State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: METROPOLITAN INVESTMENT SECURITIES, INC., RE: Ross E. Bruner Appellant.	No. S-04-041 OAH Case No. 2005-DFI-0001 FINAL ORDER ON REVIEW OF INITIAL FINDINGS OF FACT, INITIAL CONCLUSIONS OF LAW, AND INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE

THIS MATTER was commenced on October 27, 2004, when the Division of Securities (hereinafter, "Division of Securities") of the Washington State Department of Financial Institutions (hereinafter, "DFI") issued a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Revoke or Suspend Registrations, Censure, Impose Fines, and Charge Costs (hereinafter, "Statement of Charges") to Appellant, Ross E. Bruner (hereinafter, "Appellant" or "Bruner"), alleging that Bruner violated the Securities Act of Washington, Chapter 21.20 RCW (hereinafter, "Act") and its related regulations.

1.0 Procedural History

On or about November 8, 2004, Bruner filed an Application for Adjudicative Hearing (hereinafter, "Application").

Bruner's Application was granted and came before Senior Administrative Law Judge David G. Hansen (hereinafter, "Judge Hansen") of the Office of Administrative Hearings (hereinafter, "OAH"), in Spokane, Washington, in an administrative hearing which began on February 23 and 24, 2006, and culminated in Seattle, Washington, with 5 additional days of

testimony on March 13, 2006 through March 17, 2006 (hereinafter, "Administrative Hearing"). Bruner appeared and was represented by David M. Gaba, Attorney at Law. The Division of Securities appeared and was represented by Charles E. Clark, Assistant Attorney General. The parties submitted post-hearing briefs on April 13, 2006. The parties submitted post-hearing reply briefs on April 27, 2006, and the record before the OAH closed on that date. Judge Hansen, having sworn the witnesses, heard the testimony, and considered the admitted exhibits, briefs, and arguments of the parties, entered Proposed Findings of Fact, Conclusions of Law and Initial Decision on July 20, 2006 (hereinafter, "Initial Order").

On August 8, 2006, the Division of Securities, by and through Charles E. Clark, Assistant Attorney General, appealed the Initial Order to Scott Jarvis, Director of the Department of Financial Institutions (hereinafter, "Director"), in his capacity as presiding officer under the Administrative Procedures Act, Ch. 34.05 RCW, to review State's Petition for Review of Initial Order, also dated August 8, 2006 (hereinafter, "Petition"). On August 18, 2006, the Director received from Bruner, by and through his counsel, David Gaba, a Reply to State's Petition for Review of Initial Order (hereinafter, "Reply"). Thereafter, the Director instructed that the Division of Securities, by and through Charles E. Clark, Assistant Attorney General, cause the OAH to certify the record of the proceedings on appeal from the Initial Order (hereinafter, "OAH Record").

2.0 Record on Review

The record on review before the Director consists of the Petition, the Reply, and the OAH Record, the latter of which contains the following:

1. All pre-hearing pleadings, including Statement of Charges (hereinafter, "Pleadings");
2. Transcript of the Administrative Hearing (hereinafter, "Transcript");

3. Exhibits from Administrative Hearing (hereinafter, "Exhibits");

4. State's Post-Hearing Brief (hereinafter, "State's Brief") and Appellant's Post-Hearing Brief (hereinafter, "Appellant's Brief"); and

5. The Initial Order.

3.0 Posture of Case on Review

As requested by Bruner's counsel in his Reply to the Petition, the gulf in positions between the parties has necessitated that the Director consider the entire record on review. During February and March 2006, Judge Hansen heard approximately 7 days of testimony and reviewed voluminous exhibits presented by both parties. Judge Hansen also deliberated upon post-hearing briefs, lodged on April 13, 2006, and April 27, 2006, respectively. Judge Hansen did not issue his Initial Order until July 20, 2006. Similarly, the Director, in his capacity as reviewing officer and without benefit of having heard live testimony and argument, has found it fair and proper to review the entire record on appeal.

The Petition requests that the Director substantially amend and modify the Findings of Fact issued by Judge Hansen in his Initial Order and thereby reverse certain of Judge Hansen's Conclusions of Law. The Reply adamantly opposes any such amendment or modification of the Findings of Fact or reversal of Judge Hansen's Conclusions of Law.

In lodging such opposition, the Reply further questions the Division of Securities in relation to the content and intent of the Petition for Review. While the Director cannot simply ignore such questions, the Director, as reviewing officer, is inclined here to consider such questions in the Reply as a matter of zealous advocacy, recognizing that this case was hotly contested with passions on both sides. Moreover, the Director need not here question the good

faith of either party or its counsel in order to reach a fair and final, administrative decision in this matter.

4.0 Standard of Review

The administrative process of the Department of Financial Institutions is ultimately premised on the principles of the Administrative Procedures Act, Ch. 34.05 RCW, reinforced by the Department's own enabling statute, Ch. 43.320 RCW, to the effect that the Director is the final arbiter of DFI policy and the final adjudicator of administrative actions initially prosecuted by DFI's divisions, including the Division of Securities. To that end, this Final Order, taking into consideration the entire record on review, expresses the final position of the DFI with respect to Bruner and the questions first raised by the Statement of Charges.

The Director's standard of review is ultimately guided *solely* by (1) the required elements of proof in this case and (2) the standard of proof to be applied in proving each element as to each of the alleged "victims" whose transactions were either specifically named in the Statement of Charges and/or whose testimony was elicited as a basis for proving either the specific or general allegations against Bruner set forth, by way of notice pleading, in the Statement of Charges. These alleged "victims" were Robert and Patricia Blomster, Joseph and Cora Miller, and Mr. Kachold, on the one hand,[1] and Jack and Delores Redenbo, Paul R. Loranger, Wayne and Kristine Porter, and Edward L. and Susan L. Page, on the other hand.[2]

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[1] See Paragraphs 40, 41, and 42 of the Preliminary Findings in the Statement of Charges (the general allegations of Paragraphs 39 and 43 are also applicable). Contrast with Judge Hansen's Finding of Fact No. 5 as to Robert and Patricia Blomster and Finding of Fact No. 3 as to Joseph and Cora Miller. Note also that Mr. Kachold did not appear as a witness, and no testimony was heard in regard to Paragraph 42 of the Preliminary Findings of Fact in the Statement of Charges.

[2] Paragraphs 39 and 43 of the Preliminary Findings in the Statement of Charges. Contrast with Judge Hansen's Finding of Fact No. 2 as to Jack and Delores Re3denbo, Finding of Fact No. 4 as to Paul R Loranger, Finding of Fact No. 6 as to Wayne and Kristine Porter, and Findings of Fact Nos. 7 and 8 as to Edward L. and Susan L. Page.

While notice pleading is appropriate in a Statement of Charges, there are ultimately, as a matter of law, elements in each case which must be proven as to each "alleged" victim according to the appropriate standard of proof. Therefore, any administrative action by the Division of Securities, which seeks to revoke or suspend a professional license of an individual, ought to proceed in a manner which provides adequate notice in its Statement of Charges of the elements of the charge being brought against that individual.

The State of Washington may not deprive a person of life, liberty, or property, without due process of law.[3] A professional license, including Appellant's registered salesperson's license, is considered a property interest requiring due process of law.[4] At a minimum, due process requires notice and an opportunity to be heard.[5]

In what amounts to a "quasi-criminal" proceeding,[6] the Division of Securities may not, either directly or by implication, seek to "amend" its Statement of Charges to "conform" to a new-found theory of relief or proposed element of proof to which it has not theretofore provided Appellant with express notice before trial or to which Appellant was otherwise on notice by reason of a well-recognized standard of conduct *reasonably* observable in an applicable statute or rule. In this regard, the notice pleading required of the Division of Securities still requires a certain amount of rigor so as to afford accused professional-licensees effective due process.

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[3] U.S. CONST. amend. V, XIV; WASH. CONST. art. I, § 3.

[4] Ongom v. State, ___ Wn.2d ___ (12/14/2006); Nguyen v. Dep't of Health, Med. Quality Assurance Comm'n, 144 Wn.2d 516, 523, 29 P.3d 689 (2001); Wash. Med. Disciplinary Bd. v. Johnston, 99 Wn.2d 466, 474, 663 P.2d 457 (1983).

[5] Soundgarden v. Eikenberry, 123 Wn.2d 750, 768, 871 P.2d 1050 (1994); see also RCW 34.05.422(1)(c).

[6] This is in contrast to civil cases between private litigants, in which the Washington Civil Rules permit the pleadings to be amended after trial in order to conform to the proof.

As required by RCW 21.20.110 and RCW 21.20.702, there are four elements of proof in this case as to each of the alleged "victims":

1. That Bruner *recommended* the purchase of a security;[7]

2. That the security was *unsuitable*;

3. That Bruner *willfully* violated the act; and

4. That suspension of Bruner's license is *in the public interest*.

In his Initial Order, Judge Hansen applied a *"preponderance of the evidence"* standard of proof that has heretofore been the traditional standard in all administrative cases. However, as a basis for *revoking* (or in this case, *suspending*) an individual of his professional license with the State of Washington, the standard of proof for each of the above-stated elements of the case would now appear to be *"clear, cogent and convincing"* evidence. See Ongom v. State, ___ Wn.2d ___ (December 14, 2006); citing Nguyen v. Dep't of Health, Med. Quality Assurance Comm'n, 144 Wn.2d 516, 523, 29 P.3d 689 (2001). Accordingly, to the extent that the Division of Securities seeks to *suspend* Bruner's license, it must prove each of the above-stated, required elements by clear, cogent and convincing evidence.

Indeed, in his letter dated December 20, 2006, Assistant Attorney General, Charles E. Clerk, arguing on behalf of the Division of Securities, declares that the "Reviewing Officer's findings [must] be supported by clear and convincing evidence versus the preponderance of evidence standard." In this regard, we acknowledge the Division of Securities concession, by and through the Attorney General, that it must prove each required element of the case by clear, cogent and convincing evidence. However, we reject the Attorney's *apparent* implication in

[7] As to this element of proof, the Director is inclined to agree with Appellant's counsel, especially in light of any cited case law to the contrary or persuasive argument to the contrary, that a "recommendation" must be *express* and may not be *implied* or *constructive* in nature.

its December 20, 2006, letter that the burden of proof somehow shifts to the Director, as a reviewing officer, to make findings supported by clear, cogent and convincing evidence. Rather, it is the Division of Securities that has the burden of proof as to each element of the case. This burden of proof never shifts to the Appellant. If the entire record on review does not demonstrate that each required element has been proven by clear, cogent and convincing evidence, then the Division of Securities has not met *its* burden of proof, and the Director must, accordingly, affirm Judge Hansen's Initial Order. Accordingly, if the Director elects to affirm Judge Hansen's Initial Decision, the Director need not specifically affirm, deny, modify or augment any of Judge Hansen's Proposed Findings of Fact in order to find and conclude that the entire record on review does not prove the Statement of Charges by clear, cogent and convincing evidence.

The parties are no doubt curious as to how the Director may have decided this case if the standard of proof had been a mere *"preponderance of the evidence."* In this regard, the Director should not, and need not, make any comment. However, the parties should know that DFI and its Director were already aware of the pendency of *Ongom v. State*, the earlier holding in *Nguyen v. Department of Health*, and the prior application made recently by some administrative law judges to the *Nguyen* case.

Notwithstanding the above, the Director would be remiss if he applied the 5-to-4 decision in *Ongom v. State* to an issue involving enforcement short of revocation or suspension of a professional license — namely, administrative remedies such as imposition of fines and costs. Neither *Ongom*, nor *Nguyen* which preceded it, specifically extends a *"clear, cogent and convincing evidence"* standard of proof to cases involving imposition of fines and costs. Therefore, unless and until the Washington Supreme Court imposes such a higher standard of

proof upon this agency, the Director's standard of proof for affirming orders of imposition of fines and costs shall be and remain *"preponderance of the evidence."*

5.0 Findings of Fact

5.1 Statement of Charges against Bruner. The portion of the Statement of Charges applicable to Appellant is Paragraphs 36 through 43, inclusive, of the Preliminary Findings of the Statement of Charges. The applicable charges are Paragraphs 39 through 43, inclusive, thereof.

5.2 Kachold. The Division of Securities assigned no error to Judge Hansen's not making findings with respect to Mr. Kachold, as originally alleged in Paragraph 42 of the Preliminary Findings in the Statement of Charges. Moreover, Mr. Kachold was not produced as a witness, and the absence of findings in relation to Mr. Kachold, the allegations against him are not at issue on appeal. Accordingly, the Director finds that Paragraph 42 of the Preliminary Findings of the Statement of Charges has not been proven by either clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs). In addition, the Director finds that Paragraphs 39 and 43 of the Preliminary Findings of the Statement of Charges have not been proven in relation to Mr. Kachold by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs).

5.3 Redembos. The Division of Securities has assigned no substantial error to Judge Hansen's proposed Finding of Fact No. 2 in regard to Jack and Delores Redenbo. In this regard, the Director finds that Judge Hansen's proposed Finding of Fact No. 2 is not substantially at issue on appeal.[8] Moreover, the Director finds by his own independent review of the record on

[8] The Division of Securities has assigned insignificant error to Judge Hansen's proposed Finding of Fact No. 2, to which we concur. However, these amendments on review would ultimately be immaterial to a decision in this case.

appeal that Paragraphs 39 and 43 of the Preliminary Findings of the Statement of Charges, as applied to Jack and Delores Redenbo, have not been proven by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs).

5.4 Porters. The Division of Securities has assigned no error to Judge Hansen's proposed Finding of Fact No. 6 in regard to Wayne and Kristine Porter. In this regard, the Director finds that Judge Hansen's proposed Finding of Fact No. 6 is not at issue on appeal. Moreover, the Director finds by his own independent review of the record on appeal that Paragraphs 39 and 43 of the Preliminary Findings of the Statement of Charges, as applied to Wayne and Kristine Porter, have not been proven by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs).

5.5 Pages. The Division of Securities assigned no substantial or material error to Judge Hansen's proposed Findings of Fact Nos. 7 and 8 in regard to Edward L. and Susan L. Page.[9] In this regard, the Director finds that all material aspects of Judge Hansen's proposed Findings of Fact Nos. 7 and 8 are not at issue on appeal. Moreover, the Director finds by his own independent review of the record on appeal that Paragraphs 39 and 43 of the Preliminary Findings of the Statement of Charges, as applied to Edward L. and Susan L. Page, have not been proven by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs).

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[9] The Division of Securities' assignment of error as to Judge Hansen's proposed Finding of Fact No. 8 is not material in relation to a finding whether Bruner violated the law with respect to Edward L. and Susan L. Page. Moreover, it must be pointed out, in passing, that the evidence shows that Bruner did purchase Metropolitan *notes* in the good faith belief, based upon the Metropolitan prospectus and third-party audited financial statements, that these investments were personally suitable or prudent.

5.6 Blomsters. The Division of Securities has assigned error to Judge Hansen's proposed Finding of Fact No. 5 in relation to Robert and Patricia Blomster. The Division of Securities has argued that Judge Hansen's proposed Finding of Fact No. 5 be substantially amended by adding language thereto, as set forth in Pages 6 and 7 of the Petition for Review. However, in issuing a Final Decision, the Director need not be bound by either the specific language of Judge Hansen's proposed Finding of Fact No. 5 or the proposed amendments thereto contained in the Petition for Review. The Division of Securities is required to prove Paragraphs 39, 40, and 43 of the Preliminary Findings of the Statement of Charges, in relation to Robert and Patricia Blomster, by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs). The Director finds by his own independent review of the entire record on appeal that the Division of Securities has not proven the allegations set forth both generally and specifically in Paragraphs 39, 40, and 43 of the Preliminary Findings of the Statement of Charges, in relation to Robert and Patricia Blomster, by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs). In this regard, the Director finds that as to any transaction of the Blomsters, the Appellant never made a "recommendation," which is a required element of proof of the Division of Securities' case, as stated above in Section 4.0.[10]

[10] Nor does the Director find that the other three elements of proof, namely, unsuitability, willfulness and public interest, have been proven by clear, cogent and convincing evidence in the record on review. However, the Director need not make an exhaustive discussion of these other three elements if the first element of proof (i.e., was a "recommendation" made?) has not been proven by clear, cogent and convincing evidence. The Director agrees with the Appellant in its Reply to the Petition for Review that the Division of Securities has argued on appeal, in effect, that there is such a thing as an "implied" recommendation. However, the Director, in evaluating his Standard of Review (see Section 4.0 above) has concluded from the plain meaning of the relevant statute, RCW 21.20.702, that an actual and express "recommendation" must be made as one of the essential elements of the charges in question.

5.7 Millers. In its Petition for Review, the Division of Securities has assigned error to Judge Hansen's proposed Finding of Fact No. 3 in relation to Joseph and Cora Miller. In this regard, the Division of Securities has argued that Judge Hansen's proposed Finding of Fact No. 3 be substantially amended by deleting and adding language thereto, as set forth in Pages 2 and 3 of the Petition for Review. However, in issuing a Final Decision, the Director need not be bound by either the specific language of Judge Hansen's proposed Finding of Fact No. 3 or the proposed amendments thereto contained in the Petition for Review.[11] The Division of Securities is required to prove Paragraphs 39, 40, and 43 of the Preliminary Findings of the Statement of Charges, in relation to Robert and Patricia Blomster, by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs). The Director finds by his own independent review of the entire record on appeal that the Division of Securities has not proven the allegations set forth both generally and specifically in Paragraphs 39, 41, and 43 of the Preliminary Findings of the Statement of Charges, in relation to Joseph and Cora Miller, by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs). In this regard, the Director finds that as to any transaction of the Millers, the Appellant never made a "recommendation," which is a required element of proof of the Division of Securities' case, as stated above in Section 4.0.[12]

5.8 Loranger. In its Petition for Review, the Division of Securities has assigned error to Judge Hansen's proposed Finding of Fact No. 4 in relation to Paul R. Loranger. In this regard,

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[11] Indeed, at Page 3 of its Petition for Review, we find the Division of Securities' proposed language addition with regard to stated "purpose of investment" contained in the Miller Subscription Agreements to not be a completely accurate reflection of the record on review (including DFI's Exhibit 30).

[12] See Footnote 10 above.

the Division of Securities has argued that Judge Hansen's proposed Finding of Fact No. 4 be substantially amended by deleting and adding language thereto, as set forth in Pages 4 and 5 of the Petition for Review. However, in issuing a Final Decision, the Director need not be bound by either the specific language of Judge Hansen's proposed Finding of Fact No. 4 or the proposed amendments thereto contained in the Petition for Review. The Division of Securities is required to prove Paragraphs 39 and 43 of the Preliminary Findings of the Statement of Charges, in relation to Paul R. Loranger, by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs). The Director takes this opportunity to note that he devoted heightened scrutiny to the record on review in relation to Paul R. Loranger, in light of Mr. Loranger's advanced age of 84 years and his relative lack of sophistication in comparison to the other alleged "victims" who testified. Of all the evidence presented before Judge Hansen, the Director is of the view that the testimony in regard to the transactional dealings by Bruner with Mr. Loranger gave the Director the most concern. However, notwithstanding the Director's concerns in relation to Mr. Bruner's dealings with Paul R. Loranger, the Director is required to apply the standard of review set forth in Section 4.0 above. Director finds by his own independent review of the entire record on appeal that the Division of Securities has not proven the allegations set forth both generally and specifically in Paragraphs 39 and 43 of the Preliminary Findings of the Statement of Charges, in relation to Paul R. Loranger, by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs). In determining whether imposition of fines or costs might be appropriate as to Appellant's dealings with Mr. Loranger, the Director had to closely consider the credibility of Mr. Loranger's testimony (even though Mr. Loranger's good faith is not in question). But in this regard, the

Director finds that even a preponderance of the evidence shows that Appellant never made an actual "recommendation" to Paul R. Loranger, which is a required element of proof of the Division of Securities' case, as stated above in Section 4.0.[13]

5.9 Assignment of Error: Proposed Finding of Fact No. 1. In assigning error to Judge Hansen's proposed Finding of Fact No. 1, the Division of Securities proposes that language be added to state that "MIS is a subsidiary of Summit and, due to common control and ownership, is affiliated with Metropolitan. Exhibit C, at 3-5." Without amending Judge Hansen's proposed Findings of Fact No. 1 (for to do so would not be entirely accurate), the Director notes that the prospectus of Metropolitan Mortgage & Securities Co., Inc. [Bruner's Exhibit C] specifically represented to the public, including Bruner himself, that Metropolitan Investment Securities, Inc. was a subsidiary of Summit Securities, Inc., and that, in turn, Summit Securities, Inc. was wholly owned subsidiary of National Summit Corporation, a passive holding company in which C. Paul Sandifur, Jr. (the president and "controlling shareholder" of Metropolitan Mortgage & Securities, Inc.) was the majority shareholder. The Director finds that, with or without the inclusion of the Division of Securities' proposed language or the actual information contained in Pages 3 through 5 of Bruner Exhibit C, the representation contained in this prospectus is immaterial to the Director's review and Final Decision.

5.10 Proposed Finding of Fact No. 9 and Request for Additional Findings. The Division of Securities has assigned error to Judge Hansen's proposed Finding of Fact No. 9 (proposing additions thereto at Pages 8 through 10 of the Petition for Review) and has requested additional findings (at Pages 10 through 12 of the Petition for Review). As the Director has stated in Section 4.0 above, the Director is not bound to either rely upon or specifically amend

[13] See Footnote 10 above.

Judge Hansen's Proposed Findings of Fact No. 9 in reviewing this case and making a Final Decision. Nor is the Director obliged to accept the specific proposed additional findings offered in the Petition for Review. As stated above in Section 4.0, RCW 21.20.110 and RCW 21.20.702, in combination, require that, as to each of the alleged "victims," it must be proven that: (1) Bruner *recommended* the purchase of a security; (2) the security was *unsuitable*; (3) Bruner *willfully* violated the act; and (4) Suspension of Bruner's license is *in the public interest*. If just one of these elements is not proven by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs), then the case against Appellant has not been proven. Moreover, if the first element of proof (i.e., was a "recommendation" been made?) has not been proven as to each of the alleged "victims," then no further inquiry need be made. While the Director has determined that, with respect to Bruner,[14] the other three elements have not been proven, the Director was not obliged to do so, since, in his examination of the entire record on review, the Director also found, in the first instance, that the weight of credible evidence does not reveal that Bruner made a "recommendation" as to any of the alleged "victims."

5.11 Miscellaneous Assigned Errors. The Director notes the correctness of the Division of Securities' proposed amendments to Judge Hansen's Conclusions of Law Nos. 2 and 4, as set forth in the Petition for Review, at Page 12 thereof. However, these miscellaneous errors are not material to the Director's determination in so far as the Director has correctly cited herein the appropriate statutes in question.

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[14] The Director notes that there were 15 other Respondents named in the Statement of Charges and has learned, indirectly but without *ex parte* communication, which several of the other Respondents did not contest or ultimately did not go to trial on the separately pleaded allegations made against them. The Director takes this opportunity to point out that, in his capacity as a reviewing officer of an initial order by an administrative law judge, the Director may only consider the testimony and exhibits before Judge Hansen, coupled with the thoroughness and relative merits of the arguments made by both parties before Judge Hansen and the Director, respectively.

5.12 Deference. Some deference has been given to Judge Hansen having heard the live testimony at the Administrative Hearing. However, in making these Findings of Fact and Conclusions of Law, the Director, as he was urged to do in the Appellant's Reply to the Petition for Review, freshly considered the entire record on review, including the Pleadings, Transcript, Exhibits, State's and Appellant's (Post-Hearing) Briefs, the Petition for Review and the Reply thereto. Judge Hansen's Findings of Fact are substantially supported by the evidence, although the Director has relied independently upon the entire record on review in this case.

6.0 Conclusions of Law

Based upon the Findings of Fact above, the Director concludes that the Division of Securities has failed to demonstrate, either by clear, cogent and convincing evidence (in regard to license suspension) or a preponderance of the evidence (in regard to imposition of fines or costs):

6.1 That Bruner violated the anti-fraud provisions of RCW 21.20.010(2), as alleged in the Statement of Charges;

6.2 That Bruner violated the "suitable investment recommendation" provisions of RCW 21.20.702, as alleged in the Statement of Charges; or

6.3 That Bruner engaged in dishonest and unethical sales practices under RCW 21.20.110(1)(g), as defined in WAC 460-22B-090(3), as alleged in the Statement of Charges.

7.0 Final Order

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

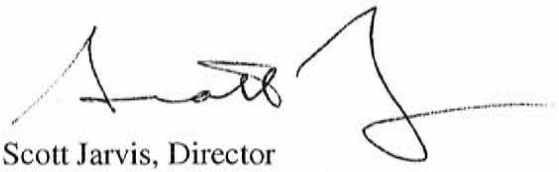
7.1 The Initial Findings of Fact are substantially and materially confirmed, subject to the Director's Findings of Fact set forth in Section 5.0 above.

7.2 The Initial Conclusions of Law are substantially confirmed, *except* insofar as the standard of proof as to each of the elements in this case is *"clear, cogent and convincing"* evidence in regard to license suspension, rather than a "preponderance of the evidence."

7.3 Accordingly, the Initial Decision of Administrative Law Judge David G. Hansen is hereby CONFIRMED.

Dated at Tumwater, Washington, on this 19th day of December, 2006.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: 

Scott Jarvis, Director
Presiding Officer on Review