

FILED

2013 MAY 10 A 11:07

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In The Matter of:

JOSEPH M. TOBEY,

Licensee.

DOCKET NO.:13-0014

HEARING MEMORANDUM

Mr. Tobey admits the allegations in paragraphs 1 to 9. However, he contends these actions do not warrant a revocation of his license and that other penalties are appropriate.

In each of the incidents described, Mr. Tobey believed the customer wanted to cancel their old policy and purchase a newer and cheaper policy from the same insurer. He took unauthorized and inappropriate methods to achieve these results. The incidents occurred within a short time and were not indicative of how he normally handled these types of transactions. During the time Mr. Tobey worked for Combined Insurance he was involved with 40 cancellations and purchases of new policies. The others transactions raised no questions regarding customer authorizations.

In order to assess what is an appropriate sanction for Mr. Tobey's actions we have made a search of recent Commission actions in similar or more significant actions. In each

1 of these actions, the penalty imposed was less than revocation. Many of these contained
 2 financial irregularities and/or making significant misleading or false representations. Mr.
 3 Tobey's record as an agent, other than these incidents, is unblemished. He has not had a
 4 discipline issue arise before or after these charges.
 5

6 We ask a different penalty be imposed consistent with prior cases.

NAME	VIOLATION	PENALTY	ORDER ID
Bannon, James W.	Misappropriation of premiums and failure to remit premiums to insureds	\$2,000 fine	D04-122
Bellamy, John D.	Back dating and increasing coverage.	\$500 fine	D02-73
Black, John A.	Engaging in unfair or deceptive acts or practices in the conduct of business; untrustworthy and a source of injury and loss to the public	Six month suspension; complete 12 hours of business or insurance ethics course credits.	06-120
Chadwick, AI Insurance Inc. and Edward Chadwick	Improper handling of premium funds; considered incompetent, or untrustworthy, or a source of injury and loss to the public	\$5,000 fine with a number of terms, including getting premium account balanced in a couple years.	D02-205
Chittenden, Cleo E.	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.	License Suspended	D06-153
Chronister, Robert S	Engaging in unfair or deceptive acts or practices; making, publishing, and disseminating false,	\$5,000 fine and 7 additional hours of continuing education in the field of insurance ethics.	D05-375

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

1		deceptive, and misleading representations; quoting and attempting to place insurance with no appointment		
2				
3				
4	Conover Insurance, Inc.	Providing incorrect and materially untrue information on twelve renewal applications and attested to the accuracy thereof	\$12,600 fine with \$6,000 suspended and compliance plan	11-0111
5				
6				
7				
8	Davies, Jeffrey W.	Misrepresentation.	Stipulation & \$500 fine	D02-72
9	Dixon, Jeffrey R	Made false statements relative to applications for insurance and sold non-approved annuities to Washington consumers	\$3,000 Fine.	D07-0331
10				
11				
12				
13	Henning, Kenneth L	Failure to properly account for premium; forgery	\$3,000 fine	D02-02
14				
15	Leaverton, Barbara C.	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	Consent and order levying a \$3,750 fine	D07-128
16				
17				
18				
19				
20				
21				
22				
23				
24	Losse, Trevor D'Jon a/k/a D'Jon, Trevor	Failing to notify OIC of changes of address within 30 days, failing to properly reply to letter from the OIC seeking a prompt response, soliciting insurance for an insurer that terminated his appointment while	\$1,000 fine and consent Order imposing fine and setting conditions for probationary Producer's License	11-0286
25				
26				
27				
28				

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

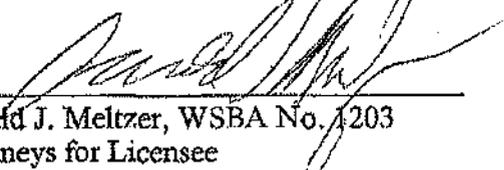
	<p>intentionally concealing his legal name and inaccurately denying to OIC that he had solicited insurance and signed applications electronically, including inaccurate information to at least one consumer's insurance application and knowingly misstating on insurance applications that a different insurance 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</p>		
<p>Parkhurst, Danny H.</p>	<p>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.</p>	<p>\$1,000 fine and six months suspension of Washington producer's license</p>	<p>11-0304</p>
<p>Paterson, Kirsten Molbak</p>	<p>Misrepresentation of benefits or advantages of a policy or a contract, in violation of RCW 48.30.090, and twisting, in violation of RCW 48.30.180</p>	<p>\$6,000 fine, \$3,000 suspended</p>	<p>D07-0193</p>

SINSHEIMER & MELTZER, INC. P.S.
 Attorneys at Law
 701 FIFTH AVENUE, SUITE 4780
 SEATTLE, WASHINGTON 98104
 (206) 340-4700 FAX (206) 464-9355
 Email: law@sinsheimer-meltzer.com

1	Piersol, JoDee	Knowingly making, publishing or disseminating a false, deceptive or misleading representation or advertising in the conduct of business of insurance	\$100 fine	12-0500
2				
3				
4				
5				
6	Shigaki, Dale M.	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	\$2,000 fine	11-0271
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17	Thompson, Tara M.	Diverting or appropriates funds received in a fiduciary capacity to her own use	Revocation order set aside by Chief Hearing Officer; probation of one year with conditions imposed on licensee	
18				
19				
20				
21	Tobey, Kenneth I., Inc.; Anderson, Harold L.	Misappropriation of funds	\$25,000 fine; 2 years of monthly financial statements provided to OIC	D04-01
22				
23				

24 DATED this 9th day of May 2013.

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

26 By: 
 27 Ronald J. Meltzer, WSBA No. 1203
 28 Attorneys for Licensee

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

Kate Reynolds Staff Attorney Legal Affairs Division PO Box 40255 Olympia, WA 98504	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	Legal Messenger U.S. Mail Electronically Facsimile
Patricia D. Peterson Office of Insurance Commissioner Hearing Unit PO Box 40255 Olympia, WA 98504	<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 9th day of May 2013.



Marci Umatum, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

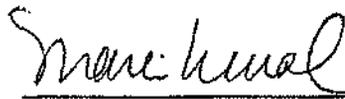
DECLARATION OF SERVICE

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.

Kate Reynolds Staff Attorney Legal Affairs Division PO Box 40255 Olympia, WA 98504	X X	Legal Messenger U.S. Mail Electronically Facsimile
Patricia D. Peterson Office of Insurance Commissioner Hearing Unit PO Box 40255 Olympia, WA 98504	X X	Legal Messenger U.S. Mail Electronically Facsimile

I declare the foregoing is true and correct.

Dated this 9th day of May 2013.



 Marci Umatum, Paralegal

SINSHEIMER & MELTZER, INC., P.S.

ATTORNEYS AT LAW
4780 COLUMBIA CENTER - 701 FIFTH AVENUE - SEATTLE, WA - 98104
PHONE (206) 340-4700 FAX (206) 464-9555
Email: mlu@sinsheimer-meltzer.com

W. JOHN SINSHEIMER
RONALD J. MELTZER
STUART J. SINSHEIMER
LOIS K. MELTZER

Date: May 9, 2013

TO: Patricia Peterson

COMPANY: Office of Insurance Commissioner

FAX NUMBER: 360-664-2782

FROM: Ronald J. Meltzer

DESCRIPTION: In Re Joseph M. Tobey
Docket No. 13-0014
Hearing Memorandum

CLIENT/MATTER NO.: 12088.12088

A total of 7 pages, including this cover sheet, are being transmitted. If you experience any problems in receiving this document please telephone *Marci Umatum* at (206) 838-0013.

Hard copy to follow via mail: Yes

OUR FAX NUMBER IS (206) 464-9555

NOTE: This message is privileged and confidential, intended only for the above addressee. If you are not the intended recipient or the employee or agent of the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us at once by telephone and mail the original back to us. Thank you.

REMARKS:

See attached