

FILED

2014 DEC -4 P 1:27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Order No. 14-0204

DIGITAL LEASH, L.L.C. d/b/a
PROTECTCELL, d/b/a
www.protectcell.com;
FORTEGRA FINANCIAL
CORPORATION; LOTS INTERMEDIATE
COMPANY; and SCOTT McLAREN,
ROBERT EMERY, BRYAN FINNERTY
and CHRISTOPHER P. BEYERSDORFF;

OIC PREHEARING
CONFERENCE STATEMENT

Unauthorized entities and individuals.

The Insurance Commissioner for the state of Washington ("OIC"), by and through the undersigned, his authorized designee, submits the following Statement in preparation for the prehearing conference scheduled for December 8, 2014, in this matter concerning the above-named unauthorized entities and individuals ("ProtectCell"). The OIC strongly objects to ProtectCell's mischaracterization of its good faith and of the legality of its Cease and Desist Order, which are in any event not properly the subjects of this Prehearing Statement, as the OIC understands it. Moreover, the OIC opposes ProtectCell's requests for 1) a stay of the OIC's Order to Cease and Desist, No. 14-0204, and 2) a transfer of this case for resolution by the Office of Administrative Hearings ("OAH").

1 **1. Request for Stay**

2 ProtectCell’s request for a stay of the Cease and Desist Order, No. 14-0204, in
3 this matter should be denied. RCW 48.04.020 provides for an automatic stay when a
4 “demand for a hearing [is] received by the commissioner prior to the effective date of
5 action taken or proposed to be taken.” RCW 48.04.020(1) (emphasis added). However,
6 as is the OIC’s practice, the Cease and Desist Order, No. 14-0204, was effective
7 immediately on October 23, 2014. ProtectCell’s demand for hearing was only received
8 on October 31, 2014, after the effective date, and thus RCW 48.04.020(1) does not
9 apply, by its terms.

10 The Insurance Commissioner’s use of a Cease and Desist Order with an
11 immediate effective date is also proper and legal. The Insurance Code provides that “[i]f
12 the commissioner has cause to believe that any person is violating or is about to violate
13 any provision of this code or any regulation or order of the commissioner, he or she
14 may: (a) issue a cease and desist order.” RCW 48.02.080(3). There is no requirement of
15 a hearing nor any time limitation on the effective date of such a Cease and Desist Order,
16 and “the commissioner has the authority expressly conferred upon him or her by or
17 reasonably implied from the provisions of this code.” RCW 48.02.060(1). The OIC’s
18 good cause for issuing this Order is laid out at length in the body of the Order itself:
19 ProtectCell is selling contracts to Washington consumers within the scope of the
20 Insurance Code, without proper licensure or registration.

21 The critical nature of being licensed or registered and therefore supervised by the
22 OIC is laid out in the Insurance Code:

23 “The business of insurance is one affected by the public interest, requiring
24 that all persons be actuated by good faith, abstain from deception, and
25 practice honesty and equity in all insurance matters. Upon the insurer, the
26 insured, their providers, and their representatives rests the duty of
preserving inviolate the integrity of insurance.”

27 RCW 48.01.030. Furthermore, with respect to service contracts:

28 “The legislature finds that increasing numbers of businesses are selling
29 service contracts for repair, replacement, and maintenance of motor
30 vehicles, appliances, computers, electronic equipment, and other consumer
products. There are risks that contract obligors will close or otherwise be

1 unable to fulfill their contract obligations that could result in unnecessary
2 and preventable losses to citizens of this state. The legislature declares that
3 it is necessary to establish standards that will safeguard the public from
4 possible losses arising from the conduct or cessation of the business of
5 service contract obligors or the mismanagement of funds paid for service
6 contracts. The purpose of this chapter is to create a legal framework within
 which service contracts may be sold in this state and to set forth
 requirements for conducting a service contract business.”

7 RCW 48.110.010. “The commissioner must execute his or her duties and must enforce
8 the provisions of this code.” RCW 48.02.060(2). Given these legislative mandates, the
9 OIC is amply authorized and justified to issue Cease and Desist Orders, such as Order
10 No. 14-0204, with an immediate effective date. Furthermore, doing so aids the OIC in
11 fulfilling its consumer protection mission, while granting a stay would allow
12 unsupervised contracts to continue to be sold to Washington consumers without the
13 safeguards of the Insurance Code. To order a stay would prejudice both the OIC, in its
14 ability to perform its duty to protect the purchasers of the contracts involved here, and
15 also the consumers themselves, who are left without the protections of OIC regulation.
16 For the foregoing reasons, the OIC respectfully requests that the Chief Presiding Officer
17 deny ProtectCell’s request for a stay of the Cease and Desist Order herein.

18 **2. Request for Transfer to OAH**

19 ProtectCell’s request to transfer this entire case to OAH should also be denied.
20 While ProtectCell has not identified the licensee in question, it appears from OIC
21 records that Mr. Beyersdorff, alone of the unauthorized entities and individuals in this
22 matter, obtained an insurance producer’s license in March 2014. ProtectCell and the
23 other entities and individuals remain unlicensed and unregistered under the Insurance
24 Code, and unauthorized sales of the contracts in question are ongoing.

25 The OIC’s position is that RCW 48.04.010(5) does not apply to situations such
26 as this one. The OIC is not seeking to revoke, suspend, or place on probation Mr.
27 Beyersdorff’s license with this Cease and Desist Order. Nor is the OIC seeking to
28 impose any penalty on Mr. Beyersdorff for the use of his insurance producer’s license
29 with this Order. Instead, Mr. Beyersdorff is included in the Cease and Desist Order for
30 his role in the unauthorized activities of ProtectCell and his actions prior to receiving

1 licensure. Since the basis for this hearing does not arise from Mr. Beyersdorff's license,
2 the right of licensees to have the hearing venue transferred to OAH under RCW
3 48.04.010(5) should not apply here.

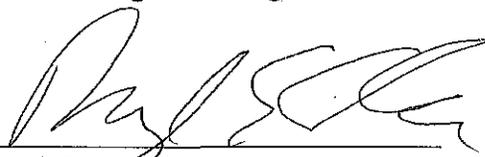
4 However, even if the Chief Presiding Officer disagrees that RCW 48.04.010(5)
5 does not apply here, only the hearing for Mr. Beyersdorff should be transferred to OAH.
6 As noted above, only Mr. Beyersdorff was licensed or registered in any way with the
7 OIC, and only after unlicensed activity had been taking place for some time. Only a
8 licensee has the right for having a hearing transferred to OAH. RCW 48.04.010(5).
9 This right should not be extended to unlicensed individuals or entities, who would never
10 be entitled to such a transfer in their own right, simply because they are identified as a
11 co-defendant with a licensee.

12 Therefore, the OIC respectfully requests that the Chief Presiding Officer deny
13 the request for transfer of this case to OAH. If the Chief Presiding Officer rules
14 otherwise, the OIC respectfully further requests that such transfer be limited to only Mr.
15 Beyersdorff, the sole licensed or registered individual or company in this action.

16
17 DATED this 27th day of October, 2014.

18
19 

20
21 MIKE KREIDLER
22 Insurance Commissioner
23 By and through his designee

24
25 
26 Darryl E. Colman
27 OIC Insurance Enforcement Specialist
28 Legal Affairs Division
29
30