

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



Phone (360) 725-7000
www.insurance.wa.gov

FILED

OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

Fax: (360) 664-2782

2014 APR 30 P 12: 16

OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER

Patricia D. Petersen
Chief Presiding Officer
(360) 725-7105

Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0332
)	
ZALE DELAWARE, INC.,)	ORDER TERMINATING
)	PROCEEDINGS
Respondent.)	
)	

TO: Zale Delaware, Inc.
901 West Walnut Hill Lane
Irving, TX 75038

Timothy J. Parker, Esq.
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, Chief Deputy Insurance Commissioner
William R. Michels, Deputy Commissioner, Company Supervision Division
Alan Michael Singer, Staff Attorney, Legal Affairs Division
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

On March 20, 2014, the Washington State Insurance Commissioner (OIC) issued a Notice of Request for Hearing for Imposition of Fines, Collection of Unpaid Premium Taxes, and Other Relief to Zale Delaware, Inc. (Respondent). Said Notice of Request for Hearing proposed that the OIC take disciplinary action against the Respondent for alleged violations of the Insurance



ORDER TERMINATING PROCEEDINGS

13-0332

Page - 2

Code. Specifically, as stated in the Notice of Request for Hearing, the OIC alleged that the Respondent is not licensed or authorized to transact insurance business in this state, nor is it registered as a service contract provider under Chapter 48.110, RCW, yet it has sold at least 426,088 contracts that are contracts of insurance and meet the definition of a "service contract" under RCW 48.110.020(17). Further, the OIC alleged that the Respondent has collected at least \$14,511,034.84 for these contracts yet has never paid premium taxes required by RCW 48.14.095(1) and (2) and 48.14.020.

On April 7, 2014, the undersigned held a first prehearing conference in this matter, which included all parties. The parties agreed that the hearing of this matter would be held on June 27, 2014.

On April 24, 2014, the OIC filed with the undersigned a copy of Consent Order Levying a Fine, No. 13-0332, which was executed by Zale Delaware, Inc. on April 21, 2014 and by the OIC on April 24, 2014. Accompanying the Consent Order was a joint request by the parties for a final order terminating these proceedings. A copy of the above referenced Consent Order Levying a Fine, which constitutes the settlement agreement between the parties, is attached hereto and by this reference made a part hereof.

Relative to Consent Order Levying a Fine, No. 13-0332, it is noted that these matters were settled prior to the commencement of an adjudicative proceeding. Therefore, for purposes of clarification, while the Consent Order includes statements identified as "Findings of Facts" and "Conclusions of Law," these are not Findings of Fact or Conclusions of Law which were made by an adjudicator after an adjudicative proceeding; rather, the statements contained in the referenced Consent Order which are titled "Findings of Fact" and "Conclusions of Law" are solely statements that have been agreed upon between the parties themselves.

Based upon the above activity,

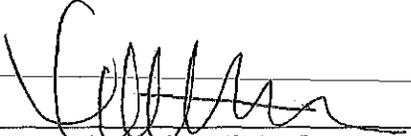
IT IS HEREBY ORDERED that, by Zale Delaware Inc.'s and the OIC's execution of the Consent Order Levying a Fine, No. 13-0332, on April 21 and April 24, respectively, the parties have fully settled this matter and the proceeding herein, Docket No. 13-0332, is dismissed with prejudice. For purposes of clarification, while the referenced Consent Order includes statements identified as "Findings of Fact" and "Conclusions of Law," these are not Findings of Fact or Conclusions of Law which were made by an adjudicator after an adjudicative proceeding; rather, the statements contained in the attached Consent Order titled "Findings of Fact" and "Conclusions of Law" are solely statements that have been agreed upon between the parties themselves.

ORDER TERMINATING PROCEEDINGS

13-0332

Page - 3

ENTERED AT TUMWATER, WASHINGTON, this 30th day of April, 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: Zale Delaware, Inc., Timothy J. Parker, Esq., Mike Kreidler, James T. Odiorne, Esq., William R. Michels, Alan Singer, Esq., and AnnaLisa Gellermann, Esq.

DATED this 30th day of April, 2014.



KELLY A. CAIRNS

MIKE KREIDLER
STATE INSURANCE COMMISSIONER
STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

FILED

2014 APR 28²⁴ A 10:22
KM

CLERK OF SUPERIOR COURT
CLERK OF SUPERIOR COURT
CLERK OF SUPERIOR COURT

In the Matter of

ZALE DELAWARE, INC.,

Unauthorized Entity,

Respondent.

ORDER NO. 13-0332

CONSENT ORDER LEVYING A FINE

The Insurance Commissioner of the State of Washington, pursuant to the authority set forth in Title 48 RCW, having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

FINDINGS OF FACT:

1. Respondent Zale Delaware Inc. ("Zale" or "Respondent"), a Delaware corporation, is not licensed or authorized to transact insurance and is not a registered service contract provider in Washington.
2. Between 1999 and 2013, for consideration over and above the purchase price of jewelry sold, Zale sold at least 426,088 service contracts to Washington residents. These contracts promised to guarantee any necessary repairs for jewelry. Respondents collected gross revenues of at least \$14,511,034.84 for these sales. Under all service contracts referred to herein, Zale is the obligor. These contracts constitute both a service contract under RCW Chapter 48.110 *et seq* and also a contract to indemnify another or pay a specified amount upon determinable contingencies -- "insurance" under RCW 48.01.040. Respondent has paid no Washington premium taxes for any of the contracts it has sold.

CONCLUSIONS OF LAW:

1. By selling at least 426,088 service contracts for gross revenues of at least \$14,511,034.84, Zale violated Insurance Code provisions that include RCW 48.05.030 (certificate of authority required), RCW 48.15.020 (solicitation by unauthorized insurer prohibited), RCW

48.17.060 (license required), RCW 48.110.030 (service contract provider registration required), and RCW 48.110.140 (violation of RCW 48.110 *et seq* is a violation of Washington's Consumer Protection Act, RCW Chapter 19.86), at least 426,088 times. Respondent has also violated RCW 48.14.020 by failing to timely pay 2% premium taxes.

2. Pursuant to RCW 48.110.120(2), the Commissioner is authorized to initiate a hearing pursuant to RCW 48.04.050 or take actions described in RCW 48.02.080, including the issuance of a cease and desist order. Pursuant to RCW 48.14.095(1), RCW 48.05.030(1), RCW 48.14.095(2), RCW 48.14.020, and RCW 48.14.060, the Commissioner is authorized to take steps to ensure premium taxes are paid by all insurers. In addition, pursuant to RCW 48.15.023 and RCW 48.17.063, the Commissioner may also take further steps, including the imposition of a civil penalty of not more than \$25,000 for each violation of RCW 48.15.020 or RCW 48.17.060.

CONSENT TO ORDER:

Respondent, acknowledging its duty to comply fully with the applicable laws of the State of Washington, consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of Respondent paying premium taxes and a fine and on such terms and conditions as are set forth below.

1. Respondent consents to the entry of this Order, waives any and all hearing rights, and waives any and all further administrative or judicial challenges to this Order.
2. By agreement of the parties, the Insurance Commissioner will impose a fine of \$300,000.00 (Three Hundred Thousand Dollars), to be paid by Respondent within thirty days of the entry of this Order.
3. By agreement of the parties, Respondent will pay premium taxes in the amount of \$290,220.70 (Two Hundred and Ninety Thousand and Two Hundred and Twenty Dollars and Seventy Cents), which shall be paid to the treasurer through the Insurance Commissioner's office. Respondent shall pay these premium taxes to the Insurance Commissioner's office within thirty days of the entry of this Order.
4. Respondent will otherwise remain in complete compliance with all laws and rules administered by the Insurance Commissioner, and will fully and promptly cooperate with the Insurance Commissioner in the investigation of any complaints.
5. The failure of Respondent to pay the fine and premium taxes within the time limit set forth above may result in any other and further actions authorized under the laws of the State of Washington, including additional assessments and penalties for failure to timely pay the premium taxes pursuant to RCW 48.14.060, and in the recovery of any unpaid fine and premium taxes through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

6. This Consent to Order is entered into by nature of a compromise and settlement in order to avoid the time, trouble and expense to the Insurance Commissioner and to Respondent by resolving this dispute informally rather than through administrative or judicial proceedings. As part of this settlement, Respondent acknowledges it did not pay premium tax pursuant to ch. 48.14 Revised Code of Washington.

7. Respondent understands that settlement of this matter shall be full and final upon Respondent's payment of both the fine and the premium taxes within thirty (30) days of the entry of this Order.

EXECUTED this 21st day of April, 2014.

ZALE DELAWARE, INC.

By: Matthew W. Appel

Printed Name: Matthew W. Appel

Title: C.A.O.

ORDER:

Pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Respondent shall pay a fine in the amount of \$300,000.00 (Three Hundred Thousand Dollars) to the Insurance Commissioner's office within thirty days of the entry of this Order.
2. Respondent shall pay premium taxes in the amount of \$290,220.70 (Two Hundred and Ninety Thousand and Two Hundred and Twenty Dollars and Seventy Cents) to the Insurance Commissioner's office within thirty days of the entry of this Order.
3. A failure by Respondent to pay the fine and premium taxes within the time limit set forth above may result in any other and further actions authorized under the laws of the State of Washington, including additional assessments and penalties for failure to timely pay the premium taxes pursuant to RCW 48.14.060, and in the recovery of any unpaid fine and premium taxes through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

4. This Consent Order is entered into by nature of a compromise and settlement in order to avoid the time, trouble and expense to the Insurance Commissioner and to Respondent by resolving this dispute informally rather than through administrative or judicial proceedings.

5. Settlement of this matter shall be full and final upon Respondent's payment of both the fine and the premium taxes within thirty (30) days of the entry of this Order.

ENTERED AT TUMWATER, WASHINGTON, this 24 day of April, 2014.

MIKE KREIDLER
Insurance Commissioner

By 

Alan Michael Singer
Legal Affairs Division