

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF INSURANCE COMMISSIONER

FILED

In the Matter of:

RELIAMAX SURETY COMPANY,

Respondent.

OAH Docket No. 2011-INS-0002

OIC No. 11-0092

INITIAL ORDER
DISMISSING APPEAL
PURSUANT TO
APPELLANT WITHDRAWING
APPEAL

2011 DEC 21 A 11:25
Hearings Unit, OIC
Patricia D. Peterson
Chief Hearing Officer

At the prehearing conference held on October 26, 2011, the attorney representing ReliaMax Surety Company (hereinafter, "the Respondent") said that the Respondent intended to withdraw its administrative appeal. The staff attorney for the Office of Insurance Commissioner (hereinafter, "the OIC") said that the OIC might object to the Respondent's withdrawal. Accordingly, briefing and oral argument were scheduled.

Briefs were filed as scheduled and on December 13, 2011, at 8:00 a.m., the parties appeared by telephone conference to present oral argument. Andrea Philhower, Staff Attorney, appeared and represented the OIC. Jason Anderson, attorney at law, of Carney Badley Spellman, appeared and represented the Respondent. Jodi Lash, attorney at law, appeared as an observer on behalf of the Respondent.

The Respondent argued that its right to withdraw was absolute and should be granted without prejudice. The OIC did not object to the Respondent's withdrawal. However, the OIC argued that the Respondent's withdrawal of its appeal constituted a waiver of its right to an administrative hearing on the underlying Order to Cease and Desist because the 90-day appeal period has run. The Respondent argued that the OIC's argument constituted a request that the Respondent's appeal be dismissed with prejudice which the Respondent feared the OIC would use as a mean for asserting *res judicata* to bar any future challenges to the validity of the Cease and Desist Order. Accordingly, the Respondent argued that the appeal should be dismissed without prejudice.

In effect, the parties argued about what would be the effect of a dismissal order pursuant to withdrawal and asserted the phrase consistent with their point of view. Neither party supported its argument with authority directly on point. An argument regarding the future effect of a dismissal order pursuant to withdrawal is not presently ripe. Moreover, the present effect of this dismissal order is that challenge in this forum to the agency action ceases – nothing more, nothing less. Therefore, I decline to employ either the phrase "with prejudice" or the phrase "without prejudice".

Order of Dismissal: Withdrawal of Appeal
OAH Docket No. 2011-INS-0002

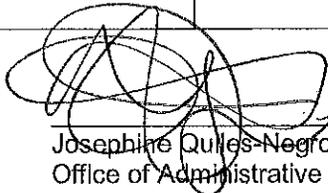
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 Fax: (253) 593-2200

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I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Address: Timothy J. Parker Attorney at Law Carney Badley Spellman, PS 701 Fifth Ave., Ste 3600 Seattle, WA 98104-7010	First Class US Mail, postage prepaid
Address: Andrea Philhower Staff Attorney Office of the Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	First Class US Mail, postage prepaid
Address: Patricia H. Petersen Chief Hearing Officer Hearings Unit, OIC PO Box 40255 Olympia, WA 98504-0255	First Class US Mail, postage prepaid
Address:	
Address:	
Address:	

Date: December 20, 2011



Josephine Quiles-Negrone
Office of Administrative Hearings