

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

In the Matter of)

KYLE E. BRADBURY,)

Licensee.)

Docket No. 14-0210

2015 MAR 12 P 1:54

ORDER ON MOTION TO DISMISS

TO: Kyle E. Bradbury
1415 Reser Road
Walla Walla, WA 99362

Kyle E. Bradbury
105 South 3rd
Walla Walla, WA 99362

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Drew Stillman, 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

Discussion.

1. On November 4, 2014, the Office of the Insurance Commissioner (“OIC”) issued an Order Revoking License, No. 14-0210 (“Order Revoking”), effective November 24, 2014, revoking the Washington State insurance producer’s license of Kyle E. Bradbury.

2. On February 4, 2015, Mr. Bradbury submitted a Demand for Hearing (“Demand”), challenging the Order Revoking.

3. On March 5, 2015, the undersigned held a first prehearing conference. The OIC was represented by Drew Stillman, Attorney at Law, Insurance Enforcement Specialist in the OIC’s Legal Affairs Division. Mr. Bradbury appeared pro se.

4. During the prehearing conference, the OIC raised the issue of whether Mr. Bradbury's Demand was untimely, and I set a briefing schedule on this issue, which was confirmed in the Notice of Hearing, filed March 5, 2015. Consistent with that schedule, the OIC presented OIC's Motion to Dismiss, filed March 6, 2015. Mr. Bradbury presented his email Response, dated March 10, 2015. The OIC did not present a Reply.

5. RCW 48.04.010(3) provides:

Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, or *in the case of a licensee under Title 48 RCW within ninety days after the commissioner has mailed the order to the licensee* at the most recent address shown in the commissioner's licensing records for the licensee, the right to such hearing shall conclusively be deemed to have been waived. (Emphasis added.)

6. WAC 284-02-070(1)(b)(ii), provides that a hearing is considered demanded when the demand for hearing is *received* by the Commissioner. (Emphasis added.)

7. Where a request for a hearing is untimely under a statutory filing deadline, a Washington State agency or court lacks jurisdiction. *E.g., Smith v. Department of Labor & Industry*, 1 Wn.2d 305, 308-09 (1939); *Graham Thrift Group v. Pierce Co.*, 75 Wn.App. 263, 267-69 (1994); *Rutcosky v. Board of Trustees*, 14 Wn.App. 786, 789 (1976). An agency or court must give full effect to a mandatory statutory filing deadline, "even when the results may seem unduly harsh." *Graham*, at 267-68 (citations omitted.)

8. On November 4, 2014, the Commissioner *mailed* the Order Revoking to the licensee, Mr. Bradbury, at Mr. Bradbury's most recent addresses shown in the Commissioner's licensing records for him. *See*, Certificate of Mailing dated November 4, 2015, attached to Order Revoking; Declaration of Joshua Pace, dated March 6, 2015 ("Pace Declaration"). Mr. Bradbury agrees in his Response that he received the OIC's emailed and mailed Order Revoking.

9. On February 4, 2015, 92 days after the OIC mailed the Order Revoking, the Hearings Unit *received* and filed Mr. Bradbury's Demand. *See*, Pace Declaration. Mr. Bradbury agrees in his Response that the Commissioner received his Demand on February 4, 2015.

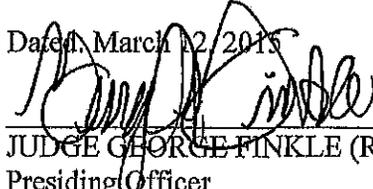
10. Mr. Bradbury states in his Response, in substance, that the fact that two of the months between November 4, 2014, and February 4, 2015, had 31 days did not cross his mind; that he intended to timely present his Demand and would have made sure he did so regardless of the deadline; and that dismissal is too drastic a remedy.

11. Mr. Bradbury's Demand was untimely because it was not received by the Commissioner within 90 days of the date the Commissioner mailed the Order Revoking to him at his most recent address. Under the applicable Washington State authority noted above, while this result may seem unduly harsh, I do not have jurisdiction to conduct an evidentiary hearing.

Order.

This Matter is dismissed.

Dated, March 12, 2015

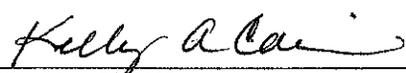


JUDGE GEORGE FINKLE (Ret.)
Presiding Officer

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: Kyle E. Bradbury, Mike Kreidler, James T. Odiorne, J.D., CPA, John F. Hamje, Drew Stillman, and AnnaLisa Gellermann.

DATED this 13th day of March, 2015.



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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.

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