

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

COMPLAINANT:	:	ORDER ON REVIEW
UTAH INSURANCE DEPARTMENT	:	
	:	
RESPONDENT:	:	DOCKET NO. 2009-138-AD
INTERMOUNTAIN CLAIMS, INC.	:	(E. Case No. 2536)
1543 East 3300 South	:	
Salt Lake City, UT 84106	:	
License No. 4899	:	

THIS MATTER came before the Utah Insurance Department (“Department”), pursuant to Respondent, Intermountain Claims’ (“Intermountain”), Petition and Request for Review (“Petition”) filed on April 26, 2010, under Utah Code Annotated, Section 63G-4-301 and Utah Administrative Code, R 590-160-8, for agency review. Complainant responded and briefing was completed by the parties.

ISSUE ON REVIEW

The issue in this matter is whether the acceptance or compromise of Intermountain’s \$3,000 settlement by the Market Conduct Director of the Utah Insurance Department under the Commissioner’s authority pursuant to Utah Code Ann. § 31A-2-308(1)(d)(West Supp. 2010) is a basis under Utah Code Ann. 63G-4-403(4) for relief requested by Intermountain.

STANDARD OF REVIEW

Pursuant to Utah Administrative Code, R590-160-8(8), the standard on review shall “correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).” Utah Code Ann. § 63G-4-403(4) states that relief shall be granted only if, on the basis of the agency’s record, a showing can be made that the person seeking review “has been substantially prejudiced by any of the following . . . (b) the agency has erroneously interpreted or applied the law . . . “

FINDINGS OF FACT

1. During October 2008, the Department learned from Intermountain that Intermountain was not licensed as an independent insurance adjuster, as required by UCA § 31A-26-213(6). (Transcript at 88.)

2. Intermountain was unlicensed from September 30, 2004 to October 15, 2008.

3. When the Department learned that Intermountain was not licensed, a Market Conduct Examiner for the Department was assigned to the matter. Richard Grieser was the Examiner specifically assigned to the Intermountain case.

4. During October and November 2008, Richard Grieser worked with Intermountain and ultimately reached a resolution of the matter. The parties agreed to settle the case for a \$3,000 penalty/forfeiture.

5. Mr. Grieser’s supervisor, Suzette Green-Wright, who is the Market Conduct Director for the Utah Insurance Department testified that she had approved the settlement offer made to Intermountain. (Transcript at 35, 65-69.) Ms. Green-Wright, in the position she held, was authorized to act on behalf of the Commissioner.

6. Mr. Grieser also testified that he had verbally accepted the offer of settlement from Intermountain and had requested that Intermountain place the offer in writing. (Transcript at 94-95.)

7. In addition to the testimony of Ms. Green-Wright and Mr. Grieser, the record contains emails that were exchanged between Mr. Grieser and Intermountain setting forth the terms of the agreement. (See attachments to Intermountain's Motion to Enforce Settlement.)

8. Mr. Grieser requested that legal counsel for Intermountain reduce his acceptance of the offer to writing, then Mr. Grieser would forward it to his legal counsel to prepare the Stipulation and Order. (See Grieser email dated December 3, 2008, attached to Intermountain's Motion to Enforce Settlement.)

9. The following day, legal counsel for Intermountain accepted the agreement in writing. (See Letter dated December 4, 2008, attached to Intermountain's Motion to Enforce Settlement.)

10. Five months later, on May 7, 2009, Mr. Grieser called Intermountain and informed it that the \$3,000 settlement would no longer be accepted by the Department.

11. On October 12, 2009, the Department filed a Complaint against Intermountain for violation of Utah Code Ann. § 31A-26-213.

12. Prior to a formal hearing, the Department requested that the Administrative Law Judge exclude all evidence of the settlement. (Department's Motion in Limine, November 4, 2009.) The Department argued: (a) that at the time of the settlement no administrative proceeding was pending so the matter could not be settled; and (b) only

the Department's attorney could enter into the settlement, not the Department.

(Department's Motion in Limine, November 4, 2009.)

13. Without specifically addressing the two theories raised by the Department in its Motion in Limine, the Administrative Law Judge granted the Motion in Limine to exclude any evidence of the existence of a settlement. (See Pre-Hearing Conference Order dated December 8, 2009, at 3.)

14. A formal hearing was held before Administrative Law Judge, Mark Kleinfeld, on February 10, 2010. An Order on Hearing was issued on March 29, 2010.

15. Mr. Kleinfeld found that Intermountain was in violation of UCA, § 31A-26-213 and assessed an administrative forfeiture against Intermountain in the amount of \$47,517.

16. Intermountain filed a Petition for Review with the Department on April 26, 2010.

CONCLUSIONS OF LAW

1. Intermountain violated Utah Code Ann. § 31A-26-213(6)(b).
2. This violation subjected Intermountain to forfeit to the state an amount of money imposed by the Commissioner under Utah Code Ann. § 31A-2-308(1)(c)(ii) (West Supp. 2010).
3. "The commissioner may accept or compromise any forfeiture under this Subsection (1) until after a complaint is filed under Subsection (2) . . . " Utah Code Ann. § 31A-2-308(1)(d)(West Supp. 2010). Subsection (2) addresses enforcement actions in

“any court of competent jurisdiction . . . “ See Id. Subsection (2) does not apply to this matter.

4. “Any power, duty or function vested in the commissioner by law may be exercised, discharged, or performed by an employee of the Insurance Department acting in the commissioner’s name and under his delegated authority.” Utah Code Ann. § 31A-2-111(1) (West Supp. 2010).

5. The Commissioner had authority to accept or compromise any forfeiture imposed under Subsection (1) of Utah Code Ann. § 31A-2-308. The forfeiture was imposed upon Intermountain under Utah Code Ann. § 31A-2-308(1).

6. Suzette Green-Wright, as Market Conduct Director for the Utah Insurance Department, was authorized, as a designee of the Commissioner, to “accept or compromise any forfeiture.” Ms. Green-Wright accepted the settlement proposal by Intermountain.

7. The order granting the Department’s Motion in Limine was erroneous as a matter of law because it failed to recognize the authority of the Commissioner or his designee to accept or compromise any forfeiture under Utah Code Ann. § 31A-2-308(1)(d).

8. Intermountain has been substantially prejudiced by the Department’s filing of an administrative action after it had entered into an agreement to compromise the forfeiture in this case.

DISCUSSION

In reviewing the pleadings submitted by the parties, the file on record, and reviewing the transcripts in this matter, it is apparent that the Department's Market Conduct Director, under authority of the Commissioner, settled this matter. It is clear that Intermountain and the Department had discussions in October and November 2008, and finally agreed upon a settlement on December 4, 2008.

This practice, of the Department's Market Conduct Director negotiating settlements with persons under the jurisdiction of the Department is standard procedure and happens on a regular basis. In this case, Mr. Grieser discussed a settlement plan with Intermountain, presented the plan to Suzette Green-Wright, the Department's Market Conduct Director, and she approved it. Mr. Grieser presented the offer to Intermountain, and they accepted the offer on December 4, 2008. Several months later, Intermountain was informed that the settlement was no longer valid and a Complaint was served upon Intermountain. This information was not accurate because the offer had been accepted and was proper under Utah Code Ann. § 31A-2-308(1)(d)(West Supp. 2010). The granting of the Department's motion in limine failed to consider the statute granting the commissioner the ability to compromise and settle matters until a complaint in a court of competent jurisdiction has been filed.

Based upon the above Findings of Fact, Conclusions of Law and Discussion, the following Order is entered:

ORDER

1. The Complaint filed on October 12, 2009, by the Department is hereby

dismissed.

2. The decision of the Administrative Law Judge, Mark Kleinfiend, entered on March 29, 2010, is hereby vacated.

3. The settlement agreement, entered into between the Department and Intermountain on or about December 4, 2008, is hereby enforced, to wit: Intermountain shall pay a forfeiture to the Department in the amount of \$3,000 for its violation of Utah Code Ann. § 31A-26-213.

APPEAL RIGHTS

Pursuant to Utah Code Ann. § 63G-4-302, any party may file a written request for reconsideration with the agency within 20 days after the date of this order.

Pursuant to Utah Code Ann. § 63G-4-401, a party may obtain judicial review of final agency action by filing a petition for judicial review within 30 days after the date that the order constituting final agency action is issued.

DATED this 22nd day of September, 2010.

UTAH INSURANCE DEPARTMENT



NEAL T. GOOCH
INSURANCE COMMISSIONER