

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

In the Matter of the Order to Show Cause
Issued to Castle Advocacy Group, Inc.,
Professional Service Corporation

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

The above-entitled matter came before Administrative Law Judge Barbara L. Neilson for a hearing on September 25, 2015. The record closed on that date.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Karl Auleciems, President, appeared without counsel on behalf of Castle Advocacy Group, Inc. (Respondent).

STATEMENT OF THE ISSUES

Did Respondent violate the Cease and Desist order that was issued by the Department on September 22, 2014, as alleged in the Order to Show Cause served by the Department on February 3, 2015, and the Notice and Order for Hearing served by the Department on April 27, 2015?

Should the Order to Show Cause issued by the Department on February 3, 2015, be vacated, modified, or made permanent?

Should Respondent be required to pay a civil penalty of \$22,500?

SUMMARY OF RECOMMENDATION

Alleged violations of the Cease and Desist Order were the sole basis for the Order to Show Cause and the Notice and Order for Hearing in this matter. However, at the end of the contested case hearing, the Department asserted that it was not alleging that Respondent had violated the Cease and Desist Order. As a result, the Administrative Law Judge finds that the Order to Show Cause and the proposed imposition of a \$22,500 civil penalty lack legal support. The Administrative Law Judge therefore recommends that the Order to Show Cause be vacated and the penalty withdrawn.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent is a closely-held corporation.¹ Karl Auleciems is Respondent's president and sole shareholder.²

2. Respondent is not licensed in any capacity by the Department.³

3. Respondent is a start-up company that began operations approximately 18 months prior to the hearing. Under its business model, advocates with experience in particular fields (such as home remodeling, vehicle purchases, insurance, and mortgages) would be available to consult with consumers who are interested in purchasing that product. An anonymous profile of the consumer would be developed and placed in an on-line "marketplace" where potential vendors (who pay a fee to Respondent) may make an offer to provide the product to the consumer. During the offering period, potential vendors would bid against each other in a "reverse auction" system. Respondent views this as an "innovative" way for consumers to purchase products.⁴

4. In February 2014, an individual who was planning to serve as an advisor for Respondent in the mortgage field contacted the Department for advice regarding Respondent's business model.⁵ The Department subsequently learned that Respondent was also proposing to offer assistance to consumers seeking life insurance.⁶ After reviewing Respondent's website and engaging in further discussions with Respondent, the Department informed Respondent that the mortgage and insurance services offered on its website would require licensure.⁷

5. Respondent disagrees with the Department's contention that the mortgage and insurance services to be offered under Respondent's business model would require that Respondent be licensed.⁸

6. Although Respondent made some changes to its website after its discussions with the Department, it did not apply for licensure and continued to mention mortgage and insurance services on its website.⁹

¹ Testimony (Test.) of Karl Auleciems.

² *Id.*

³ Test. of Nick Kulpa.

⁴ Test. of K. Auleciems.

⁵ Cease and Desist Order and Notice of Right to Hearing (Sept. 22, 2014) (Cease and Desist Order) at 1-3 (attached as Exhibit A to Notice and Order for Prehearing Conference and Hearing (Apr. 27, 2015)).

⁶ *Id.* at 3.

⁷ *Id.* at 4.

⁸ Test. of K. Auleciems.

⁹ Cease and Desist Order at 4-5.

7. On May 16, 2014, the Department issued a subpoena to Respondent which requested numerous items aimed at determining Respondent's operations, client volume, employees, and mortgage and insurance vendors.¹⁰ Respondent responded that it had no relevant clients or vendor relationships to disclose.¹¹ In the view of the Department, this did not constitute a full response to the subpoena.¹²

8. On September 22, 2014, the Department issued Respondent a Cease and Desist Order and Notice of Right to Hearing.¹³ The Cease and Desist Order alleged six statutory violations:

Count 1: By offering and advertising mortgage brokering services as defined under Minn. Stat. § 58.02, subd. 14 (2012), Respondent engaged in unlicensed residential mortgage loan origination activity in violation of Minn. Stat. § 58.04, subd. 3 (2012).

Count 2: By failing to have and maintain a surety bond at all times while it was engaged in residential mortgage loan origination activities, Respondent violated Minn. Stat. § 58.06, subd. 2(c)(iv) (2012).

Count III: By claiming on its website that it is able to provide and actively engaged in providing mortgage advocacy services, when in fact it has no lender relationships, Respondent published and placed before the public, representations relating to the business of residential mortgage loans that were false, deceptive, or misleading in violation of Minn. Stat. § 58.163, subd. 1(19) (2012).

Count IV: By soliciting insurance as defined under Minn. Stat. § 60K.30, subd. 14 (2012), Respondent engaged in unlicensed insurance activity in violation of Minn. Stat. § 60K.32 (2012).

Count V: By claiming on its website that consumers who use its insurance service can get a better premium rate than consumers who do not, without a single client experience or vendor relationship to support this statement, Respondent published and placed before the public a representation relating to the business of insurance that was deceptive and misleading in violation of Minn. Stat. § 72A.20, subd. 2 (2012).

Count VI: By failing to fully respond to a Department subpoena, Respondent provided incomplete information to the Commissioner, in violation of Minn. Stat. § 45.027, subd. 7(4) (2012).¹⁴

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 6-7. During the hearing, the Department clarified that there was a typographical error in the statutory citation that had been included in Count III. The correct citation is Minn. Stat. § 58.13, subd. 1(19).

9. The Cease and Desist Order contained a Notice that informed Respondent of its right to request a hearing and included the following language: “If no hearing is requested by Respondents [sic] within thirty (30) days of service of this Order and none is ordered by the Commissioner, this Order will become permanent and will remain in effect until it is modified or vacated by the Commissioner.”¹⁵

10. Respondent did not request a hearing to challenge the Cease and Desist Order.¹⁶

11. On February 3, 2015, the Department issued Respondent an Order to Show Cause Pursuant to Minn. Stat. § 45.027, subd. 7.¹⁷ The Order to Show Cause alleged that, “[t]o date, Respondent continues to engage in unlicensed insurance producing and mortgage origination activities via its website” and had “violated Minn. Stat. § 45.027, subd. 6 (2014) by violating the Cease and Desist Order.”¹⁸ The Department therefore ordered Respondent “to show cause why it should not be subject to disciplinary action.”¹⁹ The Order further notified Respondent that, “unless it requested a hearing to contest this Order to Show Cause within 30 days, this matter shall become final by operation of law” and the Commissioner would impose a \$22,500 civil penalty against Respondent pursuant to Minn. Stat. § 45.027, subsd. 6 and 7.²⁰

12. Respondent requested an administrative hearing to challenge the Order to Show Cause.²¹

13. The hearing proceeded as scheduled on September 25, 2015. Nick Kulpa, a senior investigator in the Department’s enforcement division, was the Department’s only witness. Karl Auleciems testified on Respondent’s behalf.

14. At the beginning of the hearing, the Administrative Law Judge informed the parties:

The issue here, as I understand it, is to determine whether the Order to Show Cause that was issued to Castle Advocacy Group on February 3, 2015, should be vacated, modified, or made permanent. The Department alleges in the Order to Show Cause that the Respondent has violated the Cease and Desist Order that was issued on September 22, 2014, by continuing to engage in unlicensed insurance producing and mortgage origination activities through its website. The Department is alleging that the company has thereby violated Minnesota Statutes section 45.027,

¹⁵ Cease and Desist Order at 7.

¹⁶ See Order to Show Cause Pursuant to Minn. Stat. § 45.027, subd. 7 (Feb. 2, 2015) (Order to Show Cause), at 1 (attached to Notice and Order for Prehearing Conference and Hearing (Apr. 27, 2015)); see also statements made by counsel for Department at September 25, 2015, hearing.

¹⁷ Order to Show Cause.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 1.

²⁰ *Id.*

²¹ See Notice and Order for Prehearing Conference and Hearing (Apr. 27, 2015) at 2; see also statements made by counsel for Department at September 25, 2015, hearing.

subdivision 6, and should be required to pay a civil penalty in the amount of \$22,500.²²

At the time, the Department did not make any objection to this statement of the issue to be considered.

15. Thereafter, the parties presented their evidence, which primarily related to the circumstances that led to the issuance of the Cease and Desist Order and whether Respondent's business activities required it to be licensed by the Department.²³

16. After the parties presented their evidence, the Administrative Law Judge offered them the opportunity to make closing statements. At that time, the Department's counsel stated: "[T]here was a statement earlier about violation of a Cease and Desist Order. That is not an allegation in this case. The Cease and Desist Order was issued and it was challenged, so that's why we're here today. So, we're not saying that they violated the Cease and Desist Order."²⁴

17. The Administrative Law Judge sought clarification from the Department's counsel, noting that the Notice and Order for Hearing indicated that the Cease and Desist Order had not been challenged by Respondent and therefore the allegations and violations contained therein were conclusively established.²⁵

18. The Department's counsel responded: "Technically, because [Respondent] only challenged the Order to Show Cause, the Cease and Desist Order was not challenged, but we've had a hearing so obviously I think the court is going to evaluate the evidence and we're not going to just prevail on that simple legal point."²⁶

19. In response to a further question from the Administrative Law Judge, the Department's counsel reiterated: "We're not alleging a violation of the Cease and Desist Order."²⁷

20. The record closed at the conclusion of the hearing on September 25, 2015.

²² Digital Recording of Hearing at 2:06 - 2:57 (Sept. 25, 2015).

²³ See *generally* Digital Recording of Hearing.

²⁴ *Id.* at 1:22:15 – 1:22:31.

²⁵ *Id.* at 1:26:22 – 1:26:41.

²⁶ *Id.* at 1:26:51 – 1:27:06.

²⁷ *Id.* at 1:27:10 – 1:27:14.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Commerce (Commissioner) have jurisdiction in this matter.²⁸

2. Respondent received due, proper, and timely notice of the time and place of the hearing. Therefore, this matter is properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural requirements of law and rule.

4. The Department bears the burden to establish by a preponderance of the evidence that Respondent committed the violations of the Cease and Desist Order that are alleged in the Notice and Order for Hearing and attached Order to Show Cause in this matter.²⁹

5. Minnesota law empowers the Commissioner of Commerce to issue a Cease and Desist Order “[w]henever it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of a law, rule, or order related to the duties and responsibilities entrusted to the commissioner.”³⁰ If the person served does not request a hearing within 30 days of service of the order, “the cease and desist order will become permanent.”³¹

6. The Commissioner issued a Cease and Desist Order to Respondent on September 22, 2015. Respondent did not challenge the Cease and Desist Order. As a result, the Cease and Desist Order became permanent in late October 2014.³²

7. When the Commissioner “seeks to enforce compliance with a cease and desist order that has been made permanent, the allegations in the cease and desist order are considered conclusively established for purposes of a proceeding under [Minn. Stat. § 45.027, subd. 5] for permanent or temporary relief to enforce the cease and desist order.”³³ The Commissioner may “impose a civil penalty not to exceed \$10,000 per violation upon a person who violates any law, rule, or order related to the

²⁸ Minn. Stat. §§ 14.50, 45.027, subd. 7, 60K.43, 82.81 (2014).

²⁹ See Minn. R. 1400.7300, subp. 5 (2015) (“The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.”).

³⁰ Minn. Stat. § 45.027, subd. 5a(a) (2014).

³¹ *Id.*, subd. 5a(c) (2014).

³² See *id.*

³³ *Id.*, subd. 5b(a) (2014)

duties and responsibilities entrusted to the commissioner unless a different penalty is specified.”³⁴

8. Because the \$22,500 civil penalty was based on Respondent’s alleged violation of the Cease and Desist Order,³⁵ and because the Department conceded at hearing that it was “not alleging a violation of the Cease and Desist Order,” there is no legal basis supporting the Order to Show Cause or the imposition of the civil penalty.

Based upon these Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department vacate the Order to Show Cause and rescind the \$22,500 penalty imposed on Respondent.

Dated: October 28, 2015

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

³⁴ *Id.*, subd. 6.

³⁵ See Notice and Order for Hearing; Order to Show Cause; see also Test. of N. Kulpa.

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 (2014), 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: Heidi Retterath, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 539-1445, 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 (2014). 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 (2014), the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

On September 22, 2014, the Department issued Respondent a Cease and Desist Order alleging six statutory violations related to its business practices.³⁶ Respondent did not challenge the Cease and Desist Order, and it therefore became permanent in October 2014.³⁷ Thereafter, in February 2015, the Department issued Respondent an Order to Show Cause, which imposed a \$22,500 civil penalty for violating the Cease and Desist Order.³⁸ Respondent requested a hearing to contest the Order to Show Cause, and the Department thereafter issued the Notice and Order for Hearing in this case.³⁹

During closing argument at the end of the hearing, counsel for the Department indicated that the Department was “not alleging a violation of the Cease and Desist Order.”⁴⁰ But an alleged violation of the Cease and Desist Order provides the only basis for imposition of the \$22,500 civil penalty.⁴¹ And the Administrative Law Judge lacks authority to adjudicate the underlying merits of the Cease and Desist Order

³⁶ Cease and Desist Order.

³⁷ See Minn. Stat. § 45.027, subd. 5a(c).

³⁸ Order to Show Cause.

³⁹ Notice and Order for Hearing.

⁴⁰ Digital Recording of Hearing at 1:22:15 – 1:22:31, 1:27:10 – 1:27:14.

⁴¹ See Notice and Order for Hearing; Order to Show Cause.

because that Order became permanent in October 2014.⁴² Therefore, because the Department is no longer alleging a violation of the Cease and Desist Order, the Administrative Law Judge recommends that the Department vacate the Order to Show Cause and rescind the \$22,500 civil penalty.

B. L. N.

⁴² See Minn. Stat. § 45.027, subd. 5a(c).