



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

HOSS MORTGAGE INVESTORS, INC.,
and TODD ALLAN HOSS,

Respondents.

OAH NO. 2009-DFI-0059

DFI NO. S-09-043-FO01

FINAL DECISION AND ORDER

THIS MATTER comes now before SCOTT JARVIS, Director (“Director”) of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS (“Department”), pursuant to the Amended Findings of Fact, Conclusions of Law, and Initial Order dated November 14, 2011 (“Amended Initial Order” or “Initial Order”), against Respondent, TODD ALLEN HOSS (“Respondent”¹), on the Respondent’s Motion for Review dated November 16, 2011 (“Respondent’s Petition”²), from the Amended Initial Order of Administrative Law Judge Terry A. Schuh (“ALJ Schuh”) of the Office of Administrative Hearings (“OAH”); and the Director having fully considered the entire record on review, including, without limitation, all pleadings, testimony and recorded oral and written argument before ALJ Schuh, the Initial Order, the Respondent’s Petition, and the Department of Financial Institutions Division of

¹ Respondent HOSS MORTGAGE INVESTORS, INC., entered into a Consent Order with the Department and was subsequently dismissed from the case. Therefore, “Respondent” has been used throughout to refer only to Respondent TODD ALLEN HOSS.

² Although Respondent’s pleading document is titled a “Motion for Review,” the Models Rules of Procedure provide only for “Petitions of Review.” See WAC 10-08-211. As such, Respondent’s Motion for Review will be referred to as a “Respondent’s Petition.”

Securities' Reply to the Respondent's Petition ("Division's Reply") (collectively, the "Record on Review");

NOW, THEREFORE, the Director issues the following Final Decision and Order:

1.0 Background & Procedural History

The Respondent timely requested an Administrative Hearing to contest the Statement of Charges, and this matter was assigned to OAH, which designated ALJ Schuh to hear the case.

On November 3, 2009, the Department entered into a Consent Order with HOSS MORTGAGE INVESTORS, INC., which led to OAH issuing an order dismissing HOSS MORTGAGE INVESTORS, INC., from the case on November 16, 2009. Beginning in January 2011 and continuing over the course of nine days during the next six months, ALJ Schuh heard testimony from twenty witnesses regarding the business dealings of Hoss Mortgage Investors, Inc., of which Respondent Todd Hoss was President. Respondent presented two witnesses during his case in chief, including the Respondent, who testified on his own behalf; the Division of Securities' counsel, Assistant Attorney General Charles E. Clark ("Division's Counsel"), presented eighteen witnesses.

The Department alleged that Respondent violated multiple laws related to the sale of securities, namely that:

1) Respondent had offered or sold notes, investments in notes, and deeds of trust, and/or mortgage paper securities, or a guarantee of any of the foregoing, or had sold LLC membership interests when those transactions constituted the offer or sale of a security as defined in RCW 21.20.005(10) and (12), whether in the form of a note, an investment contract, and evidence of indebtedness, or otherwise;

2) Respondent had engaged in acts, practices, and/or courses of business which operated or would have operated as a fraud or deceit upon investors in violation of RCW 21.20.010;

3) Respondent offered and sold unregistered securities in violation of RCW 21.20.140, the securities registration section of the Securities Act of Washington;

4) Respondent had guaranteed certain customers against loss in securities transactions effected by Hoss Mortgage Investors, Inc., with or for such customer in violation of WAC 460-21B-060(15) and WAC 460-22B-090(14);

5) Respondent had willfully violated or willfully failed to comply with any other provision of or any rule or order under the Securities Act of Washington (Chapter 21.30 RCW, or its predecessor), which is a basis for suspending or revoking a securities salesperson registration pursuant to RCW 21.20.110(1)(b);

6) Respondent committed dishonest and/or unethical practices in the securities business, which violated the rules set forth in WAC 460-21B-060 and WAC 460-22B-090, which are a basis for suspending or revoking a securities salesperson registration pursuant to RCW 21.20.110(1)(g); and

7) Respondent failed to supervise reasonably a salesperson or employee who had committed violations of the Securities Act of Washington or a rule or order issued under that chapter, which is the basis for suspending or revoking a securities salesperson registration pursuant to RCW 21.20.110(1)(j). (Hereinafter, collectively, the “Allegations Against Respondent”).

ALJ Schuh also considered whether the Department had properly:

1) Ordered Respondent, and his agents and employees, to cease and desist from offering or selling securities in any manner in violation of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington;

2) Ordered Respondent, and his agents and employees, to cease and desist from offering or selling securities in any manner in violation of RCW 21.20.040, the securities registration section of the Securities Act of Washington;

3) Revoked the exemptions for Respondent under RCW 21.20.320(1), (5), (8), (9), and (17);

4) Suspended the securities salesperson registration of Respondent, pursuant to RCW 21.20.110; and

5) Revoked the securities salesperson registration of Respondent pursuant to RCW 21.20.280 and RCW 21.20.110(1)(b), (g), and (j); and 6) assessed upon Respondent a fine of \$100,000, pursuant to RCW 21.20.110(4) and RCW 21.20.395. (Hereinafter, collectively, the “Department’s Actions”).

After considering the record and presiding over the Administrative Hearing, ALJ Schuh issued an Initial Order on November 14, 2011, finding Respondent liable for all the above Allegations Against Respondent, except for Allegation Against Respondent 5 (to the effect that Respondent had willfully violated or willfully failed to comply with any other provision of or any rule or order under the Securities Act of Washington). Additionally, ALJ Schuh held that all of the Department’s Actions referenced above were proper.

The Initial Order contains Findings of Fact (“FOF”) and Conclusions of Law (“COL”), as well as three prefatory sections including a presentation of the issues in the case, a summary

of the order, and a general overview of the hearings, including the hearing dates, witnesses, exhibits introduced, and a short procedural history of the case.

Respondent timely filed Respondent's Petition by and through attorney, Phil Mahoney, Esq.

Division's Counsel timely filed Division's Reply to Respondent's Petition.

2.0 Summary of the Case

The issue before the Director is whether ALJ Schuh's Initial Order should be affirmed in its entirety. Respondent's Petition for Review cites 139 separate paragraphs in the Initial Order with which Respondent takes exception, solely "based on Todd Hoss' testimony."³ This issue revolves around the following undisputed facts and questions of law:

2.1 WAC 10-08-211(3) and the Respondent's Assertion.

Chapter 10-08 of the Washington Administrative Code sets forth the model rules of procedure pertaining to adjudicative proceedings in administrative law courts. Section 211 of that Chapter pertains specifically to petitions for review; WAC 10-08-211(3) states that:

The petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

In this case, Respondent has made a generalized petition for review specifying a plethora of sections of the Initial Order with which he takes exception. But Respondent provides neither legal nor equitable reasons as to why the specified findings of fact and conclusions of law should be disturbed by the Director, absent that the paragraphs ostensibly are not supported by the testimony of the Respondent.

³ Respondent's Motion for Review, line 18.

3.0 Preliminary Considerations

3.1 Standard of Review by the Director. The Director has the authority and duty, prior to entering a Final Decision and Order, to consider whether any part of the Initial Order is *not* supported by the record⁴ and whether confirmation of the Initial Order, without modification, would be an error of law. Indeed, with regard to the COL as contained in the Initial Order, the Director is obliged, in the manner of a reviewing court, to consider the statutes and implementing regulations of the Division under the error of law standard, which permits the Director to substitute his judgment for that of the Division's Amended Statement of Charges and the Initial Order produced by ALJ Schuh.⁵

3.2 Director's Consideration of FOF and COL. After due consideration of the entire Record on Review, the Director is of the decided view that ALJ's Findings of Fact and Conclusions of Law are correct, and shall be left undisturbed on the basis that (1) Respondent's Petition is legally deficient under WAC 10-08-211(3) and (2) ALJ's Findings of Fact and Conclusions of Law appear to be supported by substantial evidence.

Petitions for review from initial orders in administrative law cases can be directly analogized to petitions for appeal in other litigation contexts. Similarly, the Director's role as the reviewing officer of the record below mirrors the role of an appellate judge. Just as appellate litigants assign error to be examined by the appellate court, it is necessary for the petitioning party in a petition for review from an initial order to plead their assignments of error with a requisite degree of specificity. No such requisite degree of specificity is achieved by solely basing a petition for review on the assertion that the ALJ's Initial Order is not supported by the

⁴ See RCW 34.05.464(4); see also *Northwest Steelhead v. Washington State Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995); see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

⁵ See *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999).

testimony of the Respondent. “[I]t is not the duty of an appellate court to search the record for evidence to support an appellant’s argument as to any alleged error.”⁶ Stated another way, “[a]n appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”⁷

Although Respondent has identified the portions of the Initial Order to which he takes exception, per WAC 10-08-211(3), he has failed to provide any specific assignment of error that compels the Director to disturb the holdings of the Initial Order. Respondent does not explain which provisions of each paragraph he specifically disagrees with, nor does he cite to how the testimony of Respondent purportedly contradicts the cited paragraphs in any way. It is a foundational principle in Washington law that “[t]he fact finder measures witness credibility, and we do not review credibility determinations on appeal.”⁸ ALJ Schuh heard testimony from twenty witnesses during the course of hearing this action, and weighed the credibility of the Respondent’s testimony against the credibility of testimony offered by other witnesses in the course of issuing the Initial Order. The Director will not undertake the same action without *specific* arguments as to why Respondent’s testimony should be accorded more weight.

Moreover, Respondent has failed to specifically refer to evidence in the record to support his petition for review, as required by WAC 10-08-211(3). Simply calling the Director’s attention only to the testimony of the Respondent, without any specific citations or legal analysis as to why that testimony relates to the excepted paragraphs of the Initial Order, cannot

⁶ *Rodriguez v. Rodriguez*, Cuyahoga App. No. 91412, 2009-Ohio-3456, ¶7, citing *State v. McGuire* (Apr. 15, 1996), Preble App. No. CA95-01-001.

⁷ *Rodriguez*, citing *State v. Watson* (1998), 126 Ohio App.3d 316, 710 N.E.2d 340.

⁸ *State v. Stevenson*, 128 Wash. App. 179, 114 P.3d 699 (Div. 2 2005) (court’s footnote 11).

be seriously construed as a “refer[ence] to the evidence of record” contemplated by WAC 10-08-211(3).

Because the Respondent has failed to petition for review in accordance with the specificity guidelines of WAC 10-08-211(3), the Director denies the Respondent’s Petition as it is legally deficient and accordingly without merit.

5.0 Prefatory Sections and Findings of Fact. Now, therefore, the Director re-affirms the prefatory sections of ALJ Schuh’s Initial Order, sections 1.1 through 3.8, inclusive, at pages 1-6 of the Initial Order. The Director additionally re-affirms FOF 4.1 through FOF 4.356, inclusive, at pages 6-53 of the Initial Order.

6.0 Conclusions of Law. Now, therefore, the Director reaffirms COL 5.1 through COL 5.96, inclusive, at pages 53-67 of the Initial Order.

7.0 Final Order. Having made Findings of Fact and Conclusions of Law as set forth in Sections 5.0 and 6.0 above, IT IS HEREBY ORDERED AS FOLLOWS:

7.1 Anti-Fraud Cease and Desist Order. The Summary Order to Cease and Desist, under the authority of RCW 21.20.390, directing Respondent TODD ALLEN HOSS, and his agents and employees, to cease and desist from offering or selling securities in any manner in violation of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington, is AFFIRMED.

7.2 Securities Registration Cease and Desist Order. The Summary Order to Cease and Desist, under the authority of RCW 21.20.390, directing Respondent TODD ALLEN HOSS, and his agents and employees, to cease and desist from offering or selling securities in any manner in violation of RCW 21.20.140, the securities registration section of the Securities Act of Washington, is AFFIRMED.

7.3 Exemptions Revoked. The Summary Order Revoking Exemptions, under the authority of RCW 21.20.325, (revoking the exemptions for Respondent TODD ALLEN HOSS under RCW 21.20.320(1), RCW 21.20.320(5), RCW 21.20.320(8), RCW 21.20.320(9), RCW 21.20.320(11), and RCW 21.20.320(17)), is AFFIRMED.

7.4 Suspension of Securities Salesperson Registration. The Summary Order Suspending Respondent TODD ALLAN HOSS' Securities Salesperson Registration, under the authority of RCW 21.20.110, is AFFIRMED.

7.5 Revocation of Securities Salesperson Registration. Pursuant to RCW 21.20.280 and RCW 21.20.110(1)(g) and RCW 21.20.110(j), the Department's intention to revoke Respondent TODD ALLEN HOSS' Securities Salesperson Registration is AFFIRMED and Respondent TODD ALLEN HOSS' Securities Salesperson Registration is hereby ordered REVOKED.

7.6 Fine Assessed. Pursuant to RCW 21.20.110(4) and RCW 21.20.395, Respondent TODD ALLEN HOSS is ORDERED to pay to the Department a fine of \$100,000.00 (One hundred thousand dollars and no/100).

7.7 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days

from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

7.8 Stay of Order. The Director has determined not to consider a petition to stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

7.9 Judicial Review. Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

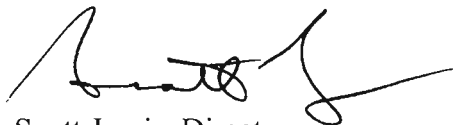
7.10 Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

7.11 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on this 9th day of March, 2012.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director

