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OFFICE OF THE INSURANCE COMMISSIONER, HEARINGS UNIT
STATE OF WASHINGTON

In The Matter of

GHOLAMREZA NIKZAD and WOOD
FINANCIAL SERVICES COMPANY,

Licensees

OIC No. 13-0222
OAH Docket No. 2013-INS-0006

LICENSEES' REPLY TO OIC
STAFF'S RESPONSE TO
LICENSEES' PETITION FOR
REVIEW

TO: HONORABLE GEORGE FINKLE
Chief Hearing Officer
Hearings Unit, OIC
PO Box 40255
Olympia, WA 98504

AND TO: CHARLES BROWN
OIC Staff Attorney
Office of the Insurance Commissioner
Legal Affairs Division
PO Box 40255
Olympia, WA 98504

This Reply to OIC Staff's Response to Licensees' Petition for Review is submitted on
behalf of the above-named Licensees pursuant the email to counsel for the parties of Kelly A.

Cairns, Paralegal, OIC Hearings Unit, of 12/29/2014, stating that counsel for the Licensees may

REPLY TO OIC'S RESPONSE TO LICENSEES' PETITION FOR
REVIEW - I.

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Seattle, WA 98104
Tel: 206-576-6907; Fax: 206-260-8906

1 file a Reply to OIC Staff's Response to Licensees' Petition for Review if such Reply is filed by
2 January 6, 2015. Licensees therefore Reply as follows:

3 1. The Response submitted by OIC staff to Licensees' Petition for Review asserts that
4 Licensees' Petition for Review fails to challenge "*any of (Administrative Law) Judge Dublin's*
5 *findings of fact or conclusions of law...*".

6 However, as stated in Licensees' Petition for Review, Licensees specifically contended
7 that the OAH Administrative Law Judge's Initial Order was erroneous for the following reasons:

8 a. The administrative law judge refused to consider evidence of events or occurrences
9 occurring after July 23, 2013, the date of OIC's order revoking the Licensees' producer's
10 licenses, ruling that any and all such evidence was "irrelevant."

11 b. Licensees contended that the exclusion of such evidence was prejudicial error insofar
12 as such evidence should have been admitted both as evidence of waiver/estoppel on the part of
13 OIC with respect to the compliance deadlines set forth in the Final Order of OIC Chief Presiding
14 Officer Patricia D. Petersen dated November 5, 2012, and as evidence which should have been
15 considered by the administrative law judge in mitigation of the alleged violations of OIC statutes
16 and regulations, and therefore in mitigation of the appropriate remedy or penalty to be imposed
17 upon Licensees if a violation of such regulations and/or statutes was found to have occurred.

18 With respect to Licensees' position that such post July 23, 2013 evidence is relevant to
19 the issue of whether OIC waived, and/or is estopped from asserting the compliance deadlines
20 included in Judge Peterson's November 5, 2012 Final Order, as noted in Licensees' Petition for
21 Review, an agency follow-up examination of Licensees was conducted on October 28, 2013, and
22 a written report of that follow-up examination which was dated October 29, 2013, was excluded
23 by the ALJ as being "irrelevant," notwithstanding that the report itself states that its specific
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1 purpose was to “*determine if Licensees had complied with the requirements of the Final Order*
2 (of OIC chief presiding officer petition Patricia D Petersen dated November 5, 2012). In other
3 words, well after the deadlines mandated in Judge Peterson’s Final Order of November 5, 2012,
4 and more than three months after the date of OIC’s revocation order of July 23, 2013, OIC
5 conducted a follow-up examination to see whether, at that point in time, Licensees were in
6 compliance with Judge Peterson’s order of November 5, 2012. Clearly, the fact that OIC did so,
7 constitutes relevant evidence of waiver/estoppel to assert the compliance deadlines included in
8 Judge Peterson’s Final Order of November 5, 2012.

9 In addition, Licensees contend that if this document had been admitted into evidence,
10 Licensees would have demonstrated, in conjunction with cross examination of OIC’s witnesses,
11 that in fact at the time of such follow-up examination, Licensees had made substantial progress
12 toward full compliance with the requirements of the Final Order of November 5, 2012.

13 2. The response submitted by OIC staff further claims that Licensees’ Petition for
14 Review failed to identify any evidence which was improperly excluded by the ALJ, other than
15 the written report dated October 29, 2013 of the OIC follow-up examination of October 28,
16 2013. This statement is likewise patently incorrect. Licensees’ Petition for Review specifically
17 refers to evidence of mitigatory factors which Licensees attempted to introduce into evidence by
18 means of the verbal testimony of licensee Gholamreza Nikzad. This evidence was specifically
19 excluded by the administrative law judge, and was the subject of an offer of proof made by
20 Licensees (which offer of proof ALJ Dublin at first refused to hear, and then later changed her
21 mind after OIC counsel stated that he was “uncomfortable” with the record, that is, a record
22 which reflected the ALJ’s refusal to hear an offer of proof).

23 Further, with respect to the issue of the exclusion of evidence of mitigation, as noted
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1 both in Licensees Petition for Review, (at page 4 thereof, lines 3 through 8), and in Licensees'
2 previously submitted Memorandum Concerning the Admissibility of Post Revocation Order
3 Evidence (attached to and submitted in augmentation of Licensees' Petition for Review), ALJ
4 Steven C. Smith's Pre-hearing Order dated December 18, 2013, specifically defined the issues
5 for the OAH evidentiary hearing as follows:

6 **3.2 Issues for Evidentiary Hearing:**

7 *3.2.1 Issue One: Did Licensees violate Washington law as stated in the*
8 *Washington OIC's Order Revoking License...*

9 *3.2.2 Issue Two: If issue One is decided against one or both Licensees, what is*
10 *the appropriate remedy or penalty (sanction) under Washington law?*

11 *3.2.3 The hearing in this matter will be limited to this issue/these issues, unless*
12 *the issues are modified at a later prehearing conference.*

13 Neither party to the OAH proceeding filed an objection to either the Pre-hearing Order
14 in general, or to the statement of issues set forth at section 3.2 of the Pre-hearing Order. As such,
15 the statement of the issues to be adjudicated in the OAH hearing were established and limited to
16 those set forth at section 3.2 of the Pre-hearing Order, and because no objection was filed by
17 either party within the 10 day time period within which such objections are permitted (WAC 10-
18 08-130), the ALJ's Pre-hearing Order became binding and non-appealable. In this regard,
19 subsection 3.2.3 of said Pre-hearing Order specifically states that the hearing would be limited to
20 the issues defined in sections 3.2.1 and 3.2.2, of the Pre-hearing Order, "*unless the issues are*
21 *modified at later prehearing conference*". The issues were not later modified by any later Pre-
22 hearing Order.

23 Issue number two, as defined by the ALJ, at section 3.2.2 of the Pre-hearing Order was
24 the question of what the appropriate remedy or penalty under Washington law should be if a
25 violation of Washington law was determined to have occurred. Licensees have asserted, and

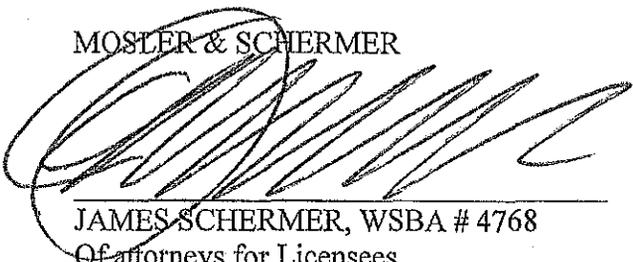
1 continue to assert that evidence of mitigatory facts and circumstances, including post July 23,
2 2013 evidence of later substantial compliance with the requirement of Judge Peterson's
3 November 5, 2012 Final Order, as well as evidence concerning the personal circumstances and
4 history of licensee Gholamreza Nikzad should be considered in mitigation of the alleged
5 violations of law, and should not be excluded solely on the grounds that they refer to
6 circumstances which occurred after the date of OIC's Order of Revocation of July 23, 2013.

7 As is evident by reference to the record of the OAH proceedings, and ALJ Dublin's
8 Initial Order, ALJ Dublin both refused to consider evidence of Post July 23, 2013 mitigatory
9 facts and circumstances, and having concluded that the Licensees committed violations of
10 Washington insurance laws and regulations, completely ignored the requirement of section 3.2.2
11 of the ALJ's Pre-hearing Order requiring consideration of, in the words of the Pre-hearing Order,
12 "...what is the appropriate remedy or penalty (sanction) under Washington law?

13 Her failure to admit posted July 23, 2013 evidence and to consider, having found a
14 violation of Washington law, what remedy or penalty would be appropriate, constitutes
15 prejudicial error.

16 Respectfully submitted this 6th day of January 2015.

18 MOSLER & SCHERMER

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22 JAMES SCHERMER, WSBA # 4768
23 Of attorneys for Licensees
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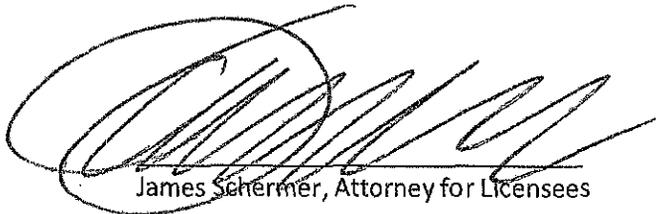
CERTIFICATION OF FILING AND SERVICE

The undersigned certifies under penalty of perjury of the laws of the state of Washington that on the date given below I caused to be served and filed LICENSEES REPLY to OIC's RESPONSE TO LICENSEES' PETITION FOR REVIEW, upon the following individuals, in the manner below indicated:

Hon. George Finkle, Chief Hearing Officer
Hearings Unit, OIC
PO Box 40255
Olympia, WA 98504
Via regular, first class mail, and
Via email to: Kellyc@oic.wa.gov, and
Via facsimile transmission to OIC: (360) 725-7002

Charles D. Brown
OIC Staff Attorney
Legal Affairs Division
5000 Capital Blvd.
Tumwater, WA 98501
Via Email and regular, first class mail

SIGNED this 6th day of January, 2015, at Seattle, Washington.



James Schermer, Attorney for Licensees