

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT  
COUNTY OF PROVIDENCE

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Craig A. Martin

Petitioner/Plaintiff

vs.

C.A. No. PC-2017-

Rhode Island Department of Business Regulation  
by and through its Director Scottye Lindsey  
Respondent/Defendant

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COMPLAINT FOR JUDICIAL REVIEW OF A FINAL ORDER ISSUED BY THE  
RHODE ISLAND DEPARTMENT OF BUSINESS REGULATION

Petitioner/Plaintiff Craig A. Martin (sometimes, “Petitioner”, “Plaintiff” or “Martin”) hereby files his Complaint against Respondent/Defendant Rhode Island Department of Business Regulation (sometimes, “Respondent”, the “DBR” or the “Department”) by and through its Director Scottye Lindsey (sometimes, the “Director”) for the purpose of obtaining judicial review of a final order issued by the DBR on March 17, 2017 (the “Final Order”) against the Petitioner.

I. Parties

1. Martin is a natural person and resident of the State of Rhode Island.
2. DBR is a statutorily created department of the State of Rhode Island established pursuant to R.I.G.L. § 42-14-1 *et seq.* and charged with, *inter alia*, regulating and monitoring certain insurance and licensing activity.
3. The Director is the head of the DBR charged with, *inter alia*, carrying out the duties set forth in R.I.G.L. § 42-14-1 *et seq.*

## II. Jurisdiction

4. This legal action is commenced pursuant to the Administrative Procedures Act (“APA”) since Martin is an aggrieved party of a final order issued by the Department and signed by the Director. See R.I.G.L. § 42-35-1 *et seq.*

## III. Brief Statement of Material Facts

5. Prior to the entry of the Final Order, Martin was the holder of insurance claim adjuster’s license number 1082927 with workers’ compensation and property/casualty lines of authority (sometimes, the “Adjuster’s License” or the “License”).

6. The Adjuster’s License was first issued on February 18, 1993 and was active up until the issuance of the Final Order on March 17, 2017.

7. In or about 2015, DBR initiated adverse administrative proceedings against Martin’s License by issuing an Order to Show Cause requiring Martin to answer why the Director of the Department should not issue an order suspending or revoking his license and/or issuing whatever penalty deemed appropriate pursuant to R.I.G.L. § 42-14-16 (the “Order to Show Cause”).

8. Martin engaged counsel and vehemently opposed the Order to Show Cause.

9. Over the next couple of years, the Order to Show Cause proceedings unfolded with Hearing Officer Catherine R. Warren, Esq. (the “Hearing Officer”) appointed to oversee the administrative proceedings.

10. A formal evidentiary proceeding was not held before the Hearing Officer but instead counsel stipulated to certain agreed upon facts and submitted deposition

transcripts and legal memorandum to the Hearing Officer for decision on the Order to Show Cause.

11. A complete, accurate and thorough record was not submitted to the Hearing Officer which adversely impaired Martin's right to a fair hearing and otherwise deprived him of his procedural and substantive due process rights he was entitled to as part of the administrative proceedings.

12. As a result of the flawed administrative proceedings, the Hearing Officer issued an erroneous Decision revoking Martin's Adjuster's License.

13. On March 17, 2017, the Director entered an Order adopting the Hearing Officer's Decision and ordered Martin's License be revoked.

14. Martin contests and opposes the Decision and the Final Order revoking his License pursuant to R.I.G.L. § 42-35-15 and other applicable law.

Count I  
APA review – R.I.G.L. § 42-35-15

15. Petitioner reincorporates paragraphs 1 through 14 of his Complaint as if fully stated herein.

16. The Hearing Officer's orders, findings, inferences, conclusions and decisions are in violation of applicable constitutional, statutory or regulatory provisions; in excess of the statutory authority of the Department; made upon unlawful procedure; affected by error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole; are arbitrary and capricious and clearly constitute an unwarranted exercise of discretion.

17. The Department's Final Order along with any other orders, findings, inferences, conclusions and decisions are in violation of applicable constitutional,

statutory or regulatory provisions; in excess of the statutory authority of the department; made upon unlawful procedure; affected by error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole; are arbitrary and capricious and clearly constitute an unwarranted exercise of discretion.

18. The ultimate penalty imposed which included revocation of Martin's License is clearly excessive and in violation of applicable constitutional, statutory or regulatory provisions; in excess of the statutory authority of the department; made upon unlawful procedure; affected by error of law; clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole; are arbitrary and capricious and clearly constitute an unwarranted exercise of discretion.

Wherefore, Petitioner respectfully asks this Court to grant the following temporary, preliminary and permanent relief:

- (i) Staying enforcement of the Final Order which shall include but not be limited to temporarily and preliminarily lifting any revocation, limitations or conditions associated with Petitioner's License pending this Court's final review of the Decision and Final Order;
- (ii) Overturning the Decision and Final Order and declaring said decision and order to be null and void;
- (iii) Ordering the Department to immediately and fully reinstate Petitioner as a fully licensed adjuster *nunc pro tunc* to March 17, 2017 or any other applicable date;
- (iv) To the extent this Court finds it necessary, remanding the matter back to the Department to take and receive additional evidence, to

hear further argument from the parties and to allow Petitioner to supplement the administrative record;

- (v) Awarding Petitioner reasonable attorney's fees and costs incurred in bringing this action; and
- (vi) Awarding Petitioner any and all other relief this Court deems just and appropriate.

Count II  
Temporary, Preliminary and Permanent Injunctive Relief

19. Petitioner reincorporates paragraphs 1 through 18 of his Complaint as if fully stated herein.

20. Petitioner will suffer irreparable harm if this Court does not preliminarily stay implementation of the Final Order pending a final review by this Court pursuant to R.I.G.L. § 42-35-15.

21. Petitioner will suffer irreparable harm if this Court does not permanently lift the Final Order which ultimately revokes Martin's License.

22. There is no harm suffered by the Department or the public should this Court grant a preliminary or a permanent stay of the Final Order.

23. The balancing of the equities militates strongly in favor of Petitioner with respect to his request to stay enforcement of the Decision and Final Order.

Wherefore, Petitioner respectfully requests that this Court issue the following interim and final relief against the Department:

- (i) A temporary restraining order and preliminary injunction against the Department restraining and enjoining DBR from enforcing the Final Order against Petitioner pending further order of this Court;

- (ii) A temporary restraining order and preliminary injunction against the Department restraining and enjoining DBR from enforcing any order the DBR may have issued which has the effect of suspending, limiting, conditioning, terminating or revoking Martin's License;
- (iii) A permanent injunction against the Department permanently restraining and enjoining DBR from enforcing the Final Order against Petitioner;
- (iv) A permanent injunction against the Department permanently restraining and enjoining DBR from enforcing any order the DBR may have issued which has the effect of suspending, limiting, conditioning, terminating or revoking Martin's License;
- (v) Revoking and overturning the Decision and Final Order with this Court declaring said decision and order to be null and void;
- (vi) Ordering DBR to immediately reinstate Martin's License *nunc pro tunc* to March 17, 2017 or any applicable earlier date;
- (vii) To the extent this Court finds it necessary, remanding the matter back to DBR and ordering the Director to take and receive additional evidence, to hear further argument from the parties and to allow Petitioner to supplement the administrative record; and
- (viii) Awarding Petitioner his reasonable attorney's fees, costs and any other relief this Court deems just and appropriate.

Petitioner/Plaintiff  
Craig A. Martin  
By and through his attorneys,

**Damon Borrelli**

**/s/ Michael J. Lepizzera, Jr.**

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*and*

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