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OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0043
)	
MARIA DIAZ aka MARIA A. DIAZ aka)	ORDER DENYING
MARIA A. DIAZ-ALVAREZ)	LICENSEE'S MOTION
)	FOR RECONSIDERATION
Licensee.)	
)	

TO: Maria Diaz-Alvarez
2925 SW 332nd Place
Federal Way, WA 98023

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamjc, Deputy Commissioner, Consumer Protection Division
Kate Reynolds, Staff Attorney, Legal Affairs Division
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division
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Olympia, WA 98504-0255

NATURE OF PROCEEDING

On September 23, 2013, Maria Diaz aka Maria A. Diaz aka Maria A. Diaz-Alvarez ("Licensee") filed a letter by U.S. Postal certified mail stating, in total:

I, Maria Diaz Alvarez wants appeal the decision that has being made on regards to my insurance agent licensing [sic]. Reason of the appeal is because I disagree to the decision of the law. I am asking for a second chance on hearing my statement and reviewing my case [sic] .I Am requesting to appeal the decision.



On October 4, 2013, the Licensee filed a second letter by email stating, along with her bases for her Motion for Reconsideration discussed below:

I guess what I am doing is reaching out to you to express my regret and to see if I can have another chance to make what I have done right. Please reconsider my revocation. ... thank you for taking your time on reading my Email..

While the Licensee's October 4, 2013 email was filed well after the time period required to file a motion for reconsideration, this letter has been determined to have clarified her September 23 email which was filed within the required period. Therefore, the Licensee's request for reconsideration in Matter No. 13-0043 shall be considered to be a Motion for Reconsideration, requesting reconsideration of the Findings of Facts, Conclusions of Law and Final Order ("Final Order") entered by the undersigned on September 10, 2013. The OIC filed no response to the Licensee's Motion for Reconsideration. Therefore, the undersigned has carefully considered the Licensee's Motion for Reconsideration in this matter, along with the record of this proceeding and the entire hearing file in entering this Order on Reconsideration.

ANALYSIS

Standard of review. In her Motion for Reconsideration, the Licensee does not identify the legal standards that govern motions for reconsideration. However, while Washington's Administrative Procedures Act, at RCW 34.05.470(1), authorizes "a petition for reconsideration, stating the specific grounds upon which relief is requested," it defers to the standard of review established by an agency through rulemaking. The APA does not indicate the standard of review in the absence of agency rules on the matter, nor has the OIC adopted any such rules of its own. Given this dearth, state rules and standards governing motions for reconsideration should provide guidance here, particularly 1) Washington Civil Rule 59. Additionally, Washington courts often look to the decisions of other courts, even federal courts, for the persuasiveness of their reasoning when trying to decide similar matters, and for that reason it is also helpful to look for guidance to the federal law used by federal courts in Washington hearing civil matters, particularly 2) Fed. R. Civ. P. 59 and Local Rule 7(h).

- 1) Washington's state courts follow Civil Rule (C R) 59 when considering motions for reconsideration. CR 59(a) provides a list of nine specific grounds for granting motions for reconsideration, briefly: 1) irregularity in the proceedings; 2) misconduct; 3) accident or surprise; 4) newly discovered evidence that the moving party could not with reasonable diligence have discovered and produced at the trial; 5) passion or prejudice; 6) error in assessment of recovery; 7) that there is no evidence or reasonable inference from the evidence to justify the decision or that it is contrary to law; 8) error in law occurring at the trial and objected to at the time by the moving party; or 9) that substantial justice has not been done. Whether one of these grounds is met is "addressed to the sound

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discretion of the trial court and a reviewing court will not reverse a trial court's ruling absent a showing of manifest abuse of discretion." *Wilcox v. Lexington Eye Institute*, 130 Wn. App. 234, 241, 122 P.3d 729 (2005). Washington state courts also caution that a motion for reconsideration should not be used as a vehicle to get a "second bite at the apple." "CR 59 does not permit a plaintiff to propose new theories of the case that could have been raised before entry of an adverse decision." *Wilcox*, 130 Wn. App. at 241, citing *JDFJ Corp. v. Int'l Raceway, Inc.*, 97 Wn. App. 1, 7, 970 P.2d 343 (1999).

- 2) Washington federal courts view motions for reconsideration similarly, but the federal court standard more clearly emphasizes that such motions seek an "extraordinary" remedy that should normally be denied. This standard was recently set forth in a June 20, 2012 order by Judge Robert J. Bryan in the civil action *White v. Ability Ins. Co.*, No. 11-5737-RJB (W.D.Wash.):

Pursuant to Local Rules W.D. Wash CR 7(h)(a), motions for reconsideration are disfavored and will ordinarily be denied unless there is a showing of a) manifest error in the ruling, or b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. The term "manifest error" is "an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." Black's Law Dictionary 622 (9th ed. 2009).

Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Neither the Local Civil Rules nor the Federal Rule of Civil Procedure which allow for motions for reconsideration is intended to provide litigants with a second bite at the apple. A motion for reconsideration should not be used to ask a court to rethink what the court had already thought through – rightly or wrongly. *Defenders of Wildlife v. Browner*, 909 F.Supp. 1342, 1351 (D.Ariz. 1995). Mere disagreement with a previous order is an insufficient basis for reconsideration, and reconsideration may not be based on evidence and legal arguments that could have been presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F.Supp.2d 1253, 1269 (D.Haw. 2005). "Whether or not to grant reconsideration is committed to the sound discretion of the court. *Navajo Nation v.*

Confederated Tribes & Bands of the Yakima Indian Nation, 331 F.3d
1042, 1046 (9th Cir. 2003).

Licensee's Arguments. Licensee's arguments in support of her Motion for Reconsideration are 1) that she realizes that the circumstances of her case including her part in it are serious; 2) that she was wrong to have gotten involved in obtaining out of state driver's insurance and driver's licenses in Washington; 3) that she was manipulated and used in enticing her to become involved in these activities; 4) that she *got caught up with this ring* [of individuals involved in obtaining insurance in Washington using false applications and in obtaining Washington driver's licenses fraudulently]; and 5) that she thought she *was helping people and doing what her employer wanted her to do*. Further, the Licensee asserts that 6) she expected the same penalty as had been given to a co-worker, Joseph Murillo, who also admitted to being involved in these activities, which was simply imposition of a fine; 7) that she has learned from this and what her responsibilities are as a licensed agent; and 8) that as a result of her actions she has created a hardship emotionally and financially on her family.

In response, the Licensee presented all of these arguments at hearing except for No. 6 above. At hearing, in fact, the Licensee admitted literally all of the allegations the OIC included in the subject Order Revoking License which were the bases upon which the OIC revoked her license. Indeed, the Licensee even admitted that at the time she conducted these activities she knew that they were in violation of the insurance code and were wrong. As found in the Final Order in this matter, the Licensee's subject activities, to which she admitted, constituted significant violations of the Insurance Code and regulations. The Licensee's subject activities were done with her knowledge that they were in violation of applicable laws and regulations, and were done with the intent to allow individuals who were not residents of Washington to obtain Washington driver's licenses illegally by obtaining proof of insurance by submitting fraudulent insurance applications, and thereby to allow them to fraudulently obtain other states' driver's licenses when in fact they were neither legal residents of Washington nor legal citizens of the United States. Her presentation in this motion for reconsideration is the same as previously made at hearing and properly rejected. Prior to entry of the Findings of Fact, Conclusions of Law and Final Order the undersigned carefully reviewed the arguments of both the Licensee and the OIC relative to the issues raised in this proceeding - which the Licensee attempts to raise again here in her motion for reconsideration. The Licensee presents no highly unusual circumstances, newly discovered evidence, clear error, intervening change in the controlling law, or any other reasons contemplated in Title 34 RCW; in CR 59, Washington Rules of Court; or in any case law governing motions for reconsideration in these or other types of state proceedings. In addition, as the federal court in *White v. Ability Ins. Co.*, *supra*, observed, a motion for reconsideration is not "intended to provide litigants with a second bite at the apple. A motion for reconsideration should not be used to ask a court to rethink what the court had already thought through - rightly or wrongly. ... Mere disagreement with a previous order is an insufficient basis for reconsideration." In addition, there appears to be no "manifest error" and/or any other basis under Local Rule 7(h)(a).

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In Licensee's argument No. 6 above, she argues that she should have been given the same penalty as that which the OIC imposed upon her co-worker, Francisco Murillo, who she alleges was involved in the same activities as her. In response, while she did not make this argument at hearing, she certainly could have made this argument, because Francisco Murillo was called as a witness at hearing and was available and subject to cross examination by the Licensee. Because by the time of hearing it was clear the OIC had already imposed whatever penalty it did upon Mr. Murillo, the Licensee could well have brought out evidence of the OIC's penalty imposed upon Mr. Murillo, evidence of how Mr. Murillo's activities were the same or similar to those of the Licensee, and at hearing she could have made the argument that the OIC should impose that same penalty upon her. Further, even if the Licensee had raised this argument at hearing as she could have, it is not necessarily even relevant because the OIC may well have determined that there were other circumstances which warranted a different disciplinary action to be imposed upon Mr. Murillo, and in any case the OIC has discretion to impose different penalties in different situations although they be somewhat similar. At any rate, because the Licensee could easily have presented this evidence and argument at hearing but did not do so, she should not be allowed to do so under the applicable rules governing motions for reconsideration.

For the above reasons, reconsideration based on the Licensee's argument is not appropriate. The Licensee has failed to show any basis upon which reconsideration should be granted.

CONCLUSION

Based upon the above authorities and analysis, the Licensee has not persuaded the undersigned that there are any issues of fact or law that warrant reconsideration of the Findings of Fact, Conclusions of Law and Final Order entered by the undersigned on September 10, 2013. Further, the Licensee has not persuaded the undersigned that she committed error, manifest or otherwise, in entering her Findings of Fact, Conclusions of Law and Final Order in this matter. Therefore, the Licensee has not made the requisite showing for reconsideration pursuant to state and federal rules and case law, and thus the Licensee's Motion for Reconsideration should be denied.

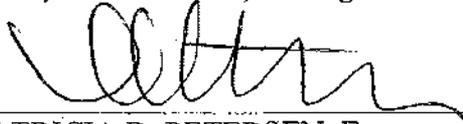
Further, because pursuant to Title 34 RCW Ability's Motion for Reconsideration did not stay the effectiveness of the Final Order herein, the Licensee should have surrendered her insurance producer's license to the OIC at least by September 25, 2013 as required in the Final Order.

ORDER

On the basis of the foregoing,

IT IS HEREBY ORDERED that Maria Diaz aka Maria A. Diaz aka Maria A. Diaz-Alvarez's Motion for Reconsideration is **DENIED**.

ENTERED at Tumwater, Washington, this 21st day of October, 2013, pursuant to Title 34 RCW; Title 48 RCW; and regulations pursuant thereto.



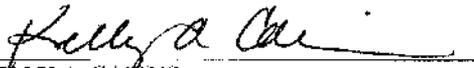
PATRICIA D. PETERSEN, Esq.
Chief Presiding Officer

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.

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 above identified individuals at their addresses listed above.

DATED this 21st day of October, 2013.


KELLY A. CAIRNS