

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

In the Matter of the
Insurance Agent License
of Thomas Casey, Sr.,
License No. 0124394.

ORDER DISMISSING APPLICATION
OF LICENSEE FOR ATTORNEYS FEES
UNDER THE EQUAL ACCESS TO
JUSTICE ACT

On August 24, 1994, the undersigned Administrative Law Judge issued Findings of Fact, Conclusions of Law, and Recommendation in the above-entitled matter. Deputy Commissioner Patrick L. Nelson, acting on behalf of the Commissioner of Commerce, issued Findings of Fact, Conclusions of Law, and Order in this matter on January 12, 1995. The Order was appealed by the Licensee to the Minnesota Court of Appeals and that appeal is pending. On February 22, 1995, the Licensee filed an Application for Fees and Other Expenses. The Department of Commerce (Department) filed a Memorandum in Opposition on March 8, 1995. Reply briefs were submitted by each party. The Judge closed the record in this matter on March 21, 1995.

Thomas E. Harms, Hessian, McKasy, & Soderberg, 4700 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402-2228, filed the Application on behalf of the Licensee, Thomas Casey, Sr. Maya K. Howlett, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, filed the Memorandum in Opposition for the Department.

Based on the record herein, and for reasons stated in the following Memorandum, the Administrative Law Judge makes the following:

ORDER

Licensee's Application for Attorney Fees is DISMISSED.

Dated: April ____, 1995.

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

In 1994, the Minnesota Equal Access to Justice Act, Minn. Stat. §§ 3.71 to 3.765 (1992) was moved and renumbered without change in 1994 to Minn. Stat. §§ 15.471 to 15.475 (1994). Citations here will use the new numbering.

Under Minn. Stat. § 15.472(a) an administrative law judge is authorized to award attorneys fees and costs to a prevailing party, other than the State, in certain contested cases. Minn. Stat. § 15.474, subd. 1, provides:

The Chief Administrative Law Judge shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and expenses in a contested case proceeding. If a court reviews the underlying decision of the contested case under sections 14.63 to 14.68, an award for fees and expenses may be made only under subdivision 3.

Minn. Stat. § 15.474, subd. 3(a), provides:

In awarding fees and expenses under subdivision 1 to a prevailing party in an action for judicial review of a contested case under sections 14.63 to 14.68, the court shall include in that award fees and expenses to the extent authorized in section 15.472.

The rules of the Office of Administrative Hearings regarding expenses and attorney's fees, at Minn. R. 1400.8400, subp. 6, provide:

Application when appeal is filed. In the event that an appeal from all or any part of the final agency decision in the contested case which gives rise to the application for expenses and attorney's fees has been taken to the appropriate court, the application for fees and expenses shall be made to the court as provided by Minnesota Statutes, section [15.474], subs. 1 and 3.

Since this matter has been appealed, the Administrative Law Judge cannot make an award of fees. The proper forum for making the application for attorneys fees incurred in the underlying contested case is the reviewing court.

S.M.M.