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BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	
	)	No. 10-0045
RALPH R. BARGABOS,	)	
	)	FINDINGS OF FACTS, CONCLUSIONS
	)	OF LAW AND FINAL ORDER
Resident Licensee.	)	ON HEARING
_____	)	

**TO:** Ralph R. Bargabos  
2902 178<sup>th</sup> Street NE  
Marysville, WA 98271

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
Carol Sureau, Esq., Deputy Commissioner, Legal Affairs Division  
Andrea Philhower, Esq., Staff Attorney, Legal Affairs Division  
John F. Hamje, Deputy Commissioner, Consumer Protection Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 48.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Office of Insurance Commissioner for the state of Washington commencing at 10:00 a.m., on July 8, 2010 and continuing on July 15, 2010 at 2:00 p.m. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance



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Commissioner appeared pro se, by and through Andrea Philhower, Esq., Staff Attorney in his Legal Affairs Division. Ralph R. Bargabos appeared pro se.

**NATURE OF PROCEEDING**

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order Revoking License, No. 10-0045, entered by the Insurance Commissioner on March 2, 2010, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance producer's license of Ralph R. Bargabos, pursuant to RCW 48.17.530 and 48.17.540. Ralph R. Bargabos requested this hearing to contest the Order Revoking License.

**FINDINGS OF FACTS**

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements have been satisfied in accordance with Title 34 RCW including for good cause 34.05.458(8), Title 48 RCW, and regulations applicable thereto.

2. On March 2, 2010, the Insurance Commissioner ("OIC") entered an Order Revoking License, No. 10-0045, revoking the insurance producer's license of Ralph R. Bargabos ("Licensee"), effective March 22, 2010. On March 8, the Licensee filed his Demand for Hearing to contest the subject Order Revoking License. Accordingly, on March 17, the undersigned mailed a Notice of Receipt of Demand for Hearing, which detailed the hearing procedures to be followed and scheduled a first prehearing conference. On April 8, the first prehearing conference was held, which included all parties. The OIC was represented by Andrea Philhower, Esq., Staff Attorney in the OIC Legal Affairs Division, and the Licensee represented himself. During said first prehearing conference, the undersigned outlined procedure to be expected at hearing and answered all questions and concerns of the parties and allowed the parties to agree that the hearing should commence on May 6. Subsequently, it was discovered that the primary witness for both parties had previously scheduled a trip out of the country which included May 6, and for this reason the hearing was continued to commence on May 27. At the request of the OIC on May 26, said hearing was continued to commence on June 10 due to an inability to prepare for testimony of said primary witness, including identifying and obtaining copies of relevant documents from that witness' investigation. On June 9, by agreement of the parties, the hearing was continued once more, to commence on July 8. The hearing commenced, as scheduled on July 8, and by agreement of the parties the second day of the hearing commenced on July 15 in order to accommodate witness testimony.

3. The Licensee is an individual, residing in Marysville, Washington, who has been licensed

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to sell life, disability, property and casualty insurance in Washington since on or about August 19, 1991. As a result of a change in licensing rules, the term "insurance agent" was converted to "producer" beginning July 1, 2009, and therefore on July 1, 2009, as with other insurance agents, the Licensee's "insurance agent's" license was canceled and he was issued an "insurance producer's" license, which expires August 1, 2011.

4. Although not named in the OIC's Order Revoking License, the Licensee has owned and operated an insurance agency, RRB Marketing, Inc. Insurance Services ("RRB Marketing") since on or about 2004 and the activities at issue herein directly involve RRB Marketing as well as the Licensee as an individual.

5. The Licensee has not been the subject of prior disciplinary action by the OIC. Further, the Licensee has not been the subject of any consumer complaints or insurance company complaints. [Testimony of Licensee.]

6. Beginning in or about 2004, the Licensee owned and operated RRB Marketing on a part time basis and began operating it full time beginning in the fall of 2006. [Testimony of Licensee.] Although the agency's income grew in relation to its expenses in later years, RRB struggled financially. [Testimony of Licensee; Ex. 2, Attach. 2, Licensee's letter to Capital Premium Financing, Inc.]

7. Because RRB Marketing was struggling financially, in order to keep the agency operating, the Licensee used some \$20,000 per year of his personal credit. [Testimony of Licensee.]

8. Additionally, the Licensee admits, and it is here found, that in order to pay expenses the Licensee intentionally withdrew funds from RRB Marketing's premium trust account that exceeded his earned commissions and that he may also have made two other small withdrawals which exceeded his earned commissions. [Testimony of Licensee.] Specifically, between August and September of 2009, the Licensee withdrew funds from RRB's premium trust account on at least two occasions, in an amount which exceeded his earned commissions. [Testimony of OIC Investigator (ret.) Ken Combs; Ex. 2, Attach. 6, Licensee's 2009 Premium Trust Bank Account Check Register for period September 14-21; Ex. 2, Attach. 7, Licensee's 2009 Premium Trust Bank Account Check Register for period September 21-29.]

9. In or about September 2009, the Licensee completed an application for premium financing with Capital Premium Financing, Inc. ("Capital"), entering Heidi's Day Care of Marysville, Washington, which was a business the Licensee owned, as the proposed insured and the insurance company as Umialik Insurance Company of Anchorage, Alaska ("Umialik"). The Licensee knew that Umialik was unable to insure Heidi's Day Care but he applied for premium financing for this insurance coverage anyway. [Testimony of Licensee.] In response to his application, Capital advanced funds to the Licensee, rather than the insurer, totaling approximately \$4299.39. [Ex. 2, Attachs. 2, 5.]

10. In or about September 2009, the Licensee completed a second application for premium financing with Capital, entering Heidi's Day Care, which was a business the Licensee owned, as

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the proposed insured and the insurance company as Umialik Insurance Company of Anchorage, Alaska ("Umialik"). The Licensee knew that Umialik was unable to insure Heidi's Day Care but he applied for premium financing for this insurance coverage anyway. [Testimony of Licensee.] In response to his application, Capital advanced additional funds to the Licensee, rather than the insurer, totaling approximately \$7,369.95. [Ex. 2, Attachs. 2, 5.]

11. In September 2009, the Licensee applied for premium financing with Capital, entering RB Financial Services of Marysville, Washington, which was a business the Licensee owned and which earned less than \$1,000 per year (doing estate planning and "catch-all for financial services"), as the proposed insured and the insurance company as Umialik. The licensee knew he was not going to get insurance coverage for RB Financial Services, but he applied for premium financing for this insurance coverage anyway. [Testimony of Licensee.] In response to his application, Capital advanced funds to the Licensee, rather than the insurer, totaling approximately \$9748.71. [Ex. 2, Attach. 2.]

12. In September 2009, the Licensee applied for premium financing with Capital, entering American Tax Services of Everett, Washington, which was a business the Licensee owned and which earned approximately \$2,000 per year in sales, as the proposed insured and the insurance company as Umialik. The Licensee knew he had not applied for insurance coverage for American Tax Services, but he applied for premium financing for this insurance coverage anyway. In response, Capital agreed to advance funds to pay premiums for American Tax Service in the amount of approximately \$16,557. [Testimony of Licensee; Ex. 2, Attach. 5, 9/22/09 Notice of Financed Premium re American Tax Service.] The evidence is unclear whether or not Capital actually advanced these funds, however, on September 22, 2009, Capital rescinded its premium finance contract relative to American Tax Service. [Ex. 2, Attach. 5, Capital's 9/22/09 Notice of Financed Premium and Capital's 9/29/09 Notice of Rescission of Premium Finance Contract, both relative to American Tax Service.]

13. In total, based upon the Licensee's representations in his applications for premium financing for his above companies (two for Heidi's Daycare and one for RB Financial Services), Capital advanced funds totaling approximately \$24,700, which funds were all sent to the Licensee as either the insurance agent or the owner of these companies. No insurance coverage was ever issued related to these premium finance agreements. Instead of using these funds to pay for insurance coverage as represented in the premium finance agreements, the Licensee used them for both personal use and to pay operating expenses of RRB Marketing. [Testimony of Licensee.]

14. On September 14, 2009, the Licensee deposited the \$10,657.50 he had received from Capital into his premium trust bank account and kept the remaining \$14,042.50 for his personal use. Some of the funds deposited replaced money he had previously withdrawn although he was not entitled to withdraw them. [Testimony of Licensee; Ex. 2, Attach. 6.]

15. On September 29, 2010, the Licensee made a \$2,000 deposit from his RB Financial Services account to his RRB Marketing insurance premium trust account to replace money he had previously withdrawn in excess of those funds he was entitled to withdraw. The deposit was

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necessary to pay a premium payment of \$2,349.90 to Umialik since prior to said deposit, the balance in the premium account was \$1,235.00. [Testimony of Licensee; Ex. 2, Attach. 7.]

16. On September 29, 2010, the Licensee made the September payments on each funded premium finance agreement – payments of \$1052.85, \$1069.05 and \$1239.10. [Ex. 2, Attach. 7.]

17. On October 19, 2009, the Licensee emailed Garn Kemp, employee of Capital, admitting that he had submitted and cashed checks for three premium finance applications with no intent of using the funds therefrom to pay insurance premiums for the insureds specified on the applications. [Testimony of Licensee; Ex. 2, Attach. 2, Email from Licensee to Capital.]

18. In his October 19, 2009 email to Capital, the Licensee requested that he be able to work out a payment schedule to repay Capital the amount it loaned under the three funded premium finance agreements. As a result of Capital's agreement to a payment schedule, the Licensee signed a promissory note committing to repay Capital the amount the Licensee owed to Capital as a result of these three premium finance agreements, which totaled \$21,321.72. As set forth in the Promissory Note, the payment schedule is \$500 per month with a balloon payment of \$18,184.60 due November 15, 2010. [Ex. 2, Attach. 8, 11/9/09 letter from Capital to Licensee.] As of the date of hearing herein, the Licensee is current on his promised repayments to Capital. [Testimony of Licensee; Ex. 2, Attach 8, Capital's 11/9/09 letter agreement to payment schedule, 11/9/09 Promissory Note, payment schedule.]

19. In late 2009, Tessa Wilson, Vice President/Underwriting Manager of Umialik received copies of the Capital premium finance agreements, but discovered that Umialik had no record of providing coverage to either Heidi's Daycare, RB Financial Services or American Tax Service. Accordingly, on or about November 11, Ms. Wilson contacted the Licensee concerning this situation, and the Licensee responded that Heidi's Daycare, RB Financial Services and American Tax Service were not in fact insured by Umialik. [Ex. 2, Attach. 9, Email Correspondence between Umialik Underwriting Manager Tessa Wilson and Licensee.] Subsequently, Ms. Wilson reported the situation to the OIC, which prompted the OIC's investigation into the matter. [Testimony of Combs.]

20. The Licensee fully cooperated with the OIC investigation and acknowledged that his activities constitute violations of the Insurance Code. [Testimony of Licensee; Testimony of Combs.]

21. Ken Combs, Financial Investigator with the OIC, now retired, testified by telephone, with permission of the undersigned, as a witness for the Licensee. Mr. Combs presented his testimony in a clear, detailed and credible manner and exhibited no apparent biases.

22. Ralph R. Bargabos, appeared and testified as a witness on his own behalf. Mr. Bargabos presented his testimony in a clear, detailed and credible manner.

23. Based upon the facts found above, it is reasonable that the Commissioner's Order Revoking License of Ralph R. Bargabos should be upheld.

### CONCLUSIONS OF LAW

1. Based upon the Findings of Facts herein, by receiving funds from insureds to be paid to insurers as premiums into his insurance premium trust account but then withdrawing those funds instead for personal and operating expenses, the licensee violated RCW 48.17.480(3).
2. By diverting funds to his own use which he had received in a fiduciary capacity and to which he was not lawfully entitled, the licensee violated RCW 48.17.480(4).
3. By representing in his premium finance applications with Capital Premium Financing, Inc. that the funds applied for would be used to pay for insurance coverage on his own businesses Heidi's Daycare, RB Financial Services and American Tax Service when he knew it would not, the Licensee made, published and disseminated false, deceptive and misleading representations in the conduct of the business of insurance, and in so doing the Licensee violated RCW 48.30.040.
4. By reason of his violations of the Insurance Code, Ralph R. Bargabos has shown that he has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in Washington State and is therefore not qualified to act as an insurance producer in the state of Washington as contemplated by RCW 48.17.530(1)(h).
5. Based upon the above, it is hereby concluded that the Insurance Commissioner's Order Revoking License, No. 10-0045, revoking the insurance producer's license of Ralph R. Bargabos, should be upheld, pursuant to RCW 48.17.480, 48.17.530, 48.17.540(2), and 48.30.040.

### ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee has received funds from insureds to be paid to insurers as premiums but instead used those funds for personal and agency operating expenses; has diverted funds to his own use which he had received in a fiduciary capacity and to which he was not lawfully entitled; has made, published and disseminated false, deceptive and misleading representations in the conduct of the business of insurance and has demonstrated by his conduct and these violations of the Insurance Code that he is not qualified to be an insurance producer in the state of Washington, as is contemplated by RCW 48.17.530(1)(h); and to the effect that it has been concluded that his insurance producer's license should be revoked pursuant to RCW 48.17.480, 48.17.530, 48.17.540(2), and 48.30.040.

**IT IS HEREBY ORDERED** that the Commissioner's Order Revoking License, No. 10-0045, is upheld.

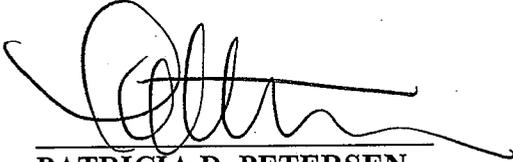
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**IT IS FURTHER ORDERED** that the Licensee's insurance producer's license shall be surrendered to the Office of the Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255 by close of business on November 10, 2010.

This Order is entered pursuant to Chapter 34.05 RCW, Title 48 RCW and regulations applicable thereto.

This Order is entered at Tumwater, Washington, this 27<sup>th</sup> day of October, 2010.



**PATRICIA D. PETERSEN**  
**PRESIDING OFFICER**

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Ralph R. Bargabos, Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Andrea Philhower, Esq., and John F. Hamje.

DATED this 27<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
NICOLE KELLY