

FILED

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

2015 MAR 30 P 1:04

In the Matter of

ROBERT R. TIMMER,

Applicant.

) **Docket No. 14-0247**

) **ORDER ON MOTION**
) **TO TRANSFER TO ALJ**

TO: Robert R. Timmer
1894 SE Sedgwick Rd., Suite 103
Port Orchard, WA 98366

Jason W. Anderson, Attorney at Law
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010

Robert R. Timmer
11118 149th Ave KPN
Gig Harbor, WA 98329

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

1. On December 19, 2014, the Office of the Insurance Commissioner ("OIC") issued an Order Revoking License, No. 14-0247 ("Order Revoking"), effective January 9, 2015, which revoked the Washington State insurance producer's license of Robert R. Timmer, based upon the finding that he had submitted false policy applications to an insurance carrier.

2. Mr. Timmer submitted a Demand for Hearing ("Demand"), filed December 23, 2014, requesting a hearing to challenge the Order Revoking. Mr. Timmer asserted that he had performed his duties as an insurance producer in an ethical manner, had learned from past mistakes, had recently taken several ethics courses, and revocation would cause hardship to his family as well as force him to lay off his employee.

3. I was designated by the Commissioner to hear and determine this matter. On January 8, 2015, I held a first prehearing conference ("PHC") at which the OIC was represented by Drew Stillman, Attorney at Law, Insurance Enforcement Specialist in the OIC's Legal Affairs Division, and Mr. Timmer appeared pro se. After considering the views of the parties, I issued a Notice of Hearing, filed January 8, 2015, establishing a pre-hearing schedule and setting an evidentiary hearing for April 1, 2015.

4. At the time of the PHC, Mr. Timmer expected to decide within one week whether to retain an attorney to represent him. On January 22, 2015, Jason W. Anderson, Esq., of Carney Badley Spellman, P.S., entered a Notice of Appearance.

5. On March 23, 2015, Mr. Anderson served and filed (by email, which I find acceptable) a Motion in which Mr. Timmer "exercise[d] his right under RCW 48.04.010(5) to have the hearing presided over by an ALJ [administrative law judge] assigned under chapter 34.12 RCW."

6. Because the evidentiary hearing was scheduled to begin just nine days after the Motion was filed, I set an accelerated briefing schedule, with which the parties complied: On March 26, 2015, the OIC served and filed its Response to the Motion, and on March 27, 2015, Mr. Timmer served and filed his Reply to the Response.

Transfer to ALJ.

7. RCW 48.04.010(1) provides in pertinent part: "The commissioner shall hold a hearing ... (b) upon written demand for a hearing made by any person aggrieved by any act ... of the commissioner...."

8. Mr. Timmer is a licensee under the Insurance Code, who was aggrieved by the Order Revoking. He timely filed the Demand and is entitled to a hearing.

9. RCW 48.04.010(5) provides: "A licensee under this title may request that a hearing authorized under this section be presided over by an administrative law judge assigned under chapter 34.12 RCW. Any such request shall not be denied."

10. A licensee's right under RCW 48.04.010(5) to a hearing presided over by an ALJ is unconditional and need not be exercised by any deadline. No other provision of the Insurance Code or the APA imposes a deadline for exercising the right to transfer.

11. Although I do not determine this issue, a licensee might in some cases be barred from the exercise of this right by operation of waiver or estoppel. But here, Mr. Timmer did not knowingly and intentionally forgo his right to a hearing before an ALJ, nor has the OIC shown detrimental reliance on Mr. Timmer's failure to earlier exercise his right. (I recognize that granting transfer to an ALJ will delay the evidentiary hearing and final order, during which time the automatic stay of the Order Revoking will continue in effect, but this is not the result of detrimental reliance by the OIC.)

12. This matter should be transferred to an ALJ at the OAH. Because such transfer occurs on the eve of the originally-scheduled evidentiary hearing, the hearing before the ALJ should be held at the earliest date available on the ALJ's schedule that is reasonably convenient for parties and counsel, but not delayed by discovery, motions, etc. The ALJ should issue the initial order as soon as possible after the evidentiary hearing and transfer the record back to the OIC Hearings Unit for entry of a final order.

Delegation of authority to enter the final order.

13. As was noted in Mr. Timmer's Motion, the Commissioner has delegated to the presiding officer the authority to enter the final order in this and other licensee hearing demands. *See*, WAC 284-02-070(2)(d)(i). Mr. Timmer requests that, under the appearance of fairness doctrine, the ALJ to whom this matter is transferred be authorized to enter the final order.

14. Mr. Timmer argues that a reasonably prudent and disinterested person would question whether an insurance producer can obtain a fair, impartial, and neutral hearing within the OIC, given evidence that he asserts demonstrates that: 1) less than a year ago, Deputy Commissioner Odiorne attempted to influence the former presiding officer's decisions and limit her discretion, and 2) the Commissioner's current solicitation of applications for a new presiding officer, posted February 25, 2015, states that the presiding officer "communicates with the Commissioner about agency policy to further the agency's goal of regulating the insurance industry in a fair and efficient manner," which suggests inappropriate interference.

15. RCW 34.05.425(5) provides: The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination." I do not disqualify myself, as I do not believe the record or the circumstances demonstrate my actual or apparent bias.

16. WAC 284-02-070(2)(d)(i) provides: "The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464) and entry of a final order."

17. Given WAC 284-02-070(2)(d)(i), I do not have the authority to direct that the Commissioner delegate to the ALJ authority to enter the final order. No other basis under law would permit me to so direct the Commissioner.

18. Further, even assuming I did have such authority, I would not so direct the Commissioner. The record does not demonstrate any attempt to influence the outcome of this matter or the appearance of any such attempted influence. Further, I do not expect any attempt to influence me, or the appearance of such attempt, in the future. *Cf. Milwaukee R.R. v. Human Rights Commission*, 87 Wn. 2d 802, 810 (1976).

ORDER ON MOTION TO TRANSFER TO ALJ

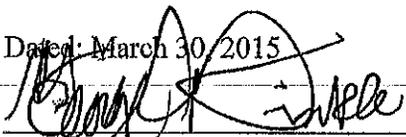
14-0247

Page - 4

Order.

This matter is transferred to the OAH for assignment of an ALJ. The ALJ shall conduct an expedited evidentiary hearing and issue Findings of Fact, Conclusions of Law, and Initial Order as soon as possible thereafter, then transmit these to the OIC Hearings Unit, together with the exhibits and record, for review and entry of a Final Order.

Dated: March 30, 2015

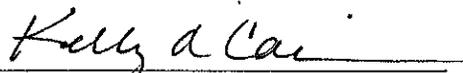


JUDGE GEORGE FINKLE (Ret.)
Presiding Officer

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: Robert R. Timmer, Mike Kreidler, James T. Odiorne, J.D., CPA, John F. Hamje, Drew Stillman, and AnnaLisa Gellermann. ~~Jason Anderson~~

DATED this 30th day of March, 2015.



KELLY A. CAIRNS