**SUPREME COURT OF IDAHO**

# Karel v. State, 144 Idaho 379

162 P.3d 758 (2007) · No. No. 33191 · Decided June 27, 2007

## SUMMARY

The Idaho Supreme Court reviewed the suspension of Vondean Renee Karel's securities-agent license after she refused to provide records during a Department of Finance audit. The court held that Idaho Code section 30-14-411(d) limited audit requests to records subject to the recordkeeping requirements of section 30-14-411(c), and that the Department lacked authority under that provision to request the records at issue. The court reversed the suspension-related decision, remanded for further proceedings, awarded Karel costs on appeal, and denied attorney's fees to both parties.

## CASE DETAILS

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| COURT | Supreme Court of Idaho |
| WRITING FOR THE COURT | Trout, Justice; Schroeder, Chief Justice; Eismann, Justice; Burdick, Justice; Jones, Justice |
| JURISDICTION | Idaho |
| DECIDED | June 27, 2007 |
| DOCKET | No. 33191 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | Karel appealed the district court's decision affirming a final order of the Idaho Department of Finance suspending her securities-agent license for six months. |
| STANDARD OF REVIEW | The Supreme Court independently reviews the agency record rather than the district court's decision. It defers to agency factual findings unless clearly erroneous and may overturn an agency order only if it violates statutory or constitutional provisions, exceeds statutory authority, results from unlawful procedure, lacks substantial evidentiary support, or is arbitrary, capricious, or an abuse of discretion. |
| PRECEDENTIAL VALUE | Published precedential opinion of the Supreme Court of Idaho |
| PARTIES | Vondean Renee Karel v. State of Idaho, Department of Finance |

## TOPICS

judicial review of agency action · administrative law · statutory interpretation · appellate procedure · fourth amendment

### PRACTICE AREAS

administrative law · securities regulation · constitutional law · appellate procedure

### QUESTIONS PRESENTED

1. Whether Idaho Code section 30-14-411(d) authorized the Department of Finance to request the client list, business financial records, and personal bank-account records during a reasonable audit or inspection.
2. Whether a reasonable audit or inspection under Idaho Code section 30-14-411(d) is limited to records that broker-dealers or investment advisers are required to make or maintain under section 30-14-411(c).
3. Whether Karel was entitled to attorney fees on appeal.

### HOLDINGS

1. A reasonable audit or inspection under Idaho Code section 30-14-411(d) is limited to records that broker-dealers or registered investment advisers are required to make or maintain under section 30-14-411(c). Securities agents may be required to surrender those records for inspection, even though the agents themselves do not bear the subsection (c) recordkeeping obligation.
2. The Department lacked authority under section 30-14-411(d) to request the records at issue because the requested documents were not subject to the recordkeeping requirements of section 30-14-411(c). Karel's license could not properly be suspended for refusing to produce those records under that audit authority.
3. The court did not reach Karel's alternative argument that section 30-14-411(d) was unconstitutionally vague because the court's limiting interpretation of the statute resolved the appeal.
4. Neither party was entitled to attorney fees on appeal because the appeal presented a matter of first impression and was neither pursued nor defended frivolously.

### KEY QUOTATIONS

> *"In other words, a search is only "reasonable" pursuant to I.C. § 30-14-411(d) if it is limited to documents that the law requires broker-dealers or registered investment advisors to make or maintain pursuant to I.C. § 30-14-411(c)."* (762)

> *"We hold that the Department of Finance did not have the authority to request the documents it did from Karel pursuant to I.C. § 30-14-411(d), as the documents were not subject to the recordkeeping requirements of I.C. § 30-14-411(c)."* (765)

### FACTUAL BACKGROUND

Karel was a licensed securities agent affiliated with Summit Brokerage Services and continued operating from her father's office after his securities-dealer registration was terminated. Acting on a suspicion that her father was conducting securities business with Karel's clients despite being unregistered, Department investigators made an unannounced visit and requested a client list, business financial records, and Karel's personal bank-account records. Karel possessed the requested materials but refused to produce them, resulting in a six-month license suspension.

### PROCEDURAL HISTORY

The Department suspended Karel's license after she refused to produce client, business, and personal bank records during an unannounced audit and investigation. A hearing officer recommended upholding the suspension, and the Department adopted that recommendation. The district court affirmed on judicial review. The Idaho Supreme Court independently reviewed the agency record and reversed the district court's determination, remanding to the Department.

### DISPOSITION

reversed_and_remanded

### REMAND INSTRUCTIONS

The matter is remanded to the Department of Finance for further action consistent with the opinion, including treating the suspension as unsupported insofar as it was based on Karel's refusal to produce records outside the permissible scope of section 30-14-411(d). Costs on appeal were awarded to Karel.

### CASES CITED

- Haw v. Idaho State Bd. of Med., 140 Idaho 152, 90 P.3d 902 (2004)
- New York v. Burger, 482 U.S. 691, 107 S. Ct. 2636, 96 L. Ed. 2d 601 (1987)
- State v. Korsen, 138 Idaho 706, 69 P.3d 126 (2003)
- State v. Cobb, 132 Idaho 195, 969 P.2d 244 (1998)

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