



OFFICE OF
INSURANCE COMMISSIONER

FILED

JUL 10 2007

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

In the matter of:

GOLF MARKETING WORLDWIDE, LLC;
GOLF MARKETING; GOLF MARKETING
INCORPORATED; HOLE-IN-WON.COM;
HOLE-IN-WON.COM WORLDWIDE;
GOLF MARKETING, LLC,
Unauthorized Insurers, AND
KEVIN KOLENDA, TIM KIRCHHOF, et al.,
Principals.

No. 07-204

**NOTICE OF PRE-HEARING
CONFERENCE TO SET A
FINAL HEARING AT WHICH
TO REQUEST IMPOSITION OF
FINES**

I. REQUEST FOR IMPOSITION OF FINES

A. BASIS

1. "Golf Marketing Worldwide, LLC," "Golf Marketing," "Golf Marketing Incorporated," "Hole-In-Won.Com," "Hole-In-Won.Com Worldwide," and "Golf Marketing, LLC" are one or more entities not known to be incorporated or registered in any State, and are believed and therefore alleged to be out of state businesses or names under which business has been or is being transacted or solicited. Kevin Kolenda is believed and therefore alleged to be the founder, principal promoter, and person who controls the aforementioned business or businesses. Tim Kirchhof has represented himself as "VP Golf Marketing." None of these entities or individuals are licensed or authorized to transact insurance in Washington.
2. On February 6, 2004, the Washington State Insurance Commissioner (OIC) entered an "Order to Cease and Desist," Order No. D04-26, ordering Golf Marketing Worldwide, LLC, Kevin Kolenda, and "their officers, directors, trustees, agents, employees and affiliates" to refrain from various activities, among them, "the attempted collection of premium monies and the advertising and soliciting of insurance and insurance-related products to Washington residents," and "soliciting by e-mail, facsimile, telephone, mail, website or any other means, taking applications for, procuring or placing for others, any contract providing indemnification for sporting event winnings or losses in Washington or any other form of insurance." The OIC's order is incorporated herein in its entirety by this reference as though fully set forth. The OIC's order was never contested and is a final order.

3. On July 7, 2006, the Oregon Department of Consumer and Business Services (DCBS) issued an order to Golf Marketing Worldwide LLC (GMWW) to stop selling insurance in Oregon without a license. The DCBS order arose out of GMWW's sale of hole-in-one insurance. In that instance, on May 24, 2004, GMWW and its agent Tim Kirchhof sold hole-in-one insurance to an Oregon business through an Oregon agent. The insurance was to cover a June 4, 2004, golf event in Vancouver Washington. After a player made a hole-in-one and GMWW refused to pay, the DCBS received a complaint about the matter, investigated, concluded that GMWW had issued insurance as an unauthorized insurer, and issued its order.
4. On July 10, 2006, the OIC learned of the DCBS order and began its own investigation. On July 13, 2006, an investigator for the OIC contacted GMWW via its website address (<http://www.hole-in-won.com>) to indicate that he wanted to obtain award/prize insurance for a Washington event scheduled to be held on August 19, 2006. On July 13, 2006, GMWW, through Tim Kirchhof, *via* e-mail, responded and solicited the OIC's investigator to enter into a contract of insurance in Washington by asking for further information about the event to enable GMWW to provide an insurance quote. On July 17, 2006, the investigator responded *via* e-mail with the information, and also asked Mr. Kirchhof whether GMWW was allowed to do business in Washington. Neither GMWW nor Mr. Kirchhof responded to this inquiry. On July 24, 2006, and again on August 2, 2006, Mr. Kirchhof sent follow up e-mails again soliciting the OIC's investigator. On August 23, 2006, Kevin Kolenda sent an e-mail solicitation to the OIC's investigator to offer "Hole-In-One Insurance."
5. On November 8, 2006, the OIC's investigator mailed a letter to Mr. Kolenda and Mr. Kirchhof to advise them that their solicitations were in violation of the February 6, 2004, "Order to Cease and Desist." On November 27, 2006, Mr. Kolenda left a voice mail message with the OIC's investigator, stating that he is no longer connected with GMWW, that GMWW is his "former business," that he has sold GMWW and moved, and leaving his cell telephone number of (203) 219-3090. On March 6, 2007, when the investigator called Mr. Kolenda's cell telephone number, a female answered by saying "hello, golf marketing." The investigator identified himself, asked for "Kevin," overheard the female speak with a male asking what it was about, and then was told "he's not available right now."
6. Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, Kevin Kolenda, Tim Kirchhof *et al* have illegally entered into at least one unauthorized insurance contract affecting persons or property within the State of Washington. The exact number of these illegal contracts is presently unknown but includes at minimum the May 24, 2004 transaction identified above. Each such illegal contract represents a separate violation of RCW 48.15 *et seq.*
7. Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, Tim

Kirchhof *et al.* have illegally solicited unauthorized insurance contracts affecting persons or property within the State of Washington, the exact number of which illegal solicitations is presently unknown but includes at minimum the solicitations identified above. Each such illegal solicitation represents a separate violation of RCW 48.15 *et seq.*

8. The foregoing acts of Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, Tim Kirchhof *et al.* also violated the OIC's February 6, 2004 "Order to Cease and Desist" No. D04-26.

B. PENALTIES AND RELIEF REQUESTED

9. Pursuant to RCW 48.15.023(5)(a)(ii), the OIC seeks to impose a fine against each of Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, and Tim Kirchhof, jointly and severally, in the amount of \$25,000 for their May 24, 2004, violation of RCW 48.15 *et seq.* by illegally selling unauthorized insurance for a Washington golf event. OIC may also seek additional amounts for additional misconduct.
10. Pursuant to RCW 48.15.020(3), the OIC also seeks to impose a fine against each of Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, and Tim Kirchhof, jointly and severally, in the amount of \$25,000, consecutive to the above fine and concurrently for each of the separate solicitation activities outlined in paragraph numbers 4 and 5 above, each of which solicitation activity separately and collectively violates RCW 48.15 *et seq.* by constituting the illegal solicitation of unauthorized insurance. OIC may also seek additional amounts for additional misconduct.
11. Pursuant to RCW 48.02.080, the OIC will also seek to enjoin each of Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, and Tim Kirchhof and their officers, directors, agents, trustees, employees, and affiliates from any further violation of the OIC's February 6, 2004, "Order to Cease and Desist" No. D04-26.

II. NOTICE OF PRE-HEARING CONFERENCE

12. Patricia Petersen, P.O. Box 40255, Olympia, Washington 98504-0255, (360) 725-7002, has been appointed as Chief Presiding Officer in this matter. Pursuant to RCW 34.05.446, a pre-hearing conference is scheduled to commence before the Chief Presiding Officer on August 20, 2007, at 10:00 a.m., at the Washington State Office of the Insurance Commissioner, 5000 Capital Blvd., Tumwater, Washington. At this pre-hearing conference, the Insurance

Commissioner will ask the Chief Presiding Officer to enter a pre-hearing order relative to discovery and setting forth the date and time of a final hearing in accordance with RCW 48.15.023, RCW 48.04 *et seq.*, and RCW 34.05 *et seq.*

13. At the final hearing, the Insurance Commissioner will ask the Chief Presiding Officer to consider imposing the above mentioned \$50,000 in fines against each of Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, and Tim Kirchhof, jointly and severally. At the final hearing, the Insurance Commissioner will present evidence as to why these fines should be ordered. Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, and Tim Kirchhof may present any defenses, evidence or argument they may have in opposition.
14. In the event of any failure to appear at any pre-hearing conference, final hearing, or any other hearing or proceeding, a default order may be entered and the penalties and orders sought by the Insurance Commissioner may be levied effective on the date of such failure to appear. The Insurance Commissioner specifically reserves the right to commence any other proceedings it deems appropriate to seek fines, injunctive relief, or other remedies relative to the violations referenced herein, including to prevent further violation of the Insurance Commissioner's "Order to Cease and Desist," Order No. D04-26.
15. The Insurance Commissioner's staff will participate in this matter through its designated representative, Alan Singer, PO Box 40255, Olympia, Washington, 98504-0255, alans@oic.wa.gov, (360) 725-7046. Pursuant to RCW 34.05.428 and WAC 10-08-083, Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, and Tim Kirchhof are hereby requested to provide the Chief Presiding Officer and Mr. Singer with written notification of the person who will appear at all conferences and hearings, including the person's name, address, e-mail address, and telephone number.

III. DEFAULT

16. Pursuant to RCW 34.05.434(2)(i), a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with RCW 34.05 *et seq.* The aforementioned pre-hearing conference is considered an "other stage of an adjudicative proceeding" under this provision. RCW 34.05.440, titled "Default," provides:
 - (1) Failure of a party to file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule constitutes a default and results in the loss of that party's right to an adjudicative proceeding, and the agency may

proceed to resolve the case without further notice to, or hearing for the benefit of, that party, except that any default or other dispositive order affecting that party shall be served upon him or her or upon his or her attorney, if any.

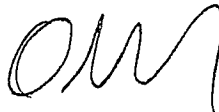
- (2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.
- (3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

17. In the event a default occurs, the Insurance Commissioner will request that the Chief Presiding Officer immediately and with no further notice enter an order imposing the above mentioned \$50,000 in fines against each of Golf Marketing Worldwide, LLC, Golf Marketing, Golf Marketing Incorporated, Hole-In-Won.Com, Hole-In-Won.Com Worldwide, Golf Marketing, LLC, Kevin Kolenda, and Tim Kirchhof, jointly and severally.

Dated at Tumwater, Washington, this 10 day of July, 2007.

MIKE KREIDLER
Insurance Commissioner

By:



ALAN MICHAEL SINGER
Staff Attorney, Legal Affairs