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STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF  
INSURANCE COMMISSIONER

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Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

June 11, 2008

Ms. Patricia D. Petersen  
Chief Hearing Officer  
Office of Insurance Commissioner  
Insurance 5000 Building  
P.O. Box 40255  
Olympia, WA 98504-0255

Re: *Design Savers Plan, et al.*, No. D07-0351  
*Robert D. Edelheit*, No. D07-0352

Dear Judge Petersen:

This letter is in response to your letter of June 4, 2008. Following receipt of your letter and the accompanying Orders, I spoke separately with Carol Sureau, Charles Brown, and Mike Madden regarding the concerns raised in your letter—concerns which are preventing you from entering the Orders Terminating the Proceedings. Since we are essentially in unanimous agreement with respect to the concerns you raised, it was agreed that the Legal Affairs Division of the OIC would submit an initial response in an effort to bring these matters to conclusion.

Our view and position is that the parties have reached mutually agreeable settlements in both matters and that Orders Terminating Proceedings should be entered without further delay or action. Simply put, not only have full and final settlement agreements been executed, but there have been withdrawals of (a) the Demand for Hearing in Case No. D07-0351, and (b) the Order Revoking License in Case No. D07-0352. Consequently, there is no longer any issue to adjudicate nor any request for an adjudicative proceeding. This is not a case where the Chief Hearing Officer has been asked to enforce or interpret a settlement agreement. Stated differently, since the documents which initially provided the Hearings Unit with jurisdiction (*i.e.*, the Hearing Demands and the Order Revoking License) have been withdrawn—coupled with the fact that full and final settlements have been executed—the settling parties fail to understand why further action is necessary before Your Honor will enter Orders Terminating Proceedings.

The position of the parties also finds support in the language of Chapter 10-08 WAC, which contains the Office of Administrative Hearing's model procedural rules for adjudications under the Administrative Procedure Act. In particular, WAC 10-08-230(2) not only "encourages" the informal resolution of disputes "whenever possible," but also provides that an

order dismissing the adjudicative proceedings shall be entered by the agency when the proceeding is settled by withdrawal:

(2)(a) . . . Settlement shall be concluded by:

(i) *Stipulation of parties* or

(ii) *Withdrawal by the applicant of his or her application for an adjudicative proceeding* or

(iii) *Withdrawal by the agency of the agency action which is the subject matter of the adjudicative proceeding.*

(b) A stipulation shall be in writing and signed by each party to the stipulation or his or her representative or shall be recited on the record at the hearing. *When an adjudicative proceeding has been settled by stipulation*, the agency head, the agency head's designee, or *the presiding officer shall enter an order in conformity with the terms of the stipulation.*

(c) *When an adjudicative proceeding has been wholly or partially settled by withdrawal, the presiding officer shall enter an order dismissing the adjudicative proceeding*, or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.

WAC 10-08-230 (emphasis added).

Putting the procedural issue aside, I will nevertheless address a couple of the substantive concerns raised in your letter. With respect to the license revocation matter (No. D07-0352), the OIC and Mr. Edelheit executed a settlement agreement in which, among other things, the OIC agreed to withdraw the Order Revoking License and Mr. Edelheit agreed to have his license declared permanently expired and inactive. The Office of Administrative Hearings signed the settlement (the parties do not question the authority/validity of the signature) and terminated the matter from its docket. The parties believed that termination of the case by OAH would result in the matter being terminated by the OIC as well.

In your letter of June 4, 2008, however, you indicate that the OIC withdrew the Order Revoking as "a means of concluding, but not eliminating this disciplinary action." The parties do not agree with this statement. The OIC did—and still does—consider the settlement and its withdrawal of the Order Revoking License to be acts which both concluded and eliminated this action; indeed, a settlement and withdrawal of the Order Revoking License, it seems to the Legal Affairs Division at least, could have no other result. Moreover, the language from the Settlement

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Agreement (Paragraph 3.a) to which you refer was included to make clear that those are not activities prohibited by the settlement agreement since they are not activities which require that Mr. Edelheit possess a valid Washington license.

Furthermore, in your letter, you correctly note that Jonathan Edelheit did not appear or demand a hearing within ninety days of his receipt of the Order to Cease and Desist; thus, he waived his "right to a hearing" pursuant to RCW 48.04.010(3). Notwithstanding this situation, the parties do not agree with Your Honor's position that by waiving his right to a hearing the OIC and Jonathan Edelheit are precluded from reaching an independent settlement of the matter. Ultimately, the only right that Jonathan Edelheit waived was his right to a hearing—he did not waive his right to reach a settlement with the OIC. And given the nature of the underlying facts of the case and his involvement with United Group Programs, Inc., it made practical and logistical sense to include Jonathan Edelheit in the settlement.

Based on the foregoing, the parties respectfully request that Orders Terminating the Proceedings be entered without further action or delay. Should Your Honor like to schedule a conference call to discuss this matter further, the parties are willing to participate on a date that is convenient with your schedule. Thank you in advance for your time and consideration.

Respectfully,

**OFFICE OF INSURANCE COMMISSIONER**



Thomas P. Rowland  
Staff Attorney  
Legal Affairs Division

TPR:TPR

cc: Mike Madden