

NOT FOR PUBLICATION

NO. 25630

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

IN THE MATTER OF DUANE LEE CHAPMAN, Respondent-Appellant, v.
J.P. SCHMIDT,¹ INSURANCE COMMISSIONER, Complainant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIVIL NO. 02-1-0129)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Respondent-Appellant Duane Lee Chapman (Chapman) appeals the Judgment filed on January 13, 2003 in the Circuit Court of the First Circuit (circuit court).²

On appeal, Chapman contends (1) the circuit court erred by affirming the Order Revoking License, (2) the circuit court erred in finding that Chapman was provided with notice of the revocation, and (3) Chapman's due process rights were violated.

On October 29, 1997, Deputy Insurance Commissioner Hiram Tanaka (Commissioner) issued a Notice of Intent to Issue Order Revoking License (Order Revoking License) to Chapman. The Order Revoking License stated that if Chapman did not request a hearing on or before November 21, 1997, the Order Revoking License would become a final order revoking Chapman's inactive

¹ In February 2003, J.P. Schmidt succeeded Wayne C. Metcalf, III, as Insurance Commissioner and is automatically substituted as Appellee herein pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c)(1).

² The Honorable Eden Elizabeth Hifo presided.

general agent's license. Copies of the Order Revoking License were mailed by registered mail to Chapman at his prior addresses: 1232 Waimanu Street and 2357 S. Beretania Street, both in Honolulu, Hawai'i. Chapman did not receive either of these copies. Chapman did receive, by registered mail, an uncertified copy of the Order Revoking License on or about January 13, 1998 at his then-current address in Colorado.

On or about December 18, 2001, Chapman's attorney requested a certified copy of the Order Revoking License and received it the next day. On December 20, 2001, Chapman filed a "Motion for Reconsideration of Final Order Revoking License" (Motion for Reconsideration). On January 9, 2002, the Motion for Reconsideration was denied. Chapman filed a Notice of Appeal on January 16, 2002 with the circuit court. After briefing and a hearing, the circuit court filed on January 13, 2003 an "Order Affirming (1) Order Revoking License, Dated October 29, 1997, and (2) Order Denying Respondent's Motion for Reconsideration, filed January 9, 2002." The circuit court found that it had jurisdiction to hear the appeal. A Judgment was filed on January 13, 2002. Chapman timely filed this appeal.

Chapman's Motion for Reconsideration was untimely. Hawai'i Administrative Rules § 16-201-23 ("Any party, within ten days after receipt of any final order may move the authority to reconsider its final order or decision."). The circuit court had

no jurisdiction to review the October 29, 1997 Order Revoking License because Chapman's Motion for Reconsideration was untimely filed. The circuit court was correct in its Order Denying Respondent's Motion for Reconsideration because the Motion for Reconsideration was untimely filed.

The part of the circuit court's January 13, 2003 Judgment affirming the Order Revoking License is vacated, and the part of the Judgment affirming the Order Denying Respondent's Motion for Reconsideration is affirmed.

DATED: Honolulu, Hawai'i, February 14, 2005.

On the briefs:

Michael Jay Green,
Howard Glickstein,
for respondent-appellant.

Chief Judge

Deborah Day Emerson,
David A. Webber,
Deputy Attorneys General,
for complainant-appellee.

Associate Judge

Associate Judge