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Comes Now Michael Scott Maclay and Files with the Court Appeals, Division III of the State of Washington Petitioner's Reply Brief in Support of Appeal of the Administrative Final Order issued against him from the Washington State Department of Licensing.

### **INTRODUCTION**

Under the Administrative Procedures Act there are certain factors which the Court may grant relief of an adjudicative proceeding order which include:

(b) The agency is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which included the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by state facts and reasons to demonstrate a rational basis for inconsistency; or,

(i) The order is arbitrary and capricious.

## **DISCUSSION**

It is clear when the record is reviewed and the actions and inactions of the Department and BAP that each of the above elements have been met to grant relief from the Departments Disciplinary Order against Maclay. These elements which meet the above standards include but are not limited to:

1. The Department from the commencement of the Petrilli Complaint engaged in an arbitrary and capricious investigation. The initial investigative officer, pursued an investigative path which does not support the conclusion Petitioner engaged in activity which violated the statute. This has been highlighted above.
2. The Department denied the Petitioner the opportunity to engage in discovery prior to the BAP hearing and also denied the Petitioner the opportunity to cross examination of witness that provided statements to the investigative official. This is an abuse of the administrative process as outlined above.
3. The Department controlled the hearing process to the detriment of the Petitioner. In the initial letter of allegation of violations the Petitioner was allowed only one venue for adjudication of the allegations, the BAP process. This action by the Department was highly prejudicial to the Petitioner and did not allow Petitioner nor inform Petitioner of other legal and available options and remedies

8. The Department's action and or inactions are contrary to the Washington Administrative Procedures Act and cannot be supported at law. This is highlighted throughout this initial brief from Petitioner. Especially this is the case when the Department, BAP can not show that the filing of lien is in fact a violation of the law – rather than a mere interpretation – unlawful interpretation of the facts.

9. Petitioner reasserts each and every pleading, correspondence and memorandum submitted to the Department in this investigation as exhibited in the Official Record. With the evidence submitted to the Department and BAP, the Department **should have upon its own authority submitted this to an Office of Administrative Hearing Administrative Law Judge** to get evidence, allow cross examination and to resolve any credibility issues. The Departments action is arbitrary and capricious.

10 The Final Order and the process that led to the Final Order is in violation of the constitutional provisions of the Agency enabling statute. The Department and the BAP had to create an interpretation of the facts outside its constitutional construct to support is conclusions.

11 The Agency exceeding its statutory authority and had to go outside its scope to reach the conclusions in the Final Order and preliminary Findings of Fact, Conclusions of Law of the Brief

Adjudicative Proceeding. The Order is not supported by the evidence on the record when the record in its totality is taken into account.

12 The Agency action in drawing the conclusion of the Final Order is arbitrary and capricious and contrary to law.

13 The Final Order is inconsistent with the rules of the Agency.

14 The Final Order which has adopted the BAP's Finding of Fact and Conclusions of Law is not supported by the evidence in the Record which was the basis of the Final Order.

#### CONCLUSION

It is clear when applying the standard for review of an administration order and in this case the disciplinary order against Maclay. The magnitude of the discipline and actions taken toward Maclay should have been a "red flag" to the Department and the BAP officer that there are credibility issues to be resolved. Also, the abuse of Department failing to identify the actual interpretations of the statutes allegedly violated along with its violative protocol of handling complaints the adjudication of the complaint shows the outlined element of RCW 34.05.50 have been satisfied to grant relief from the Order against Maclay.

It is respectfully requested that the Order be vacated and or in the alternative the matter be remanded to a formal hearing before an

administrative law judge to allow examination and cross examination of the charging party, his counsel and the investigator.

This 26<sup>th</sup> day of September, 2013

  
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Michael Scott Maclay, Pro Se

**CERTIFICATE OF SERVICE**

I Michael Scott Maclay deposited a conformed filed copy postage prepaid *this Petition for Review this day to:*

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This 26th Day of September, 2013