



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF DETERMINING  
whether there has been a violation of the  
Securities Act of Washington by:

JEANNE CRISTENSEN and DOING  
BUSINESS, INC.,

Respondents.

FINAL DECISION AND ORDER

OAH Case No. 08-2005-DFI-00017

DFI No. S-13-1218-16-FO01

THIS MATTER comes before SCOTT JARVIS, Director ("*Director*") of the WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS ("*Department*"), on Petition for Review ("*Petition*") dated July 13, 2016, by the Respondents, JEANNE CRISTENSEN and DOING BUSINESS, INC. ("*Respondents*"), by and through Roger D. Mellem, Esq., and Kristen Nealey Meier, Esq., of Ryan Swanson & Cleveland, PLLC ("*Respondents' Counsel*"), who seek relief from the Initial Order on Respondents' Motion to Dismiss and Department's Summary Judgment Motion ("*Initial Order*"), issued on June 23, 2016, by Administrative Law Judge Lisa Dunbar ("*ALJ Dunbar*") of the Office of Administrative Hearings ("*OAH*"), incident to a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose Fines, and to Charge Costs dated June 12, 2014, in the above-enumerated matter ("*Statement of Charges*"), brought by the Department's Division of Securities ("*Division*"), which is represented by Assistant Attorney General, Ian S. McDonald, of the Office of the Washington Attorney General ("*Division's Counsel*"), and who

filed with the Director the Division's Reply to Petition for Review of Initial Order ("*Reply*") on July 25, 2016.

1.0 *The Preliminary Issue of Timeliness of the Petition and the Reply*

The Initial Order was issued on June 23, 2016. The Petition was dated July 13, 2016, and appears to have been erroneously filed with the OAH on July 15, 2016, and marked received by the Department on July 18, 2016. The cover letter to the Petition from Respondents' Counsel with the "RECEIVED" stamp of July 18, 2016, affixed to it states that it was delivered by email to [joseph.vincent@dfi.wa.gov](mailto:joseph.vincent@dfi.wa.gov) by email and "via U.S. Mail," addressed to Joseph M. Vincent in his capacity as Director of Regulatory and Legal Affairs for the Department and as representative of the Director for purposes of petitions for review.

The Model Rules of Procedure,<sup>1</sup> as authorized by the Washington Administrative Procedures Act ("*WAPA*"),<sup>2</sup> provide that a petition for review of an initial order by the OAH in a Department matter shall be filed with the Director within twenty (20) days of service of the initial order.<sup>3</sup> The Petition is deemed filed the day it is received by the Department.<sup>4</sup> Mr. Vincent did receive an email on Wednesday, July 13, 2016, which was the *twentieth* day after issuance of the Initial Order. This email contained, as an attachment, the Petition.

The Model Rules of Procedure set forth procedures for alternative filing by facsimile ("*FAX*") transmission.<sup>5</sup> There is no rule authorizing filing by *email* transmission. The Petition was not filed by FAX transmission. Respondents' Counsel's cover letter indicates that it is being

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<sup>1</sup> Chapter 10-08 WAC.

<sup>2</sup> RCW 34.05.250.

<sup>3</sup> WAC 10-08-211(2).

<sup>4</sup> WAC 10-08-110(1)(a).

<sup>5</sup> WAC 10-08-110(1)(b).

filed by email and by U.S. mail only. The Reply to the Petition, on the other hand, was filed by FAX in keeping with the Model Rules of Procedure.<sup>6</sup>

Service of the Initial Order was by mail and was deemed served as of the date of mailing.<sup>7</sup> However, there is an issue as to what address of Respondents is applicable for purposes of determining the timeliness of the Petition based on the address of service of the Initial Order and date of its service. The Division's Reply acknowledges that the Initial Order was served by mail twice. On June 23, 2016, OAH mailed the Initial Order to Respondents at Respondent Christensen's address at 1721 Zermatt Drive, Frazier Park, CA 93225 ("*Frazier Park Address*"). On June 24, 2016, OAH mailed the Initial Order to Respondent Christensen's address at P.O. Box 5570, Pine Mountain Club, CA 93222 ("*Pine Mountain Club Address*").

In the normal course, the latest that the Petition could have been filed with the Department was twenty (20) days from the latest service by mail of the Initial Order, i.e., June 24, 2016, the date of mailing to the Pine Club Mountain Address. Under these circumstances, then, without any other considerations being made, filing of the Petition with the Department should have taken place no later than Thursday, July 14, 2016. Yet there is no record of filing of the Petition with the Department by FAX or U.S. mail on either July 13<sup>th</sup> or July 14<sup>th</sup>. There is a record of OAH having received a copy of Petition on July 15, 2016. However, the Department, and not OAH, is the proper entity for filing of the Petition. Accordingly, the July 18<sup>th</sup> "RECEIVED" stamp on Respondents' original cover letter to Mr. Vincent (acting on behalf of the Department) appears to be the only credible evidence of the date of actual filing pursuant to the Model Rules of Procedure. Moreover, it is also an indication that even if it was delivered to

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<sup>6</sup> WAC 10-08-110(1)(b).

<sup>7</sup> WAC 10-08-110(2)(c).

the Department's physical address in Tumwater on July 15, 2016, it would have been after business hours that day. The Model Rules of Procedure are clear that filing must take place by "actual receipt during office hours at any office of the agency."<sup>8</sup> Accordingly, it would appear from a technical application of the Model Rules of Procedure to the facts at hand, that the Petition was *untimely* filed.

Notwithstanding the apparent untimeliness of the Petition, however, it also appears as if Division's Counsel has *not* objected to the timeliness of the Petition. Division's Counsel does not even address this issue. Indeed, the July 13<sup>th</sup> cover letter to Mr. Vincent indicates that Division's Counsel is being served a copy at his email address at [IanM@atg.wa.gov](mailto:IanM@atg.wa.gov), together with service by mail. The inference is that, like Mr. Vincent, Division's Counsel also received an attachment of the Petition by email on July 13, 2016, which was the *twentieth* day after the first service-by-mail date of the Initial Order. Division's Counsel was obliged to file the Division's Reply to the Petition within ten (10) days after the filing of the Petition,<sup>9</sup> unless the tenth day fell on a weekend or legal holiday, in which case the deadline for filing the Reply would be the next business day at the Department.<sup>10</sup> Accordingly, because the Reply to the Petition was filed by Division's Counsel on July 25, 2016, the logical inference is that Division's Counsel deemed the Petition either to have been filed on Friday, July 15<sup>th</sup>, or as appears more likely, on Wednesday, July 13<sup>th</sup>. Otherwise, as is the usual course with Division's Counsel in matters on behalf of the Department, Division's Counsel would likely have objected in his Reply to the timeliness of the filing of the Petition.

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<sup>8</sup> WAC 10-08-110(1)(a).

<sup>9</sup> WAC 10-08-211(4).

<sup>10</sup> WAC 10-08-080.

Secondly, if, as the Director is being asked to determine, there were excusable circumstances related to the withdrawal of attorney Steve Talbot as Respondents' prior counsel, then it is reasonable for the Director to assume that Respondents' Counsel may have been retained less than twenty (20) days prior to the date required for filing of the Petition and, therefore, had less than the typical amount of time to become acquainted with the issue at hand and write the Petition.

Thirdly, the Director is not unmindful of the fact that this matter was fully lodged as of July 25, 2015,<sup>11</sup> which *in total* was the allocated period of time for timely filing of both the Petition and the Reply based on the first issuance of the Initial Order on June 23<sup>rd</sup>.

Therefore, for all of the reasons set forth above<sup>12</sup> and notwithstanding the fact that a technically proper filing of the Petition does not appear to have occurred until July 18, 2016, the Director hereby deems the Petition to have been filed as if it were timely. In addition, the Director further deems the Reply to the Petition to have been timely filed.

## 2.0 The Issue of Whether There Has Been "Excusable Neglect"

The Director has examined the Petition, the Reply, and the supporting documentation in detail in an effort to determine whether Respondents have made a case for *excusable* neglect warranting a remand of this matter for further dispositive proceedings, including affording Respondents' Counsel the opportunity to file a reply to the Motion for Summary Judgment.

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<sup>11</sup> However, the Director did not receive the full OAH record until a few days thereafter.

<sup>12</sup> The Director also takes this opportunity to acknowledge, parenthetically, that it is possible there may have been some communication from the Department, on or prior to July 13, 2016, giving Respondents' Counsel some reason to believe that filing by email would be acceptable, notwithstanding the strict letter of the Model Rules of Procedure to the contrary. The Director cannot discount that possibility. However, absent further communication with the Division, Division's Counsel, and/or Respondents' Counsel on this point, which now has been made unnecessary, the Director and Mr. Vincent, acting on the Director's behalf, were unable to readily ascertain or remember whether express or tacit permission was given for filing the Petition by email.

May 2, 2016, was the deadline set by ALJ Dunbar for filing of dispositive motions. It appears that on May 2, 2016, Steve Talbot filed a Motion to Dismiss on behalf of Respondents. Also, it appears that Division's Counsel filed the Division's Motion for Summary Judgment on May 2, 2016.

Division's Counsel admits that he considered himself precluded under the Rules of Professional Conduct ("RPC") from communicating directly with Respondents,<sup>13</sup> and so he emailed and mailed the Division's Motion for Summary Judgment to Steve Talbot only.

Then, on May 5, 2016, Steve Talbot served the parties with a Notice of Withdrawal, which stated that it was effective immediately. While the certificate of service of the Notice of Withdrawal included Steve Talbot's representation that he had mailed the Notice of Withdrawal to Respondents, there was no representation as to *which* address that was. Then, curiously, Steve Talbot mailed an Amended Notice of Withdrawal on May 9, 2016, declaring that his withdrawal would be effective May 23, 2016. In this Amended Notice of Withdrawal, Mr. Talbot included the *Pine Mountain Club Address*.

While Steve Talbot was still Respondents' attorney, Division's Counsel mailed Mr. Talbot the Division's Opposition to Motion to Dismiss on May 13, 2016.

Even though Steve Talbot still represented Respondents as of May 16, 2016, the U.S. Postal Service returned the Division's Motion for Summary Judgment on that date.<sup>14</sup> However, the return envelope appears to indicate that Steve Talbot forwarded the Motion for Summary Judgment to Respondents' Pine Mountain Club Address.<sup>15</sup>

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<sup>13</sup> RPC 4.2.

<sup>14</sup> Ian McDonald Declaration, *Exhibit 2*.

<sup>15</sup> *Id.*

The hearing on the Motion to Dismiss and Motion for Summary Judgment took place on May 24, 2016. Mr. Talbot's withdrawal was effective the day before, and he did not attend the hearing. Respondents did not attend the hearing either.

The Initial Order rejecting the Motion to Dismiss and granting the Motion for Summary Judgment was issued by ALJ Dunbar on June 23, 2016, and served by mail as of that date on the Frazier Park Address. One day later, On June 24, 2016, OAH mailed the Initial Order to Respondents' Pine Mountain Club Address.

Meanwhile, it does not appear that Respondent Christensen made any attempt to do anything about having missed the hearing on May 24<sup>th</sup> until she apparently placed a call *one month later* to Division's Counsel on June 23, 2016, and was apparently told by him that the Motion for Summary Judgment was being decided by ALJ Dunbar that day.<sup>16</sup> It is significant that on June 23<sup>rd</sup>, the withdrawal of Steve Talbot from the case had also been effective *for one month*.

On July 5, 2016, Respondent Jeanne Christensen, now appearing *pro se*, filed a Motion for Reconsideration with OAH. On July 11, 2016, Division's Counsel filed the Division's Objection to Motion for Reconsideration.

It does not appear from the record that ALJ Dunbar acted on this Motion for Reconsideration.

Under the Administrative Procedures Act,<sup>17</sup> the Director is not obliged to follow the Washington Superior Court Civil Rules. This means that the Director is not obliged to follow Civil Rule 60 or any case authority interpreting it.

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<sup>16</sup> Jeanne Christensen Declaration, p. 2.

<sup>17</sup> Ch. 34.05 RCW.

However, the Director is obliged to consider the Department's Administrative Rules of Procedure.<sup>18</sup> In this regard, the Department's rules declare:

“Withdrawal of a party's attorney or representative after the service of a notice of hearing shall *not* be grounds for the continuance of the hearing *unless good cause is shown*.”<sup>19</sup>

In deliberating upon the facts above, the Director is of the view that Respondents have made an *insufficient* case for “good cause” warranting that the Initial Order be set aside and the case remanded to ALJ Dunbar so that either Respondents' Counsel or Respondents may file opposition to the Motion for Summary Judgment (if any).

In her declaration, Respondent Christensen would have this Director believe that when she called Division's Counsel on June 23<sup>rd</sup>, she was only aware of and concerned about the upcoming hearing (trial), which, but for the outcome of the Motion for Summary Judgment, would have begun the next day, May 24<sup>th</sup>.

True, this does not explain away the fact that Mr. Talbot's Amended Notice of Withdrawal, which was apparently served by mail on the Pine Mountain Club Address,<sup>20</sup> clearly states that there are pending a Motion for Summary Judgment and Motion to Dismiss for Lack of Jurisdiction and that “[h]earing on both of the above motions [will occur] on May 24, 2016, by telephone at 1:30 p.m.”<sup>21</sup> Indeed, even the original Notice of Withdrawal, for which there was no address given, also contains the same information notifying the client of the pending Motion for Summary Judgment to be heard “on May 24, 2016, by telephone at 1:30 p.m.”<sup>22</sup>

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<sup>18</sup> Ch. 208-08 WAC.

<sup>19</sup> WAC 208-08-040(2).

<sup>20</sup> The Pine Mountain Club Address is a mailbox address. The Frazier Park Address appears to not be a mailbox address and is the official one OAH had for Respondents. It also appears as if the Frazier Park Address is the one that Respondent Christensen has represented to her probation officer in an unrelated matter as being one of her places of residence. See Division's Reply to Petition for Review of Initial Order, pp. 4-5.

<sup>21</sup> Amended Notice of Withdrawal, filed with OAH on May 11, 2016.

<sup>22</sup> Notice of Withdrawal, filed with OAH on May 9, 2016.



Moreover, the Director is concerned, in the first instance, with when Respondents were aware (1) that there would be a telephonic hearing on the Motion for Summary Judgment on May 24, 2016, and (2) that they must represent themselves, have replacement counsel (if any) on the phone, or have obtained a continuance. On March 3, 2016, there was a First Amended Prehearing Conference Order issued which stated that there would be a hearing on all “dispositive motions” on May 24, 2016. Given the date of mailing of the Amended Notice of Withdrawal to the Pine Mountain Club Address on May 16, 2014, and even assuming three days from Mr. Talbot’s Vancouver, Washington, office address for such notice to arrive via mail at his former clients’ Pine Mountain Club Address, Respondents would have had at least two business days (Friday, May 20<sup>th</sup>, and Monday, May 23<sup>rd</sup>) to take action by way of appearance or request for a continuance to obtain new counsel.

Given the reasonableness of the OAH in granting prior continuance of proceedings in this matter, it appears to the Director that timely appearance on May 24<sup>th</sup> at 1:30 p.m. by telephone to explain the need to obtain new counsel would have been sufficient to grant leave to Respondents to seek new counsel and prepare a response to the Motion for Summary Judgment. However, Respondent Christensen did nothing from the time she would have likely received the Amended Notice of Withdrawal (May 19<sup>th</sup>) until she finally placed a call to Division’s Counsel on June 23, 2016— a delay of 35 days.

Accordingly, when considering the entire Record on Review, including all the inferences to be drawn from the evidence and argument presented, the Director concludes that good cause has not been shown that a continuance should, in effect, be granted after the fact.

3.0 Affirmation of Initial Order

For all of the reasons set forth above, IT IS HEREBY ORDERED:

- 3.1 The Findings of Fact of the Initial Order are affirmed and incorporated herein by this reference;
- 3.2 The Conclusions of Law of the Initial Order are affirmed and incorporated herein by this reference;
- 3.3 Respondents' prior Motion To Dismiss for Lack of Jurisdiction is ***DENIED***;
- 3.4 The Director has personal jurisdiction over Respondents JEANNE CHRISTENSEN and DOING BUSINESS, INC.;
- 3.5 The Motion for Summary Judgment is ***GRANTED***;
- 3.6 Respondents JEANNE CHRISTENSEN and DOING BUSINESS, INC., offered and sold investment contracts which constitute "securities" as defined in RCW 21.20.005;
- 3.7 Respondents JEANNE CHRISTENSEN and DOING BUSINESS, INC., offered to sell and sold unregistered securities, while not registered as securities salespersons or securities broker-dealers, in violation of RCW 21.20.040 and RCW 21.20.140;
- 3.8 Respondents JEANNE CHRISTENSEN and DOING BUSINESS, INC., made misleading statements of material fact, and omission(s) of material fact, in connection with the offer and sale of securities, in violation of RCW 21.20.010;
- 3.9 Under RCW 21.20.390 and RCW 21.20.395, Respondents JEANNE CHRISTENSEN and DOING BUSINESS, INC., must:

- 3.9.1 Cease and desist from violating RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140;
  - 3.9.2 Pay, jointly and severally, to the order of WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS, a fine of Fifty Thousand Dollars (\$50,000.00); and
  - 3.9.3 Pay investigative fees, costs, and other expenses of the Department to the order of WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS in the amount of Ten Thousand Dollars (\$10,000.00); and
- 3.10 Respondents JEANNE CHRISTENSEN and DOING BUSINESS, INC. must make restitution of the principal amount of investment to all investors who are the subject of the Statement of Charges, and the afore-mentioned fine, investigative fees, costs and other expenses (See 3.9.2 and 3.9.93 above) shall be considered deferred and outstanding until such restitution is paid in full.

#### 4.0 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.

5.0 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.

6.0 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.

7.0 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.

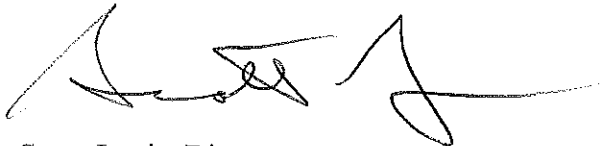
8.0 Effectiveness and Enforcement of Final Order

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 28<sup>th</sup> day of October, 2016.

WASHINGTON STATE DEPARTMENT  
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director