

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

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FILED

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 of a true copy of this document to parties listed below
DATED this 20th day of April 2007
at Tumwater, Washington.

Signed: Wendy Galloway

OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
Fax: (360) 664-2782

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Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

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STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	
)	NO. D06-246
)	
FRAN E. AUSTIN,)	ORDER ON LICENSEE'S
)	MOTION FOR RECONSIDERATION
Licensee.)	
)	

TO: Fran E. Austin
5431 S. Quail Ridge Circle
Spokane, Washington 99223

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Mike Huske, Chief Investigator, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Charles D. Brown, Senior Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

By letter dated April 5, 2007 and filed herein on April 9, 2007, Fran E. Austin (Licensee) filed a Request for Reconsideration of the Findings of Facts, Conclusions of Law and Final Order on Hearing (Final Order) which was served on him on March 27, 2007. In the referenced Final Order, the parties were advised that Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for



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reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. For further information or to obtain copies of the applicable statutes, the parties may contact the paralegal to the undersigned. By failing to file his Request for Reconsideration within the 10 day period proscribed by RCW 34.05.461(3), the Licensee has lost his right for reconsideration of the Final Order.

Although the Licensee is no longer entitled to reconsideration, the undersigned has reconsidered this matter. As the bases for reconsideration, the Licensee argues as follows:

1. The Licensee states: *According to RCW 34.05.461 I should of (sic) had the results in writing to me no longer then (sic) 90 days from the hearing date.* In response after reconsideration, RCW 34.05.461(8) provides that "initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown." Pursuant to this statute and Finding of Fact No. 1, the Final Order was timely and properly served on March 27, 2007.

2. The Licensee states: *In reading your final order it sure looks like it was just rubber stamped from the final order of Angela Vogel, enforcement attorney with the Washington state dept. of financial institutions, Securities Division.* In response after reconsideration, the Final Order appears to be based upon the facts presented at hearing, which were, properly, those facts which were alleged in the Commissioner's Order Revoking License. Many of the facts alleged were also included in the Securities Division's Final Order, but each were presented and proven independently by the Commissioner at hearing. The Final Order herein properly contained findings of facts relating to the allegations contained in the Commissioner's Order Revoking License.

3. The Licensee states: *I noticed that none of the things I brought up at the hearing were even mentioned in your final order, not even the fact that I did take full blame for this mess I created. I guess you do not have to believe a word I say, but your own witness Roger Minaker even backed up what I said for the reason Mrs. Minaker cashed in her annuity, to gift each of her son's money.* In response after reconsideration, findings of facts are those facts which are adequately proven at hearing, as required by Title 34 RCW. Those facts which are either not proven, or are not relevant, are normally not included in findings of facts. The relevant facts related to the Minaker case, found in Findings of Fact Nos. 4-8 in the Final Order, were, briefly, that the Licensee induced Ms. Minaker to surrender her annuity at a charge to her of over \$4,000, to receive some \$61,000 which comprised the bulk of her estate and life savings, and to entrust these \$61,000 proceeds to him pursuant to an agreement between himself and Ms. Minaker under which the Licensee falsely represented and guaranteed that Ms. Minaker would earn a minimum return of ten percent per year and the right to return of her principal at the end of one year, after which the Licensee commingled the funds with his own, spent some \$10,000 of it for his personal purposes and investments, and lost the remaining \$50,000 in his own personal stock brokerage account. The subject agreement with Ms. Minaker, the annuity documents and handling of the cash

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received were all in writing and entered into evidence as Exs. 6, 7, 8 and 9. The Licensee's suggestion that he converted Ms. Minaker's funds to his own personal purposes in order to somehow allow Ms. Minaker to gift money to each of her sons is not credible given his actual activities in his handling of her funds.

4. Finally, in consideration of the Licensee's Request for Reconsideration, the undersigned had no knowledge of the Licensee having inquired as to the status of the Final Order until well after the Final Order was drafted. In any case, such knowledge would not have influenced the Final Order herein. The evidence presented by the Commissioner in this case was extremely clear and persuasive, and the activities proven against the Licensee – many which were in fact admitted to by the Licensee – were strong and clear, very serious, and extremely injurious to the consumers with whom the Licensee came into contact. The Licensee's assertion that no consideration was given to his statement that he *take[s] full blame for this mess I created* cannot change the proper facts found, the conclusions drawn or the Final Order herein.

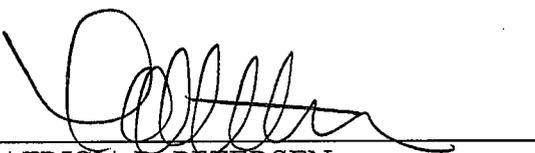
The undersigned has reviewed and considered the arguments of the Licensee in his Request for Reconsideration, the record of the original hearing herein, and the entire hearing file and has concluded that there is no basis for change in the Findings of Facts, Conclusions of Law, and Final Order on Hearing entered by the undersigned on March 26, 2007. Therefore, said Findings of Facts, Conclusions of Law and Final Order on Hearing remain effective as entered as the Final Order in this proceeding.

ORDER

Based upon the above activity,

IT IS HEREBY ORDERED that the Licensee's Request for Reconsideration in this matter has been received and considered by the undersigned, that there is no sufficient basis for changing any portion on the Findings of Facts, Conclusions of Law and Final Order entered in this matter by the undersigned on March 26, 2007, and that, therefore, the Findings of Facts, Conclusions of Law and Final Order entered in the matter by the undersigned on March 26, 2007, remain effective as entered as the Final Order in this proceeding.

ENTERED AT TUMWATER, WASHINGTON, this 20th day of April, 2007, pursuant to Title 34 RCW, Title 48 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Presiding Officer