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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY BUREAU OF SECURITIES
OAL DKT. NO. BOS 7446-01

IN THE MATTER OF: THOMAS BYRNE, Respondent.	Administrative Action FINAL DECISION AND ORDER

BEFORE FRANKLIN L. WIDMANN, CHIEF
NEW JERSEY BUREAU OF SECURITIES

This matter is before Franklin L. Widmann, Chief of the New Jersey Bureau of Securities (hereinafter "Bureau Chief"), Division of Consumer Affairs, to review the August 2, 2002 Initial Decision of Administrative Law Judge (hereinafter "ALJ") Margaret M. Hayden, and to render a Final Decision pursuant to N.J.A.C. 1:1-18.

Based upon a thorough review of the Initial Decision and of the entire record, including the exceptions filed by the Respondent out of time, the Bureau Chief hereby affirms and adopts that decision.

In the Initial Decision, ALJ Hayden concludes that the sworn testimony of Mr. Byrne on June 13, 2000, and the accompanying exhibits, even if taken as true and viewed in the light most favorable to the Respondent, provide sufficient evidence to resolve the dispute without a hearing. In so concluding, the ALJ relied upon the procedure for summary decision embodied in N.J.A.C. 1:1-12.5 and sanctioned by the cases cited in her Initial Decision. The Bureau Chief concurs with the ALJ, and finds summary decision appropriate in this case based on the evidence presented.

The ALJ's finding that Mr. Byrne filed an application for registration with the Bureau that contained statements which, in light of the circumstances under which they were made, were false and misleading as to several material facts is undisputed. The ALJ's determination that the Respondent must be held responsible for that false and misleading filing, because he personally attested to the accuracy of his statements without qualification, is so fundamentally true that it cannot be subject to a contrary finding by a rational fact finder, and is consequently amenable to summary decision. Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995).

Moreover, the ALJ's conclusion that the undisputed facts also demonstrate that Alaska's Order to Cease and Desist, which was not appealed by Mr. Byrne, constitutes sufficient grounds for denial of his application under N.J.S.A. 49:3-58(a)(2)(vi), is likewise accurate and unassailable. Respondent's assertion that he was acting on the advice of counsel when he represented to Alaska that he was already registered in New Jersey, and that he had been given a waiver of the examination requirement by this state, cannot negate Respondent's knowing assertion of a complete untruth with the intent to mislead Alaska authorities, as the ALJ correctly found. Even with the benefit of an assumption, for the purposes of the motion, that Respondent's actions may have been done with extremely poor advice from counsel, his acts nevertheless remain grounds for denial of his application for registration both in Alaska and New Jersey.

Finally, it is clear from the record that the adjournment of the scheduled hearing by the ALJ contained in her letter to the parties dated April 29, 2002, and referenced in Respondent's exceptions, was due to the pendency of the Bureau's motion for summary decision. The letter advised that the matter would be rescheduled, *if necessary*, after the motion was decided. In granting the Bureau's motion, the ALJ inherently determined that a hearing was *not* necessary. For the reasons already discussed, the Bureau Chief affirms.

Therefore:

IT IS on this 19 th day of September, 2002, ORDERED that:

The Initial Decision of Administrative Law Judge Margaret M. Hayden in this matter, dated August 2, 2002, is **affirmed** for the reasons set forth therein.

NEW JERSEY BUREAU OF SECURITIES

BY: Franklin L. Widmann

Franklin L. Widmann, Chief