional uncontroverted facts which did to some extent mitigate his situation. At any rate, based on the fact that the Applicant has paid the fine and served the probation imposed by FINRA for the activities which are the subject of this proceeding, has obtained new employment where his new employer is aware of the FINRA action and resolution, has been reappointed by Metropolitan Life Insurance Company and has been reissued both securities and insurance agent licenses in many states since the expiration of his period of suspension, and based on the above finding that the Applicant has practiced as a licensed insurance agent for many years, at the time of the December 2008 FINRA action for which he has already been penalized he had had no prior FINRA actions against him, and there is no evidence of any state or other claims or actions against him which are relevant to the issue herein, it is not reasonable that the OIC should deny the Applicant's application for a Washington insurance producer license pursuant to RCW 48.17.530(1)(h).

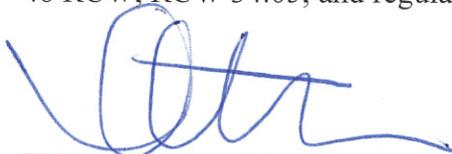
3. Based upon the above Findings of Fact and Conclusions of Law, it is reasonable to conclude that the Insurance Commissioner's February 7, 2011 denial of the application of Matthew J. King, Jr. for a Washington nonresident insurance producer license should be set aside.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Insurance Commissioner's February 7, 2011, decision denying the application of Matthew J. King, Jr. for a Washington nonresident insurance producer license in Washington is set aside. The OIC shall grant Mr. King's application forthwith and issue him a Washington nonresident insurance producer license. Should the OIC become aware of any future activities which bear on his Washington nonresident insurance producer license which do not include the activities which were the subject of the FINRA violation, the OIC may take the facts of this proceeding into account when considering any future action against Mr. King.

This Order is entered at Tumwater, Washington, this 24th day of May, 2011, pursuant to Title 48 RCW, RCW 34.05, and regulations applicable thereto.



PATRICIA D. PETERSEN
PRESIDING OFFICER

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that,

FINDINGS OF FACTS, CONCLUSIONS OF LAW
AND FINAL ORDER ON HEARING
Matthew J. King, Jr., Docket No. 11-0021 - Page 9

pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Matthew J. King, Jr., Mike Kreidler, Michael G. Watson, Carol Sureau, Andrea L. Philhower, John F. Hamje, and Jeff Baughman.

DATED this 24th day of May, 2011.


Victoria Estrada