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DISTRICT COURT

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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

RONALD MOSCHETTA,

Petitioner,

v.

MONICA J. LINDEEN, Commissioner
of Securities and Insurance, Montana
State Auditor,

Respondent.

Cause No.: DDV-2010-685

**ORDER ON MOTION FOR
SUMMARY JUDGMENT**

Before the Court is Defendant Monica J. Lindeen's (Lindeen) motion to dismiss, which the Court converted to a motion for summary judgment pursuant to Rule 12(b) of the Montana Rules of Civil Procedure. The Court heard oral argument on the motion on March 22, 2011. Plaintiff Ronald Moschetta (Moschetta) was present and represented by J. Devlan Geddes. Lindeen was not present but was represented by Roberta Cross Guns.

MEMORANDUM

The issue before the Court is whether Lindeen, as the Montana Commissioner of Securities and Insurance, properly served notice of her agency's

1 intended disciplinary action on Moschetta. Rule 4(d), M.R.Civ.P., generally
2 describes the ways in which service of process may be accomplished. Rule 4(d)(4),
3 M.R.Civ.P., allows for other specific statutory means for service of process. Section
4 30-10-107(8), MCA, of the Montana Securities Act, authorizes the Commissioner
5 of Securities and Insurance to make service either by personal delivery or by mail
6 addressed to the person at that person's last-recorded principal place of business on
7 file at the commissioner's office. The commissioner utilizes a databank known as
8 FINRA, which is a central licensing and registration system for U.S. securities
9 industry and its regulators, to determine a person's last-known business address.

10 According to FINRA, Moschetta's last-recorded principal place of
11 business is listed as 600 Old Country Road, Suite 318, Garden City, NY 11530.
12 The address utilized by Lindeen in mailing the notice of her proposed disciplinary
13 action, however, was 600 Old Country Road, Garden City, NY 11530. Lindeen did
14 not include the suite number listed in FINRA.

15 The Montana Supreme Court has made it clear that precise compliance
16 with the service of process is mandatory. *E.g., Isern v. Summerfield*, 1998 MT 45,
17 287 Mont. 461, 956 P.2d 28; *Fonk v. Ulsher*, 260 Mont. 379, 860 P.2d 145 (1993).
18 This is for two reasons — to give the defendant notice of the proposed action and
19 to invest the agency with jurisdiction of the matter. *Fonk*, 260 Mont. at 383, 860
20 P.2d at 147. Failure to comply precisely with the service of process requirements
21 divests the agency of jurisdiction.

22 The court has also made it clear that knowledge of the proceeding is not
23 a substitute for proper service. *Id.*, 260 Mont. at 384, 860 P.2d at 147.

24 In the present case, the failure of Lindeen to include Moschetta's full
25 address in mailing her notice to him was a failure of service of process. Therefore,

1 Lindeen did not have jurisdiction over Moschetta for purposes of her proposed
2 action. Moschetta cannot be placed into default when he has not received proper
3 service. Lindeen cannot proceed to a default judgment when there has not been
4 proper service.

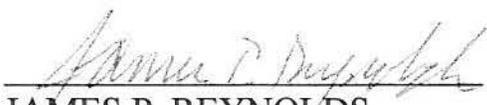
5 At the conclusion of the oral argument on Lindeen's motion, both
6 parties agreed that the proper course of action, given the foregoing state of affairs,
7 was for the Court to deny Lindeen's motion to dismiss (for summary judgment);
8 to vacate Lindeen's final agency decision and order; and remand this matter to
9 Lindeen to initiate new proceedings against Moschetta, should she choose to do so.
10 Such new proceedings must include proper service of process as discussed herein.

11 Based on the file in the matter, the foregoing discussion, and the
12 agreement of the parties at the conclusion of oral argument,

13 **IT IS HEREBY ORDERED** that:

- 14 1. Lindeen's motion to dismiss (summary judgment) is DENIED.
- 15 2. Lindeen's final agency decision and order in *In the Matter of*
16 *Ronald Moschetta*, Case No. Sec.-2009-14, is VACATED without prejudice.
- 17 3. This matter is REMANDED to the Montana Commissioner of
18 Securities and Insurance for further proceedings consistent with this Order. Lindeen
19 may pursue the alleged offenses, which were the subject of her decision and order,
20 by initiating new administrative proceedings and obtaining proper service of process
21 upon Moschetta.

22 DATED this 25 day of March 2011.

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24 
25 JAMES P. REYNOLDS
District Court Judge

1 c: Brian K. Gallik/J. Devlan Geddes
2 Roberta Cross Guns

3 d/JPR/Moschetta v Lindeen DDV-2010-685
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