

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **Westshores Homes, Inc.**

) **FINAL ORDER**

) Case No. INS 05-03-015

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.318(3)(d) and 731.505(4), and Oregon Administrative Rules (OAR) 836-043-0101 *et seq.*, to review a workers' compensation insurance final premium audit billing (billing) issued by SAIF Corporation to Westshores Homes, Inc. (employer).

History of the Proceeding

On or about 1/20/05, the employer received from the insurer a billing dated 1/20/05 for the audit period from 11/1/03 to 7/31/04. The billing informed the employer that it may request a hearing by sending to the director a written request for a hearing so that the director receives the request within 60 days after the employer received the billing. See ORS 737.318(3)(d), ORS 737.505(4), and OAR 836-043-0170(1).

On 2/14/05, the director timely received from the employer a written request for a hearing.

On 2/18/05, the director mailed to the employer a letter and a petition form. The letter informed the employer that it must complete the form and return it to the director so that director receives it within 60 days after the director received the request for a hearing, otherwise the director will dismiss the employer's request for a hearing. See OAR 836-043-0170(2)-(3) & (9).

On 3/9/05, the director timely received from the employer the completed petition, and a request for a stay of collection efforts by or on behalf of the insurer of any amount billed in the billing until this proceeding is concluded.

On 3/31/05, the director referred the request to the Office of Administrative Hearings (OAH).

On 4/11/05, OAH scheduled a hearing to be held on 7/26/05.

On 4/11/05, OAH issued an order granting a stay of all collection efforts by or on behalf of the insurer of any amount billed in the billing until this proceeding is concluded.¹ See OAR 836-043-0170(5).

On 6/21/05, OAH discovered that the employer, during the audit period and thus for purposes of this proceeding, was Westshores Homes, Inc. rather than Westshores Homes, LLC, and issued a notice making the correction.²

On 7/26/05, OAH held a hearing. The hearing was conducted by Lawrence S. Smith, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Dmitriy Martinov³, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Dmitriy Martinov as its witness. The employer offered Exhibit P1 as its documentary evidence which was admitted into the record. The insurer appeared and was represented at the hearing by David B. Hatton, an Assistant Attorney General assigned to represent the insurer, as the insurer's authorized representative. The insurer called Kathleen Hamilton, Mark Salmon, Elaine Marco-Bassett and Teresa Smith as its witnesses. The insurer offered Exhibits A1

¹ The order granting the stay incorrectly indicated that the audit period was from "November 2004 through September 2005." The audit period was from 11/1/03 to 7/31/04. See Statement of Account - Audit Adjustment.

² The employer was organized in Oregon as a domestic corporation from 4/29/03 to 1/11/05 which period included the policy period from 11/24/03 to 7/9/04 and the audit period from 11/1/03 to 7/31/04. On 1/11/05, after the audit period but before the insurer issued the billing on 1/20/05, the employer reorganized as a domestic limited liability company. When the employer requested a hearing on 2/10/05, the employer identified itself as Westshores Homes, Inc. When the employer completed the petition on 2/28/05, the employer identified itself as Westshores Homes, LLC. When the Insurance Division referred the request to OAH on 3/31/05, the Insurance Division identified the employer as Westshores Homes, LLC, the then present name. Later, at the hearing on 7/26/05, Dmitriy Martinov, the employer's representative, testified that the employer as an limited liability company had been dissolved, and that he, as the sole owner of the employer both when it was a corporation and a limited liability company, was then conducting business as a sole proprietorship.

³ The proposed order misspelled the first name of the employer's representative as "Dimitriy." The correct spelling is "Dmitriy." See employer's request for a hearing dated 2/10/05.

to A16 as its documentary evidence of which A1 to A10 and A12 to A16 were admitted into the record.⁴

On 9/1/05, OAH issued a proposed order. The proposed order recommended that the director affirm the billing because the employer did not produce sufficient evidence that (1) it properly requested the insurer to cancel the policy before 7/9/04 when it was cancelled by the insurer for lack of payment of premiums, and (2) certain workers were nonsubject workers for purposes of Oregon workers' compensation law. The proposed order informed the employer and insurer that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was served on the employer and insurer.

The director did not receive from the employer or the insurer any exceptions to the proposed order.

Therefore, the director now makes the following final decision in this proceeding.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions, and reasoning of proposed order as the findings of facts, conclusions, and reasoning of this final order.

Order

The billing is affirmed and the stay is withdrawn.

Notice of Right to Judicial Review

Each party may be entitled to have the final order reviewed by the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party

⁴ The proposed order omitted that the insurer's exhibit A16 was also admitted. See the audio recording of the hearing. See also the proposed order, page 2, findings of fact numbered 3, 6 and 7, wherein the proposed order relied upon A16 to support those findings.

files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated December 5, 2005

/s/ Joel Ario
Joel Ario
Administrator
Insurance Division
Department of Consumer and Business Services

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