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STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



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Hearings Unit, DIC
Patricia D. Petersen
Chief Presiding Officer

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of

ROBERT P. SORRELL,

Licensee.

) **Docket No. 12-0241**

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

TO: Robert P. Sorrell
Delta Pacific Services, Inc.
P.O. Box 966
Seabeck, WA 98380

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Marcia Stickler, Staff Attorney, Legal Affairs Division
Charles Brown, Acting 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 1:00 p.m. on February 7, 2013. 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 by and through Marcia Stickler, Esq., Staff Attorney in his Legal Affairs Division. Robert P. Sorrell appeared pro se.



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 Washington licensed resident insurance producer Robert P. Sorrell ("Licensee"). On August 27, 2012, the Insurance Commissioner ("OIC") issued an Order Suspending License and Levying a Fine, which suspended the Licensee's license for a period of thirty days, effective September 15, 2012, and imposed a fine of \$1,000.00. In the Order, the OIC alleges that the Licensee received premium funds from a client and deposited them into his premium trust account as required but did not then transfer them to the broker entitled thereto. The OIC further alleges that the Licensee failed to timely file a notice of affiliation with the OIC identifying himself as the licensed producer affiliated with his insurance agency. On September 11, 2012, the Licensee filed a Demand for Hearing to contest the OIC's Order based on his explanation that at this time he suffered from serious illness and underwent major surgery which led to severe complications, and that as a result he was unaware the premiums had not been transferred to the broker or that the notice of affiliation had not been filed with the OIC.

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. Robert P. Sorrell is an individual who resides in Seabeck, WA and has held an insurance producer license in Washington since July 5, 1995. The Licensee is the sole owner of Delta Pacific Services, Inc., an insurance agency located in Seabeck, WA, and currently has approximately five appointments to represent insurers. It is here found that neither the Licensee nor his agency, Delta Pacific Services, Inc., has ever been the subject of any complaints made to, or disciplinary action taken by, the Office of the Insurance Commissioner ("OIC") other than the complaint at issue herein. [Testimony of Licensee.] Hereinafter, unless otherwise noted, Robert P. Sorrell and Delta Pacific Services, Inc. will be referred to collectively as "Licensee."
3. On March 12, 2012, the OIC received a complaint against the Licensee from one of his longtime clients, Northway Aviation of Washington, Inc. ("Northway"), which is a flight school with a fleet of approximately eleven aircraft. Northway is wholly owned by Jim Grant, and has purchased its commercial insurance from the Licensee since December 1998. [Ex. 2, Declaration of Jim Grant, owner of Northway Aviation of Washington, Inc.] This insurance was brokered through Phoenix Aviation Managers, Inc. ("Phoenix") of Renton, WA and issued by Old Republic Insurance Company. At all times pertinent hereto, the premium payments for this

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coverage (Old Republic Policy No. AVC 001343-11) were regularly scheduled: the Old Republic policy ran from 3/3/2011 to 3/3/12 (12 months); Northway paid its monthly insurance premiums of \$5,013.41 to the Licensee, who deposited those premiums into Delta Pacific's insurance agency trust account and then paid the net commission (\$5,013.41 less the Licensee's commission) over to Phoenix; Phoenix was then responsible to make the proper payments to Old Republic for Northway's continuing coverage. [OIC Ex. 1; Testimony of Licensee; Testimony of Jim Grant, owner of Northway.]

4. There is no evidence or argument that in the more than 10 years in which Northway had been a client of the Licensee there had ever been a problem with the manner in which the Licensee received and deposited Northway's premium payments and then transmitted these payments properly in order to secure Northway's continuing coverage. [OIC Ex. 1; Testimony of Licensee.]

5. It should be noted here that while much attention was focused on the fact that the Licensee had a major health emergency, was hospitalized for two months and had no adequate backup for his insurance business, a review of the evidence leads more to an inquiry about Phoenix's accounting and business practices. For example, there was and is significant confusion concerning which premium payments were made for which months of coverage, and as to what premium payments were outstanding at the time Phoenix prepared and mailed the Notice of Cancellation on January 13, 2012. For example, Phoenix explains its own billing practices in two ways, which are inconsistent with each other:

1) Phoenix's statements re its billing practices. In its investigation into this matter, the OIC asked Phoenix ... [I]f you were notifying Delta Pacific Services of premium payments due for January, when would that notice go out and when would it be due? Is there grace period involved? and Phoenix replied *For transactions that occurred in January, they are billed February 1st. Payment would be due to us by February 28th (last day of the month).* [OIC Ex. 8, p.1, Phoenix's answer to OIC's Question No. 2] Therefore, in its statements to the OIC, Phoenix explains that the premium payment for a specific month of coverage is billed on the first day of the month following the end of that month of coverage with payment due by the last day of the month following the month of coverage.

2) Phoenix's accounting records. (a) In contrast, however, in its own accounting records which Phoenix provided in response to the OIC's investigative request [OIC Ex. 7, pp. 1-4, Phoenix's accounting records], Phoenix indicates a different payment schedule which is not in accord with its own explanation of its billing practices cited above (Finding No. 5(1)). Phoenix's actual accounting records show a two month lag (not a one month lag as Phoenix describes in Finding No. 5(1) above) in its billing for the premium payments: for example, Phoenix's accounting records indicate that the premium payment for what Phoenix indicates was the October 2011 coverage was due on January 1, 2012 (not due December 1, 2012 as the Licensee understood, and as Phoenix's own responses to the OIC explained); Phoenix's accounting records indicate that the premium payment for

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what Phoenix indicates was the November 2012 coverage was due on February 1, 2012 (not due January 1, 2012 as the Licensee understood, and as Phoenix's own responses to the OIC explain); Phoenix's accounting records for December 2011 coverage was due on March 1, 2012 (not due February 1, 2011 as the Licensee understood and as Phoenix's own responses to the OIC explain); and then, inconsistent with this prior pattern, Phoenix's accounting records indicate that the premium payment for what Phoenix indicates was the January 2012 coverage was - just like payment for the December 2011 coverage - also due on ~~March 1, 2012~~ (not due ~~April 1, 2012~~ as Phoenix's prior pattern in these accounting records would indicate).

(b) In addition, Phoenix's accounting records [OIC Ex. 7, pp. 3-4] not only demonstrate that Phoenix was confused about what payments relate to which coverage month, but also the accounting records themselves are not at all clear: for examples, the first column is labeled "TRANS DATE"--what does this mean (these dates do not reflect either the due date or the end of a coverage period)? The second column is labeled "EFF DATE"--it appears that these dates signify the end of the coverage period. The third column is labeled "TRANS AMOUNT"--which dates/payments do these figures pertain to? The fourth column is labeled "TRANS" and is followed by many lines marked "PAY" and "END"--what do "Pay" and "End" mean? As is handwritten between columns six and seven, it appears that the OIC investigator assumed that "End" means due date and "Pay" means date paid. The fifth column is labeled "ITEM"--this sequence of numbers fails to clarify anything. The sixth and seventh columns are marked "DATE DUE/PAID" and "AMOUNT DUE/PAID" respectively and are followed by many dates and dollar figures respectively --which are the Dates Due and which are the Dates Paid, and which figures apply to which Amounts Due and which Amounts Paid? As is hand marked on the OIC's calculation of payments [OIC Ex. 9], it appears that the OIC investigator was required to make assumptions about these dates and figures based on her prior assumption that "End" means due date and "Pay" means date paid.

(c) Finally, in the OIC's investigation of this matter, the OIC asked Phoenix *In Regal Aviations [sic] communication with Northway Aviation on 3/1/12 they indicate Phoenix is out \$10,003.00 in earned premiums. What is meant by that?* and Phoenix responded *I do not have that communication in file and can't factually speak to Regal's intent but they may be referring to a past balances [sic] due prior to the policy being cancelled?*[sic] [OIC Ex. 8, p. 2, Phoenix's answer to OIC's Question No. 11.] Phoenix's answer is entirely irresponsible: the OIC's question asked about Phoenix's calculations as to whether Phoenix was still owed \$10,003. in earned premium. This is not within Regal's knowledge or responsibility to account for: Regal is simply the new producer which had nothing to do with the transactions at issue herein. Not only did Phoenix's Renton office, where all relevant transactions took place, refer the OIC's questions to its corporate office in Georgia, but after some delay Phoenix's corporate office professes to not even know its own accounting even though Phoenix did withhold these thousands of dollars in funds from Northway (below) claiming it was owed this extra money in earned premiums.

In summary, the very most that can be said about Phoenix's accounting records [OIC Ex. 1, pp. 1-20; OIC Ex. 7, pp. 1-4; OIC Ex. 8, pp. 1-3, OIC's Investigator

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Calhoun's questions to Phoenix and Phoenix's answers; OIC Ex. 9 pp. 1, OIC Investigator Calhoun's calculations] is that they cannot be responsibly deciphered, and therefore they do not provide any adequate basis upon which to make findings; rather, they cast doubt on the accuracy of Phoenix's figures, business records, statements of amounts due and received on this account, and statements of amounts still due to Phoenix during the pertinent period and since March 2012. No insurance professional, including the Licensee, or other individual could reasonably be expected to understand or rely upon ~~Phoenix's account records and statements. This is even more so given Phoenix's~~ requirement that all communications to them electronically (apparently including explanations of billings and amounts due requested by producers such as the Licensee, as certainly no explanations were provided in response to the Licensee's many requests). See Finding below.

6. The Licensee reasonably understood Phoenix's billing to be in accordance with Phoenix's own explanation of its billing practices in Finding No. 5(1) above, and for this reason,

(1) Northway made a premium payment to the Licensee (Delta Pacific) by check for \$5,013.41 dated December 5, 2011. The Licensee properly deposited this check into his insurance trust account on December 7, 2011, and the Licensee's invoice referenced this check as payment for the November coverage, consistent with the understanding that Phoenix's billing practices were as Phoenix explained to the OIC (Finding No. 5(1)). Although the Licensee should have forwarded this \$4,487.00 net premium payment to Phoenix before the end of December 2011, it was not sent until January 12, 2012. [OIC Hearing Brief filed February 4, 2013; OIC Ex. 9, OIC Investigator's Table of Payments; OIC Ex. 1, pp. 3-10, copies of checks; OIC Ex. 1, pp. 11-13, Licensee's invoices.] Finally, Phoenix's records indicate that this check, mailed from Seabeck, WA on January 12, was not received by Phoenix in Renton, WA until January 19 although there appears to be no reason why this would take 7 full days. However, as the OIC asserts [OIC Hearing Brief filed February 4, 2013], the weight of the evidence shows (most specifically Phoenix's statement to the OIC about its billing practices and attempt to explain amount(s) due to Phoenix [OIC Ex. 8, pp.1-2]; copies of Northway's checks to Delta Pacific for this premium [OIC Ex. 1, pp. 3-10]; Delta Pacific's invoices [OIC Ex. 1, pp. 11-13]; chart prepared by OIC Investigator Calhoun [OIC Ex. 9]; and the fact that Phoenix's account records are indecipherable [Ex. 7, pp. 1-4]) that this check was in payment for Northway's November 2011 coverage.

(2) Northway made a premium payment to the Licensee (Delta Pacific) by check for \$5,013.41 dated December 31, 2011. The Licensee properly deposited it into his insurance trust account on January 4, 2012 and the Licensee's invoice referenced this check as payment for the December 2011 coverage (consistent with the understanding that Phoenix's billing practices were as Phoenix stated in Finding No. 5(1) above. Although according to Phoenix's above statement about its billing practices, and the Licensee's understanding of Phoenix's billing practices, the Licensee should have

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forwarded this \$4,844.88 net premium payment to Phoenix before the end of January 2012, it was not sent until February 18. Finally, Phoenix's records indicate that this check, mailed from Seabeck, WA on February 18, was not received by Phoenix in Renton, WA until February 27 although there appears to be no reason why this would take 9 full days. However, as the OIC asserts [OIC Hearing Brief filed February 4, 2013], the weight of the evidence shows (most specifically Phoenix's statement to the OIC about its billing practices and attempt to explain amount(s) due to Phoenix [OIC Ex. 8, pp. 1-2]; copies of Northway's checks to Delta Pacific for this premium [OIC Ex. 1, pp. 3-10]; Delta Pacific's invoices [OIC Ex. 1, pp. 11-13]; chart prepared by OIC Investigator Calhoun [OIC Ex. 9]; and the fact that Phoenix's account records are indecipherable [Ex. 7, pp. 1-4]) that this check was in payment for Northway's December 2011 coverage.

(3) Northway paid its last premium payment to the Licensee (Delta Pacific) by check for \$5,013.41 dated February 3, 2013. The Licensee deposited it into his insurance trust account on February 7, 2012 and the Licensee's invoice referenced this check as payment for the January 2012 coverage (consistent with the understanding that Phoenix's billing practices were as Phoenix explained in Finding No. 5(1) above). According to Phoenix's above statement about its billing practices, and the Licensee's understanding of Phoenix's billing practices, this check for January coverage should have been paid to Phoenix by February 28, 2012. The Licensee forwarded this \$4,172.88 net premium payment to Phoenix on February 20, well before the February 28 due date for payment of the January coverage. Finally, Phoenix's records indicate that this check, mailed from Seabeck, WA on February 20, was not received by Phoenix in Renton, WA until February 28, although there appears to be no reason why this would take 8 full days; in any case even Phoenix recognizes the check as being received by the February 28 due date. As the OIC asserts [OIC Hearing Brief filed February 4, 2013], the weight of the evidence shows (most specifically Phoenix's statement to the OIC about its billing practices and attempt to explain amount(s) due to Phoenix [OIC Ex. 8, pp. 1-2]; copies of Northway's checks to Delta Pacific for this premium [OIC Ex. 1, pp. 3-10]; Delta Pacific's invoices [OIC Ex. 1, pp. 11-13]; chart prepared by OIC Investigator Calhoun [OIC Ex. 9]; and the fact that Phoenix's account records are indecipherable [Ex. 7, pp. 1-4]) that this check was in payment for Northway's January 2012 coverage.

This table illustrates the above payments found to have been made by the Licensee to Phoenix:

<u>Check date</u>	<u>Month premium covered</u>	<u>Date mailed to/rec'd by Phnx</u>	<u>Amount paid to Phnx</u>
12/5/11	November	1/12 -- 1/19	\$4,487.00
12/31/11	December	2/18 -- 2/27	\$4,844.88
2/3/12	January	2/20 -- 2/28	\$4,172.88

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[OIC Hearing Brief filed February 4, 2013; Phoenix's statements to the OIC about its billing practices and attempt to explain amount(s) due to Phoenix [OIC Ex. 8, pp.1-2]; copies of Northway's checks to Delta Pacific for this premium [OIC Ex. 1, pp. 3-10]; Delta Pacific's invoices [OIC Ex. 1, pp. 11-13]; chart prepared by OIC Investigator Calhoun [OIC Ex. 9]; and the fact that Phoenix's account records are indecipherable [Ex. 7, pp. 1-4].

~~7. In January 2012, Northway received a Notice of Cancellation from Phoenix, dated January 13, 2012. [Testimony of Grant; Declaration of Jim Grant; OIC Ex. 1, pg. 14, Notice of Cancellation.] In this Notice of Cancellation, Phoenix advised Northway that its insurance coverage would be cancelled effective on January 25, 2012 at (curiously) "(Hour-Standard Time [sic] 12:01 A.M." The "Reason for Cancellation" was stated to be "Non-Payment of Premium" and the "Amount Due" was stated to be \$4,844.88. First, this Notice fails to indicate for which month of coverage this \$4,844.88 was due, but given the above contradictory information provided by Phoenix and its indecipherable accounting records - as well as Phoenix's own statements about its billing practices found in Finding No. 5(1) above - it is most reasonable to conclude that this \$4,844.88 "overdue payment" was for coverage for November 2011 because payment for December coverage was not even due until January 31, 2012 -- over two weeks after the Notice of Cancellation was prepared and mailed. Second, Phoenix's Notice of Cancellation fails to provide the insured a window in which the overdue premium could be paid in order to avoid cancellation; while this may have been what this Notice meant to provide, it is certainly unclear. Third, Phoenix's Notice of Cancellation also advises:~~

You are hereby notified that in accordance with the terms and conditions of the above-mentioned policy your insurance will cease at and from [sic] the hour and date mentioned above.

If the premium has been paid, premium adjustment will be made as soon as practicable after cancellation becomes effective. If the premium has not been paid, a bill for the premium earned to the time of cancellation will be forwarded in due course.

This second paragraph is unclear: does this mean that Phoenix is cancelling the policy effective January 25 whether the *premium has been paid* (i.e. prior to the January 13 date of the Notice) or only if the premium has not been paid?

8. Upon receipt of the January 13, 2012 Notice of Cancellation from Phoenix, Northway (Grant) telephoned the Licensee and advised him of its contents. In response, the Licensee telephoned Phoenix (Jackie A. Ramey, Accounts Receivable Coordinator for Phoenix) to ask about the situation, and during that telephone call Phoenix (Ramey) told the Licensee that the payments had been made properly, that Northway could disregard the Notice of Cancellation because there had been a mistake in the system. [Testimony of Licensee.] Based on Phoenix's advice to disregard the Notice and that the premiums were paid current, and also knowing that on January 12 he had in fact already mailed Phoenix another premium check for \$4,487, the

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Licensee advised Northway (Grant) on or about January 15 that Northway could disregard the Notice of Cancellation. The parties agree this payment was made, as found above Phoenix reflects it as being received on January 19, and it cleared the Licensee's insurance trust account on January 20. [Testimony of Licensee.]

9. Northway (Grant) knew that his Old Republic policy was due for renewal on March 3, 2012. As he was still concerned about the previous Notice of Cancellation and had been unable to contact the Licensee, on March 1, Grant contacted Phoenix directly. At that time, Phoenix told Grant that Northway's Old Republic policy had already been cancelled on January 25, 2012 for nonpayment of premium and that his aircraft fleet had been operating without commercial insurance from January 25 to March 1, 2012. [OIC Ex. 1, Northway's complaint to OIC with attachments; OIC Ex. 2, Declaration of Grant.] On that day, Grant grounded all planes, until March 2 when he was able to bind a new insurance policy through a different insurance producer. [Testimony of Grant; OIC Ex. 2, Declaration of Grant; OIC Ex. 1, pp. 15-20.]

10. It is concerning that Phoenix routinely professes, in its responses to individuals contacting them for assistance, to have a *paperless company* and *request[s] that all communications to our attention be in electronic format. In those instances when it is necessary to provide a paper/hard copy document, they should be directed to our corporate headquarters located at Phoenix Aviation Managers Inc. ... Kennesaw, GA... unless otherwise instructed* so that apparently even producers such as the Licensee could not even have a conversation with Phoenix about significant matters such as the Northway situation. [OIC Ex. 3, pp.1-2, emails between Licensee and Phoenix; Sorrell Exs. B-F, emails between Licensee and Phoenix.] Even when the Licensee contacted Phoenix many times attempting to confirm payments, confirm that specific payments were for specific months of coverage -- e.g., emails to Phoenix in February and March 2012 attempting to understand why Phoenix was maintaining that the premiums the Licensee had forwarded were for different months of coverage than the Licensee had indicated they were for, and to confirm that Phoenix had received Northway's premium of \$4,172.88 and that it was for December 2011 -- Phoenix responds to him virtually only with the above wording and there is no evidence that Phoenix ever responded to the Licensee's reasonable attempts to clarify the months for which he had made premium payments on Northway's behalf even though Phoenix's calculations were contrary to its own billing practices; even though Phoenix had advised the Licensee on or about January 15, 2012 that he should disregard Phoenix's Notice of Cancellation because of a mistake in "the system;" and even though Phoenix had gone ahead and cancelled the Northway policy against even its own advice that Northway should disregard that Notice. [OIC Ex. 3, pp1-2.]

11. In addition, there is no evidence that Phoenix's Renton office, the office which handled all of the transactions at issue herein -- and in fact still handles Northway's insurance business -- has ever attempted to resolve this situation by responding either to the OIC, the Licensee or Northway: e.g., why would Northway owe Phoenix over \$10,000 in "earned premium" as of January 25, 2012 (the date Phoenix cancelled the policy) when Phoenix had advised Northway that all that was due on January 13 was \$4,844.88 and Phoenix acknowledged receiving nearly

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all of this amount from the Licensee on January 19? [OIC Ex. 1, Notice of Cancellation; Sorrell Exs. B-F.] What are Phoenix's true billing practices, why did Phoenix cancel the Northway policy on January 25 when on January 15 Phoenix had advised the Licensee that he and Northway could disregard Phoenix's Notice of Cancellation because there had been a mistake in the system? Phoenix Renton office simply failed to respond, and submitted no evidence at all in this proceeding. When it received the OIC's inquiries it simply referred them to its Georgia office. After significant delay, as found above in Finding No. 5(2)(c), Phoenix's Georgia office ~~has no idea what occurred in this matter, how Phoenix's billings were handled, why the policy was cancelled, or even why it maintains Northway owes it over \$10,000.~~ Phoenix Georgia even seems unaware that it should be able to explain this over \$10,000 difference but instead refers to another entity (Regal) which clearly has no involvement in the transactions at issue.

12. As a result of Phoenix's activities,

- 1) Northway had to ground all of its aircraft associated with its flight school for the entire day of March 1, 2012 because it had discovered that Phoenix had cancelled its Old Republic insurance coverage on January 25, 2012. Therefore Northway had to contact each of its students and cancel classes on March 1, 2012, and lost one day of income from its flight school.
- 2) Unearned premium/new premium charges. On January 13, 2012 Phoenix advised Northway that, as of January 13, the amount due from Northway to Phoenix was \$4,844.88. [OIC Ex. 1, p.14, Notice of Cancellation.] Phoenix acknowledged receiving virtually all of this amount due on January 19. Even so, Phoenix cancelled the policy on January 25. Then on March 1 Phoenix began asserting that Northway owed it over \$10,000 in earned premium and required Northway to pay \$2,503 -- and kept Northway's \$7,500 security deposit -- to pay this over \$10,000 before it would issue new coverage (even though Northway had just discovered it was operating without coverage for one month because Phoenix had cancelled it against Phoenix's representations). [OIC Ex. 1, p.18.] Given the state of Phoenix's account records, it is entirely possible that Northway does not owe Phoenix this amount and it is even possible that Phoenix received and retained unearned premiums, in which case Northway would be due those return premiums. As above, although the Licensee has repeatedly inquired to Phoenix as to the whereabouts of these unearned premiums or an explanation of Phoenix's accounting for these premiums (so that Northway can be refunded any unearned premiums) [Testimony of Licensee; Ex. 3; Sorrell Exs. B-F] he has received virtually no response from Phoenix except one stating *You are paid in full.* [Testimony of Licensee; OIC Ex. 3; Sorrell Exs. B-F.]
- 3) \$7,500 security deposit. Years ago when it first obtained coverage involving Phoenix, Northway was required to place a \$7,500 security deposit with Phoenix. As above, upon Phoenix's cancellation of Northway's policy, Phoenix retained

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this \$7,500 for itself, asserting that this would reimburse Phoenix for part of the over \$10,000 in earned premium Northway owed Phoenix (and required Northway to pay an additional \$2,503 to reimburse Phoenix for the balance Phoenix alleged was owed). While Phoenix maintains it had to use this \$7,500 deposit to pay earned premiums it was owed up until January 25, there is insufficient evidence to support this position. Rather, there is no evidence that Northway, through the Licensee, failed to pay any premiums required, or that any of this deposit was needed to cover any premium payments. Once again, neither the Licensee nor the OIC has been able to receive an adequate explanation from Phoenix as to its accounting records. [Testimony of Licensee; OIC Ex. 1, Sorrell Exs. B-F.] In addition, even though Northway secured coverage the day after it discovered Phoenix had cancelled its Old Republic coverage, and even though this new coverage was also through Phoenix, and even though Phoenix had been unwilling to discuss its accounting of the Old Republic coverage with the Licensee and has since provided inadequate accounting, and contradictory explanations of its billing practices, even to the OIC, on March 1 Phoenix still required Northway to pay another \$7,500 security deposit to Phoenix before it would bind the new coverage. [Ex. 1, p.18.]

- 4) \$6,000 renewal credit lost. Under its contract with Phoenix, Northway was entitled to a \$6,000 renewal credit on renewal of Northway's insurance policy on March 3, 2012. However, curiously, Phoenix denied Northway the \$6,000 credit when Northway purchased the new coverage effective March 2 (the day after Northway and the Licensee discovered Phoenix had cancelled Northway's policy which was renewable on March 3), even though this was one day before the renewal of the original policy; even though Phoenix's accounting records are insufficient to show that Phoenix even had a right to cancel the Northway policy on January 25; even though Northway secured coverage the very next day (because Phoenix required it to pay the over \$10,000 Phoenix maintained it was owed before it would issue the new coverage); and even though the new coverage was also through Phoenix. [OIC Ex. 1.]

13. It is reasonable that Phoenix should respond very carefully and in sufficient clear detail as to where and how Northway's premium payments, and possibly even extra premium payment(s), and \$7,500 security deposit, were disposed of. Phoenix should also respond carefully and in sufficient clear detail as to how it had the right to cancel the original Northway policy on January 25, 2012 when the amount that Notice of Cancellation stated was due was virtually paid in full on January 19 – days before the stated date for cancellation, and in spite of Phoenix's assurances to the Licensee that Northway could disregard the Notice as there had been a mistake. It is here found, and no party argues otherwise, that the Licensee did not receive funds from Northway which it did not forward to Phoenix, and that the Licensee never received any return premiums, security deposit or other funds from Old Republic, Phoenix or any other source relative to the Northway matter. Finally, Phoenix should respond carefully in sufficiently clear detail as to why

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it believes it should not have provided Northway with its \$6,000 renewal credit given the entire situation as found above. As found above, it is of concern that Phoenix requires all communications to it to be in digital format, yet even to the OIC it cannot explain its own billing practices, or explain how it has accounted for premiums due and payments made in this matter or how it has fairly charged Northway an additional over \$10,000 for "earned premium" on the old policy when it stated only \$4,844.88 was due as of January 13, was paid virtually all of this amount January and cancelled the policy January 25; and when its own records are so unclear and contradictory; and, importantly, when Northway faces unaccountable monetary losses and lacked coverage for one month and the Licensee has had to face these very serious charges from the OIC based upon Phoenix's activities.

14. Although as above it was not the primary cause of the activities herein, in December 2011 the Licensee suffered a severe illness and undergone major cardiac bypass surgery. The Licensee was in the hospital for two months due to this unexpected health problem and underwent significant rehabilitation and several setbacks in recovery in the following months. The Licensee's wife, who had little to no insurance experience, was trying to keep his insurance business current during this time by at least receiving and depositing premium payments into Delta Pacific Services' insurance trust account and attempting to forward them to the insurers/brokers as appropriate. Neither the OIC nor Grant argue that the Licensee had any wrong intentions or ever profited in any way by his activities, but that due to the emergency health situation he may have failed to timely transmit Northway's premiums to Phoenix this period. [Testimony of Grant; Testimony of Licensee; Testimony of Barbara Sorrell (Licensee's wife).] While, as the OIC argues, the Licensee should have arranged for adequate backup should an emergency such as this arise, this situation was unexpected and in fact the Licensee had never had such a health or other emergency and has always been able to take care of his insurance business by himself without any backup. [Testimony of Licensee; Testimony of Ms. Barbara Sorrell, Licensee's wife.] The Licensee advises that he will secure adequate backup for his insurance business so that it will be handled properly should another such emergency arise.

15. Since April 14, 2011, the Licensee has failed to file an Individual Notice of Affiliation with the OIC, properly affiliating himself with his agency, Delta Pacific, as required.

16. Debra Calhoun, OIC Investigator, appeared as a witness on behalf of the OIC. Ms. Calhoun presented her testimony in a detailed and credible manner and exhibited no apparent biases.

17. Jim Grant, owner of Northway Aviation of Washington, Inc., appeared as a witness on behalf of the OIC. Mr. Grant presented his testimony in a detailed and credible manner and presented no apparent biases. Mr. Grant clearly stated that the insurance services he received from the Licensee for the ten years prior to the pertinent period was very good, that in fact he and the Licensee had become personal friends and therefore he was sorry to have had to bring this issue to the attention of the OIC.

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18. Misty Ogden, bookkeeper for Northway Aviation of Washington, Inc., appeared as a witness on behalf of the OIC. Ms. Ogden presented her testimony in a detailed and credible manner and presented no apparent biases.

19. Robert P. Sorrell, the Licensee, appeared as a witness on his own behalf. Mr. Sorrell presented his testimony in a detailed and credible manner and presented no apparent biases.

~~20. Barbara Sorrell, the Licensee's wife, appeared as a witness on behalf of Mr. Sorrell. Ms. Sorrell presented her testimony in a detailed and credible manner and presented no apparent biases.~~

21. Based upon the above Findings of Facts, it is reasonable that the OIC's Order, No. 12-0241, suspending the Licensee's Washington insurance producer's license for 30 days and imposing a \$1,000 fine, be set aside on the condition that the Licensee provide for adequate backup in the event of another unforeseen emergency or planned absence from his insurance business.

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. In two of the months at issue herein, it is most likely that the Licensee delayed sending premium payments to Phoenix by one to three weeks and thereby violated RCW 48.17.480(2) and (3), although these delays were not the cause of the hardship suffered by Northway detailed herein.
3. In failing to timely file his Individual Notice of Affiliation by April 14, 2011, affiliating himself with his agency Delta Pacific, the Licensee violated WAC 284-17-473.
4. Based upon the above Findings of Facts and Conclusions of Law, it is hereby concluded that the OIC's Order Suspending License and Levying a Fine, No. 12-0241, should be set aside on the condition that within three months of the date of this Order the Licensee 1) shall identify a backup producer to handle his insurance business should another unexpected emergency occur in the future, and 2) shall file a Notice of Affiliation with the OIC, affiliating himself or another individual with Delta Pacific, within two weeks of the date of this Order.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

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ORDER

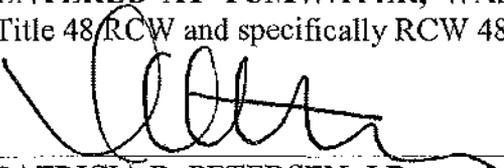
On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's Order Suspending License and Levying a Fine, No. 12-0241, is set aside.

~~**IT IS FURTHER ORDERED** that the Licensee shall identify an individual producer or agency which will serve as a backup producer to handle his insurance business should another unexpected emergency occur in the future. The Licensee shall identify such individual or entity within three months of the date of this Order to the above referenced attorney for the OIC either 1) by mail to her at P.O. Box 40255, Olympia, WA 98504-0255; or 2) by personal delivery to her at 5000 Capitol Blvd., Tumwater, WA 98501; or 3) by email to her at MarciaS@oic.wa.gov.~~

IT IS FURTHER ORDERED that, within two weeks of the date of this Order if he has not already done so, the Licensee shall properly file a Notice of Affiliation with the OIC, affiliating himself or another individual with Delta Pacific Services, Inc., as appropriate.

ENTERED AT TUMWATER, WASHINGTON, this 30th day of May, 2013, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN, J.D.
Chief 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.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

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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: Robert P. Sorrell, Mike Kreidler, James T. Odiome, John F. Hamjc, Esq., Marcia Stickler, Esq., and Charles Brown, Esq.,

DATED this 3rd day of June, 2013.


KELLY A. CAIRNS