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On February 5, 2014, Respondent Steven H. Minnich ("Minnich"), by and through his attorney Jason W. Anderson of Carney Badley Spellman, P.S. in Seattle, filed Respondent Steven H. Minnich's Motion to Dismiss or for a Continuance.

I. **Does the Statute of Limitations under RCW 4.16.100(2) bar the OIC's action against Minnich?**

The pertinent activities in this matter are summarized as follows:

- On July 6, 2011, the Insurance Commissioner ("OIC") received a consumer complaint against Minnich. [Ex. A to Declaration of Jason W. Anderson in Support of Respondent Steven H. Minnich's Motion to Dismiss or for a Continuance.]
- After conducting an investigation into the allegations contained in the consumer complaint, on April 3, 2013, the OIC mailed a Proposed Consent Order Levying a Fine No. 13-0110 to Minnich. At that time, the OIC assigned a disciplinary case number to this matter, No. 13-0110 as reflected in both the OIC's letter accompanying the proposed Consent Order and in the proposed Consent Order itself. Further, in its letter accompanying the proposed Consent Order, the OIC noted that Minnich was already aware of the allegations against him because they were both included in the consumer complaint and because he had been involved in the OIC's investigation of his activities alleged in the consumer complaint. The OIC's letter further advised Minnich that the OIC had determined, after investigation, that his conduct violated the specific statutes and regulations identified in the accompanying proposed Consent Order and that the OIC had determined that the appropriate enforcement action in this matter was a fine against him of \$5,000. The OIC's letter further informed Minnich that he could resolve this matter by agreeing to payment of the fine and the conditions outlined in the proposed Consent Order, but that *If we have not heard back from you by April 24, 2013, this offer must be withdrawn and the OIC will be forced to explore other options. Please be aware that the fine amount set forth in the Consent Order is a settlement offer only. In the event of a hearing on this matter, OIC is not bound by that amount and would seek a fine in the full amount warranted and/or any other appropriate sanctions authorized under the Insurance Code.* [OIC's April 3, 2013 letter to Minnich entitled Proposed Consent Order Levying a Fine No. 13-0110.]
- On October 29, 2013, apparently because Minnich had been unwilling to agree to the proposed Consent Order offered to him on April 3, 2013 which bore a response deadline of April 24, 2013, the OIC entered a Notice of Request for Hearing for Imposition of

Fines. This OIC's Notice of Request for Hearing 1) was based on the same allegations which Minnich had been aware of since before he received the Proposed Consent Order on April 3, 2013, and 2) was also based on the same alleged violations which Minnich had been aware of since April 3, 2013 when he received the proposed Consent Order.

Respondent Minnich ("Minnich") argues that the OIC's action against him is barred by the two year statute of limitations set forth in RCW 4.16.100(2). Citing *U.S. Oil & Refining Co. v. State*, 96 Wn.2d 85 (1981), he argues that the two year statute of limitations set forth in RCW 4.16.100(2) commenced on July 6, 2011 when the OIC received a complaint regarding Minnich by a consumer and that no tolling of the statute of limitations occurred until the OIC filed its Notice of Request for Hearing for Imposition of Fines on October 29, 2013. Therefore, Minnich argues, the OIC's action was several months outside of the two year statute of limitations and is therefore barred.

In *U.S. Oil*, the Washington Supreme Court did indeed rule - as Minnich suggests - that the limitation period in RCW 4.16.100(2) commences when a cause of action accrues and tolls when a complaint is filed or a summons is served. However, the Supreme Court went on to state that neither a formal complaint nor a formal summons need be served, but that an action is tolled when "an action is commenced" against the entity being penalized. Therefore, in ruling that the Washington State Department of Ecology's "notice" to U.S. Oil imposing a \$90,000 penalty tolled the statute of limitations under RCW 4.16.100(2) and that therefore the DOE's later actions against U.S. Oil was not barred, the Supreme Court stated:

...the action was commenced, for tolling purposes, with the [DOE's] notice of the penalties. Although the notice is not technically a complaint or a summons, it does as a practical matter commence the action and apprise the penalized party of it. Once the notice is served, the penalized party can either pay the penalty or have the claim fully adjudicated by the otherwise available administrative and judicial forums, with no liability actually arising until completion of all available judicial review. The notice has much the same effect as a complaint or summons, and hence the action should toll when the notice is served.

96 Wn.2d at 91-92.

Assuming that RCW 4.16.100(2) applies to the matter herein, and accepting that Minnich understands the cause of action to have accrued when the OIC received the consumer complaint on July 6, 2011, the issue here remains simply whether the two year statute of limitations bars the OIC's action against Minnich now or whether the OIC's April 3, 2013 Proposed Consent Order Levying a Fine No. 13-0110 constituted "commencement of an action" which tolled the statute of limitations.

After review, it is hereby concluded that the OIC's April 3, 2013 Proposed Consent Order Levying a Fine No. 13-0110 did constitute "commencement of an action" which tolled the statute of limitations: as above, the Washington State Supreme Court has ruled that although the DOE's "notice" imposing a civil monetary penalty in *U.S. Oil* "is not technically a complaint or a summons, it does as a practical matter commence the action and apprise the penalized party of it. Once the notice is served, the penalized party can either pay the penalty or have the claim fully adjudicated by the otherwise available administrative and judicial forums, with no liability actually arising until

*completion of all available judicial review. The notice has much the same effect as a complaint or summons, and hence the action should toll when the notice is served.” Id.* Just as with the DOE’s “notice” imposing civil penalties against U.S. Oil, the OIC’s proposed consent order also, as a practical matter, “commences the action” (which was, indeed, already identified by the OIC in the proposed consent order as No. 13-0110), it does “apprise the penalized party of it,” and just as in *U.S. Oil*, at that point Minnich “[could] either pay the penalty [which the OIC proposed] or have the claim fully adjudicated by the otherwise available administrative and judicial forums, with no liability actually arising until completion of all available judicial review.” All of the criteria set forth in *U.S. Oil* are met, and there is no significant difference between the DOE’s “notice” imposing a \$90,000 civil penalty against U.S. Oil and the OIC’s Proposed Consent Order proposing to impose a civil penalty and agreement to other conditions. Therefore, assuming RCW 4.16.100(2) does apply to this matter, pursuant to *U.S. Oil* the OIC’s action against Minnich was tolled on April 3, 2013 when the OIC mailed the proposed Consent Order to Minnich; therefore, because the period from July 6, 2011 to April 3, 2013 is less than two years, the OIC’s current action against Minnich is not barred by RCW 4.16.200(2).

## II. Motion for Continuance.

Minnich moves, in the event that the proceeding is not dismissed as barred by the statute of limitation, for a continuance of the hearing in this matter for 60 days. The OIC advises that it would not join a request for a continuance but neither would it oppose the request.

On October 29, 2013, the OIC entered a Notice of Request for Hearing for Imposition of Fines with the undersigned, and at the same time filed a Motion to Consolidate this case with Charles D. Oliver, American Equity Advisory Group, LLC, and “The Chuck Oliver Team,” Matter No. 13-0108. Minnich’s counsel, Michael H. Church, Esq., represented Minnich from the outset:

- 1) On November 12, 2013, Minnich’s counsel filed a Response to [the OIC’s] Motion to Consolidate and Motion for Continuance, advising that he had no objection to consolidation of this case but, should consolidation be granted, he requested a continuance of the December 10, 2013 hearing date which was then scheduled for Oliver (later rescheduled to January 14, 2014) in order to allow him time to prepare for the hearing.
- 2) On November 15, 2013, the undersigned held the first prehearing conference herein which included counsel for Minnich and counsel for the OIC. As is always the case, the purpose of the prehearing conference is to address all issues which have arisen, to address all discovery questions and requests for, e.g., exchange of witness lists and all other matters to date.
- 3) On December 4, 2013 the undersigned held a second prehearing conference which included Minnich’s counsel, Oliver’s counsel and the OIC’s counsel to discuss the OIC’s Motion to Consolidate. At that time, all parties including counsel for Minnich agreed that should the OIC’s Motion to Consolidate be granted then the Oliver matter (which was then scheduled for January 14, 2014) would be continued once again and the consolidated cases would be heard commencing on March 4, 2014. It should be noted that as reflected in his briefs, Oliver opposed both the consolidation and the rescheduling of his hearing date to a later time,

asserting among other issues that Oliver was opposed to further delay of his adjudicative proceeding.

- 4) On December 10, 2013 the undersigned orally ruled that the cases would be consolidated, granting Minnich's November 12, 2013 Motion for Continuance and reflecting all parties agreement that if consolidation was granted the consolidated hearing would commence on March 4, 2014. (On January 17, 2014 the undersigned also entered a written Order confirming her December 10, 2013 oral order.) Once again, continuance of the hearing date was granting Minnich's Motion for Continuance against opposition from Oliver who objected to the additional delay this continuance would cause.
- 5) On January 8, 2014, Minnich's counsel Church filed a Notice of Intent to Withdraw. On January 28, 2014, Minnich's new attorney, Jason W. Anderson, Esq., filed his Notice of Appearance and participated in Minnich's third prehearing conference. Thereafter, on February 5, 2014 Mr. Anderson has filed this Motion for Continuance for 60 days.

Based upon the events which have occurred to date, including the fact that the Oliver hearing herein has been already delayed – against opposition from Oliver – to accommodate Minnich's first counsel's Motion for Continuance; the fact that on December 4, 2013 Minnich already agreed that should consolidation be granted the consolidated hearing should commence on March 4, 2014; the fact that the parties have proceeded these past months with the expectations about hearing date now being met and there being no prior request for identification of an expert witness although Minnich could have requested that information months ago should he have desired; and the fact that Minnich's new attorney presumably knew the status of this case prior to agreeing to represent Minnich at this late hour, it is not reasonable to continue the hearing on these consolidated cases once again.

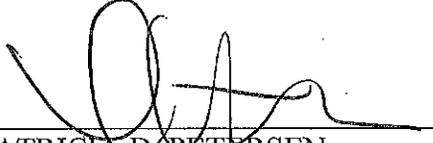
On the basis of the foregoing,

IT IS HEREBY ORDERED that Steven H. Minnich's Motion to Dismiss or for a Continuance is denied.

IT IS FURTHER ORDERED that the hearing in the consolidated matters of Charles D. Oliver, American Equity Advisory Group, LLC, and "The Chuck Oliver Team," No. 13-0108, and Steven H. Minnich, No. 13-0110, shall remain as ordered on December 10, 2013, as confirmed by Order entered January 17, 2014 and as reflected in Notice of Hearing entered January 30, 2014, commencing on March 4, 2014 at 10:00 a.m., Pacific Standard Time, and continuing on each successive day until terminated, in the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA.

ORDER ON MOTION TO DISMISS  
OR FOR CONTINUANCE  
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ENTERED AT TUMWATER, WASHINGTON, this 5<sup>th</sup> day of February, 2014, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN  
Chief Presiding Officer

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: Jerry Kindinger, Esq., Gulliver A. Swenson, Esq., Steven H. Minnich, Mike Kreidler, James T. Odiorne, John F. Hamje, Esq., AnnaLisa Gellermann, Esq., and Andrea Philhower, Esq.

DATED this 7<sup>th</sup> day of February, 2014.

  
KELLY A. CAIRNS