

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

2016 OCT -5 A 10:12

In the Matter of:

Michael R. Marinelli

And

Insurance Appraisal Services,

Respondents.

Docket No. 16-0155

NOTICE OF HEARING
HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

TO: Brian Kreger
Kreger Beeghly, PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
John Hamje, Deputy Commissioner, Consumer Protection Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Drew Stillman, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

Since 1995, Michael R. Marinelli ("Marinelli") and Insurance Appraisal Services ("IAS"), collectively referred to as Respondents, have owned and operated an appraisal service (aka Cal-Mar Enterprises) in the greater Seattle area that specializes in automobile property damage. Respondents inspect cars and prepare damage estimates based on visible damage. In December 2015, an insurer allegedly retained IAS to inspect a vehicle to determine if there were any defects, and if any existed, to prepare a damage estimate, and attempt to reach agreement with the vehicle owner on the scope of necessary repairs. The OIC alleges that IAS was not properly licensed under RCW 48.17.060.

On June 17, 2016, Drew Stillman, Insurance Enforcement Specialist with the Office of Insurance Commissioner ("OIC") sent an Order to Cease and Desist and Notice of Intent to Impose Fine ("Order") to Respondents directing them to immediately stop acting or holding out as an adjuster

in this state without an adjuster license issued by the OIC, and to stop seeking, pursuing, or obtaining any such business in this state without an adjuster license. The OIC also seeks to impose a \$5,000 fine on Respondents jointly and severally.

On September 12, 2016, Respondents filed a demand for hearing with the OIC, by and through their attorney Brian Kreger, of Kreger Beeghly, PLLC, seeking the following: That the OIC's cease and desist order be retracted; that Commissioner Kreidler retract his allegedly "wrongful and damaging" press release picked up by the NAIC News Wire; an order directing that Commissioner Kreidler issue a public apology to them; and monetary damages for loss of business, loss of business opportunity, interference with business relationships, and harm to personal and professional reputation. Respondents argue that they conduct business only as damage appraisers, not as insurance adjusters. They also allege that the Chief Deputy refused to allow a meeting between Commissioner Kreidler and Respondents.

On October 4, 2016, the undersigned held a first prehearing conference. Drew Stillman, Insurance Enforcement Specialist with the OIC's Legal Affairs Division, appeared on behalf of the OIC. Attorney Brian Kreger, represented Respondents.

After considering the views of the Parties, I enter the following Order:

At the prehearing conference the OIC requested that it be allowed to file a motion regarding whether the Respondents' claims for monetary damages against the OIC for loss of business, loss of business opportunity, interference with business relationships, and harm to personal and professional reputation are within the scope of this adjudicative proceeding, and is an issue that can be decided by the undersigned. Therefore, briefing regarding this issue has been scheduled as follows: By October 14, 2016, the OIC shall file and serve its motion regarding the issue of monetary damage claims against the OIC. By October 24, 2016, Respondents shall file and serve their response to the OIC's motion. By October 28, 2016, the OIC shall file and serve its reply to Respondents' response. My ruling will be issued without oral argument as soon as possible thereafter.

RCW 34.05.446 and WAC 284-02-070(2)(e) permit discovery in adjudicative proceedings before the OIC. The parties are engaging in discovery, including exchange of interrogatories and requests for production, and anticipate taking depositions. The deadline for completion of all discovery is December 15, 2016.

By January 9, 2017, the parties shall serve and file dispositive motions. By January 23, 2017, the parties shall serve and file responses to such motions. By January 30, 2017, the parties shall serve and file replies to such responses. I expect to rule without oral argument as soon as possible after briefing is complete.

Assuming this matter is not resolved based upon the dispositive Motions, an evidentiary hearing is scheduled for four days: Monday, February 27, 2017, through Thursday, March 2, 2017. The hearing will be held at the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA, beginning at 9:00 a.m., Pacific Standard Time and continuing until

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5:00 p.m., Pacific Standard Time each day, and will continue until completed. The purpose of the hearing at this juncture, prior to any decision on the OIC's motion to preclude my consideration of money damages claims posited by Respondents, is to consider whether Respondents violated RCW 48.17.060, and whether they are subject to a fine pursuant to RCW 48.17.063(4)(a)(iii). The purpose of the hearing may involve consideration of additional issues identified in my ruling on the OIC's motion to preclude.

By February 21, 2017, the parties shall exchange copies of witness and exhibit lists, briefs and any other documents they expect to offer into evidence at the evidentiary hearing. Any witness and exhibit lists, briefs and documents so provided should also be provided to the Hearings Unit at the address below.

The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. All parties may be represented and may examine witnesses, respond, and present evidence and argument on all relevant issues. Telephonic testimony of witnesses, if unavailable, will be permitted.

A party who fails to attend or participate in the hearing or another stage of this proceeding may be held in default in accordance with Chapter 34.05 RCW. *See*, RCW 34.05.434(2)(i).

William Pardee, Presiding Officer, has been designated by the Insurance Commissioner to hear and determine this matter. The hearing will be held under the authority granted by the Insurance Commissioner under Chapter 48.04 RCW.

Pursuant to WAC 284-02-070(1)(c), accommodation will be made for persons needing assistance due to difficulty with language or disability. Further, pursuant to WAC 10-08-040(2) and in accordance with Ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by Ch. 2.42 RCW. A Request for Accommodation form, with instructions, is attached to the original of this Notice.

All case related documents and correspondence shall be directed to the Hearings Unit, Office of Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, Dorothy Seabourne-Taylor, at the same address. Ms. Seabourne-Taylor's telephone number is (360) 725-7002.

Dated: October 5, 2016



WILLIAM PARDEE
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing Notice of Hearing on the following people at their addresses listed below:

Brian Kreger
Kreger Beeghly, PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
John Hamje, Deputy Commissioner, Consumer Protection Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Drew Stillman, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Dated this 5th day of October, 2016, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal
Hearings Unit

OFFICE OF INSURANCE COMMISSIONER
HEARINGS UNIT
Fax: (360) 664-2782

To request an interpreter, complete and mail this form to:

Presiding Officer
Hearings Unit
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

REQUEST FOR ACCOMMODATION FOR LANGUAGE OR DISABILITY

I am a party in Matter No.16-0155 before the Insurance Commissioner.

I request accommodation for the following disability (insert your disability):

I request an interpreter for myself or a witness who will be testifying at the evidentiary hearing.

Please check the statements that apply:

I am a non-English-speaking person and cannot readily speak or understand the English language. My primary language is _____ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable accommodation for your disability, an interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____

Signed: _____

Please print or type your name: _____

Address: _____

Telephone: _____