

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

In the Matter of Great Western
Business Services, Inc.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter was heard by Richard C. Luis, Administrative Law Judge (ALJ), on August 16, 2000 at the Office of Administrative Hearings in Minneapolis.

Appearing on behalf of the Minnesota Department of Commerce (Department) was David M. Aafedt, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

There was no appearance by or on behalf of Great Western Business Services, Inc.

The record closed on September 1, 2000.

NOTICE

Notice is hereby given that this Report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions or Recommendation. Minn. Stat. § 14.61 provides that the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceedings for at least 10 days. Any party adversely affected by this Report may file exceptions or present argument to the Commissioner. Parties should contact the office of James C. Bernstein, Commissioner, Minnesota Department of Commerce, 133 East 7th Street, St. Paul, MN 55101 regarding procedures for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Whether adverse action should be taken against Great Western Business Services, Inc. (Respondent) pursuant to Minn. Stat. §§ 45.027, subd. 5a and 80C.12, subds. 3 and 4 for acting as a real estate salesperson or real estate broker without a license and for offering or selling franchises within Minnesota without an effective registration statement on file in accordance with the provisions of Minn. Stat. Chapter 80C (unless the franchise or transaction is exempt under Minn. Stat. § 80C.03).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 12, 2000, a Notice of and Order for Hearing, Order for Prehearing Conference and Order to Show Cause was served on the Respondent by Federal Express addressed to the following persons at the addresses noted:

John H. Binkley, Jr.
Great Western Business Services,
Inc.
14643 Dallas Parkway, Suite 650
Dallas, TX 75240

Ronald D. Kerridge
Attorney at Law
1717 Main Street, Suite 2800
Dallas, TX 75201

A Cease and Desist Order and Notice of Right to Hearing had been served successfully in January, 1998 on John H. Binkley, Jr. The address used for service on Mr. Binkley at that time was the same as the address noted above.

2. The Notice of and Order for Hearing, Order for Prehearing Conference and Order to Show Cause issued on July 12, 2000 scheduled the prehearing conference in this matter for 1:30 p.m. on August 16, 2000. Neither the Respondent, nor anyone on its behalf, appeared at the prehearing conference on August 16, 2000. The Respondent did not contact the Department or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Respondent.

3. The Notice of and Order for Hearing, Order for Prehearing Conference and Order to Show Cause mailed to Mr. Binkley and Mr. Kerridge contains the following statement, on page 6:

“If Respondent fails to attend or otherwise appear at any prehearing conference, or settlement conference, or the hearing in this matter without the prior consent of the judge or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and the Cease and Desist Order may be issued and a civil penalty may be imposed against Respondent without further proceedings.”

4. The allegations set forth in the Notice of and Order for Hearing, Order for Prehearing Conference and Order to Show Cause are taken as true and deemed proved. The allegations are incorporated into these Findings by reference.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, 80C.12 and 82.19.

2. The Respondent was given timely and proper notice of the prehearing conference in this matter.

3. The Minnesota Department of Commerce has complied with all relevant, substantive and procedural requirements of law and rule.

4. Under Minn. Rule 1400.6000, the Respondent is in default as a result of its failure to appear at the scheduled prehearing conference. When a party defaults, the allegations and issues set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Order to Show Cause may be taken as true and deemed proved. Therefore, those allegations and issues are taken as true and deemed proved. Based upon the facts set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Order to Show Cause, and in the January, 1998 Cease and Desist Order and Notice of Right to Hearing, the Respondent has violated Minn. Stat. §§ 80C.02 and 82.19 subd. 1. No exemption under Minn. Stat. § 80C.03 has been demonstrated. As a result, the Respondent is subject to adverse action from the Commissioner of Commerce, including the possible imposition of a monetary penalty and the issuance of a Cease and Desist Order against it pursuant to Minn. Stat. §§ 45.027, subds. 5a and 6, 80C.12, subd. 3 and 80C.16.

5. An order by the Commissioner of Commerce imposing appropriate action against the Respondent is in the public interest.

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

RECOMMENDATION

IT IS RECOMMENDED that **ADVERSE ACTION** (issuance of a Cease and Desist Order and imposition of a monetary penalty) be taken against Great Western Business Services, Inc., under the authority of Minn. Stat. §§ 45.027, 80C.12 and 80C.16.

Dated this 5th day of September, 2000.

RICHARD C. LUIS
Administrative Law Judge

Reported: Default

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency 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.

