

STATE OF MINNESOTA
IN COURT OF APPEALS



In the Matter of the Certificate of Authority
of The Auto Club Group, a Michigan
corporation licensed to do business in the
State of Minnesota, NAIC Nos. 11983, 21202.

ORDER

A15-0114

Considered and decided by Cleary, Chief Judge; Halbrooks, Judge; and Stauber,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

This certiorari appeal was filed on January 21, 2015. Relators Safelite Group, Inc. and Safelite Solutions, LLC (collectively, Safelite) seek review of a January 8, 2015 consent order issued by respondent Commissioner of the Minnesota Department of Commerce (commissioner). The January 8, 2015 consent order is between the commissioner and The Auto Club Group, Auto Club Group Property-Casualty Insurance Company, and their affiliated entities (collectively, Auto Club). Safelite was not a party to the proceedings that resulted in the January 8, 2015 consent order. In part, the January 8, 2015 order directs Auto Club to cease and desist from using Safelite as its administrator of automobile-glass claims in Minnesota on or before February 1, 2015.

This court questioned whether the January 8, 2015 consent order is a quasi-judicial decision reviewable by certiorari and whether Safelite's proposed issues are properly reviewed for the first time on appeal. The commissioner and Safelite filed informal memoranda.

A certiorari appeal from a quasi-judicial decision issued by an administrative agency is appropriate pursuant to the provisions of Minn. Stat. ch. 606 where contested-case proceedings have not been conducted and the applicable statute does not provide for judicial review. *In re Ultraflex Enterprises Appeal*, 494 N.W.2d 89, 91 (Minn. App. 1992). In this case, a contested-case hearing was not held because Auto Club agreed to resolution of the commissioner's charges against it through the consent order. *See* Minn. Stat. § 14.59 (2014) (holding that an informal disposition may be made of any contested case by arbitration, stipulation, agreed settlement, consent order, or default).

The three indicia of a quasi-judicial action reviewable by certiorari are: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim. *Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (*MCEA*). The failure to meet any of the three indicia of quasi-judicial acts is "fatal" to a claim that the proceedings are quasi-judicial. *Id.* at 844.

Because the consent order resulted from an investigation by the Minnesota Department of Commerce, Safelite argues that the proceedings were quasi-judicial, even though a hearing was not held. In support of this argument, Safelite cites *State v.*

Tokheim, 611 N.W.2d 375 (Minn. App. 2000). In *Tokheim*, the state troopers involved waived their right to a hearing before the commissioner of public safety on the issue of whether the troopers were entitled to a defense and indemnification by the State of Minnesota for claims against the troopers resulting from off-duty conduct. *Id.* at 377. This court held that the *MCEA* factors were met, noting that the commissioner's review of the troopers' written arguments constituted an investigation into the troopers' "disputed claim and a weighing of disputed evidentiary facts." *Id.* at 378.

By contrast, in this case, Auto Club did not dispute the charges against it and consented to the proposed administrative action. Because the January 8, 2015 consent order did not involve the weighing of disputed evidentiary facts and the application of facts to a prescribed standard, the first two *MCEA* indicia are not met.

Finally, the third *MCEA* factor is not met because Safelite was not a party to the January 8, 2015 consent order and the order is not binding on any claims that Safelite may have. *See Meath v. Harmful Substance Comp. Bd.*, 550 N.W.2d 275, 279-80 (Minn. 1996) (noting that the board's denial of a claim for compensation is not final because it does not preclude a civil action against the person or persons alleged to be responsible for the claimant's injury).

Because the January 8, 2015 consent order does not meet any of the three indicia of a quasi-judicial act under *MCEA*, certiorari review is not available.

IT IS HEREBY ORDERED: The writ of certiorari is discharged and this appeal is dismissed.

Dated: February 10, 2015

BY THE COURT



Edward J. Cleary
Chief Judge