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STATE OF WASHINGTON



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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 11-0282
)	
JEFFREY S. HOLLINGSWORTH,)	FINAL ORDER ON LICENSEE'S
)	MOTION FOR RECONSIDERATION
)	
Licensee.)	
_____)	

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NATURE OF PROCEEDING

The Insurance Commissioner ("OIC") entered his Order Revoking License against Jeffrey S. Hollingsworth ("Licensee") on December 5, 2011, the Licensee demanded a hearing to contest



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said Order on December 13, 2011, the administrative proceeding commenced before the undersigned on March 20, 2012 and the undersigned entered her Findings of Facts, Conclusions of Law and Final Order ("Final Order") herein on June 26, 2012. Thereafter, the Licensee filed his Motion for Reconsideration ("Motion") on July 12, 2012 and the OIC timely filed its Memorandum in Response to the Licensee's Motion for Reconsideration of Final Order on July 31, 2012. The undersigned commenced consideration of the arguments of both parties after receipt of the OIC's responsive brief on August 1, 2012.

In its Order Revoking License, the OIC alleged, and in her Final Order the undersigned found and concluded, 1) that the OIC discovered that the Licensee had been suspended by the Financial Industry Regulatory Authority ("FINRA") on July 8, 2011 and had failed to advise the OIC of FINRA's action as required and thereby violated RCW 48.17.597; 2) that pursuant to RCW 48.17.530 the OIC was authorized to revoke the Licensee's insurance producer's license for failure to report this suspension; 3) that the OIC had properly sent inquiries to the Licensee, at his registered mailing address, on four occasions to discuss this matter and that the Licensee had on all four occasions failed to respond to these inquiries and thereby violated RCW 48.17.475 on each occasion; and 4) that if the Licensee's registered mailing address was outdated as he claims, then the Licensee had failed to advise the OIC of his change of mailing address and thereby violated WAC 284-17-005.

RULES GOVERNING MOTIONS FOR RECONSIDERATION

While the Licensee cites no authority authorizing him to file his Motion for Reconsideration in this matter, RCW 34.05.470 provides that the undersigned may consider motions for reconsideration of her final orders entered in administrative hearings.

While the Licensee also provides no authority or standards for review of his Motion for Reconsideration, pursuant to Title 34 RCW, Local Rules, CR 59, Washington Rules for Superior Court, and applicable case law serve as guides in considering and determining motions for reconsideration of final orders entered in administrative hearings.

Reconsideration is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources. The Licensee cites no reason why his Motion for Reconsideration should be granted under the prevailing standards for motions for reconsideration. However insofar as might be pertinent herein, a Motion for Reconsideration should not be granted absent highly unusual circumstances, a) the judge is presented with material newly discovered evidence which the Licensee could not have discovered and produced at the hearing; b) the judge committed clear error; c) that there is no evidence or reasonable inference from the evidence to justify the Final Order; d) that the Final Order is contrary to law; or e) if there has been an intervening change in the controlling law. A Motion for Reconsideration cannot be used to provide parties with a second bite at the apple, i.e., a Motion for Reconsideration should not be used to ask the judge rethink what he or she had already thought through, rightly or wrongly. Equally importantly, a Motion for Reconsideration may not

be based upon evidence and legal arguments that could have been presented at the time of the challenged decision (administrative hearing) but failed to do so.

LICENSEE'S MOTION FOR RECONSIDERATION

The Licensee presents essentially a total of four arguments in his Motion for Reconsideration: the Licensee's first argument (Argument No. 1 below) is one that he could well have presented in the administrative hearing before the undersigned, but he did not do so. The Licensee's other arguments are ones that he did raise at the administrative hearing before the undersigned (Argument Nos. 2, 3 and 4 below), which were the subject of presentation of evidence from both the Licensee and the OIC and were the subject of Findings of Facts and Conclusions of Law in the Final Order. As set forth in Rules Governing Motions for Reconsideration above, none of the Licensee's arguments are appropriate bases for a Motion for Reconsideration. However they are recognized as having been made herein and are discussed below:

The Licensee argues that the undersigned should not have concluded that the Licensee violated RCW 48.17.597 for three reasons:

1. First, the Licensee cites RCW 48.17.597, which provides:

An insurance producer ... shall report to the [OIC] any administrative action taken in another jurisdiction or by another governmental agency in this state

In his Motion for Reconsideration, the Licensee argues that he did not violate RCW 48.17.597 because *FINRA is not a governmental agency*. [Citing Wikipedia, the Licensee argues that FINRA] *is a private corporation that acts as a self-regulatory organization for securities firms doing business in the United States*. In response, this argument very well could have, but was not, presented in the administrative proceeding in this matter and therefore should not be considered now. However, in making this argument the Licensee ignores that part of RCW 48.17.597 which states the requirement that a producer must report to the OIC *any administrative action taken in another jurisdiction*: the statute does not include only administrative actions taken by *another governmental agency* as the Licensee argues. Further, contrary to the Licensee's new argument, FINRA is not simply *a private corporation*: FINRA falls under federal jurisdiction and its authority to initiate a disciplinary action originates from the federal Securities Exchange Act at 15 USC Sec. 780-3 et seq. FINRA is a primary regulatory body entrusted to ensure proper conduct of securities brokers/dealers pursuant to 15 USC Sec. 780-3, and suspension of the Licensee by FINRA is an *administrative action*. This argument was not raised during the administrative hearing, and so it is not properly brought on Motion for Reconsideration now. In addition, however, even if the Licensee had raised it in the administrative hearing, for the above reasons this argument is without merit.

2. Second, the Licensee argues once again that he never knew that he was suspended

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because FINRA sent the suspension notice to an outdated address and he never received it (assuming RCW 48.17.597 does include the requirement to report actions taken against him by FINRA). In response, the Licensee raised this argument during the administrative hearing, the undersigned considered the Licensee's and the OIC's evidence submitted on this point, and her determination was reflected in her Final Order. Therefore, it is not properly brought up again in this Motion for Reconsideration now. In addition, however, a different Finding or Conclusion was not supported by the weight of the evidence presented by the parties at hearing, or on reconsideration now.

3. Third, the Licensee once again argues that his FINRA suspension was not a "final disposition" and therefore he did not have to report it to the OIC (again assuming RCW 48.17.597 includes the requirement to report actions taken against him by FINRA): *the FINRA suspension was not a "final disposition" under [RCW 48.17.597] because [t]he suspension was subject to being lifted automatically upon the Licensee's submission of proof of satisfying of an arbitration award, which [the Licensee] could have provided had he received the FINRA suspension notice. Furthermore, the suspension did not preclude [the Licensee] from transacting securities business but merely from associating with or receiving compensation from another FINRA member.* In response, the Licensee raised this argument in the administrative hearing, the undersigned considered the Licensee's and the OIC's evidence on this issue which was presented at hearing and her determination was included in Finding 6 of her Final Order which reads in part *The status of FINRA's suspension is final, and it prohibits the Licensee from conducting securities business in any capacity. [Ex. 2.] Further, the Licensee has been the subject of several complaints by consumers reported by FINRA [Ex. 2] [detailing five complaints by consumers reported by FINRA.* In addition, however, this argument is without merit: as found above, FINRA reports its suspension of the Licensee as being a final disposition. However in addition, RCW 48.17.597 by its terms requires producers to report to the OIC *any administrative action taken in another jurisdiction* and not just those in which there was a final disposition. Because the Licensee already raised this argument at hearing, it was considered by the undersigned as reflected in her Final Order, it is not properly brought up again on Motion for Reconsideration now. In addition, however, a different Finding or Conclusion was not supported by the weight of the evidence presented by the parties at hearing, or on reconsideration now.

4. Finally, in his Motion for Reconsideration here, the Licensee does not object to that portion of the undersigned's Final Order which found and concluded that the Licensee failed to respond to inquiries of the OIC on four occasions in violation of RCW 48.17.475, and (if indeed the Licensee's registered mailing address was outdated) also failed to advise the OIC of any change of his mailing address within 30 days after a change and thereby violated WAC 284-17-005. Instead, the Licensee now simply repeats this same argument he made during the administrative proceeding, i.e. that they are minimal and do not justify revocation of his license. In response, the Licensee raised this argument during the administrative hearing, both his and the OIC's evidence on these points were considered by the undersigned at that time, and was included in her Final

Order particularly in Finding of Fact No. 5, which reads *On September 2, 2011, the OIC both emailed and mailed a letter to the Licensee at the email address and the Washington address he had on file with the OIC. The letter asked why he had not reported the two FINRA actions to the OIC as required by RCW 48.17.597 and whether he has sold any variable products since his variable license was cancelled on April 29. [Ex. 3, p.3.] The OIC's email asked the Licensee why he had not reported the two FINRA actions to the OIC as required by RCW 48.17.597 and why he has a resident license in Texas and a nonresident license in Washington when his mailing address is in Washington. [Ex. 3, p.2.] The Licensee failed to respond to the OIC's September 2 inquiries. On September 30, the OIC mailed a second letter to the Licensee, at his Texas address, advising that its first letter had been returned as "undeliverable," citing the statute which requires a licensee to notify the OIC of any change of resident, business or mailing address within 30 days of the change, reminding the Licensee that the OIC had not received a response to its September 2 email to him (the letter having been returned to the OIC by the USPS as undeliverable although it was mailed to his registered address) and ordering him to file his written response no later than October 21. [Ex. 3, p.4,5.] The Licensee failed to reply to this OIC inquiry as well. The Licensee finally responded to the OIC on December 12, seven days after the OIC issued its subject December 5 Order Revoking License against the Licensee. Therefore, the Licensee's argument is not properly brought up again in this Motion for Reconsideration now. In addition, however, a different Finding or Conclusion was not supported by the weight of the evidence presented by the parties at hearing, or on reconsideration now.*

CONCLUSIONS OF LAW

Pursuant to applicable rules of court and case law, Reconsideration is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources. A Motion for Reconsideration should not be granted, absent highly unusual circumstances, unless a) the judge is presented with material newly discovered evidence which the Licensee could not have discovered and produced at the hearing; b) the judge committed clear error; c) that there is no evidence or reasonable inference from the evidence to justify the Final Order, or that the Final Order is contrary to law; or d) if there has been an intervening change in the controlling law. A Motion for Reconsideration cannot be used to provide parties with "a second bite at the apple," i.e., a Motion for Reconsideration should not be used to ask the judge rethink what he or she had already thought through, rightly or wrongly. Equally importantly, a Motion for Reconsideration may not be based upon evidence or legal arguments that could have been presented at the time of the challenged decision (administrative hearing) but were not.

As stated and detailed above, the Licensee's arguments presented to support his Motion for Reconsideration are all either evidence and legal arguments which he actually presented at the time of the administrative hearing (Argument Nos. 2, 3 and 4) or evidence and legal arguments that the Licensee could have presented at the administrative hearing but did not (Argument No. 1). Further, a) the Licensee has not argued, nor can the undersigned find, that there is any newly discovered evidence related to the issues in the administrative proceeding which the Licensee

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could not have discovered and produced at the hearing; b) the Licensee has not argued, nor can the undersigned find, that she committed clear error; c) the Licensee has not argued, nor can the undersigned find, that there is no evidence or reasonable inference from the evidence to justify the Final Order; d) the Licensee has not argued, nor can the undersigned find, that the Final Order is contrary to law; and e) the Licensee has not argued, nor can the undersigned find, that there has been an intervening change in the controlling law applicable to the issues in the administrative proceeding.

ORDER

Based upon the above, and after careful review and consideration of the Licensee's Motion for Reconsideration, the arguments of the parties and the entire hearing file,

IT IS HEREBY ORDERED that the Licensee has not made the requisite showing that the Final Order entered herein should be amended in any way;

IT IS FURTHER ORDERED that the Licensee's Motion for Reconsideration is DENIED. The Findings of Facts, Conclusions of Law and Final Order entered by the undersigned on June 26, 2012 became effective as of that date and shall remain effective as written.

ENTERED AT TUMWATER, WASHINGTON, this 13th day of September, 2012, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that, 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.

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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: Jeffrey S. Hollingsworth, Jason W. Anderson, Esq., Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Robin Aronson, Esq., and Carol Sureau, Esq.,

DATED this 13th day of September, 2012.


KELLY A. CARNS

