

FILED

BEFORE THE STATE OF WASHINGTON SEP 24 A 10:00
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)
)
HENRY WILLIAM DAILEY,)
)
Licensee.)
)
_____)

Docket No. 14-0114

**ORDER ON MOTION FOR
SUMMARY JUDGMENT**

TO: Henry William Dailey
16130 SE 42nd Street
Bellevue, WA 98006

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Marcia Stickler, Insurance Enforcement Specialist, Legal Affairs Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This case comes before me on the Motion for Summary Judgment of the Office of the Insurance Commissioner (OIC). I have considered the Motion, filed August 28, 2014, and the Response of Mr. Dailey, pro se, filed September 19, 2014. The OIC indicated that it would not file a Reply to the Response.

1. On June 4, 2014, the OIC issued an Order Revoking License, No. 14-0114, revoking Mr. Dailey's resident insurance producer's license effective June 23, 2014. The Order Revoking License was based in substance upon the allegations that Mr. Dailey: 1) sold annuity products that were not approved for sale in Washington State to senior consumers, in violation of RCW 48.18.100(1); and 2) knowingly made material false or misleading statements that such

consumers were out of state when they completed the applications, in violation of RCW 48.30.210.

2. On June 17, 2014, Mr. Dailey filed a demand for hearing to contest the OIC's Order Revoking License.

3. The evidentiary hearing in this case is scheduled for October 2, 2014. *See*, Notice of Hearing, filed July 29, 2014.

4. The OIC's Motion requests a final judgment upholding the Order Revoking License, based on the doctrine of collateral estoppel.

5. On July 25, 2014, King County Superior Court Judge Kenneth Schubert entered an Order Granting Plaintiff's Motion for Summary Judgment in *State of Washington v. William Dailey, et al*, No. 13-2-27535-0 SEA.

6. Judge Schubert's Order declared that Defendants, including Mr. Dailey, violated the Washington State Consumer Protection Act by making misrepresentations or omitting material facts during the sale of annuities to vulnerable seniors, including: that the rules and policies of many reverse mortgage loan origination companies expressly prohibited agents from using reverse mortgage funds to purchase annuities, which Defendants did; the existence, size, and importance of surrender penalties on deferred annuities; the inability to retrieve money from annuities once purchased in the event funds became needed; and the fact that the monthly payments for some annuities would cease upon death, leaving no funds for the annuitant's heirs.

7. Judge Schubert's Order further declared that Defendants submitted annuity applications to insurance companies containing false information, including claims that consumers or Defendants had signed documents in locations other than the locations where they

actually were signed; and that consumers owned property outside of the State of Washington, when in fact they did not.

8. The doctrine of collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent proceeding involving the same parties. The elements of collateral estoppel are: 1) identical issues; 2) a final judgment on the merits; 3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and 4) application of the doctrine must not work an injustice on the party against whom the doctrine is asserted. *Christensen v. Grant Co. Hosp.*, 152 Wn.2d 299, 306-07 (2004); *Reninger v. Dept. of Corrections*, 134 Wn.2d 437, 449 (1998).

9. The issues before me in the present case are substantially identical to the issues that were determined in Judge Schubert's Order.

10. Judge Schubert's Order is a final judgment on the merits.

11. Mr. Dailey was a party to the prior adjudication before Judge Schubert.

12. Application of the doctrine of collateral estoppel does not work an injustice on Mr. Dailey, who had a full opportunity in the case before Judge Schubert to respond to the allegations against him.

13. Mr. Dailey's Response does not challenge the OIC's assertion that the elements of collateral estoppel have been met, but asks that I deny the OIC's Motion pending his appeal of Judge Schubert's Order. Mr. Dailey relies on a Motion for Reconsideration (dated August 1, 2014, but unsigned), which asserts that Judge Schubert abused his discretion when he implicitly denied Mr. Dailey's Motion for Continuance of the hearing on the Summary Judgment Motion before him to permit Mr. Dailey to retain counsel.

14. Neither Mr. Dailey's Motion for Reconsideration nor his possible appeal bears on the OIC's present Motion for Summary Judgment. A judgment otherwise final, as was Judge Schubert's Order, remains so despite an appeal. *See, Lejeune v. Clallam Co.*, 64 Wn.App. 257, 265-66 (1992); *Winchell's Donuts v. Quintana*, 65 Wn.App. 525, 530 (1992). (However, application of the doctrine may be defeated by later rulings on appeal. *See, Lejeune*, at 266.)

15. I do not find that delay in entering a final order in the case before me is necessary to permit Mr. Dailey to be heard. Subject to Judge Schubert's reconsideration or reversal on appeal, the status of the record is that the proceeding before Judge Schubert gave Mr. Dailey the full opportunity to be heard on the substance of the issues now before me.

16. WAC 10-08-135, which governs motions for summary judgment in administrative proceedings, provides:

A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

17. No genuine issue exists as to any material fact, and the OIC is entitled to judgment as a matter of law, affirming the Order Revoking License.

ORDER

The OIC's Motion for Summary Judgment is granted. The June 4, 2014 Order Revoking License is affirmed. The evidentiary hearing is stricken.

Dated: September 24, 2014



JUDGE GEORGE FINKLE (Ret.)
Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

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: Henry William Dailey, Mike Kreidler, James T. Odiome, J.D., CPA, John F. Hamje., Marcia Stickler, and AnnaLisa Gellermann.

DATED this 24th day of September, 2014.


KELLY A. CAIRNS