

Commonwealth Land Title Insurance Company v. Stephen W. Robertson, Insurance Commissioner of the State of Indiana, on behalf of the Indiana Department of Insurance

Indiana Court of Appeals, No. 49A04-1302-PL-84, March 4, 2014, Crone, J.

Summary

Pursuant to its statutory authority under the Indiana Insurance Code (“Code”), the Indiana Department of Insurance (“Department”) conducted a “Targeted Market Conduct Examination” (“Examination”) of Commonwealth Land Title Insurance Company (“Commonwealth”). The purpose of the survey was to determine whether Commonwealth permitted excessive charges in the form of premiums charged to policyholders by their agents and complied with consumer disclosure requirements under the Real Estate Settlement Procedures Act and Department of Housing and Urban Development (“HUD”) premium tax reporting procedures.

The Department conducted an audit, and found that Commonwealth’s premiums for HUD-1 statements¹ were much higher than premiums calculated under its Cents Per Thousand remittance program (“CPT”)² which resulted in underpayment of premium taxes and violation of the Gross Premium Tax Statute. In addition, the Department found that Commonwealth had violated Indiana’s Rate Statute and Unsafe Business Practices Statute, by *inter alia*, “devising, allowing, and promoting an environment wherein it had no control over premiums charged to consumers for its title insurance by implementing the CPT program”; Permitting the charging of greater premiums per thousand dollars of coverage to consumers on smaller coverage amounts than those who purchased policies covering higher amounts; using the CPT program to allow agents to generate a fictitious premium not based on actuarial analysis; and engaging in a practice of entering into agreements where its agents were permitted to set the final pricing of premiums to the consumer, resulting in great variance of premiums throughout the State.” *Id. at 12-13.*

The Department issued an Administrative Order to Commonwealth to cure the violations and conduct a retroactive actuarial analysis. Commonwealth filed a petition for judicial review on grounds that the Department’s interpretation of the Rate Statute was in error and there was not sufficient evidence to support its findings under *Robertson v. Ticor Title Ins. Co. of Florida*, 982 N.E.2d 9, 18 (Ind. Ct. App. 2012), trans. denied (2013). The Trial Court agreed with the Department and Commonwealth appealed. United Policyholders filed an Amicus Curiae brief in support of the Department. The Court of Appeal affirmed the Trial Court’s decision, holding that unlike *Ticor* there was ample evidence in the Department’s Examination and final report to support a finding of violation. Further, the “Cure Statute” under the Code provides that “the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation.” Ind. Code § 27-1-3.1-11. Further, such actions will only be set aside if: “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law; or unsupported by substantial evidence.” *Id. at § 4-21.5-5-14(d).*

¹ HUD-1 Statement: a disclosure form completed by the agent pursuant to the issuance of a real estate mortgage on which all charges imposed upon the borrower and seller by the lender are itemized.

² Internal documents revealed that Commonwealth had implemented a “remittance program” whereby agents were given tremendous flexibility in writing policies that were not reflective of actual premium amounts. Even Commonwealth admitted this program could not be characterized as “consumer friendly.”