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OFFICE OF  
INSURANCE COMMISSIONER

2011 OCT 10 P 1:38

In the Matter of: )  
 )  
RACHEL ANDERSON )  
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No. 11-0220

Hearing Officer  
Patricia J. Peterson  
Chief Hearing Officer

MOTION RE HEARING RIGHT

**I. SUMMARY OF THE FACTS**

On 9/3/09, Ms. Anderson filed a request for investigation of her insurance agent, John Peterson, alleging that he had altered her application. She asked that we have the company return all their records regarding her application and to state that she never submitted an application and therefore never had an application postponed. See Exhibit A – Ms. Anderson’s on-line complaint.

This complaint was assigned to Victor Overholt for investigation. He contacted Ms. Anderson to determine what alterations she alleged had been made. Attached as Exhibit B is Ms. Anderson’s list of the alleged alterations. Mr. Overholt’s investigation determined that the information constituting the “alterations” was provided by Ms. Anderson to Mr. Peterson, with the understanding that the information would be submitted as part of her application. Mr. Overholt so advised Ms. Anderson and on 9/23/10, she wrote to John Hamje, myself and Mark Durphy stating that she did not believe Mr. Overholt was capable of conducting an unprejudiced investigation of her complaint and asking that the investigation be reassigned.

The investigative file compiled by Mr. Overholt was reassigned by Investigations Manager Mark Durphy to Cheryl Penn, who reviewed the entire file, coming to the same conclusion as Mr. Overholt, that there was insufficient evidence of a violation of the Insurance Code. Thereafter, Mr. Durphy reviewed the entire file and came to the same conclusion. On January 12, 2011, Mr. Durphy wrote to Ms. Anderson informing her that, after a thorough investigation and review of the facts and evidence in the case, the agency had concluded that there is insufficient evidence to substantiate the allegation that Mr. Peterson violated the Insurance Code and therefore no disciplinary action would be taken against him. On January 20, Ms. Anderson responded to Mr. Durphy complaining of the result. I wrote to her thereafter, explaining the process followed by the agency and providing her with a copy of the hearing statute, RCW 48.04.010. Ms. Anderson’s request for hearing followed.

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## II. ARGUMENT

RCW 48.04.010(1)(b) provides as follows:

- (b) Except under RCW 48.13.475, upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing. [emphasis added]

Ms. Anderson's hearing demand insists that Mr. Peterson violated the Insurance Code and her complaint is that the Insurance Commissioner's Office ("OIC") "decided there was insufficient evidence to do anything about this." Her demand concludes that the harm about which she complains was "caused by the Office of the Insurance Commissioner's decision not to do anything about this fraudulent, withdrawn application that is currently attributed to me."

There is no right to a hearing for such a failure of the OIC to act, since this failure is not deemed an act under any provision of the Code. An example of a failure to act that is deemed an act under the Code is RCW 48.18.110(2), which provides in pertinent part:

- (2) . . . . If the commissioner does not disapprove a rate filing within sixty days after the insurer has filed the documents required in RCW 48.20.025(2) and any rules adopted pursuant thereto, the filing shall be deemed approved.

The Insurance Code does not deem a decision by the OIC to not pursue disciplinary action against a producer an act under the Code. Therefore, Ms. Anderson is not entitled to a hearing in this matter.

DATED this 10th day of October, 2011.

OFFICE OF INSURANCE COMMISSIONER

By: Carol Sureau  
Carol Sureau  
Deputy Commissioner, Legal Affairs *RM*

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CERTIFICATE OF MAILING

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

On the date given below I caused to be served the foregoing MOTION RE HEARING RIGHT on the following individuals via US Mail and via email.

Rachel Anderson  
2337 E. 18<sup>th</sup> Street  
Bremerton, WA 98310

RachelRoo@gmail.com

SIGNED this 10<sup>th</sup> day of October, 2011, at Tumwater, Washington.

  
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RENEE MOLNES