MIKE KREIDLER
STATE INSURANCE COMMISSIONER

**STATE OF WASHINGTON**

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

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| In the Matter of: | ) | |
| | ) | No. 11-0092 |
| **RELIAMAX SURETY COMPANY,** | ) | |
| | ) | ORDER TERMINATING |
| | ) | PROCEEDINGS |
| Respondent. | ) | |
| | ) | |

**TO:** ReliaMax Surety Company
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And via email at: jredmon@redmonlaw.com; mvanerdewyk@reliamax.com

**AND TO:** Timothy J. Parker, Esq.
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## NATURE OF PROCEEDING

On April 28, 2011, the Insurance Commissioner ("OIC") issued an Order to Cease and Desist ("OIC's Order") against Reliamax Surety Company ("Reliamax"), requiring that Reliamax immediately cease and desist from selling unlicensed surety products in the State of Washington. In its OIC's Order, the OIC alleges that ReliaMax is a South Dakota insurer 1) which is not authorized to engage in the business of insurance in Washington, 2) does not meet the criteria under RCW 48.05.340 for licensure as an insurer in Washington, 3) has not filed any rates or forms with the OIC for approval of any products to be sold in Washington, and 4) has been selling surety products in Washington. Specifically, the OIC asserts that there were a total of 3 unauthorized sales of ReliaMax's surety products in Washington affecting 3 Washington credit unions, one having approximately $400,000 in student loans that were covered by ReliaMax's surety product and was committed to do another $225,000 before June 2011. Further, the OIC asserts that Reliamax has informed the OIC that it has approximately $500,000 insured in Washington – all of which the OIC asserts is unauthorized - and has approximately $300 million in student loans insured nationwide.

In response to the OIC's Order, on July 26, 2011, the undersigned received a Demand for Hearing from Timothy J. Parker, Esq. representing ReliaMax to challenge the OIC's Order, asserting that it is aggrieved because it prevents ReliaMax from doing business in Washington as a direct writer. Pursuant to its August 1 Amended Demand, on August 10 the undersigned transmitted the hearing file to OAH with the request that an OAH judge conduct the hearing and enter an Initial Order.

Subsequently, beginning on August 25, 2011, the OAH judge entered a Notice of [Prehearing] Conference, received and granted a request from ReliaMax to have a ReliaMax representative participate in the prehearing conference, commenced the prehearing conference on September 12 as scheduled, received and granted ReliaMax's request for a continuance of that prehearing conference and rescheduled it for October 26, held the October 26 prehearing conference, and based upon ReliaMax's advise that it might withdraw its request for hearing scheduled oral argument thereon.

## ISSUE RE TERMINATION WITH OR WITHOUT PREJUDICE

Thereafter, on November 2, 2011, ReliaMax filed its Motion to Withdraw Request for Hearing, advising that it no longer wished to challenge the OIC's Order through state administrative procedures. In its Motion, Reliamax simply requested the OAH judge to enter an Initial Order Terminating Proceedings pursuant to RCW 34.05.461(1(c) and did not address the issue of whether it should be entered either *with prejudice* or *without prejudice.*

On November 16, 2011, the OIC filed its OIC Response to ReliaMax's Motion to Withdraw Request for Hearing, advising it did not object to ReliaMax's withdrawal of its hearing request or entry of an initial then final Order Terminating Proceedings but, apparently for clarification, stated that it should be *with prejudice*, and that the OIC's Order *would remain in effect subject to further order of the OIC, and* [as is specifically stated in the OIC's Order], *any violation of the terms of the Order to Cease and Desist by ReliaMax, their officers, directors, agents, or*

*affiliates, will render the violator(s) subject to the full penalties authorized by the Insurance Code.*

On December 7, 2012, ReliaMax then filed its Reply in Support of Motion to Withdraw Request for Hearing, arguing that the Order Terminating Proceedings should be *without prejudice* because, briefly, 1) it *has an absolute right to request a hearing and thus to withdraw its request for hearing* and 2) that, because it assumes the OIC could take the position (in a challenge to any subsequent enforcement action it may conduct relative to this Order to Cease and Desist) that a dismissal *with prejudice* would bar any challenge to the validity of the OIC's Order. As a result, ReliaMax argues, *because the merits of this case have not been adjudicated, dismissing this matter with prejudice would result in a deprivation of ReliaMax's rights without due process.*

In response, on December 20, 2011, the OAH judge entered an Initial Order Dismissing Appeal Pursuant to Appellant Withdrawing Appeal. With regard to the issue herein, the Initial Order recognized that the parties offered opposing arguments regarding whether the proceeding should be terminated with or without prejudice, as detailed above, and stated:

> *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". [sic] Having reviewed the file, the briefs and oral argument, and* [ReliaMax's ] *withdrawal motion, I conclude that there remains no issue for resolution by the Office of Administrative Hearings. Accordingly, dismissal of the appeal is appropriate under the circumstances....* [ReliaMax's] *appeal is dismissed.*

The undersigned has carefully reviewed the entire hearing file received from OAH, the OAH judge's Initial Order Terminating Proceedings, and the arguments of the parties including case law cited, and applicable statutes and regulations, and finds as follows:

1. The OIC issued its Order to Cease and Desist on April 28, 2011. RCW 48.04 states that any person aggrieved by an order of the OIC may file a Demand for Hearing to contest the merits of the OIC's Order. Pursuant to RCW 48.04, on July 26 ReliaMax filed its Demand for Hearing to contest the merits of the OIC's Order. RCW 48.04 also requires that any Demand for Hearing must be filed within 90 days of receipt of the OIC's Order, and therefore ReliaMax's Demand for Hearing was filed timely. The undersigned determined that ReliaMax did indeed have a right to hearing to contest the merits of the OIC's Order pursuant to RCW 48.04, a hearing was granted and the adjudicative process commenced: between July 26 and November 2 the adjudicative process progressed toward the hearing on the merits. On November 2, ReliaMax voluntarily filed its Motion to Withdraw its Request for Hearing.

2. ReliaMax argues that it should be able to again file a Demand for Hearing

to contest this same OIC's Order because *the merits have not been adjudicated and so to terminate this proceeding with prejudice would deprive ReliaMax of due process.* However, ReliaMax was given the opportunity to have its challenge to the OIC's Order adjudicated on the merits but chose not to have the merits of the OIC's Order adjudicated, by - after over three months of activity progressing to the hearing to adjudicate the merits -- filing its Motion to Withdraw Request for Hearing. In addition, pursuant to RCW 48.04, ReliaMax was required to file its Demand within 90 days after service of the OIC's Order: that period expired in July 2011. (ReliaMax also argues that because it has *an absolute right to hearing it also has an absolute right to withdraw its request* and that this somehow means it can file requests and withdrawals of requests -- to challenge the same action – repeatedly as it chooses regardless of the fact that the requests challenge the same action and are filed outside the 90 day period. This argument is without merit.)

3. ReliaMax also argues that, in a subsequent enforcement action related to the OIC's Order, the OIC would take the position that a dismissal with prejudice bars any challenge to the validity of the Order (or the OIC's authority to enter it). The OIC could take that position and very well may be correct. However, this argument does not support entry of an Order Terminating Proceeding without prejudice now: the OIC very likely might take this position upon subsequent enforcement action, and ReliaMax might choose to raise this issue at that time, however this is no reason to enter an Order Terminating Proceeding without prejudice now.

4. Finally, contrary to the decision of the OAH judge in the Initial Order Terminating Proceeding which is quoted above, the issue of whether this Order Terminating Proceeding should be entered with or without prejudice is very clearly ripe at the time of entry of this Order Terminating Proceeding.

## ORDER

Based upon the above considerations,

**IT IS HEREBY ORDERED** that this proceeding, Docket No. 11-0092, is hereby dismissed with prejudice.

**IT IS FURTHER ORDERED,** as reflected in the hearing file, 1) pursuant to RCW 48.04.020 there was no automatic stay of the OIC's Order to Cease and Desist; 2) ReliaMax did not request a discretionary stay of the OIC's Order to Cease and Desist; and 3) the OIC's Order to Cease and Desist became effective on April 28, 2011 and remains in effect.

Entered this 5th day of September, 2012, at Tumwater, Washington, pursuant to Title 48 RCW, Title 34 RCW and regulations pursuant thereto.

PATRICIA D. PETERSEN
Review Judge

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: ReliaMax Surety Company, Timothy J. Parker, Esq. and Jason W. Anderson, Esq., Mike Kreidler, Mike Watson, James Odiorne, John F. Hamje, Carol Sureau, and Andrea L. Philhower.

DATED this 6th day of September, 2012.

Kelly A. Cairns

KELLY A. CAIRNS