

EXHIBIT #1

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

STATE OF WISCONSIN

Closed: 05-04-2009
Atty: Harris, James

In the Matter of
Timothy P. Barry,
Respondent.

FINAL DECISION

Case No. 07-C31082

Barry, Timothy P
07-C31082
Ex: Zwart, Kevin

FINAL DECISION

I have considered Respondent's letter addressing the Proposed Decision. In addition, I have reviewed the record. The Administrative Law Judge's Findings of Fact are all supported by substantial evidence. Respondent does not present any specific objections to the Proposed Decision; his concern is the loss of his license. While the loss of his license will significantly impact Respondent, the protection of the public requires he be prevented from soliciting insurance in Wisconsin. Therefore, I adopt the Administrative Law Judge's Proposed Decision, including the findings of fact and conclusions of law, which is attached to this Final Decision and which was served on the parties with an opportunity for submitting written objections.

OPINION

Respondent asserts that the consumers who complained want "to ruin his life" and that they knew what they were doing in every transaction. He does not address either the forfeiture or the restitution in the Proposed Order. His concern is that the revocation of his license will mean the loss of his livelihood at the age of fifty-six, after he has been in the business for eighteen years. He explains that he loves his profession and can not see himself doing anything else.

Respondent is not the victim, nor are his violations based in ignorance of the regulations and statutes. He chose to deceive both consumers and insurers. He has held a license for 18 years and yet he violated rules and statutes which are fundamental to the regulation of insurance. He knew his customers relied on him as a financial advisor. He abused the trust his customers placed in him when he misled them about the benefits and suitability of the transactions he was proposing. He engaged in the churning of insurance products for his own benefit while his customers incurred significant losses. His failure to inform his customers of the status of their insurance policies served to hide his mismanagement of their funds. He repeatedly violated the misrepresentation statute both by direct communication and through omission. The ALJ noted that Respondent acted with scienter when he violated s.628.34(1)(a), Wis. Stat. and found that his actions show he lacks the requisite character and competence to be an insurance intermediary.

rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Commissioner of Insurance
P.O. Box 7873
Madison, Wisconsin 53707-7873

A copy of the relevant statutory provisions is attached.

Dated at Madison, Wisconsin, this 26 day of February, 2009.



Sean Dilweg
Commissioner of Insurance

entitled to judicial review of the decision provided in this chapter and subject to all of the following procedural requirements:

- (a) 1. Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held....
2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after the service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.
3. IF the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides
...
(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed and modified...
(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record....
(d) Except in the case of the tax appeals commission, the banking review board, the credit union review board, and the savings institutions review board, the agency and all parties to the proceeding before it, shall have the right to participate in the proceedings for review...