

FILED

2012 OCT 12 PM 1:17

W. J. ...  
...  
Chief Hearing Officer

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In The Matter of:

SAM Y. CHAN,

Licensee.

DOCKET NO. 12-0103

LICENSEE' HEARING  
MEMORANDUM

There are four issues to be determined in this case. They are whether the commissioner has factually established each of the three violations alleged and whether the penalty invoked, i.e. revocation, was warranted.

1. False notarization of a document. The facts are undisputed and Mr. Chan signed a statement admitting he notarized a document when the person signing the document was not present. However, Mr. Chan did not, in fact, notarize a document despite his statement. A notarization is an attestation a person signed a document. No exhibit has been produced or submitted that constitutes a notarization. There is a document that contains Mr. Chan's Notary stamp (Exhibit FF). This is not a notarization nor could ever legally constitute a notarization. It is putting a stamp on a document which legally has no effect.

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RCW 42.44.080 reads as follows:

A notary public is authorized to perform notarial acts in this state. Notarial acts shall be performed in accordance with the following, as applicable:

- (1) In taking an acknowledgment, a notary public must determine and certify, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the acknowledgment is the person whose true signature is on the document.
- (2) In taking an acknowledgment authorized by RCW 64.08.100 from a person physically unable to sign his or her name or make a mark, a notary public shall, in addition to other requirements for taking an acknowledgment, determine and certify from personal knowledge or satisfactory evidence that the person appearing before the notary public is physically unable to sign his or her name or make a mark and is otherwise competent. The notary public shall include in the acknowledgment a statement that the signature in the acknowledgment was obtained under the authority of RCW 64.08.100.
- (3) In taking a verification upon oath or affirmation, a notary public must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the verification is the person whose true signature is on the statement verified.
- (4) In witnessing or attesting a signature, a notary public must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the notary public and named in the document.
- (5) In certifying or attesting a copy of a document or other item, a notary public must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.
- (6) In making or noting a protest of a negotiable instrument, a notary public must determine the matters set forth in \*RCW 62A.3-509.
- (7) In certifying that an event has occurred or an act has been performed, a notary public must determine the occurrence or performance either from personal knowledge or from satisfactory evidence based upon the oath or affirmation of a credible witness personally known to the notary public.
- (8) A notary public has satisfactory evidence that a person is the person described in a document if that person: (a) Is personally known to the notary public; (b) is identified upon the oath or affirmation of a credible witness personally known to the notary public; or (c) is identified on the basis of identification documents.
- (9) The signature and seal or stamp of a notary public are prima facie evidence that the signature of the notary is genuine and that the person

1 is a notary public.

2 (10) A notary public is disqualified from performing a notarial act  
3 when the notary is a signer of the document which is to be notarized.

4 While Mr. Chan may have used bad judgment, he did not commit the act which is  
5 the subject of his complaint despite what he admits.

6 2. Failure to report a conviction that had been the subject of a deferred sentence  
7 resulting in the dismissal of the charge. There is no document presented as an exhibit which  
8 establishes a judgment was deferred. The only document presented is a court docket which  
9 makes reference to a deferral. This is not proof of the entry of a judgment constituting a  
10 final order of conviction.  
11

12 It is the Department's obligation to prove its case. We would further argue the  
13 requirement is ambiguous and does not put the reporter on notice the report has to be made  
14 regardless of the fact the deferral was completed and the charge dismissed prior to the  
15 renewal date.  
16

17 3. The third claim relates to a charge previously investigated by the Department  
18 and found not worthy of administrative action. This relates to a dispute between Mr. Chan  
19 and a consumer as to the cashing out of an annuity. At best there is a misunderstanding.  
20

21 4. The penalty, i.e. revocation, is inconsistent with commission action in other  
22 matters. We have compiled an index of Commission action in cases with far more  
23 egregious facts where far lesser penalties were sought or imposed. See Appendix.

24 DATED this 31<sup>st</sup> day of August, 2012.

25 SINSHEIMER & MELTZER, INC., P.S.

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28 By:   
Ronald J. Meltzer, WSBA No. 1203

SINSHEIMER & MELTZER, INC. P.S.

Attorneys at Law

701 FIFTH AVENUE, SUITE 4780

SEATTLE, WASHINGTON 98104

(206) 340-4700 FAX (206) 464-9555

Email: law@sinsheimer-meltzer.com

Attorneys for Licensee

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### DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of the foregoing document.

Alan Singer Office of Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	Legal Messenger U.S. Mail Electronically Facsimile
Patricia D. Peterson Chief Hearing Officer Office of Insurance Commissioner PO Box 40255 Olympia, WA 98504-0255	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	Legal Messenger U.S. Mail Electronically Facsimile

I declare the foregoing is true and correct.

Dated this 21<sup>st</sup> day of August, 2012.



Marci Umatum, Paralegal

Settle, Dustin L.

Violation: Felony conviction and failure to timely notify the OIC of that conviction.

Penalty: Consent Order Setting Conditions for Probationary Producer's License

Order ID: 11-0248

Sturges, Joseph A.

Violation: Issuing, delivering, and using unapproved policy form, knowingly making false or misleading statement relative to an application for insurance to an insurer, and failing to promptly rely in writing to an inquiry of the commissioner relative to the business of insurance.

Penalty: Consent order levying fine of \$5,000

Order ID: 12-0085

De Angelis, Robert A.

Violation: Alteration of a signed application of a consumer without the consumer's knowledge or consent constitutes fraudulent, coercive, or dishonest practices, and/or demonstrates incompetence or untrustworthiness.

Penalty: Consent Order Setting Conditions for Probationary Producer's License

Order ID: 11-0207

Lindsay Jr., Robert E.

Violation: Conviction for misdemeanor sexual battery against a student constitutes coercive or dishonest practices, and/or demonstrates incompetence or untrustworthiness.

Penalty: Consent Order Setting Conditions for Probationary Producer's License

Order ID: 11-0204

Losse, Trevor D'Jon a/k/a D'Jon, Trevor

Violation: Failing to notify OIC of changes of address within thirty days, failing to properly reply to letter from the OIC seeking a prompt response, soliciting insurance for an insurer that terminated his appointment while intentionally concealing his legal name and inaccurately denying to OIC that he had solicited insurance and signed applications electronically, including inaccurate information to at least one consumer's insurance application and knowingly misstating on insurance applications that a different insurance producer was the agent who solicited the insurance, soliciting in a state where he no longer had a license, and failing to properly disclose the more than 12 state actions against him.

Penalty: \$1,000 fine and Consent Order Imposing Fine and Setting Conditions for Probationary Producer's License

Order ID: 11-0286

Parkhurst, Danny H.

Violation: Misrepresenting himself as a Kansas City Life Agent, the Licensee committed multiple unfair insurance practices and knowingly made false, deceptive or misleading representations in the conduct of business of insurance, or relative to the business of insurance or relative to any person engaged therein.

Penalty: \$1,000 fine and six months suspension of Washington producer's license  
Order ID: 11-0304

Ruble, Karin C. d/b/a Bryant-Toups, Inc.

Violation: Signing applications knowingly making false representations when she did not solicit or have personal knowledge of the facts being represented.

Penalty: \$500 Fine  
Order ID: 11-0209

Van Landingham, Gary

Violation: Fraudulent transaction and misrepresentation and failing to obtain, fill out, sign or submit replacement forms to replacing insurer.

Penalty: \$3,500 Fine  
Order ID: 08-0008

Dixon, Jeffrey R.

Violation: Made false statements relative to applications for insurance and sold non-approved annuities to Washington consumers.

Penalty: \$3,000 Fine  
Order ID: D07-0331

Black, John A.

Violation: Engaging in unfair or deceptive acts or practices in the conduct of business; untrustworthy and a source of injury and loss to the public.

Penalty: Six month suspension; complete 12 hours of business or insurance ethics course credits.  
Order ID: 06-120

Leaverton, Barbara C.

Violation: Marketed non-approved annuities to Washington residents, instructed and assisted Washington consumers to falsely claim they had signed annuity applications in Idaho when they were signed in Washington, falsely claiming that she was the selling agent when her husband was which he was not appointed to sell.

Penalty: Consent and order levying a \$3,750 fine.  
Order ID: D07-128

Leaverton, Michael R.

Violation: Marketed non-approved annuities to Washington residents, instructed and assisted Washington consumers to falsely claim they had signed annuity applications in Idaho when they were signed in Washington, falsely claiming that Barbara Leaverton had been the selling agent for annuities which he had sold and which he was not appointed to sell.

Penalty: Consent and order levying a \$3,750 fine.

Order ID: D07-129

Chittenden, Cleo E.,

Violation: Misappropriated or converted premium funds for personal use; intentionally deceived or materially misrepresented effect of insurance contract; engaged in fraudulent transaction; deemed incompetent, or untrustworthy, or source of injury and loss to the public.

Penalty: License Suspended

Order ID: D06-153

Chronister, Robert S.

Violation: Engaging in unfair or deceptive acts or practices; making, publishing, and disseminating false, deceptive, and misleading representations; quoting and attempting to place insurance with no appointment....

Penalty: \$5,000 fine and 7 additional hours of continuing education in the field of insurance ethics.

Order ID: D05-375

Chadwick, Al Insurance Inc. and Edward Chadwick.

Violation: Improper handling of premium funds; considered incompetent, or untrustworthy, or a source of injury and loss to the public.\$5,000 Fine

Order ID: D02-205

Penalty: \$5,000 fine with a number of terms, including getting premium account balanced in a couple years.

Davies, Jeffrey W.,

Violation: Misrepresentation.

Penalty: Stipulation & \$500 fine

Order ID: D02-72

James, Michel A.

Violation: Failed to promptly pay insurance premiums received to parties entitled thereto; failed to return sums collected as a premium in excess of amount expended.

Penalty: Initial order revoking license was set aside by ALJ

Order ID: 11-0029

Shigaki, Dale M.

Violation: By exerting undue pressure and influence over a consumer to sign a change of producer form without the consumer's fully understanding and consent, and otherwise providing misleading information and by photocopying a consumer's signature on to a change of producer document without a consumer's knowledge and consent and otherwise altering the policy number on said document.

Penalty: \$2,000 fine

Order ID: 11-0271

Bannon, James W.,

Violation: Misappropriation of premiums and failure to remit premiums to insured's.

Penalty: Self interest/benefit

Order ID: D04-122

Tobey, Kenneth L., Inc.; Anderson, Harold L.,

Violation: Misappropriation of funds.

Penalty: 25,000 fine. 2 years of monthly financial statements provided to OIC

Order ID: D04-01

Henning, Kenneth L.,

Violation: Failure to properly account for premium; forgery.

Punishment: \$3,000 fine

Order ID: D02-02

Adams, Destiny S.

Violation: Falsifying license renewal application regarding continuing education required but not completed.

Penalty: Stipulation and order levying \$500 fine

Order ID: 10-0091

Strong, Michele M.

Violation: Convictions for felony theft demonstrate dishonest practices and untrustworthiness

Penalty: Consent Order Setting Conditions for Probationary Producer's License

Order ID: 11-0238

Thompson, Tara M.

Violation: Diverting or appropriates funds received in a fiduciary capacity to her own use.

Penalty: Revocation order set aside by Chief Hearing Officer; probation of one year with conditions imposed on Licensee

Order ID: 12-0020

Sobodyan, Igor

Violation: Providing incorrect, misleading, incomplete, or materially untrue information in two license applications and by obtaining or attempting to obtain a license through misrepresentation.

Penalty: Consent order levying \$500 fine

Order ID: 12-0112

McIntosh, Kyle L.

Violation: Mr. McIntosh's probation violation and pending charges of Trespassing and Obstruction/False Statement demonstrate dishonest practices and untrustworthiness authorizing the OIC to issue his producer's license on a probation basis for the first licensing period.

Penalty: Consent Order Setting Conditions for Probationary Producer's License

Order ID: 11-0278

Pak, Chong Y.

Violation: Misrepresentation. \$250 fine

Penalty: \$250 fine

Order ID: D02-67

Waddell & Reed, Inc., and W&R Insurance Agency, Inc.

Violation: Engaged in dishonest and unethical practices and "twisting."

Penalty: Consent Order

Order ID: D05-361