

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



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FILED

OFFICE OF
INSURANCE COMMISSIONER

2014 JUN 24 A 11:5

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2
3 IN THE MATTER OF
4 RENT-A-CENTER, INC.,
5 RENT-A-CENTER WEST, INC.,
6 Unlicensed Entities,
7 And
8 BENEFIT MARKETING SOLUTIONS, LLC and
9 BENEFIT SERVICES ASSOCIATION,
10 Unregistered and Unauthorized Entities.

ORDER NO. 14-0082

OIC RESPONSE TO
MOTION FOR STAY OF
PROCEEDINGS PENDING
DECLARATORY
JUDGMENT

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12 The Insurance Commissioner through its designated representative, Marcia G. Stickler,
13 objects and requests that no stay be granted of the administrative proceedings in this matter for
14 the purpose of Respondents obtaining a declaratory judgment in Thurston County Superior
15 Court in the matter of: In Re: Benefit Marketing Solutions, et al. at No. 14-0081. There is
16 simply no compelling reason to interrupt and supersede the administrative proceeding that has
17 been initiated by the OIC by Notice of Hearing on May 7, 2014. The granting of a stay would
18 unnecessarily interfere with the OIC's expeditious resolution of this matter. The Superior
19 Court proceedings for the stay won't start until at least October 2014, or later. The
20 administrative hearing will be long completed by then. There should be no action in Superior
21 Court until administrative remedies have been exhausted.

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1 And Respondents can demonstrate no detrimental reliance or other harm suffered
2 because their offer of a joint stay was rejected by the agency. In fact, this request for stay and
3 the Motion for Declaratory Relief filed in Superior Court are proof that no harm was done by
4 the few weeks it took for the agency to deny entering into the joint motion for stay. No relief
5 or potential relief was barred just because Respondents misunderstood the nature of the agency
6 decision-making hierarchy.

7 Respondents have little hope for success on the merits. Respondents continually refer
8 to the OIC's allegations in their pleadings as wrongfully issuing "service contracts." That is
9 only one alternate allegation. The OIC pleadings also indicate that Respondents have provided
10 "insurance" as that term is defined in RCW 48.01.040, to wit: Insurance is a contract whereby
11 one undertakes to indemnify another or pay a specified amount upon determinable
12 contingencies. This is exactly what the Rent-A-Center "Paid Out Account Product Service
13 Protection" benefit provides to its members. Respondents' program offered to Rent-A-Center
14 customers specifically provides that if the rental merchandise is damaged beyond repair, stolen
15 or destroyed by a covered event, a new agreement will be opened up on a like kind
16 replacement product at the same rental terms. An insurer requires a Certificate of Authority in
17 order to offer or sell insurance, unless there is some alternate license or registration permitted
18 by the insurance code. Had BMS and BMA registered as a "service contract provider" under
19 RCW 48.110, it may have avoided the need for a full certificate of authority. But it did not do
20 so. Thus, they need a Certificate of Authority to legally provide this program in lieu of
21 registering as a service contract provider.

22 Further, there is a potential danger to the public to further put off resolving the issues in
23 this matter in an administrative hearing. The interests of persons not parties to the
24 administrative proceeding could be harmed. Any and all unlicensed activity poses a threat of
25 harm to the public. Rent-A-Center and BMS and BSA have failed to satisfy the requirements
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1 of RCW 48.110, including registration as a service contract provider, and therefore were in fact
2 selling an insurance product without a Certificate of Authority or other authorization.
3 Financial responsibility requirements have not been met nor has a reimbursement insurance
4 policy been obtained to cover liabilities under the service contracts. RCW 48.110.050 outlines
5 the requirements necessary to become a registered service contract provider, and RCW
6 48.05.040 generally lists the qualifications for a Certificate of Authority, including filing of
7 financial statements. None of these requirements have been satisfied. The Paid Out Account
8 Product Service Protection benefit sold by Rent-A-Center constitutes the act of undertaking to
9 indemnify the consumer or pay a specified amount upon determinable contingencies, and is
10 therefore "insurance" as defined in RCW 48.01.040. As the state entity enforcing the
11 Insurance Code, this office cannot permit sales of insurance products without oversight, as
12 consumer harm may occur.
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15 As counsel for Respondent's well knows, the OIC representative did not take it
16 upon herself to agree to a stay on behalf of the OIC. She lacks the authority to do so.
17 She did agree to take the proposition to management for a decision, which was duly
18 made and resulted in a denial of a stay. Counsel was promptly informed of the
19 agency's decision to decline to enter into a joint motion for stay of the administrative
20 proceeding. There is simply no reason to circumvent the ongoing administrative
21 proceedings to get a second opinion from the Superior Court. Jurisdiction, the statutory
22 definition of a service contract, and of insurance itself are all within the ambit of the
23 Chief Hearing Officer. The declaratory ruling Respondents seek is inappropriate unless
24 and until they have exhausted administrative remedies, including the OIC hearing
25 process. While Respondents may appeal the Chief Hearing Officer's conclusions, they
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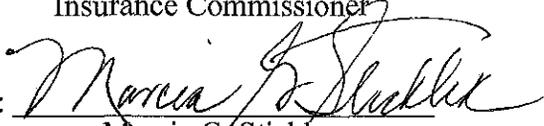
1 should not obfuscate and complicate the straightforward administrative hearing process
2 contemplated by Chapter 34.05 RCW and Chapter 48.04 RCW.

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4 In any event, there is no justification for delay of these proceedings when unlicensed
5 activity is alleged. The Motion for stay should be denied.

6 DATED this 24th day of June, 2014.

7 **MIKE KREIDLER**

8 Insurance Commissioner

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10 By: 

11 Mareia G. Stickler
12 OIC Staff Attorney
13 Legal Affairs Division
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CERTIFICATE OF MAILING

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2 The undersigned certifies under the penalty of perjury under the laws of the State of
3 Washington that I am now and at all times herein mentioned, a citizen of the United States, a
4 resident of the State of Washington, over the age of eighteen years, not a party to or interested
5 in the above-entitled action, and competent to be a witness herein.
6

7 On the date given below I caused to be served the foregoing OIC RESPONSE TO
8 MOTION FOR STAY OF PROCEEDINGS PENDING DECLARATORY JUDGMENT on
9 the following individuals in the manner indicated:
10

11 Hon. George Finkle, Chief Hearing Officer
12 P O Box 40255
13 Olympia, WA 98504-0255

14 (XXX) Via Hand Delivery

15 **For Respondents:**

16 Rent-A-Center, Inc.
17 Rent-A-Center West, Inc.
18 5501 Headquarters Drive
19 Plano, Texas 75024

20 Gulliver Swenson, Counsel for Benefit Marketing Solutions, LLC
21 Ryan, Swanson & Cleveland, PLLC
22 1201 Third Avenue, Suite 3400
23 Seattle, Washington 98101-3034

24 (XXX) Via U.S. Regular Mail

25 **SIGNED** this 14th day of June, 2014, at Tumwater, Washington.

26

Christine Tribe