



Alerts

Insurance Producer's Complaint for Judicial Review of License Revocation Dismissed for Failure to Exhaust Administrative Remedies

February 20, 2014
Professional Lines Alert

Plaintiff insurance producer was employed by USA Retirement from 2008 through 2010, during which he obtained his insurance producer license in 2009. Plaintiff held seminars on estate planning issues and met with customers regarding estate planning issues. In March 2010, USA Retirement went into receivership when the SEC filed a complaint against the managing partners. Four customers contacted the Illinois Securities Department (ISD) and complained about plaintiff's conduct and alleged that he led them to invest in fraudulent products and caused them to lose their life savings. In June 2010, the ISD issued a temporary order prohibiting the plaintiff from selling or offering securities based on allegations of fraud. Plaintiff failed to contest that temporary order and the order became final. The Illinois Department of Insurance (IDOI) then opened an investigation on plaintiff and on March 1, 2011, revoked the plaintiff's insurance producer license. On March 25th, plaintiff petitioned the IDOI to determine whether his producer license should be reinstated. An evidentiary hearing was held on August 25, 2011, before Hearing Officer Kim during which several witnesses testified. Plaintiff appeared *pro se*. Kim issued an opinion on November 10, 2011, recommending that plaintiff's license be revoked and that he be fined a civil penalty of \$10,000. Kim determined that because the ISD had found that plaintiff had committed fraud it was within the Director of Insurance's discretion to also revoke his insurance producer license. On January 10, 2012, the IDOI adopted Kim's factual findings and conclusions of law. Plaintiff failed to file a petition for a rehearing or to reopen the hearing pursuant to the Illinois Administrative Code. Instead on April 17, 2012, plaintiff filed an action in the Circuit Court of Cook County for administrative review. The IDOI moved to dismiss and the trial court granted the motion for failure of the plaintiff to exhaust his administrative remedies. The appellate court affirmed.

Question Before the Court and How the Court Decided It

Was the plaintiff insurance producer entitled to bring a complaint for judicial review of revocation of his insurance producer's license by virtue of an exception to the Exhaustion of Administrative Remedies Rule?

No. The court held that the general rule is that parties aggrieved by the action of an administrative agency cannot seek review in the courts without first exhausting all administrative remedies available to them. The administrative code provided that a motion for a rehearing or a motion for reopening of a

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hearing shall be filed within 10 days of the date of mailing of the Director's order. Further, the administrative review law provided that unless review was sought of an administrative decision within the time and manner provided, the parties before the agency would be barred from obtaining judicial review of the decision.

An exception to this rule is where no issues of fact are presented or agency expertise is not involved. Plaintiff argued that the exception applied because the IDOI had based its revocation on hearsay statements that were improperly admitted through the testimony of the enforcement attorney from the ISD and such an evidentiary question was a legal issue that did not require the IDOI's expertise or fact-finding duties. The court, after pointing out that plaintiff failed to make the transcript of the hearing part of the court record, found that evidentiary issues such as admission of hearsay, do not fall within the exception that plaintiff raised because they were not novel and did not involve statutory construction issues. Filing for a rehearing within the 10-day period would have allowed the IDOI to reconsider such errors and allow it to use its expertise and correct its own errors.

What the Court's Decision Means for Practitioners

This case illustrates the need to get early legal advice when a government agency puts you on notice that they are intending to take action against you. Plaintiff insurance producer failed to contest the temporary order issued by the ISD finding he had committed fraud and then he appeared *pro se* at the evidentiary hearing convened by the IDOI where witnesses were going to give testimony on why he ought to lose his insurance producer license. He then never sought a rehearing of the order entered by the IDOI with the 10-day period in the Code. Competent legal advice may have avoided all or part of this harsh result.

Burns v. Department of Insurance, 997 N.E.2d 938 (Illinois Appellate Court, 1st District, Sept. 30, 2013)

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