

ENTRY ORDER

JAN 12 2010

SUPREME COURT DOCKET NO. 2009-441

DECEMBER TERM, 2009

Allianz Life Ins. Co. of North America	}	APPEALED FROM:
	}	
	}	
v.	}	Banking & Insurance
	}	
	}	
Vermont Department of Banking, Insurance, Securities, & Health Care Administration	}	DOCKET NO. 09-066-I

In the above-entitled cause, the Clerk will enter:

Allianz Life Insurance Company (Allianz) has moved to stay proceedings in its administrative appeal before the Vermont Department of Banking, Insurance, Securities and Health Care Administration (Department). Allianz contends a stay is appropriate pending an appeal to this Court under 3 V.S.A. § 815(a), in which it claims it will be irreparably harmed if required to conduct its appeal under the procedures prescribed by the hearing officer appointed to hear the appeal. Department has responded with a memorandum opposing the stay and a motion to dismiss the appeal. Allianz has filed an opposition to Department's motion to dismiss.

The underlying proceeding concerns the Department's June 24, 2009 Order Adopting Report of Examination (examination report) which found that Allianz committed numerous violations of Vermont insurance law, ordered the company to take remedial action, and imposed an administrative fine of \$345,000. Pursuant to 8 V.S.A. § 3574(c), Allianz sought agency review of the order.

Allianz is asking this Court to review the hearing officer's October 22, 2009 preliminary procedural order, governing the administrative appeal, that 1) requires use of the examination report as part of the record, 2) allows for supplemental evidence from Allianz and the Department, and 3) denies Allianz's request for discovery. Allianz claims that we should grant a stay of the administrative appeal and review of the procedural order because it contends the preliminary procedural order does not comply with the procedural requirements for contested hearings of examination orders under the Banking and Insurance enforcement statute, 8 V.S.A. § 3574. Allianz asserts that the administrative appeal should be properly heard without reference to the examination report and with the opportunity for Allianz to request discovery and depositions of the Department. Allianz claims it will be forced to expend resources and time presenting its case under the procedural order that this Court may eventually decide was incorrect.

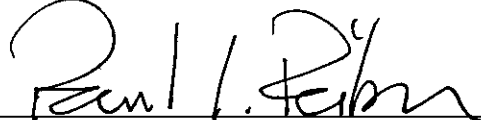
The Department objects to the motion to stay and to the appeal, arguing that there is no right to interlocutory appeal of administrative appeals under 8 V.S.A. § 3574, that we lack jurisdiction under 3 V.S.A. § 815(a) to hear the appeal, and that even assuming that such a right existed, Allianz has failed to meet its burden of showing that review by this Court of the final decision on the merits would provide an inadequate remedy.

Assuming without deciding that we have jurisdiction to consider the appeal, we find that Allianz has failed to demonstrate such review is warranted. The legislature has provided that the process for administrative appeal of an examination order by the commissioner, 8 V.S.A. § 3574(c), shall be governed by the Administrative Procedure Act, 3 V.S.A. § 801 et seq (A.P.A.). The A.P.A., not only permits an appeal to this Court from a “final decision in any contested case,” it also permits immediate review of a “preliminary, procedural, or intermediate agency action or ruling . . . if review of the final decision would not provide an adequate remedy.” 3 V.S.A. § 815(a). We have held that this provision limits judicial review to “extraordinary circumstances where the normal appellate route will almost surely work injustice, irrespective of this Court’s final decision.” In re Maple Tree Place, 151 Vt. 331, 333, 560 A.2d 382, 382 (1989)

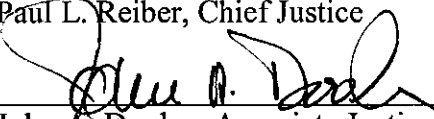
The burden lies on the appellant to demonstrate that an appeal prior to final order is necessary to provide an adequate remedy. Beaupre v. Green Mtn. Power Corp., 168 Vt. 596, 597 715 A.2d 1292, 1293 (1998). The threshold is a high one, and this Court subjects to careful scrutiny those reasons offered as justification for such and appeal. In re Central Vt. Pub. Serv. Corp., 142 Vt. 138, 140, 453 A.2d 1108, 1109 (1982). Allianz has failed to demonstrate that it has met the criteria for interlocutory review of the procedural order. The only potential harm that Allianz identifies is the possibility that Allianz may suffer the expense of pursuing the administrative appeal under an evidentiary ruling that may be reversed by this Court on appeal. We are not persuaded that adequate review is unavailable on appeal from a final judgment.

The motion to dismiss is granted. The motion to stay the proceedings below is denied as moot.

BY THE COURT:



Paul L. Reiber, Chief Justice



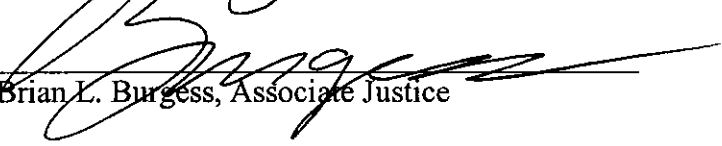
John A. Dooley, Associate Justice



Denise B. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice