

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA COMMISSIONER OF  
INSURANCE

CAUSE NUMBERS: 12560-CO14-0317-002  
12560-CO14-0317-002

IN THE MATTER OF )  
 )  
D. Warren Robison and )  
Hale Abstract Co., Inc., )  
Respondents. )  
 )  
103 W. Washington Street )  
Shelbyville, IN 46176 )  
 )  
Type of Action: Title Enforcement )

**FILED**

JUL 13 2015

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

Commissioner Stephen W. Robertson, being advised of the matter, and having reviewed the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order (the "Recommended Order"), plus Respondents' Objections to Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order, now issues the following Findings of Fact, Conclusions of Law, and Final Order.

**FINDINGS OF FACT**

1. Administrative Law Judge Rueben B. Hill ("Judge Hill") held a three-part hearing on this matter on December 11, 2014; February 18, 2015; and February 27, 2015.
2. Judge Hill issued his Recommended Order on June 9, 2015.
3. On July 6, 2015, a document was filed, *pro se*, on behalf of Robison and Hale Abstract (collectively, "Respondents") titled "Notice of Appeal from Recommended Order." This document is properly considered to be an objection filed pursuant to IC 4-21.5-3-29 (the "Objection").

4. The Findings of Fact in the Recommended Order are adopted in full and incorporated herein.

5. Conclusions of Law that are properly considered Findings of Fact are incorporated as such.

#### CONCLUSIONS OF LAW

6. The Conclusions of Law in the Recommended Order are adopted and incorporated herein.

7. The Objection is without merit.

A. Respondents received proper notice of the hearing which had to be completed in three parts and consists of 481 transcript pages. Part of the necessity of multiple parts was due in part to Respondents' thorough cross-examination of the Department's witnesses. Respondents' objection that "Respondents were never allowed to . . . defend" is incorrect.

B. Respondents did not object to the date of the third part of the hearing except as it related to the bankruptcy filing, which is addressed below. As such, any objection to the notice provided regarding the date of the third part is waived. As the Seventh Circuit Court of Appeals recently noted, "[C]ivil litigants are responsible for their own choices and their own inaction." *Choice Hotels International, Inc., v. Grover*, No. 2:11-CV-290-JVB, *slip op.* pp. 6-7 (July 7, 2015).

C. Even if an objection to the setting of the third part of the hearing had not been waived, any objection based on the hearing date(s) is unavailing. In the words of Administrative Law Judge Hill:

As a matter of procedure, the Court granted you every opportunity in terms of time to prepare and be ready for this – months, in fact, to be ready for this hearing.

(Transcript Part III, February 27, 2015, p. 26)

D. The Objection fails to recognize that federal law provides certain exceptions to the general stay placed when a debtor files for bankruptcy protection. 11 U.S.C.S. § 362(b) provides:

The filing of a petition . . . does not operate as a stay . . . of the withholding, suspension, or restriction of . . . a professional or occupational license . . . under State law . . . .

Subsection (2)(D). Additionally, the filing of a bankruptcy petition does not stay:

[T]he commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power . . . .

11 U.S.C.S. § 362(b)(4).

E. Federal courts have allowed regulatory proceedings to continue after the filing of a bankruptcy petition. *See, e.g., In re Halo Wireless*, 384 F.3d 581 (“[W]here a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, *consumer protection*, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding *is not stayed* under the automatic stay.” 384 F.3d at 587 (emphases added)).

F. This matter involves the revocation of Respondents’ professional insurance licenses and the protection of Hoosier consumers who were blatantly overcharged for title insurance premium by Respondents. Therefore, this matter is not subject to the automatic stay due to Robison’s bankruptcy.

G. Additionally, collection from the bankruptcy estate of the fines and penalties ordered below may not be required. If Robison and/or Hale Abstract maintained liability insurance for their business affairs, such collection might proceed outside of the bankruptcy estate. A claimant can proceed against a debtor to establish liability for purposes of insurance coverage. *See, e.g., In re Jet Florida Systems, Inc.*, 883 F.2d 970 (11<sup>th</sup> Cir. 1989); *In re Hendrix*, 986 F.2d 195 (7<sup>th</sup> Cir. 1993); *In re Seaside Engineering & Surveying, Inc.*, 780 F.3d 1070 (11<sup>th</sup> Cir. 2015).

H. Furthermore, there is no evidence that Hale Abstract filed for bankruptcy; therefore, an automatic stay would not apply to Hale Abstract.

I. The Objection alleges that the fines and penalties are not reasonable, but Respondents provide no support for this statement. Considering the facts found above and in the incorporated Recommended Order, the fines and remedies recommended in the Recommended Order are appropriate.

8. The Commissioner adds the following additional Conclusion of Law:

86. Because the Department met its burden of proof in demonstrating fraudulent conduct on the part of Hale, Robison is jointly and severally liable in addition to Hale.

9. Findings of Fact that are properly considered Conclusions of Law are incorporated as such.

**FINAL ORDER**

**IT IS THEREFORE ORDERED:**

1. Hale shall pay an administrative PENALTY in the amount of ten thousand dollars (\$10,000.00) to the Department for overcharging consumers for title insurance premiums, government recording fees, and for paying unlicensed personnel for signing HUD-1s. This amount is due in full within one hundred twenty (120) days after the signing of this Final Order.

2. Robison shall pay an administrative PENALTY in the amount of ten thousand dollars (\$10,000.00) to the Department for overcharging consumers for title insurance premiums, government recording fees, and for paying unlicensed personnel for signing HUD-1s. This amount is due in full within one hundred twenty (120) days after the signing of this Final Order.

3. Respondents shall REFUND consumers the total amount of overcharges in the manner as outlined below.

- a. Within thirty (30) days of the signing of the Department's Final Order, Respondents shall diligently search Hale's records and provide counsel for the Department, Eric D. Schmadeke—with a copy of each HUD-1 settlement statement closed by Hale or a Hale employee between August 8, 2012 and December 31, 2014—wherein a lender's title insurance premium was recorded on line 1104.
- b. Within thirty (30) days of the signing of the Department's Final Order, Respondents shall diligently search Hale's records and provide counsel for the Department, Eric D. Schmadeke, with a copy of each HUD-1 settlement

statement closed by Hale or a Hale employee between August 8, 2012 and December 31, 2014, wherein a consumer was charged an a recording fee that was different than the amount actually paid by Hale to record documents with the County.

- c. Each Respondent shall provide the Department a notarized affidavit under penalties of perjury certifying that the directives issued in parts a and b of this Order a have been completed, and that all information provided to the Department is complete and accurate.
- d. The Department shall conduct a review of all HUD-1 settlement statements provided by Respondents. Upon completion of its review, the Department will give notice to Respondents of the individual and aggregate amounts of excessive fees charged to Indiana consumers during the relevant time period.
- e. Within thirty (30) days after the notice provided pursuant paragraph 3(d), Respondents shall issue refunds via certified check to the individual listed on each HUD-1 as having paid the excessive fee.

4. Respondents shall pay the COSTS of the examination and audit performed pursuant to paragraph 3 above:

- a. The Department shall provide Respondents with notice of the amount of costs and fees expended by the Department at the same time notice is provided to Respondents pursuant to paragraph 3(d).
- b. Respondents shall provide payment to the Department within thirty (30) days of receiving notice of the Department's costs and fees.

5. Hale's resident agency license, number 1352690, is hereby PERMANENTLY REVOKED.

6. Robison's resident insurance producer's license, number 311249, is hereby PERMANENTLY REVOKED.

7. Each Respondent is ORDERED to file with the Department's counsel, on or before August 17, 2015, any policy of insurance covering errors and omissions or officers and directors liability for the time period discussed in the hearing on this matter.

SO ORDERED this 13<sup>th</sup> day of July 2015.

  
Stephen W. Robertson,  
Indiana Insurance Commissioner

Distribution:

Eric D. Schmadeke  
Densborn Blachly, LLP  
500 E. 96<sup>th</sup> Street, Suite 100  
Indianapolis, Indiana 46240

D. Warren Robison  
1246 N. 450 W.  
Shelbyville, Indiana 46176

HALE ABSTRACT COMPANY, INC.  
103 West Washington Street  
Shelbyville, Indiana 46176