

In the Matter of the Merger of National Mutual Benefit
with and into Western Fraternal Life Association by
National Mutual Benefit and Western Fraternal Life Association,

FINAL DECISION
AND ORDER

Petitioners.

Case No. 20-C43723

FINAL DECISION

A hearing was held in this matter before Amy Malm, Administrator of the Bureau of Financial Regulation, by teleconference on or about 2:00 p.m. on November 11, 2020. A proposed decision was issued in this matter on November 30, 2020. On November 30, 2020, the petitioners, National Mutual Benefit (NMB) and Western Fraternal Life Association (WFLA), filed limited objections to the proposed decision. Specifically, the petitioners objected to Paragraph (14)(c) of the proposed decision which required WFL to notify OCI at least 90 days prior to the sale of any lodge properties. The petitioners contend that WFL cannot legally sell lodge properties because they do not own the properties and the properties are actually held in each lodge's name. The petitioners suggest removing the language of Paragraph (14)(c) from the final order and replacing it with a finding of fact that recognized that the lodges are separate entities and that the ownership of the lodge is not affected by this merger. The petitioners have no other objections to the proposed decision.

OPINION

After reviewing the petitioner's objections, I agree that the language in the proposed decision should be modified to better reflect the legal status of the lodge properties.

Therefore, I adopt the Hearing Examiner's Proposed Decision, including the findings of fact and conclusions of law, with the following modifications.

Paragraph (9) of the proposed decision shall be amended to read:

"(9) During the hearing, in response to a specific question from the Hearing Examiner, Mr. Craig Van Dyke, President and Chief Executive Officer stated that there were no plans for Western Fraternal Life Association, as the survivor of the merger, to merge or sell any lodge buildings. The merger documents recognize that the fraternal lodges are separate entities from the survivor of the merger, that lodges are not merged by operation of the merger, and that buildings and other property owned by a lodge will continue to be owned by the lodge following the merger."

Paragraph (14) c) of the proposed decision shall not be adopted in the final order.

ORDER

Based on the findings of fact and conclusions of law I order that:

(1) The Petitioners' request for approval of the plan for the acquisition of control is approved, subject to the following conditions subsequent:

- a) Western Fraternal Life Association files with the OCI the agreed post-merger Articles of Incorporation certified by the Secretary or an Assistant Secretary of the fraternal.
- b) Western Fraternal Life Association files with the OCI the agreed post-merger Bylaws certified by the Secretary or an Assistant Secretary of the fraternal.

NOTICE OF APPEAL INFORMATION

(Notice of rights for rehearing and judicial review,
the times allowed for each, and the identification
of the party to be named as respondent)

The following notice is served on you as part of the Final Decision and Order:

1. Rehearing.

Any person aggrieved by this Final Decision and Order may petition for a rehearing within 20 days after the service of this Final Decision and Order, as provided in s. 227.49, Wis. Stat. A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

A petition for rehearing must be filed with the Commissioner at the address below.

2. Judicial Review.

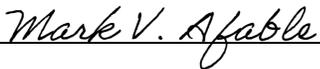
Any person aggrieved by this Final Decision and Order has a right to petition for judicial review of this Final Decision and Order as provided in s. 227.53, Wis. Stat. The petition must be filed in circuit court within 30 days after service of this Final Decision and Order if there has been no petition for rehearing, or within 30 days after service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Commissioner of Insurance, Respondent
Office of the Commissioner of Insurance
P. O. Box 7873
Madison, Wisconsin 53707-7873

A copy of the relevant statutory provisions is attached.

Dated at Madison, Wisconsin, this 1st day of December, 2020.

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Mark V. Afable
Commissioner of Insurance

WISCONSIN STATUTES

At all times material, the relevant parts of s. 227.49, Wis. Stat., read as follows:

227.49 PETITIONS FOR REHEARING IN CONTESTED CASES. (l)

A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. . . .

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. . . .

At all times material, the relevant part of s. 227.52, Wis. Stat., read as follows:

227.52 JUDICIAL REVIEW; DECISIONS REVIEWABLE.

Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter. . . .

At all times material, the relevant parts of s. 227.53, Wis. Stat., read as follows:

227.53 PARTIES AND PROCEEDINGS FOR REVIEW. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. . . .

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of

law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

. . .

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. . . .

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. . . .

(d) The agency . . . and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. . . .