



OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
Fax: (360) 664-2782

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

FILED
2012 MAY 22 A 11:10

FILED
Patricia D. Petersen
Chief Hearing Officer

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of

CRISTEN J. BOCANEGRA,

Licensee.

) **Docket No. 11-0256**

) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **AND FINAL ORDER**

TO: Cristen J. Bocanegra (aka Stevens)
1721 Maple Street
Everett, WA 98201

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

Pursuant to RCW 34.05.434, 34.05.461, 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 Washington State Insurance Commissioner commencing at 12:30 p.m. on January 26, 2012. 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 Commissioner appeared pro se, by and through Marcia Stickler, Esq., Staff Attorney in his Legal Affairs Division. Cristen J. Bocanegra appeared pro se and represented herself throughout the proceedings.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

11-0256

Page - 2

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether disciplinary action should be taken against Cristen J. Bocanegra ("Licensee") based primarily on the Commissioner's determination that the Licensee sold flood insurance policies (1) without having completed the minimum training requirements and education required for selling flood insurance, in violation of RCW 48.17.153(1); and (2) without having a business entity affiliation in place with the agency with which she was employed, in violation of WAC 284-17-473. The Commissioner proposed a Consent Order Levying a Fine, No. 11-0256, which proposed the imposition of a fine in the amount of \$1,000.00 against Licensee for her actions. By letter dated May 31, 2011, Licensee rejected the proposed Consent Order and demanded a hearing.

FINDINGS OF FACT

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 under the laws of the state of Washington have been satisfied.

2. Cristen J. Bocanegra ("Licensee") has held a Washington resident insurance producer's license since January 2007. From January 2007 until March 2008, the Licensee was employed by Allstate agent Sandy Tebow's agency as a licensed customer service representative. In March 2008, the Licensee became employed by Allstate agent Andrew Collup. From her former work experience in Sandy Tebow's Allstate agency, the Licensee believed that it was her new agency-employer, Andrew Collup's agency, that was responsible for filing the paperwork so she would be properly affiliated with his agency to act as a producer in handling the products she was instructed to handle. Although she worked as an employee of Collup's agency and believed that in April 2008 he had filed the paperwork so that she was affiliated with his agency, the affiliation paperwork had not been filed and the Licensee was not legally affiliated with his agency. [Testimony of Licensee.]

3. In 2008, Collup gave the Licensee a list of customers and instructed her to call and provide them with quotes for flood insurance backed by the federal government through the National Flood Insurance Program ("NFIP"). Collup advised the Licensee that a bonus was being offered based on volume of policies sold and that she would share the bonus. Collup commuted from Oregon, where he lived, and was not always in the Washington agency office. Therefore, pursuant to Collup's instructions, the Licensee contacted those customers, which were part of Collup's agency's book of business, and told them about a basic flood policy with \$8,000 in contents coverage for \$58/year, and advised them that the agency would send them a gift card (\$25 or \$50) if they purchased the coverage. [Ex. 4; Testimony of Licensee.] Further pursuant

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

11-0256

Page - 3

to Collup's instructions, if the customer chose to purchase the coverage, the Licensee submitted the flood insurance applications to Allstate online. Again with Collup's instructions, the Licensee used Collup's identification information and password when submitting the applications. Ultimately, the Licensee submitted 32 applications in December 2008. [OIC Ex. 2.]

4. The Licensee was required to be affiliated with Collup's agency (or appointed by the insurer) to solicit and sell the subject flood insurance policies. [It is noted that even though she was not affiliated with the agency, had the licensee been appointed by the insurers whose products she solicited and sold she would have been in compliance with applicable rules; however there is no evidence that the Licensee held these appointments.] As the OIC stated during hearing, however, it is most arguably the primary responsibility of the agency owner to file the paperwork to have his new employee-producer properly affiliated with his agency for the work the new producer will handle. It is certainly the agency owner's primary responsibility to ascertain that the affiliation is completed before instructing the new employee to contact and solicit flood insurance to his customers. However, while the Licensee believed the agency owner when he advised that he had gotten her properly affiliated with his agency as her experience told her was the agency owner's responsibility, she herself could and should have checked to ascertain for herself that she was indeed properly affiliated to handle the work which the agency owner was assigning to her. Licensees who become employed in a situation where it may be the primary responsibility of another to file the proper affiliation paperwork are still responsible themselves to see that they are properly affiliated (or appointed) before they act as producers representing designated insurers.

5. The OIC asserts that as part of enforcement of the federal Flood Insurance Reform Act of 2004, the federal government, in cooperation with state insurance regulators, requires minimum flood insurance training requirements for insurance producers selling federally-backed flood insurance through the NFIP. The wording of those federal rules is not in evidence, and is only referred to in an OIC Memorandum to insurers and producers dated July 17, 2006 [Ex. 1a] as follows:

Federally-backed flood insurance is available through NFIP, which is administered by the Federal Emergency Management Agency (FEMA). FEMA has implemented the minimum flood insurance training requirements for insurance producers, as set forth in Section 207 of the Flood Insurance Reform Act of 2004, Pub. L. 108-264 Under the Act, FEMA, in cooperation with state insurance regulators, has developed flood insurance training requirements which are designed to ensure that insurance producers selling flood insurance under NFIP are properly trained and educated about the program.

Under these requirements, Washington state licensed insurance agents who sell federal flood insurance policies must comply with the minimum training requirements of section 207 of the flood insurance reform act of 2004 and basic

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

11-0256

Page - 4

flood education as outlined at 70 C.F.R. Sec. 52117, or such later requirements as are published by the federal emergency management agency. Under these requirements a one-time, minimum three-hour, course must be completed.

After completion of the referenced minimum three-hour training and education, apparently producers are "certified" to sell this flood insurance through NFIP. The Licensee did not complete the minimum required training and education requirements to be able to identify herself as "certified" to sell flood insurance through NFIP. (The only training the Licensee received in regard to flood insurance was from informal instruction provided to her from Collup, and from viewing the NFIP website.) While the above cited OIC's summary of the federal rules states that they apply to *producers selling flood insurance under NFIP*, 1) it is unclear as to whether the federal rules apply to those soliciting flood insurance but whom, as may be the situation here, then allow other trained agents to actually "sell" the policies (or whether "sell" includes solicitation); and 2) it is also unclear as to whether the Licensee solicited flood insurance under NFIP or whether there is also flood insurance outside the NFIP which the Licensee may have instead been soliciting. Further, 3) there is no evidence of what penalty can be imposed, and whether by federal or by state agency, for what violations of the federal rules. Additionally, 4) the only evidence of any penalty the OIC may impose (aside from general disciplinary provisions in the Insurance Code if it could be determined that a producer had violated the actual terms of the federal rules) is as stated in the OIC Memorandum [Ex. 1a] as follows: *Licensed insurers shall demonstrate to the commissioner, upon request, that their licensed and appointed agents who sell federal flood insurance policies have complied with the minimum federal flood insurance training requirements.* Therefore, the OIC's stated interest appears to be in holding insurers responsible to demonstrate that their producers have complied with these federal rules. Finally, 5) it is unclear just who is the agent who sold these policies, given that the applications fail to state an agent on them. [Ex. 3, OIC's sample of a completed application.]

6. Apparently, outside the actual Allstate flood insurance application form [Ex. 3], Allstate electronically prompts the person entering the applicant's information into the application form ("the operator") to answer the question whether he or she – or someone – is "certified." If that question is not answered in the affirmative, Allstate's software does not allow the operator to submit the application to Allstate. At the time the Licensee was preparing the applications online, she became concerned about this prompt question and asked Collup whether she should be "certified." Collup replied that she did not need to be "certified," because he had taken the training and had become "certified" and so because she was working for him she was covered under his "certification." [Testimony of Licensee.] When preliminary to submitting the applications online and being electronically prompted by Allstate's software to answer this question, the Licensee entered a response in the affirmative.

7. No evidence was presented as to just what the wording of Allstate's electronic prompt question above is (it is apparently written by Allstate to the person actually submitting the application forms online), nor is there any evidence as to when or how the Licensee answered in

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

11-0256

Page - 5

the affirmative. Therefore, there is insufficient evidence to find that the Licensee provided a false answer to Allstate's prompt question regarding whether she (as opposed to Collup or his agency) was "certified." If the prompt question refers to whether the producer on the policy is "certified," it is also unclear just who the producer on the policies was (presumably the producer on the policies was either the Licensee, who was not "certified," or Collup, who was "certified"). Therefore there is insufficient evidence to find that the Licensee falsely answered Allstate's prompt question concerning "certification."

8. The Licensee electronically completed the applicants' information in the online Allstate flood insurance application form, and submitted them to Allstate online. [Testimony of Licensee.] The application [Ex. 3] includes a certification box which contains the wording *The above statements are correct to the best of my knowledge. I understand that any false statements may be punishable by fine or imprisonment under applicable federal law.* The wording is followed by a line for "Agent/Broker Signature," a line for "Date," and a line for "Insured Signature (Optional)." [Ex. 3.] No signatures are included as "Agent/Broker" and no date is entered. Therefore no certification is given. Further, there is no place in the application where any agent/broker is identified. Finally, the only area where information about the submitter/operator/producer is typed in at the bottom of the application page, outside the certification box, wherein small spaces are provided for the operator submitting the application to complete *Application ID* ____; *Create Date* ____; and *Created By* _____. The Licensee completed this information, including Andrew Collup's name in the *Created By* section. [Ex. 3; Testimony of Licensee.] It is unclear if "Created By" means the agent/broker (i.e., producer), the agency, or just the operator who is creating the online document to be submitted. Therefore there is insufficient evidence that the Licensee either "submitted applications under another person's name" as the OIC asserts, or that she falsely represented that she, or that Collup, was the producer on the applications.

9. The OIC presented no witnesses on its behalf.

10. The Licensee appeared as the sole witness on her behalf. She presented her information in a clear and credible manner and exhibited no apparent biases.

11. After a review of this entire situation and the facts found above, particularly including the lack of evidence of the wording of the federal rules, lack of evidence of the penalty for violation of those federal rules, lack of evidence of the electronic prompt question and lack of identification of the producer on the applications, and the fact that the Licensee's employment with Collup was her first job as a licensed producer (her prior employment with Sandy Tebow's Allstate agency she worked as a customer service representative [Ex. 4]), it is most reasonable to conclude this matter without imposition of disciplinary action. It is further reasonable, however, that the facts found above should be taken into consideration should the OIC become concerned about any other of the Licensee's activities in the future.

CONCLUSIONS OF LAW

Based upon the above Findings of Facts, it is hereby concluded:

1. The adjudicative proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW including, for good cause shown, RCW 34.05.458(8); and regulations pursuant thereto.
2. While the Licensee admitted that she did, at Mr. Collup's request, contact current customers of Mr. Collup's agency and solicited flood applications to them, based upon the lack of evidence as to the wording of the federal Flood Insurance Reform Act of 2004, Sec. 207, and 70 CFR Sec. 52117, and therefore their applicability to the situation herein, it is not concluded that she violated Sec. 207 of the federal Flood Insurance Reform Act of 2004 or 70 CFR Sec. 52117.
3. By soliciting customers for flood insurance without having an affiliation with Mr. Collup's agency, although she understood and was advised by Mr. Collup that he as the agency owner and her new employer had filed the paperwork so that she was properly affiliated with his agency, and although she conducted this activity pursuant to Mr. Collup's instructions, the Licensee did violate WAC 284-17-473.
4. While, as the OIC asserts, RCW 48.17.530(1)(b) provides that the OIC may levy a civil fine for violating any insurance laws, or violating any rule of the OIC, based upon the above Findings of Facts, particularly the fact that the Licensee's employment with Mr. Collup was her first job as a licensed producer, it is most reasonable to conclude this matter without imposition of disciplinary action. It is further reasonable, however, that facts found above should be taken into consideration should the OIC become concerned about any other activities of the Licensee in the future.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

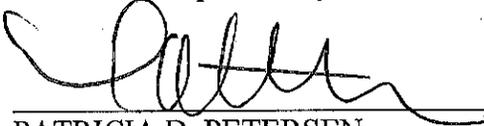
IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's decision to impose a fine or other disciplinary action upon the Licensee for the activities alleged in its proposed Consent Order Levying a Fine shall be dismissed. This matter is terminated without disciplinary action taken.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

11-0256

Page - 7

ENTERED AT TUMWATER, WASHINGTON, this 22nd day of May, 2012, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Hearing Officer
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.

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: Cristen J. Bocanegra (aka Stevens), Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Marcia Stickler, Esq., and Carol Sureau, Esq.,

DATED this 22nd day of May, 2012.



KELLY A. CAIRNS