

STATE OF WASHINGTON
BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER

FILED

2011 AUG 24 P 3: 31

IN THE MATTER OF:

**STEWART TITLE GUARANTY
COMPANY,**

An Authorized Title Insurer.

Docket No. 11-0106

Hearings Unit, DIC
Patricia D. Petersen

**OIC MOTION FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

The Office of the Insurance Commissioner (hereinafter "OIC") requests that the Administrative Law Judge grant summary judgment in this matter for the following reason:

The undisputed evidence shows that Stewart Title Guaranty Company ("Stewart Title" or "the Company") voluntarily appointed Rainier Title, LLC (Rainier Title") as its agent on or about December 17, 2008, to sell, solicit or negotiate title insurance on its behalf in accordance with RCW 48.17.010(15), and has so been appointed continuously since that date (Exhibit 1). Between March 20, 2009 and July 1, 2010, Rainier Title issued title insurance exclusively for Stewart Title. During this same timeframe, Rainier Title, by its own admission, violated WAC 284-29-215(2) by providing a link to a mortgage broker's website on its own website (Exhibit 2). By virtue of Stewart Title's properly filing an Appointment form with the OIC on forms prescribed and furnished by the OIC, as required by RCW 48.17.160, and its retention of that perfected appointment at all times pertinent hereto, a principal-agent relationship was effectuated by statute.

ORIGINAL

Therefore, Stewart Title is liable for the regulatory violations of Rainier Title committed while Rainier Title was exclusively an agent for Stewart Title.

II. RELIEF REQUESTED

OIC staff requests entry of an order of summary judgment in this matter. Specifically the Administrative Law Judge is asked to determine as a matter of law that as the appointing insurer, Stewart Title is liable for the regulatory violations of its duly appointed agent, Rainier Title, and that as a result, a fine in an amount of no less than \$250 and no more than \$10,000 should be imposed on Stewart Title in accordance with RCW 48.05.185.

III. FACTS

1. This matter is set for hearing at the request of the OIC inasmuch as Stewart Title has declined to enter into a proposed Consent Order offered to it wherein a fine of \$2,500 was levied for its violation, by way of its agent's actions, of WAC 284-29-215(2) (Exhibit 3).

2. Rainier Title admitted that it had advertised with a producer of title insurance business on its website and on December 14, 2010, Rainier Title entered into a Consent Order with the OIC whereby Rainier Title consented to the entry of the Order finding that it had advertised with a producer of title insurance business in violation of WAC 284-29-215(2) and thereafter paid a fine of \$500 (See Exhibit 2).

IV. ARGUMENT AND AUTHORITY

There are no material issues of fact and so Summary Judgment Is Appropriate

In *Island Air, Inc. v. LaBar*, 18 Wn. App. 129, 136, 566 P.2d 972 (1977), the rules governing summary judgment are set out as follows:

The purpose of a motion for summary judgment is to examine the sufficiency of the evidence supporting the plaintiff's formal allegations so that unnecessary trials may be avoided where no genuine issue of material fact exists. CR 56; *Morris v. McNicol*, 83 Wn.2d 491, 519 P.2d 7 (1974); *Garbell v. Tall's Travel Shop, Inc.*, 17 Wn. App. 352, 353, 563 P.2d 211 (1977). A material fact is one upon which the outcome of litigation depends in whole or in part. *Morris v. McNicol, supra*; *Amant v. Pacific Power & Light Co.*, 10 Wn. App. 785, 520 P.2d 181 (1974), *aff'd per curiam*, 84 Wn.2d 872, 529 P.2d 829 (1975). The motion will be granted only if after viewing the pleadings, depositions, admissions and affidavits, and all reasonable inferences that may be drawn therefrom in the light most favorable to the nonmoving party, it can be stated as a matter of law that (1) there is no genuine issue as to any material fact, (2) all reasonable persons could reach only one conclusion, and (3) the moving party is entitled to judgment.

As Stewart Title's agent, Rainier Title solicited insurance on Stewart Title's behalf, including advertising on its website, in the course of which it violated WAC 284-29-215(2).

RCW 48.17.010 (16) defines a "title insurance agent" as follows:

"Title insurance agent means a business entity licensed under the laws of the state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company."

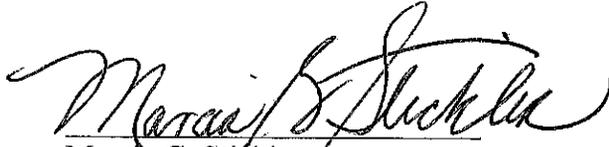
"Solicit" is defined in RCW 48.17.010(14) as attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer. Rainier Title's advertising on its website for its title insurance services obviously constitutes one form of solicitation. And since virtually all of Rainier Title's title insurance business at that time was on behalf of underwriter Stewart Title, the advertisement in effect advertises for Stewart Title as well as for Rainier Title. It was in its website advertising that Rainier Title violated WAC 284-29-215(2) by advertising with Nest Financial, LLC, a producer of title insurance business. Even if Rainier Title's motive for advertising for Nest Financial, LLC on its own website was purely selfish, its advertising was part and parcel of its title insurance solicitation activities and benefited its principal as well as itself. Because Rainier Title's advertising constituted solicitation

activity, it falls squarely within the scope of the insurance code definition of what an insurance agent is and what an insurance agent does. It also falls clearly within the scope of Rainier Title's appointment to solicit title insurance on Stewart's behalf. Rainier Title's conduct is therefore attributable to Stewart Title. WAC 284-29-215(2) prohibits a title insurer or title insurance agent from advertising on behalf of or with a producer of title insurance business. A mortgage broker is specifically named as a "producer of title insurance business" under RCW 48.29.010(3)(e). The OIC is therefore entitled to summary judgment on its finding that Stewart Title violated WAC 284-29-215(2).

V. CONCLUSION

The undisputed facts of this case show that Rainier Title admitted to violating WAC 284-29-215(2) and agreed to a fine and entry of a Consent Order for conduct that occurred while Rainier Title issued title insurance exclusively for Stewart Title. Stewart Title and Rainier Title were and are still in a principal-agent relationship as a matter of law. Rainier Title's violation of WAC 284-29-215(2) is therefore attributable to and Stewart Title is liable for such violation. The OIC respectfully requests that the Administrative Law Judge enter an order granting summary judgment in this matter and impose an appropriate fine for its regulatory violation.

Respectfully submitted this 24th day of August, 2011.


Marcia G. Stickler
OIC Staff Attorney

CERTIFICATE OF SERVICE

Pursuant to Rule 5 of the Civil Rules, I certify under penalty of perjury under the laws of the State of Washington that this instrument was served upon all parties of record in this proceeding on this 24th day of August, 2011.

Stephen J. Sirianni
Sirianni Youtz Spoonmore
999 Third Avenue, Suite 3650
Seattle, WA 98104

Jodie Thompson
Jodie Thompson

[Print](#)

LICENSE DETAILS

License Information

License Type Status Cancel Date

Effective Date * Expiry Date Formed Date

Designated Responsible Person WAOIC#

[Show Pending](#)

Full Lines

Lines	Effective Date	Cancel Date
<input type="text" value="Title"/>	<input type="text" value="09/04/2001"/>	<input type="text"/>

Appointment List

Company Name	Company #	Appointment Date	Appointment Type	Expiry Date	Lines	Cancel Date
COMMONWEALTH LAND TITLE INSURANC...	313	01/03/2006	Regular Appointment	10/24/2009	Lines	03/12/2009
EnTitle Insurance Company	500214	07/01/2010	Regular Appointment	12/31/2011	Lines	
LAWYERS TITLE INSURANCE CORPORATION	720	09/04/2001	Regular Appointment	10/09/2009	Lines	03/12/2009
STEWART TITLE GUARANTY COMPANY	1265	12/17/2008	Regular Appointment	05/03/2013	Lines	
WFG NATIONAL TITLE INSURANCE COM...	500587	01/19/2011	Regular Appointment	08/30/2012	Lines	

Bond Information

Company #	Bond #	Bond Amount	Effective Date	Cancel Date
578	52SBAVZ7170	200000.00	12/01/2009	

Guarantee Information

Company #	Guarantee Amount	Effective Date	Cancel Date
1265	200000.00	06/04/2009	
313	200000.00	08/13/2005	03/12/2009
720	200000.00	11/30/2006	03/12/2009

EXHIBIT 1 **PAGE** 1 of 1



OFFICE OF
INSURANCE COMMISSIONER

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In the Matter of)

No. 10-0157

RAINIER TITLE, LLC,)

**CONSENT ORDER
IMPOSING A FINE**

A Licensed Title Insurance Agent)
_____)

COMES NOW the Insurance Commissioner of the State of Washington, pursuant to the authority provided in RCW 48.01.020 and RCW 48.17.260, and having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

FINDINGS OF FACT:

1. Rainier Title, LLC ("Rainier Title" or the "Company") is licensed by the OIC and appointed by Stewart Title Guaranty Company, an authorized title insurer, to sell, solicit and negotiate insurance on Stewart Title Guaranty Company's behalf in Washington State. Rainier Title is therefore subject to Title 48 RCW and Chapter 284 WAC.
2. Between on or about March 20, 2009 and July 20, 2010, Rainier Title advertised on its website, www.rainiertitle.com, with and on behalf of Nest Financial, LLC, a mortgage broker. Nest Financial, LLC is a producer of title insurance business as defined in RCW 48.29.010(3)(e).

CONCLUSIONS OF LAW:

1. By advertising with or on behalf of a producer of title insurance business, Rainier Title committed one violation of WAC 284-29-215(2).
2. RCW 48.17.260 authorizes the Insurance Commissioner to impose a fine of up to \$1,000 (One Thousand Dollars) per violation for violation of any insurance rule, in lieu of or in addition to the suspension or revocation of a title insurance agent's license.

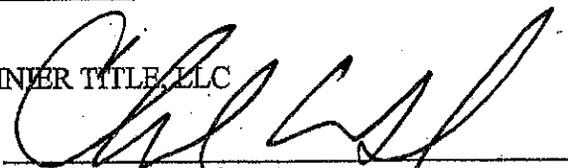
CONSENT TO ORDER:

Rainier Title, acknowledging its duty to comply fully with the applicable laws of the State of Washington, consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of the Company's payment of a fine and upon such terms and conditions as are set forth below.

1. Rainier Title consents to the foregoing Findings of Fact and Conclusions of Law as they pertain to these facts, consents to the entry of the Order and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order;
2. Within thirty days of the entry of this Order, Rainier Title agrees to pay to the Office of the Insurance Commissioner a fine in the amount of \$500.00 (Five Hundred Dollars).
3. Rainier Title agrees to provide, if any, only those free, downloadable forms on its website that are in compliance with WAC 284-29-260(6)(j).
4. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of Rainier Title's license, and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General.

Executed this 13TH day of DECEMBER, 2010.

RAINIER TITLE, LLC

By: 

Printed Name: CHARLES W. TRAFON III

Corporate Title: GENERAL MANAGER

ORDER:

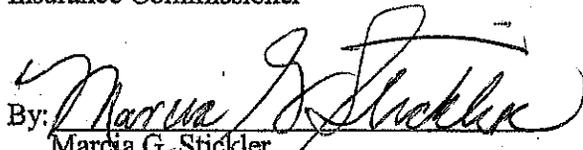
NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner orders as follows:

1. Rainier Title, LLC is ordered to pay a fine in the amount of \$500.00 (Five Hundred Dollars).

2. Rainier Title is ordered to provide, if any, only those free, downloadable forms on its website that are in compliance with WAC 284-29-260(6)(j).
3. Rainier Title, LLC's failure to provide, if any, only those free, downloadable forms that are in compliance with WAC 284-29-260(6)(j) and to pay the fine within the time limit set forth above shall constitute grounds for revocation of the Company's license, and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General.

Executed this 14th day of December, 2010.

MIKE KREIDLER
Insurance Commissioner

By: 
Marcia G. Stickler
Staff Attorney
Legal Affairs Division



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	No.10-0158
)	
STEWART TITLE GUARANTY COMPANY,)	CONSENT ORDER
)	IMPOSING A FINE
An Authorized Insurer.)	
_____)	

COMES NOW the Insurance Commissioner of the State of Washington, pursuant to the authority provided in RCW 48.01.020 and RCW 48.05.185, and having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

FINDINGS OF FACT:

1. Rainier Title, LLC ("Rainier Title") is licensed by the OIC and appointed as a title insurance agent by Stewart Title Guaranty Company ("Stewart Title" or "the Company"), an authorized title insurer, to sell, solicit and negotiate insurance on Stewart Title Guaranty Company's behalf in Washington State. Stewart Title and Rainier Title are therefore subject to Title 48 RCW and Chapter 284 WAC.
2. Between on or about March 20, 2009 and July 20, 2010, Rainier Title advertised on its website, www.rainiertitle.com, with and on behalf of Nest Financial, LLC, a mortgage broker. Nest Financial, LLC is a producer of title insurance business as defined in RCW 48.29.010(3)(e).

CONCLUSIONS OF LAW:

1. By its appointed agent Rainier Title advertising with or on behalf of a producer of title insurance business, Stewart Title committed one violation of WAC 284-29-215(2).
2. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine of up to \$10,000 (Ten Thousand Dollars) on an insurer for violation of any insurance regulation, in lieu of or in addition to the suspension or revocation of its Certificate of Authority.

EXHIBIT 3 **PAGE** 1 of 3



CONSENT TO ORDER:

Stewart Title, acknowledging its duty to comply fully with the applicable laws of the State of Washington, consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of the Company's payment of a fine and upon such terms and conditions as are set forth below.

1. Stewart Title consents to the foregoing Findings of Fact and Conclusions of Law as they pertain to these facts, consents to the entry of the Order and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order;
2. Within thirty days of the entry of this Order, Stewart Title agrees to pay to the Office of the Insurance Commissioner a fine in the amount of \$2,500 (Two Thousand Five Hundred Dollars); and
3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of Stewart Title's Certificate of Authority, and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General.

Executed this _____ day of _____, 2010.

STEWART TITLE GUARANTY COMPANY

By: _____

Printed Name: _____

Corporate Title: _____

ORDER:

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner orders as follows:

1. Stewart Title Guaranty Company is ordered to pay a fine in the amount of \$2,500 (Two Thousand Five Hundred Dollars).
2. Stewart Title Guaranty Company's failure to pay the fine within the time limit set forth above shall constitute grounds for revocation of the

Company's Certificate of Authority, and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General.

Executed this _____ day of _____, 2010.

MIKE KREIDLER
Insurance Commissioner

By: _____
Marcia G. Stickler
Staff Attorney
Legal Affairs Division