State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: DANIEL LANGLEY; DGL DEVELOPMENT LLC; GETCARBIDS, INC., Respondents.	OAH NO. 06-2018-DFI-00057 DFI NO. S-17-2248-19-FO01 FINAL DECISION AND ORDER

THIS MATTER having come before CHARLES E. CLARK, Director ("Director") of the Washington State Department of Financial Institutions ("Department"), on the Respondents' Petition for Review ("Petition") dated June 10, 2019, from the Initial Decision and Order of Default ("Initial Order") dated May 21, 2019, of Administrative Law Judge Terry Schuh ("ALJ Schuh") of the Office of Administrative Hearings ("OAH"); and the Director having fully considered the Record on Review, together with Petition and the Reply to the Petition ("Reply") by Assistant Attorney General Jong Lee, counsel ("Division Counsel") for the Division of Securities ("Division");

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

1.0 SUMMARY OF FACTS

After conducting an examination and investigation of the business practices of Respondents GETCARBIDS INC., DGL DEVELOPMENT, and DANIEL LANGLEY (collectively, "Respondents"), the Division issued against Respondents a Statement of Charges and Notice of Intent to Issue Order to Cease and Desist, to Impose Fines and to Charge Costs

dated February 21, 2018 ("Statement of Charges"). On March 16, 2018, Respondents requested an Administrative Hearing to contest the Statement of Charges issued by the Division, dated February 21, 2018. This matter was assigned to the OAH, which designated ALJ Schuh to hear the case.

On August 7, 2018, ALJ Schuh issued a Prehearing Conference Order. This Status Order contained the following language:

> "DEFAULT: If you do not participate in any stage of the proceedings or if you fail to appear at the hearing, you may be held in default. This means you lose the right to a hearing and your appeal will be dismissed."

This Prehearing Conference Order set forth various case-related dates, including a Status Conference scheduled for May 20, 2019 ("Prehearing Status Conference").

On May 20, 2019, the Division's representative, AAG Jong Lee, attended the Prehearing Status Conference by telephone. Respondents failed to appear or otherwise contact OAH. On May 21, 2019, ALJ Schuh issued an Order of Default against Respondents and dismissed the Respondents' appeal of the Statement of Charges.

The Respondents then timely filed their Petition on June 10, 2019.

In turn, Division Counsel timely filed a Division's Reply to Respondent's Petition for Review on July 1, 2019, after having been granted a continuance to do so based upon good cause shown.

2.0 DIRECTOR'S CONSIDERATIONS

The issue before the Director is whether ALJ Schuh properly entered an Initial Order of Default after Respondents failed to participate in the May 20, 2019 telephonic Prehearing Status Conference.

Of far less significance, the Director must also consider Respondents not having, in the first instance, brought before ALJ Schuh a Motion to Vacate the Order of Default ("Motion to Vacate").

2.1 **Uncontested Facts.** The following facts are uncontested:

2.1.1 Respondents do not question in their Petition that the Notice of Prehearing Status Conference was received. Attached to the Notice is a Certificate of Service affirming that the Notice was served upon Respondents.

2.1.2 The third paragraph of the Notice contained the following admonition directed to the Respondents: "**You must call in to the conference. If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal.**" [Original emphasis.]

2.1.3 Respondents failed to appear at the Prehearing Status Conference. The Prehearing Status Conference was set for 10:00 A.M. on May 20, 2019, but did not commence until 10:15 AM in order to afford all parties adequate opportunity to join the teleconference using a designated toll-free number and WebEx account.

2.1.4 The Notice of Prehearing Status Conference was *not* returned to the OAH as undeliverable.

2.1.5 The Notice included a warning that failure to participate in the Prehearing Status Conference could result in entry of a default order that would cost the Respondents their opportunity to challenge the action of the Department.

2.1.6 There is no authorization statement in the record empowering any person other than Dan Langley, DGL Development LLC and GetCarBids, Inc., in this matter.

2.1.7 There was no indication in any communication from Respondents that would have given ALJ Schuh any reason to believe that Dan Langley was incapable of joining the

telephonic prehearing conference based upon the instructions set forth in the notice of Prehearing Conference.

2.1.8 There was no evidence given of a problem or emergency that would necessitate re-scheduling.

2.1.9 Respondents made no such Motion to Vacate before filing Respondents' Petition.

2.1.10. Respondents' Petition to the Director was received June 10, 2019.

2.2 **Relevant Law.** The following law or conclusions of law have a bearing on the Final Decision and Order in this matter:

2.2.1 The Administrative Procedures Act[1] states, in relevant part:

> "(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order."[2]

2.2.2 When a default order is served on a party, the party has seven (7) days, "or such longer period as provided by agency rule, . . . [to] file a written motion requesting that the order be vacated, and stating the grounds relied upon."[3]

2.2.3 The Department has no rule in derogation of the "seven day" provision set forth in the Administrative Procedures Act.[4]

2.2.4. On May 21, 2019, the Initial Order was served by mail upon Respondents. Respondents had twenty (20) days from the service by mail of the Initial Order to file with the

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[1] Chapter 34.05 RCW.
[2] RCW 34.05.440(2).
[3] RCW 34.05.440(3).
[4] *Id.*

Director a petition for review of the Initial Order.[5] The Petition was filed with the Director on June 10, 2019. The Petition was timely. It is entitled to be heard by the Director.

2.3 **Respondents' Assignment of Error as Stated in the Petition.** The Director does not find persuasive any of Respondents' assignments of error in the Petition:

2.3.1 **Assignment of Error No. 1.** Respondent Langley declares: "Former attorney failed to inform me of hearing dates verbally or by paper." Whether Respondents' former counsel had a duty to review with Respondents the required dates to appear before ALJ Schuh on or prior to terminating his relationship with Respondents is irrelevant. Respondents are themselves not excused from complying with the appearance schedule and are held to a standard that presumes that they were aware of those scheduled dates as a matter of law. Indeed, the Prehearing Conference Order of August 7, 2018, contains two notable features: first, The Case Schedule on Page 1 clearly indicates May 20, 2019, at 10:00 A.M. as the time appointed for the Prehearing Status Conference; and second, the very first-named persons attested to as being mailed the Prehearing Conference Order, as shown by ALJ Schuh's Certificate of Service, are the Respondents, *not* their former attorney. Whether Respondents' former attorney was under a duty to remind his clients of appearance dates upon his termination of representation is irrelevant to any inquiry before the Director. The sole question is whether Respondents were on notice of the May 20th hearing and the requirement to appear. It is clear that they were.

2.3.2 **Assignment of Error No. 2.** Respondent Langley further declares: "The Department of Financial Institutions established a pattern Dan Langley came to rely on when they emailed him with the date, time, phone code and procedure of the phone hearing ahead of the

[5] WAC 10-08-211(2).

April __, 2019 hearing." There was never an "April __, 2019" hearing scheduled by ALJ Schuh nor notice to that effect. Respondents are held to the standard and schedule established by ALJ Schuh. The Division is the Respondents' adversary, and they owe Respondents no duty to represent them. Respondents claim that they were sent an email on "April __, 2019," which Respondent Langley claims confused him and is not supported by any documentary evidence set forth in or attached to the Petition. What the Director does find in his review of the Record on Review is an April 12, 2019, letter from ALJ Schuh to the parties that sheds some light on what was happening in the time leading up to the Pre-Hearing Status Conference set for May 20, 2019. According to ALJ Schuh's Letter Order of April 12, 2019:

2.3.2.1 There was a pending Motion for Summary Judgment dated February 15, 2019.

2.3.2.2 The pre-existing Prehearing Conference Order provided for oral argument on this Motion for March 18, 2019, but neither party appeared.

2.3.2.3 So, by letter order dated March 25, 2019, ALJ Schuh struck the Summary Judgment Motion hearing and characterized it as moot, which would have then required an actual evidentiary hearing to dispose of the case.

2.3.2.4 Division Counsel established to the satisfaction of ALJ Schuh that his lack of appearance on March 18th was due to a genuine family emergency and that he was not the Division's official counsel at the time.[6] Accordingly, the Motion for Summary Judgment was restored and made pending again.

2.3.2.5 Oral argument on the Division's Motion for Summary Judgment was then to be heard on April 22, 2019, by ALJ Schuh. If there was such a hearing, the Director presumes this

[6] ALJ Schuh also accepted Division Counsel's representation, as does the Director, that Division Counsel thought that the motion hearing was supposed to be telephonic, as they generally are.

must be the "April __, 2019" date to which Respondent Langley is referring, because no other April 2019 dates for appearance show up in the Record on Review whatsoever.

2.3.2.6 The Director does take particular notice of the final statement by ALJ Schuh in his April 12th letter to the parties, of which there is a Certificate of Service to Respondent Langley made at a time when Respondent Langley was representing himself: ***"This*** [April 12th] ***decision does not alter any of the remaining deadlines and events listed in the case schedule contained in the Prehearing Conference Order. The parties should plan accordingly."*** [Emphasis added.]

2.3.2.7 The Director finds it somewhat suspect that Respondents would rely so heavily on the notion of the Division establishing a "precedent" of *reminding* Respondents of (the Director presumes) the April 22nd oral argument on the Division's Summary Judgment Motion, when the Respondents have supplied no proof of such email in their Petition. The fact that the Division (or the OAH) would send such an email, if it exists, only emphasizes the fact that this date for oral argument was not contained in the official schedule set forth in the Prehearing Conference Order. It does not change the fact, however, that the May 20, 2019, date for Prehearing Status Conference—two weeks before the June 3, 2019, Evidentiary Hearing Date—was a date the Division had reason to believe Respondents knew very well. It was written right on Page 1 of the Prehearing Conference Order. Hence, there was no reason for the Division to believe it had to remind Respondents of any of the dates contained in the Prehearing Conference Order. Nor would the OAH have thought so.

2.3.3 **Assignment of Error No. 3.** Respondent Langley further declares: "I am personally going through a divorce which adversely affects my ability to receive and respond to mail via USPS or personal service. Email is the most reliable manner of communication." In this regard, the Director finds somewhat suspect the claim by Respondents that they were not

receiving communication from ALJ Schuh due to mail being intercepted or withheld by the estranged spouse of Respondent Langley. Leaving aside the question of whether Respondents did not receive their file from their former counsel,[7] the Director finds it improbable that Respondent Langley—in the face of such a serious matter and the lack (as Respondent Langley tells it) of written communication from OAH—would not have called to instruct the Division, Division Counsel, and/or OAH to change his address so that he would receive all official communication in the case. Paragraph 4.5 of the Prehearing Conference Order, issued and mailed to Respondents on August 7, 2018, states clearly:

> "CONTACT NFORMATION: If your address or telephone number changes, you must immediately update OAH."

Moreover, the Department has its own rule on the subject of electronic service.[8] A party may elect to be served by FAX or by email (which would have solved Respondents' claimed problem with the estranged spouse), but they would have had to make the request in the manner provided in the Department Rule.[9] This was a request that could have been made at any time in this case. Respondents are held to the standard of knowing what the applicable rules are before ALJ Schuh. Ultimately, the Director finds it suspect that Respondent Langley would not have informed OAH and Division Counsel of the problem and made alternative arrangements to receive all communication by other means.

2.3.4 **"Assignment of Error" No. 4.** Respondent Langley further declares: "I am relying on WAC 10-08-211(2) which allows 20 days from the date of mailed service for the

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[7] The Director finds it curious why Respondents do not supply proof of an Attorney's Lien on the file, since the filing of one is the sole basis under which a lawyer can lawfully withhold his or her client's file after termination of the relationship. See Chapter 60.40 RCW.

[8] WAC 208-08-025.

[9] *Id.*

Administrative Law Judge to consider reinstating a hearing for Petitioner's Administrative Appeal." ALJ Schuh entered an Initial Order on May 21, 2019, the day after Respondents failed to make their appearance on May 20th as required by the Prehearing Conference Order. Respondents could have made a Motion to Vacate before ALJ Schuh within seven (7) days of the entry of the Initial Order.[10] Failure to do so does not—in the Director's view—preclude this Petition for Review by the Director. However, it does prompt concern by the Director as to why Respondents would not avail themselves of an opportunity to explain their lack of appearance before ALJ Schuh, who is far more knowledgeable of the record. "Assignment of Error" No. 4 points to no error by ALJ Schuh, and it is of no value in Respondents' argument.

2.4 **Director's Conclusions.** Based upon the considerations above, the Director makes the following conclusions:

2.4.1 Based upon his given address for receipt of required service in this case, both before and after the withdrawal of Respondents' former counsel, coupled with Respondent Langley's failure to either furnish an alternative address or request electronic service, both ALJ Schuh and Division Counsel are conclusively presumed to have furnished proper service on Respondents at all material times relevant to this Petition for Review.

2.4.2 Respondents' reliance on their former attorney is not a valid excuse.

2.4.3 Therefore, Mr. Langley should have been aware of key dates, and he should have not been reliant on his former attorney.

2.4.4 The Division is not required to send email reminders to Respondents after Respondents have already received proper notice from the OAH. Therefore, the Division was not

[10] RCW 34.05.440(3).

required to send a reminder email concerning the critical May 20, 2019, Prehearing Status Conference, which had long been scheduled pursuant to the Prehearing Conference Order early in the case. Mr. Langley should not have relied on such communication, if it existed. The failure to produce this mysterious email leads the Director to discount its existence for purposes of this Final Decision and Order.

2.4.5 Based upon Respondent Langley's own admissions in his Petition, there does not appear to be enough evidence or other indication to rise to the level of excusable neglect by Respondents. In the absence of any credible evidence from which the Director (in his discretion) could set aside the Initial Order, the Director must conclude that the Division is entitled by reason of Respondents' default to a Final Decision and Order.

2.4.6 After due consideration of the entire Record on Review, coupled with the Petition and the Reply, the Director has determined that ALJ Schuh properly ordered a default under the authority granted to him by the Administrative Procedures Act.[11]

2.4.7 Since there was no Motion to Vacate,[12] the Initial Order was proper.

2.4.8 The Initial Order was reviewable, and the Respondents' Petition was timely filed.

2.4.9 By way of Respondents' default, the Director may accept the Statement of Charges as true.

2.4.10 Respondents are therefore liable, respectively and jointly and severally, as applicable, for all of the relief requested by the Division in its Statement of Charges.

The Director now makes the following Findings of Fact:

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[11] RCW 34.05.440(2).
[12] RCW 34.05.440(3).

3.0 **FINDINGS OF ACT**

3.1 The Findings of Fact set forth in *Sections 1.0* and *2.0* above are incorporated here by this reference and made a part of the Findings of Fact of this Final Decision and Order; and

3.2 The Tentative Statement of Facts, Paragraph 1 through 30, inclusive, contained in the Statement of Charges, are incorporated here by this reference and made a part of the Findings of Fact of this Final Decision and Order.

The Director having made the above-referenced Findings of Fact, the Director does now make the following Conclusions of Law.

4.0 **CONCLUSIONS OF LAW**

4.1 The Conclusions of Law set forth in *Section 2.0* above are incorporated here by this reference and made a part of the Conclusions of Law of this Final Decision and Order; and

4.2 The Conclusions of Law, Paragraphs 1 through 5, inclusive, contained in the Statement of Charges, are incorporated here by this reference and made a part of the Conclusions of Law of this Final Decision and Order.

The Director having made the above-referenced Findings of Fact and Conclusions of Law, the Department is entitled to the relief against Respondents, and each of them, prayed for in the Statement of Charges.

5.0 **FINAL DECISION AND ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED:

5.1 Pursuant to the Securities Act of Washington, at RCW 21.20.390(1), Respondents GETCARBIDS INC., DGL DEVELOPMENT, LLC, DAVID LANGLEY, and each of their agents and employees, shall cease and desist from violations of the Securities Act of Washington, at RCW 21.20.010 and RCW 21.20.140;

5.2 Respondents GETCARBIDS INC., DGL DEVELOPMENT, LLC, DAVID LANGLEY, and each of their agents and employees, shall cease and desist from violations of the Securities Act of Washington, at RCW 21.20.040;

5.3 Respondents GETCARBIDS INC., DGL DEVELOPMENT, LLC, and DAVID LANGLEY are hereby jointly and severally liable for and shall pay to the order of the WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS, a fine in the amount of ONE HUNDRED THOUAND U.S. DOLLARS ($100,000.00); and

5.4 Pursuant to the Securities Act of Washington, at RCW 21.20.390, Respondents GETCARBIDS INC., DGL DEVELOPMENT, LLC, and DAVID LANGLEY are hereby jointly and severally liable for and shall pay to the order of the WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS the costs, fees, and other expenses incurred in the administrative investigation and adjudication of this matter, in the amount of TWENTY-FIVE THOUAND U.S. DOLLARS ($25,000.00).

6.0 **NOTICES**

6.1 Reconsideration. Pursuant to RCW 34.05.470, Respondents have 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 Respondents. 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.

6.2 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.

6.3 Judicial Review. Respondents have 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.

6.4 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.

Dated at Tumwater, Washington, on this 16th day of August, 2019.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: _____

CHARLES E. CLARK
Director

STATE OF WASHINGTON ADMINISTRATOR SECURITIES DIVISION DEPARTMENT OF FINANCIAL INSTITUTIONS