

FILED

2013 MAY 10 P 12:18

Healings Unit, DIC
Patricia D. Peterson
Chief Hearing Officer

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In The Matter of:

SAM Y. CHAN,

Licensee.

DOCKET NO. 12-0103

LICENSEE'S REQUEST FOR
RECONSIDERATION

COMES NOW the Licensee and requests reconsideration of the presiding officer's
Order of April 26, 2013 for the following reasons:

FINDINGS OF FACT

1. Finding of Fact No. 3. We submit this finding is inaccurate in that Mr. Chan's answer on his renewal application was, in fact, technically true at the time it was made. A deferred sentence, later dismissed, is not a conviction. The purpose of deferred sentences is to allow persons to get convictions off their records. Therefore, the court defers the imposition of sentence to allow a probation process. If the probation is successful the case is dismissed, as was the case for Mr. Chan.

The question asked in the renewal application recognized this distinction, as it asked for disclosures of judgments of deferrals as well as convictions. While the court docket

SINSHEIMER & MELTZER, INC. P.S.

Attorneys at Law

701 FIFTH AVENUE, SUITE 4780

SEATTLE, WASHINGTON 98104

(206) 340-4700 FAX (206) 464-9555

Email: law@sinsheimer-meltzer.com

1 reflects a deferral there was no evidence presented of a judgment of deferral which would
2 require a written document. CrRLJ 7.3, a copy of which is attached, provides a judgment
3 must be in writing and contain at least 12 elements. The docket entry contained none of this
4 information. Therefore, Mr. Chan answered the question posed truthfully.
5

6 2. Finding of Fact No. 6. This finding is inaccurate in that it states "defendant's
7 case was closed after Mr. Chan completed his conditions of deferral." The case was not
8 closed, it was dismissed. In addition, the charges were dismissed, not the sentence.
9

10 3. Finding of Fact Nos. 2 and 15. There is no reason to believe any of the
11 names used by Mr. Chan were done for an improper purpose. While his legal name was
12 not changed until 2004, he had gone to school and professionally used the name Sam Chan
13 for many years. There is no basis for finding his statement in his original application to the
14 OIC in 2000 was false. There is no evidence of his Chinese birth certificate or that his use of
15 that name was improper. The name change, which uses the same name in a different order,
16 is not proof of falsity. Mr. Chan was born in a different culture that uses names in a
17 different way.
18

19 4. Finding of Fact No. 7. Inaccurate in that it suggests Mr. Chan falsely
20 answered that he had not been known by, nor done business under, any name but Sam
21 Chan. As a practical matter this was the name he used for school and business and there is
22 no evidence Bankers was harmed or injured by this answer.
23

24 5. Finding of Fact Nos. 8 and 9. As previously argued in our Hearing
25 memorandum a notarization requires an attestation which was missing from the document
26 in question. The intent of the Notary is not relevant to this inquiry. The findings ignore the
27 fact this was, in fact, Mr. Anderson's signature on the document. The purpose of a
28

1 notarization is to guarantee the validity of the signature. While Mr. Chan may be an
2 incompetent Notary, this does not reflect on his ability to hold an insurance license

3 6. Findings of Fact Nos. 10 through 14. This series of findings is inaccurate in
4 that they conclude the Bankers Life Annuity was not suitable for Mr. Schevers. In fact, it
5 was an Indexed Annuity which would have given Mr. Schevers far greater gains had he kept
6 it than the 3% he gained on the Symetra annuity. There is no basis whatsoever to conclude
7 Mr. Schevers needed access to these funds or likely needed access for his living expenses.
8 He did not testify he ever accessed this account and he had other funds available. After he
9 initially wanted to cancel the policy he met with Mr. Chan and apparently changed his
10 mind. After he got the policy, he changed his mind again and got the policy rescinded. Mr.
11 Schevers' initial remarks about his income were noted by Mr. Chan and another agent. At
12 best this evidences a misunderstanding which did no harm to the consumer.
13
14

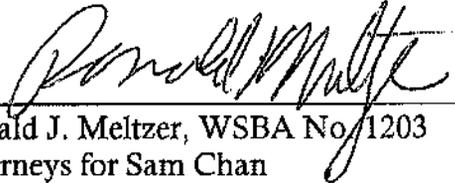
15 **CONCLUSIONS OF LAW**

16
17 Many of the Findings rely on incidents unrelated to the sale of insurance. The
18 Commissioner is trying to regulate the insurance industry by taking isolated unrelated
19 incidents from the past to form a pattern of dishonesty. There are no standards for the
20 number or type of incidents that rise to a level where revocation is necessary. In our prior
21 brief we pointed out numerous incidents where revocation was not used in situations
22 arguably far worse than Mr. Chan, particularly in situations where the dishonesty took place
23 within the scope of the insurance industry. In addition, as we pointed out above, the
24 Findings are, to some degree factually, inaccurate or rely on an erroneous view of the law.
25

26
27 In light of this we ask the Chief Presiding Officer to reconsider her decision
28 upholding the action of the Commissioner and impose a sanction less than revocation.

1 DATED this 9th day of May 2013.

2 **SINSHEIMER & MELTZER, INC., P.S.**

3
4 By: 

5 Ronald J. Meltzer, WSBA No. 1203
6 Attorneys for Sam Chan
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

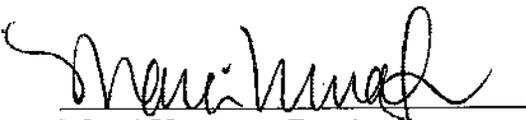
DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of the foregoing document.

Alan Singer Office of Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	X X	Legal Messenger U.S. Mail Electronically Facsimile
Patricia D. Peterson Chief Hearing Officer Office of Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	X X	Legal Messenger U.S. Mail Electronically Facsimile

I declare the foregoing is true and correct.

Dated this 9th day of May 2013.



Marci Umatum, Paralegal

RULE CrRLJ 7.3
JUDGMENT

A judgment of conviction shall set forth whether the defendant was represented by a lawyer or waived representation by a lawyer, the plea, the verdict or findings, and the adjudication and sentence. The court may order that its sentence include special conditions or requirements, including a specified schedule for the payment of a fine, restitution, or other costs, or the performance of community service. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judge or clerk shall enter the judgment on the record. The judgment and record of the sentencing proceedings of the courts of limited jurisdiction shall be preserved in perpetuity, either in an electronic or hard copy format. "Hard copy format" may include microfilm, microfiche, or a paper copy. At a minimum, the judgment and record of the sentencing proceedings shall include:

- (a) Defendant's name;
- (b) Defendant's ID numbers;
- (c) Citation to the statute or ordinance, including subsections, under which the defendant was sentenced;
- (d) Identification of any charge to which the defendant pled guilty or was found guilty that is a crime of domestic violence under state law;
- (e) Arraignment date;
- (f) The plea, and the date entered;
- (g) Representation by or waiver of lawyer, as well as date of lawyer's appearance or waiver;
- (h) The parties present, including but not limited to the judge, attorneys, prosecutor, defense counsel, witnesses;
- (i) Verdict or findings, and the date entered;
- (j) Adjudication and sentence, and the date entered;
- (k) Conditions or requirements of the sentence, including but not limited to a specified schedule for the payment of a fine, restitution, or other costs, performance of community service, counseling or treatment;
- (l) The outcomes of any hearings held on the case, including but not limited to noncompliance hearings, reviews.

The judgment and record of the sentencing proceedings shall be prima facie evidence of a valid conviction in subsequent proceedings in courts of limited jurisdiction and in superior court.

[Amended effective June 4, 1997; amended effective Dec. 2010.]

FILED

2013 MAY 10 P 12:18

Hearings Unit, DIC
Patricia D. Peterson
Chief Hearing Officer

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In The Matter of:

SAM Y. CHAN,

Licensee.

DOCKET NO. 12-0103

REQUEST FOR STAY

COMES NOW Sam Y. Chan and requests a stay of the final Order until the Chief Presiding Officer rules on the Request for Reconsideration, or until May 14, 2013, whichever shall later occur.

ARGUMENT

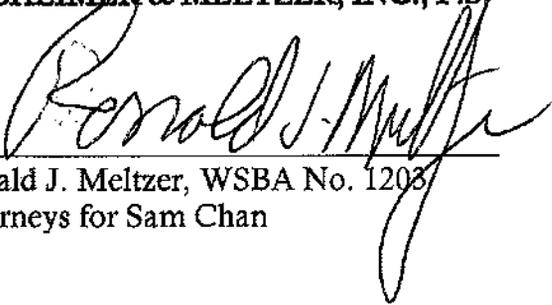
The Request for Reconsideration is being filed on May 9, 2013. It may or may not be ruled upon by May 14, 2013. If it is still pending on May 14, 2013, Mr. Chan must resign his current position. If the request is granted, Mr. Chan will have the right to continue as an agent but no employment as an agent

This appears to be an unreasonable hardship when the time being requested for a stay is relatively short.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 8th day of May 2013.

SINSHEIMER & MELTZER, INC., P.S.

By: 
Ronald J. Meltzer, WSBA No. 1203
Attorneys for Sam Chan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of the foregoing document.

Alan Singer Office of Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	X X	Legal Messenger U.S. Mail Electronically Facsimile
Patricia D. Peterson Chief Hearing Officer Office of Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	X X	Legal Messenger U.S. Mail Electronically Facsimile

I declare the foregoing is true and correct.

Dated this 8th day of May 2013.



Marci Umatum, Paralegal