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STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

RENT-A-CENTER, INC.
RENT-A-CENTER WEST, INC.,

NO. 14-0082

and

BENEFIT MARKETING SOLUTIONS, LLC and
BENEFIT SERVICES ASSOCIATION,

**REPLY TO OIC RESPONSE TO
MOTION FOR STAY OF
PROCEEDINGS PENDING
DECLARATORY JUDGMENT**

The Insurance Commissioner's opposition fails to provide (1) any legitimate reason to not enforce the Commissioner's prior agreement to stay this matter, (2) any response to the legal arguments that judicial resources will be saved, efficiencies will be obtained, and inconsistent adjudications will be avoided should this matter be stayed pending determination of the declaratory judgment matter, and (3) any actual evidence that any harm will ensue if a stay is not entered. The Hearings Officer should stay this matter because it is the equitable and legally appropriate thing to do while the parties await the determination of the Thurston County Superior Court action.

A. The OIC has provided no justification for being released from its agreement to stay this matter.

The OIC states that it cannot be bound by its agreement to stay this matter because Ms. Stickler did not have authority to enter into the agreement and the agreement only



1 required her to seek approval of her supervisors for a stay. The OIC's contentions are both
2 false.

3 First, Ms. Stickler has been expressly identified as the "designated representative" of
4 the Insurance Commissioner. Ms. Stickler's role is unequivocally confirmed in the opening
5 sentence of the Insurance Commissioner's response brief. As the designated representative,
6 Ms. Stickler has the authority to act on the Insurance Commissioner's behalf; this authority is
7 what allowed Ms. Stickler to issue the original Notice of Hearing for Imposition of Fines and
8 to take the various other steps she's taken in relation to this matter and other matters involving
9 these same parties. To designate Ms. Stickler as the Insurance Commissioner's designated
10 representative, but then to argue that that designation doesn't involve the ability to reach a
11 procedural agreement in an administrative hearing with opposing parties is disingenuous.

12 Second, the OIC contends that the agreement was actually that Ms. Stickler would
13 bring the request for a stay to her supervisors. This is false. The contemporaneous
14 communications between the parties' representatives clearly established that an agreement
15 had been reached, not that there was need for further approval. There was never a statement
16 that further approval was needed and if further approval was required, it was incumbent upon
17 Ms. Stickler to state so in response to the contemporaneous communications that were
18 attached as exhibits to our moving papers. The Insurance Commissioner entered into an
19 agreement through its designated representative and that agreement to stay these proceedings
20 should be enforced.

21 **B. The OIC does not dispute that it would be more efficient, save judicial resources,
22 and avoid inconsistent adjudications to have one tribunal deciding the threshold
23 legal question.**

24 It would indisputably save judicial resources, avoid inconsistent adjudications, and be
25 more efficient for this matter to be stayed while the very same parties adjudicate the issue of
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1 whether the OIC has jurisdiction to regulate the parties to this action and their business
2 activities. The OIC could not and did not dispute these legal justifications.

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4 **C. The OIC's conclusory and circuitous arguments that putting off resolution of this
5 matter will lead to additional harm are unsupportable.**

6 The OIC argues that there could be harm if a stay is granted. The OIC ignores,
7 however, that this matter simply seeks imposition of fines. There is no cease and desist order
8 in this matter, rather the cease and desist order is in a separate and distinct matter between the
9 same parties. The only possible outcome for the OIC in this matter is payment of a fine. It is
10 unclear how the OIC believes that delaying a fine could have any harm upon the public
11 interest.

12 Additionally, the OIC's arguments that harm could accrue are frivolous. The basic
13 argument is that Benefit Marketing Solutions and Benefit Services Association are unlicensed
14 entities and that as a general rule unlicensed activity could harm the public. But this is the
15 very question that these entities are asking the Superior Court to adjudge: Does the Office of
16 the Insurance Commissioner have the authority to regulate the activities of Benefits
17 Marketing Solutions and Benefit Services Association? The issue of the OIC's jurisdiction
18 and authority should be determined prior to this Hearings Unit continuing forward on a matter
19 to determine whether a fine is appropriate.

20 **CONCLUSION**

21 This matter presents a horn book example of when a stay is appropriate. There are two
22 pending matters seeking resolution of the same legal question and this Hearings Unit should
23 stay this matter until that legal question is answered. In addition, the OIC has reneged on its
24 deal to stay this matter, and the court should enforce the OIC's agreement.
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DATED this 1st day of July, 2014.

RYAN, SWANSON & CLEVELAND, PLLC

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