

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 96-3519

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DANIEL E. JENSEN,

PETITIONER-APPELLANT,

v.

**COMMISSIONER OF SECURITIES OF THE STATE OF
WISCONSIN,**

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Daniel E. Jensen appeals from an order denying his petition for a writ of mandamus to compel the Office of the Commissioner of Securities. The issue is whether mandamus lies to compel the commissioner to file formal findings of fact and conclusions of law in response to Jensen's request

for a rehearing. We conclude that mandamus is not appropriate because the commissioner fulfilled her statutory obligation by responding to Jensen in writing, setting out her reasons for denying the rehearing. Therefore, we affirm.

On November 13, 1987, a Consent Order was entered based on a stipulation between Jensen and then Commissioner of Securities, Ulice Payne, suspending Jensen's license to sell securities for thirty days. In March 1989, Jensen complained to then Commissioner Walter White that the stipulation and order were based on fraud. Commissioner White found that Jensen's allegations were not supported by the evidence. In October 1995, Jensen petitioned the current Commissioner of Securities, Patricia Struck, for an order to hold a hearing to establish that the stipulation and order had involved a fraud on the commission. Commissioner Struck responded by a letter dated February 5, 1996, stating that there was no evidence on which to reopen the case. On June 25, 1996, Jensen petitioned for a writ of mandamus to compel Commissioner Struck to enter formal findings of fact and conclusions of law pursuant to § 227.47, STATS., so that an appeal could be filed from that decision. On September 5, 1996, the circuit court denied the writ and this appeal followed. We affirm the decision of the circuit court.

Mandamus is an extraordinary legal remedy available only when one can show a clear right to the writ. See *State ex rel. Collins v. American Family Mut. Ins. Co.*, 153 Wis.2d 477, 483, 451 N.W.2d 429, 432 (1990). A party seeking mandamus must show that the duty sought to be enforced is positive and plain, that substantial damage will result if the duty is not performed, and that the party has no other adequate remedy at law. See *Lake Bluff Hous. Partners v. South Milwaukee*, 197 Wis.2d 157, 170, 540 N.W.2d 189, 194 (1995) (citations omitted). While mandamus is the appropriate remedy to compel public officials to

perform certain duties, those duties must be “clear and unequivocal and not discretionary.” *State ex rel. Oman v. Hunkins*, 120 Wis.2d 86, 88, 352 N.W.2d 220, 221 (Ct. App. 1984).

Here, Jensen seeks a writ of mandamus to compel the Commissioner to file formal findings of fact and conclusions of law in response to Jensen’s petition for a rehearing. Section 227.42(2), STATS., states that an agency shall deny a request for a hearing in writing, stating the reasons for the denial. The statute also provides that a denial of a request for a hearing is appealable under ch. 227. *Id.* In her letter to Jensen dated February 5, 1996, Commissioner Struck denied Jensen’s request for a rehearing and explained the reasons for that denial. Jensen could have appealed from Commissioner Struck’s letter. *Id.* The time to appeal, however, has now passed. Section 227.53(1)(a)2., STATS.

Jensen argues that *Universal Org. of Mun. Foreman, Supervisors & Admin. Personnel v. WERC*, 42 Wis.2d 315, 320, 166 N.W.2d 239, 242 (1969), holds that letters are not agency decisions subject to judicial review. The ruling in that case, however, was that “[u]nless some special statutory provisions apply,” courts have jurisdiction to review only final agency decisions. Section 227.42(2), STATS., is such a statutory provision because it states that a written response to a request for a hearing is “an order reviewable under this chapter.” Additionally, § 227.42(2) was enacted subsequent to the decision in *Universal*. Therefore, *Universal* is not dispositive of the question presented in this appeal.

Because we conclude that the Commissioner has fulfilled her statutory obligation by stating the reasons in writing for denying Jensen’s petition, Jensen is not entitled to a writ of mandamus to compel the Commissioner to file formal findings of fact and conclusions of law.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5.,
STATS.

