

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Variable Marketing, LLC,
d/b/a Instant Insurance Marketing, and
Ryan Blackman and Jeffrey Scott
Schaefer, individually

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Barbara J. Case on January 15, 2014.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Department of Commerce (Department). There was no appearance by, or on behalf of, Variable Marketing, LLC, d/b/a/ Instant Insurance Marketing, Ryan Blackman, or Jeffery Scott Schaffer (Respondents).

STATEMENT OF THE ISSUES

1. Respondents engaged in, conspired to participate in, directed, authorized, failed to learn about, diligently investigate, prevent the unlicensed solicitation of insurance in Minnesota on 38,237 occasions, each of which constitutes a distinct violation of law. Minn. Stat. §§ 45.027, subd. 7(a)(2), 60K.32, and 60K.43, subd. 1(2) (2012).

2. Respondents engaged in, conspired to participate in, directed, authorized, failed to learn about, diligently investigate, or prevent the making of communications to potential insurance buyers that gave the impression that Respondents were acting on behalf of a government agency. Minn. Stat. §§ 45.027, subd. 7(a)(2), and 60K.43, subd. 1(16) (2012).

3. Respondents engaged in, conspired to participate in, directed, authorized, failed to learn about, diligently investigate, prevent the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading. Minn. Stat. §§ 45.027, subd. 7(a)(2); 60K.43, subd. 1(2); and 72A.20, subd. 2 (2012).

4. Variable and Schaffer failed to respond to the Department's Administrative Subpoena.

Based upon relevant authority and all of the files, records and proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 12, 2013, a copy of the Notice and Order for Prehearing Conference in this matter was mailed to Respondents at the Respondents' last known addresses.¹

2. The Notice and Order for Hearing indicated that a prehearing conference would be held in this matter on January 15, 2014, at 1:00 p.m., at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota²

3. In conformity with Minn. R. 1400.5700 the Notice and Order for Hearing requires that any party intending to "appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service" of the Notice and Order for Prehearing Conference.³

4. In conformity with Minn. R. 1400.6000, the Notice and Order for Prehearing Conference in this matter also includes the following statements:

Respondents' failure to appear at the prehearing conference, settlement conference, or hearing may result in a finding that the Respondent is in default, that the allegations contained in this Notice and Order for Prehearing Conference and Hearing may be accepted as true, and its proposed action may be upheld.

5. Respondent did not file a Notice of Appearance with the undersigned.

6. No one appeared at the January 15, 2014 prehearing conference on behalf of Respondents. No request was made for a continuance.

7. The only communication received by the undersigned from any Respondent prior to the January 15, 2014 prehearing conference was a letter to Assistant Attorney General Kaisershot confirming receipt of the Notice and Order for Prehearing Conference and disavowing any responsibility for the actions of the other Respondents.

8. The Notice and Order for Prehearing Conference sets forth specific factual allegations, all of which are set forth in Statement of Charges 1 through 9 of Attachment A and are hereby expressly adopted and incorporated by reference.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

¹ Testimony of Christopher M. Kaisershot.

² Notice and Order for Hearing, at p.1.

³ *Id.* at 5.

CONCLUSIONS OF LAW

1. The Department of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 60K.43.
2. The Respondent received timely and proper notice of the prehearing conference in this matter when the Department of Commerce sent the Notice and Order for Prehearing Conference to the Respondent's last known address.
3. The Department of Commerce has complied with all relevant procedural requirements of statute and rule.
4. Under Minn. R. 1400.6000, the Respondents are in default as a result of their failure to appear at the scheduled Prehearing Conference.
5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.
6. Minn. Stat. § 60K.43 provides that the Department of Commerce may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may level a civil penalty under section 45.027 or any combination of actions.
7. The Department of Commerce has sufficient factual and legal grounds to levy an appropriate civil penalty because of the Respondent's violation of various Minnesota insurance laws and Respondents' communications to Minnesotans which were false and misleading because they improperly held themselves out as representing a government agency.
8. An order by the Commissioner of Commerce taking disciplinary action against the Respondents is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department of Commerce take disciplinary action against the above-named Respondents.

Dated: January 22, 2014

s/Barbara J. Case

BARBARA J. CASE
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.