

1
2
3
4
5
6
7
8
9

BEFORE THE STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY

In Re:

WESTERN THRIFT & LOAN,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL DECISION**

10
11
12
13
14
15
16
17
18
19
20
21

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL DECISION**

THIS MATTER was heard on March 16, 2012 and continued to May 4, 2012, before Andrew J. MacKay, Chairman of the Nevada Transportation Authority, serving in his capacity as Administrative Law Judge (hereafter "ALJ"). The Financial Institutions Division, Department of Business and Industry, State of Nevada (hereafter "Division"), was represented by David J. Pope, Senior Deputy Attorney General and Daniel Ebihara, Deputy Attorney General, and Respondent Western Thrift & Loan (hereafter "WTL") was represented by Mark J. Krueger, Esq. The ALJ having received evidence, reviewed the briefs filed in this matter and testimony, evidence, and arguments of counsel, and good cause appearing, now, therefore, enters the following findings of fact and conclusions of law, and final decision:

JURISDICTION

- 22
23
24
25
26
27
28
1. Respondent, WTL, is a Nevada Corporation doing business in the State of Nevada.
 2. WTL is a licensed thrift company pursuant to NRS Chapter 677.
 3. Thrift Companies in the State of Nevada are governed by chapter 677 of the Nevada Revised Statutes (NRS) and chapter 677 of the Nevada Administrative Code (NAC). The Division has primary jurisdiction for the licensing and regulation of persons operating and/or engaging in thrift companies. NRS 677.150 and 677.160.

1 4. This hearing was based upon the Division's Order for Temporary Suspension
2 issued September 16, 2011. The Order for Temporary Suspension was based on the fact
3 that the State of Utah had liquidated Western Insurance Company, the insurance company
4 which insured the deposits of WTL.

5 5. Pursuant to NRS 677.510, the hearing was set regarding the Temporary
6 Suspension and Revocation of the license of WTL. After the conclusion of the hearing, the
7 ALJ shall "[e]nter a written order either dismissing the charges, or revoking the license, or
8 suspending the license for a period of not more than 60 days." Pursuant to NRS
9 677.510(2)(a), the following constitutes the ALJ's written order:

10 **FINDINGS OF FACT**

11 6. The deposit accounts of WTL were insured by Western Insurance Company.

12 7. Based upon the documentation supplied during the course of the briefing,
13 Western Insurance Company began insuring the deposits of WTL in 2002.

14 8. On September 13, 2011, the Third District Court of the State of Utah issued a
15 Liquidation Order against Western Insurance Company. Case No. 110917050, *In re*
16 *Western Insurance Company* (hereafter the "Liquidation Order").

17 9. The Liquidation Order found that Western Insurance Company "is in the
18 condition and that further transaction of business would be hazardous, financially or
19 otherwise, to its policyholders, its creditors, or the public." (Exhibits at 31). The Liquidation
20 Order claimed that all claims by policyholders are "fixed" as of the September 13, 2011
21 Order.

22 10. Therefore, the policyholders, including Respondent WTL, will only be able to
23 make a claim based upon the policy for ninety (90) days or the expiration of the insurance
24 policy.

25 11. Given that Western Insurance Company was liquidated, WTL has no insurance
26 policy to cover deposits. Further, WTL has not obtained another insurance policy to cover its
27 deposits. WTL did not contest the fact that it had lost deposit insurance.
28

1 12. On September 16, 2011, the Division issued two administrative orders. First, the
2 Division temporarily suspended Respondent's thrift license pursuant to NRS 677.500.

3 13. Second, the Division issued an order for Respondent to limit payment of
4 liabilities and immediately pay its insured depositors as designated by WTL.

5 14. WTL received the orders and paid the insured depositors. On September 28,
6 2011, after having received assurances and supplied documentation that all insured
7 depositors had been paid, the Division withdrew the order regarding the limitation of payment
8 of liabilities and payment of insured deposits.

9 15. The original hearing regarding the Temporary Suspension and Revocation of
10 WTL's thrift license was scheduled for October 13, 2011. However, WTL made four
11 requests for continuances and the hearing was scheduled and took place on March 16,
12 2012.

13 16. At the hearing, the Division presented Monica Villines, Supervisory Examiner,
14 who testified that WTL had insurance for its deposits through Western Insurance Company;
15 that she was informed by officers for WTL that Western Insurance Company had been
16 liquidated by the State of Utah; and that, as of that date, WTL had not provided any other
17 insurance policy to cover its deposits.

18 17. The Division then called Commissioner George E. Burns (hereafter "the
19 Commissioner"), to testify. The Commissioner testified that a thrift was a company which
20 was created to act similar to a bank; and that a thrift company both generally and by statute
21 is an institution which both makes loans and accepts deposits.

22 18. The Commissioner further testified that although WTL continued to hold
23 deposits, those deposits were uninsured and were made by companies affiliated with WTL.
24 The Commissioner was presented with documents by WTL showing that those depositors
25 were aware that their deposits in WTL were not insured.

26 19. Further, the Commissioner testified that requiring the repayment of those
27 uninsured deposits would make the company insolvent.

28

1 20. Respondent WTL presented L. Scott Walshaw, former Commissioner of the
2 Financial Institutions Division, to testify. Mr. Walshaw stated that WTL had been previously
3 permitted to exist without insurance of deposits. Mr. Walshaw testified that deposit
4 insurance became a requirement when NRS 677.247 was enacted in 1985. He said
5 however, in the bill, S.B. 147, transitory language was included which permitted uninsured
6 thrift companies to exist as long as they did not accept deposits.

7 21. Mr. Walshaw further testified regarding his observations and personal
8 experience as Commissioner of the Division in the drafting of statutes contained in NRS
9 Chapter 677.

10 22. Because Mr. Walshaw was testifying solely upon the legal issue of statutory
11 construction and his impression of the intent of the legislature, the ALJ suspended his
12 testimony. Testimony regarding the law as well as legislative intent are not admissible
13 pursuant to *A-NLV-Cab Co. v. State, Taxicab Authority*, 108 Nev. 92, 95, 825 P.2d 585, 587
14 (1992).

15 23. Instead, the ALJ determined that whether WTL was required to maintain deposit
16 insurance or whether it was exempt from the requirement so long as it did not maintain any
17 deposits, was a strictly legal question based upon the construction of NRS Chapter 677. As
18 such, the ALJ determined that this issue is one which should be briefed and argued.

19 24. Both WTL and the Division stipulated that the legal issue was the first matter to
20 be addressed and based upon that ruling a determination of whether additional testimony
21 would be needed could be made. The parties agreed to a briefing schedule and date for oral
22 argument, if needed. The question to be determined is whether WTL is required to have
23 deposit insurance if it does not maintain deposits, or whether WTL could exist without
24 deposit insurance as long as it did not solicit or maintain deposits.

25 25. The briefs submitted by the parties were reviewed and oral argument was
26 received on May 4, 2012.

27 26. If any finding of fact is more properly characterized as a conclusion of law, it
28 shall be construed as such.

1 **CONCLUSIONS OF LAW**

2 27. The ALJ has reviewed the briefs, legal arguments, and legislative history
3 regarding the applicable statutes.

4 28. In short, this is a case of statutory construction, and the ALJ does not see a
5 need to go beyond the plain meaning of the statutes.

6 29. By definition, a thrift licensed under NRS Chapter 677 is authorized to both
7 "accept deposits and make loans." NRS 677.100.

8 30. Nevada law requires that every thrift company licensed by the Division must be
9 insured by the Federal Deposit Insurance Corporation (FDIC) or the National Housing Act. If
10 the thrift was licensed prior to October 1, 1997, it may obtain insurance through a private
11 insurance company.

12 NRS 677.247 Applicant required to obtain insurance of deposits;
13 regulations.

14 1. Except as otherwise provided in subsection 2, an applicant
15 for an authorization to engage in the business regulated pursuant
16 to this chapter *must* obtain:

17 (a) The insurance of deposits provided pursuant to the
18 provisions of the Federal Deposit Insurance Act (12 U.S.C. §§
19 1811 et seq.); or

20 (b) The insurance of deposits provided pursuant to the
21 provisions of the National Housing Act (12 U.S.C. §§ 1701 to 1743,
22 inclusive).

23 2. A person who:

24 (a) Is licensed pursuant to this chapter before October 1, 1997;
25 and

26 (b) Has not obtained the insurance of deposits provided in
27 subsection 1,

28 -- may obtain a contract for the insurance of deposits that is issued
by a private insurer. The contract must be approved by the
Commissioner and the Commissioner of Insurance.

3. The Commissioner shall adopt regulations prescribing the
requirements that must be complied with before a contract issued
pursuant to subsection 2 will be approved by him or her.

31. The statute is clear that any person authorized to engage in the business of a
thrift "must" have some form of deposit insurance. NRS 0.025(1)(c) states that the term
must "expresses a requirement."

1 32. Thus, WTL is required to have insurance for deposits in order to have a license
2 as a thrift company. WTL does not possess insurance for deposits. Therefore, WTL's
3 license must be revoked based upon the lack of insurance.

4 33. WTL disputes this conclusion by stating that section 50 of S.B. 147 (1985)
5 contains language which permits thrifts to operate without insurance as long as they do not
6 accept deposits. This language was never codified in the Nevada Revised Statute.

7 34. The section provides for deadlines when thrift companies would have to obtain
8 insurance for deposits either through the federal government or through a private insurance
9 company.

10 35. The deadline was July 1, 1986. However, the language is transitory and
11 provides that a thrift could request an extension to process the insurance application and if
12 no insurance was available, the institution could not accept deposits.

13 36. WTL argues that in 1985, while the Nevada Legislature required all thrift
14 companies to obtain some form of insurance for deposits, it also created an exemption which
15 allowed thrifts which could not obtain insurance to continue to exist as long as they did not
16 accept deposits.

17 37. However, the Division correctly points out that the exception in Section 50 of
18 S.B. 147 was transitory and never codified in the NRS. This language was meant to guide
19 the conduct of thrifts between the time the law was enacted and its effective date.

20 38. Even if WTL was granted an exemption from 1985 to operate without insurance,
21 that exemption ended in 2002 when WTL received deposit insurance from Western
22 Insurance Company.

23 39. WTL asserted that this language in section 50 provided WTL with a "special
24 class of license" which permits WTL to divest its deposits every time insurance is lost and
25 then accept deposits whenever it found an insurance company that would provide coverage.
26 Further, WTL asserted that this language would permit WTL to exist this way for as long it
27 wished.

28

1 40. The ALJ disagrees with WTL's assertion. Permitting a thrift company to operate
2 without insurance simply by stating that it does not accept deposits would lead to an absurd
3 result. If the Respondent's interpretation is to be given effect, it is in direct conflict with the
4 plain meaning of NRS 677.247. WTL would have the unlimited ability to both accept
5 deposits when it has insurance and reject them when it does not. This would lead to an
6 absurd result and contrary to the intent of a legislature which sought to insure all thrift
7 companies. It is a basic tenet of statutory construction that statutes should not be construed
8 to have an absurd result. *Sheriff, Clark County v. Burcham*, 198 P.3d 326, 329 (Nev. 2008)
9 ("statutory construction should always avoid an absurd result.")

10 41. The ALJ finds that there is not a special class of license described anywhere in
11 NRS Chapter 677. If the Legislature intended to create a special class of licensee who could
12 alter its character from a depository institution to one which only makes loans, it would have
13 specifically created one. The Legislature did not do so. *Mineral County v. State, Bd.*
14 *Equalization*, 121 Nev. 533, 119 P.3d 706, 708 n.5 (2005) ("We disagree and conclude that
15 had the Legislature intended to preclude county petitions of State Board decisions, it could
16 have explicitly stated that intent.")

17 42. Further, the definition of "licensee" in NRS 677.100 dictates otherwise. A thrift
18 licensed under NRS Chapter 677 has the power both "to accept deposits and make loans."
19 NRS 677.100.

20 43. While WTL claims that the Legislature did not intend to terminate these
21 companies which were not able to obtain insurance in 1985, the history shows that the
22 legislature was aware that some companies would not survive after the insurance
23 requirement became effective on July 1, 1986. Hearing for S.B. 147, Before the Senate
24 Committee on Commerce and Labor, 1985 Legis., 63rd Sess. 20 (February 28, 1985).

25 44. The solution for thrift companies that could not obtain FDIC or other federal
26 insurance was private insurance. If a thrift company was not able to obtain private
27 insurance, then it was understood that it would be out of business.

28

1 45. In 1997, the Legislature, by enacting A.B. 360, eliminated the ability to obtain
2 private insurance for any new thrift company. While NRS 677.247 was amended to require
3 applicants to have FDIC insurance, it provided an exemption for thrifts who were licensed
4 prior to 1997 and whose existence relied upon the availability of private insurance.

5 46. WTL maintains that the changes to NRS 677.247 confirms the exemption
6 created by S.B. 147 (1985) for WTL to exist with private deposit insurance if it solicits or
7 maintains deposits or to exist without deposit insurance if it does not solicit or maintain
8 deposits.

9 47. Again, the ALJ disagrees with this assertion. The 1997 amendment reinforced
10 the position that the Legislature sought to eliminate private insurance for any applicant.
11 While there was an exception for thrifts which were licensed before October 1, 1997, that is
12 separate and distinct from whether a thrift should be able to exist without insurance at all.

13 48. Finally, WTL asserts that NRS 677.247 only requires "applicants" to obtain
14 insurance, and, as an existing thrift company, WTL is not an applicant. This argument lacks
15 merit. NRS 677.375 states that "the Commissioner may suspend or revoke a license if the
16 licensee has engaged in any act that would be grounds for denying a license pursuant [to]
17 this chapter." Consequently, the insurance requirement in NRS 677.247 applies to WTL.

18 49. Respondent WTL is in violation of NRS 677.247 because WTL does not have
19 insurance for deposits and has not been able to obtain insurance for deposits.

20 50. Pursuant to NRS 677.510, the ALJ orders that the license of Respondent
21 Western Thrift & Loan under NRS Chapter 677 is revoked.

22 51. Based upon the foregoing, there are no remaining factual issues which require
23 determination.

24 52. Any conclusion of law which more properly characterized as a finding of fact
25 shall be construed as such.

26

27

28

1 **FINAL DECISION**

2 IT IS HEREBY ORDERED that Respondent Western Thrift & Loan is in violation of
3 NRS 677.247 and its license as a thrift company pursuant to NRS Chapter 677 is
4 REVOKED;

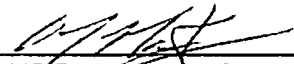
5 IT IS FURTHER ORDERED that pursuant to NRS 677.510(5) this order will become
6 effective five (5) judicial days from the date of this Notice of Entry of the FINAL DECISION
7 (hereafter the "Effective Date").

8 IT IS FURTHER ORDERED that, as of the Effective Date of this FINAL DECISION, the
9 Order of Temporary Suspension of Western Thrift & Loan issued on September 16, 2011 is
10 VACATED as the license has been revoked pursuant to this FINAL DECISION.

11 **PURSUANT TO NRS 233B.130, RESPONDENT HAS THIRTY (30) DAYS FROM THE**
12 **DATE OF SERVICE OF THIS ORDER IN WHICH TO FILE A PETITION FOR JUDICIAL**
13 **REVIEW.**

14 Dated this 16th day of May, 2012.

15
16 NEVADA DEPARTMENT OF BUSINESS
17 AND INDUSTRY

18
19 By: 
20 ANDREW J. MACKAY,
ADMINISTRATIVE LAW JUDGE

21 Submitted by:
22 CATHERINE CORTEZ MASTO
Attorney General

23
24 By: /s/ Daniel Ebihara
25 David Pope
26 Senior Deputy Attorney General
27 Daniel D. Ebihara
28 Deputy Attorney General
Attorneys for State of Nevada
Financial Institutions Division,
Dept. of Business and Industry
(702) 486-3326

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on May 16, 2012, I deposited in the U.S. Mail, postage prepaid, via First Class Mail, e-mail and Inter-office mail, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION** a copy of the foregoing, by mailing a true copy to the following:

Via U.S. Mail & E-Mail
Mark J. Krueger, Esq.
P.O. Box 23
Carson City, NV 89702
mkrueger.esq@gmail.com

Via E-Mail and State Inter-office Mail
Daniel D. Ebihara, Esq.
debihara@ag.nv.gov

and

David J. Pope, Esq.
dpope@ag.nv.gov
Office of the Attorney General
State of Nevada
555 E. Washington Avenue, Ste. 3900
Las Vegas, NV 89101

DATED this 16th day of May, 2012.



Sally A. Bullard
An Employee of the Office of the Attorney General