

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY  
THE DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT**

In the Matter of )  
 )  
BARBARA MAZONNA ) OAH No. 17-1051-SEC  
 ) Agency No. 2016-00229  
\_\_\_\_\_ )

**DECISION**

The Division of Banking and Securities issued a temporary Cease and Desist Order to Barbara Mazonna in April 2017. Ms. Mazonna, through counsel, timely requested a hearing to contest the allegations.

When an agency receives a request for hearing that is subject to AS 44.64.030, the agency has ten days to either refer the request to the Office of Administrative Hearings or issue a written denial of the hearing request.<sup>1</sup> The Division failed to follow this procedure, apparently because it was engaged in settlement negotiations with Ms. Mazonna’s counsel. This was error. Settlement negotiations are not cause to delay a referral. The Division should have referred the hearing request, then asked the assigned administrative law judge to stay case-related proceedings while the parties attempted to resolve the dispute.

The Division’s procedural error was magnified when the parties’ settlement negotiations broke down, which apparently occurred when both her attorney and the Division became unable to locate Ms. Mazonna. It was only at this point – five months after receiving Ms. Mazonna’s hearing request – that the Division referred the request to OAH.

A case planning conference was scheduled, and notice was sent to the attorney identified on Ms. Mazonna’s hearing request, as well as to Ms. Mazonna’s last known mailing address. When I attempted to reach the attorney for the case planning conference, I was informed that she no longer represents Ms. Mazonna in this matter. Because the Division’s referral notice did not list a phone number for Ms. Mazonna, and counsel for the Division was unable to supply one, a brief status conference was held on the record with the counsel for the Division, who advised me of the foregoing history and of the Division’s inability, thus far, to locate Ms. Mazonna. I then issued an order directing the Division to make further attempts to locate Ms. Mazonna, and to file a status report as to those efforts and as to the Division’s position about how to proceed.

Pursuant to that order, the Division sent case-related documents to Ms. Mazonna’s Post Office box *via* certified mail. Those documents were signed for by Ms. Mazonna and an Angus

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<sup>1</sup> AS 44.64.060(b).

Mazonna. The Division also located a phone number provided by Ms. Mazonna's prior attorney, but was unable to reach Ms. Mazonna at this number.

The Division proposed scheduling an additional status conference, cautioning Ms. Mazonna that her appeal would be dismissed if she failed to participate. Ms. Mazonna did not respond to the Division's filing, nor otherwise contact OAH.

On December 21, 2017, I issued an Order re: Intent to Dismiss and Scheduling Status Conference. The order recited the above procedural history, and explained that where an appealing party fails to participate in the proceedings, OAH regulations permit an administrative law judge to issue a proposed decision dismissing the appeal.<sup>2</sup> The order scheduled a status conference for Tuesday, January 9, 2018, at 2:30 p.m., and told Ms. Mazonna (1) the number at which she would be called; (2) the process for providing a different number as appropriate, or rescheduling if necessary; and (3) that her appeal would be dismissed if she did not participate or otherwise contact OAH.

Ms. Mazonna did not respond to this order, and was not reachable at her phone number of record at the time of the status conference. In light of the foregoing, and without expressing a view as to the merits of the Divisions' underlying decision, Ms. Mazonna's appeal is hereby **DISMISSED** based on her failure to participate. Because Ms. Mazonna has abandoned her appeal of the Cease & Desist Order, that Order will become final upon distribution of the Final Decision in this appeal.

DATED: January 12, 2018.

By: Signed  
Cheryl Mandala  
Administrative Law Judge

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<sup>2</sup> 2 AAC 64.320.

## Adoption

The undersigned adopts this Decision and Order in OAH Case No. 17-1051-SEC as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 12<sup>th</sup> day of February, 2018.

By: Signed  
Signature  
Mike Navarre  
Name  
Commissioner, DCCED  
Title

[This document has been modified to conform to the technical standards for publication.]