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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF THE INSURANCE COMMISSIONER

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In The Matter Of:

GHOLAM REZA NIKZAD AND WOOD
FINANCIAL SERVICES COMPANY,

Appellants.

OAH Docket No. 2013-INS-0006
Agency No. 13-0222

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
INITIAL ORDER

I. ISSUES PRESENTED

1.1 Whether Appellants fully complied with the November 5, 2012 Findings of Fact, Conclusions of Law, and Final Order issued by the Office of the Insurance Commissioner?

II. ORDER SUMMARY

2.1 Appellants did not fully comply with the November 5, 2012 Findings of Fact, Conclusions of Law, and Final Order issued by OIC Chief Presiding Officer Patricia Petersen. Consequently, under RCW 48.17.530, Appellants' insurance producer licenses are revoked.

III. HEARING

3.1 **Hearing Date:** September 24, 2014

3.2 **Administrative Law Judge:** Lisa N. W. Dublin

3.3 **Appellants:** Gholam Reza Nikzad and Wood Financial Services Company

3.3.1 **Representative:** Attorney James Schermer

3.4 **Agency:** Office of the Insurance Commissioner ("OIC")

3.4.1 **Representative:** Charles Brown, OIC Staff Attorney

3.4.2 **Witnesses:**

3.4.2.1 Mary Tunis

3.4.2.2 Ira Harte

3.5 **Exhibits:** Exhibits 1-8 and 10-15 were admitted into the record.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On or around August 8, 2013, Appellants timely appealed OIC's July 23, 2013 Order Revoking License in this matter.

4.2 On or around September 26, 2013, the Office of Administrative Hearings (OAH) received OIC's request for administrative hearing regarding Appellants' appeal.

Appellants

4.3 At all times relevant hereto, Wood Financial Services Company was a Washington company located at 5200 Southcenter Boulevard, Ste. 200, Tukwila, Washington, holding WAOIC entity insurance producer license number 171385. At all times relevant hereto, Wood Financial Services Company was owned by Gholam Reza Nikzad, holding WAOIC insurance producer license number 198336. See Ex. 5, pp. 2-3.

4.4 Mr. Nikzad came to the United States from Iran in 1976 as a student, attended Tacoma Community College and Seattle University, and then worked as a clerical employee for Home Insurance Company from 1979-1984. In 1984, Mr. Nikzad decided to become an insurance agent, and so went to work for an insurance agency as a bookkeeper. Approximately six months later, Mr. Nikzad became a licensed insurance agent.

4.5 In 2001, Mr. Nikzad opened his own insurance agency, i.e. Wood Financial Services Company. Appellants subsequently maintained a relatively small number of "agency bill" accounts in addition to their primary, "direct bill" accounts. Under the "direct bill" system, Appellants' clients often paid their premiums directly to the insurers, so that these premium payments did not pass through Appellants' bank accounts; in the alternative, clients paid their premiums to Appellants who placed 100% of these funds into their dedicated premium trust account for the insurer to collect by "sweeping" this account. Insurers under this direct bill system then paid Appellants separately. This involved less accounting

work and risk to Appellants and consumers. However, under the "agency bill" system, Appellants accepted premium payments from clients and then passed on these payments to the insurance companies (or brokers thereof) minus Appellants' commissions. Under this system, Appellants needed to maintain sufficient reserves in order to pay back the insurance companies any unearned commissions in the event the insureds' policies were cancelled.

4.6 From approximately 2004 to 2008, Appellants used a separate bookkeeping service to manage their business affairs. During the ensuing economic downturn, Appellants' business declined, and Appellants could no longer afford the bookkeeping service. Mr. Nikzad bought a building in Kent, where he conducted his insurance business, but he ultimately defaulted on the property and returned to Tukwila. Mr. Nikzad's health suffered, and he underwent several heart surgeries. Mr. Nikzad lost ownership of his home and currently rents this home from the new owner. Mr. Nikzad currently supports his two adult sons who live with him, and supports his siblings in Iran, on a significantly reduced income.

Investigations

4.7 In 2010, OIC received a complaint from an insurance company against Appellants for failure to remit premiums due. In December 2010, as part of the resulting OIC audit of his company, Appellants paid the complainant the premiums due. Ex. 2, p.3. However, OIC Financial Examiner Angelina Portacio was unable to complete her investigation because Appellants did not maintain records of premiums received, remitted, or returned. *Id.* Ms. Portacio found Appellants in violation of Chapter 48.17 RCW in three respects: (1) "fail[ing] to retain a record of transactions consummated," (2) "fail[ing] to account for all the premiums and return premiums received and fail[ing] to remit to the company monies received as payment for premiums," and (3) fail[ing] to comply with the requirement of this code to establish and maintain records and an appropriate accounting system for all premiums and return premiums received." *Id.*, p.4. Ms. Portacio instructed Appellants to reconstruct their premium trust account records for 2009 and 2010, and operating account records for 2010, and submit them to her by March 1, 2011, at which time OIC would conduct a follow-up investigation. *Id.*; Ex. 4, p.1.

4.8 In February 2011, Mr. Nikzad acknowledged that the violations Ms. Portacio identified were accurate. Ex. 3, p.1. He claimed he could not reconstruct his records as directed due to the cost of obtaining bank records, and asked Ms. Portacio to limit her request. *Id.*, p.2. Ms. Portacio responded by reducing the requirement to reconstruct both accounts to 2009 only, and extended the deadline to June 2011. Ex. 5, p.4. However, as of November 2011, when Ms. Portacio conducted a follow-up investigation, Appellants had not

done so. *Id.*; see Ex. 1, pp. 2-3. Nor had Appellants instituted recordkeeping procedures going forward. *Id.*

4.9 After Appellants repudiated a consent order, on May 31, 2012, the OIC filed a Notice of Hearing to Request Imposition of a Fine and Placement of Licensees on Probationary Status. See Ex. 5, p.2. On July 10, 2012, an evidentiary hearing took place before Chief Presiding Officer Patricia D. Petersen, which resulted in a Findings of Fact, Conclusions of Law and Final Order ("Final Order") issued November 5, 2012. Therein, Chief Presiding Officer Petersen ordered Appellants to do the following: (1) pay a fine in the amount of \$1,000.00 within 30 days, (2) "transfer all of their general agency accounts to a properly licensed insurance producer who is not affiliated with [Appellants]" by the end of 2012, and "take no new general agency account business," (3) within three months, "provide OIC with organized clear evidence, to the satisfaction of the OIC, that [Appellants] received, identified, deposited and handled all premium credits received in calendar year 2009 – specifically, premium credits received as a result of cancellations, endorsements and overpayments – and promptly and properly returned these funds to their customers or other persons entitled thereto"; and (4) beginning January 1, 2013, "maintain its accounts and records relating to all of its insurance business in full compliance with all provisions of the Insurance Code and regulations." See Ex. 5, pp. 8-9. The Final Order concluded with the following:

IT IS FURTHER ORDERED that if each of the conditions set forth in this Order is not *fully met* as described and *within the time frames stated*, the Washington resident insurance producer's licenses of Gholam Reza Nikzad and Wood Financial Services Company shall be, at the sole discretion of the OIC, revoked without advance notice.

Id., p.9 (italic emphasis added).

Compliance with the Final Order

4.10 Appellants did not appeal this Final Order, and paid the \$1,000.00 fine. However, Appellants admittedly did not fully comply with the remainder of the Final Order.

4.11 In April 2013, Ms. Portacio and OIC Financial Examiner Supervisor Mary Tunis conducted a follow-up examination of Appellants to determine compliance with the Final Order. Regarding Appellants' agency bill accounts, Ms. Tunis and Ms. Portacio found that not only had Appellants not transferred their existing accounts to other non-affiliated insurance producers, but rather had renewed existing agency bill accounts and issued new agency bill accounts. Ex. 6, p.2.

4.12 Regarding premium refunds, Appellants still had not reconstructed their records for 2009, and could not provide OIC sufficient evidence showing how much in premium credits they received and returned to clients. OIC then performed its own research and determined that with regard to Griffin Underwriting Services customers alone, Appellants owed them \$4,465.58 in premium credits. *Id.*, p.3.

4.13 Regarding compliance going forward with all provisions of the Insurance Code, Appellants still had no established accounting system, and still failed to properly track the transaction activity involving their premium and operating bank accounts. Ms. Tunis and Ms. Portacio still could not tell how checks Appellants collected from insureds resulted in payment to the insurers, and whether there was a shortage in the premium account. *Id.*

4.14 In addition, Appellants commingled the bank accounts, using the premium bank account for personal and business expenditures. *Id.*, p.4. As of April 30, 2013, Appellants' premium account was overdrawn by \$480.99, and charges on this account had been made to LA Fitness, Verizon Wireless, and the City of Bellevue. See Ex. 12. Mr. Nikzad testified that he did not know the bankcard he used for these personal and business charges was tied to his premium account; he believed the bankcard was only tied to his business account, and that when he learned of the error from Ms. Portacio, he went to the bank and obtained separate bankcards for the accounts. This testimony is not credible, especially given that Appellants continued to use the premium account bankcard to pay business expenses as late as September 2013. See Exhibit 13, p.3.

4.15 On June 24, 2013, Ms. Portacio returned to Appellants' business and determined they still had not issued the \$4,465.58 in premium refunds due. Ex. 6, p.3.

4.16 In a report dated July 8, 2013, Ms. Portacio found specifically:

- By failing to maintaining [sic] records and an appropriate accounting system for all premiums and return premiums received, the licensees failed to comply with RCW 48.17.480(2), RCW 48.17.470, WAC 284-12-080(8), and WAC 284-12-080(9).
- By using the separate premium account to pay for personal and business expenses, the licensees failed to comply with RCW 48.17.600(1) and WAC 284-12-080(4).

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- By failing to reconcile the separate premium account, the licensees failed to comply with RCW 48.17.480(2), RCW 48.17.600(1), RCW 48.17.470, and WAC 284-12-080(8).

Id. Ms. Portacio concluded, "Based upon the results of the examination tests performed, the licensees have failed to comply with the requirements of the Final Order issued on November 5, 2012." *Id.*, p.5.

Order of License Revocation

4.17 On July 23, 2013, OIC issued an order revoking Appellants' Washington insurance producer licenses effective August 12, 2013. Ex. 10. Therein, the Commissioner found that as of April 2013, Appellants "had completely and utterly failed to comply with" the Final Order. *Id.*, p.2. The Commissioner additionally found:

By failing to produce accounts, records, and documents necessary to facilitate the OIC's financial examination, Licensees violated RCW 48.03.030(1).

By failing to retain records of all transactions consummated under their licenses and failing to keep such records available and open to inspection by the OIC for at least five years, Licensees violated RCW 48.17.470(1) and (2).

By failing to maintain records and an appropriate accounting system for all premiums and return premiums received, Licensees violated RCW 48.17.480(1) and (2), RCW 48.17.470, RCW 48.17.600(1), and WAC 284-12-080(8) and (9).

By using the separate premium account to pay for personal and business expenses, Licensees violated RCW 48.17.600(1) and WAC 284-12-080(4).

By failing to reconcile the separate premium account, Licensees violated RCW 48.17.480(2), RCW 48.17.600(1), RCW 48.17.470, and WAC 284-12-080(8).

Id. The Commissioner concluded:

RCW 48.17.530(1)(b) authorizes the Commissioner to revoke the license of an insurance producer for violating any insurance laws or any rule or order of the Commissioner. Accordingly, the Washington State insurance producer licenses of Gholamreza

Nikzad and Wood Financial Services Company are hereby
REVOKED.

4.18 On August 8, 2013, Appellants appealed this order, and requested a hearing seeking relief from license revocation. See Ex. 9, p.2.¹

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under chapters 48.04 and 34.05 RCW, and chapters 10-08 and 284-02 WAC.

Appellants failed to fully comply with the November 5, 2012 Final Order.

5.2 The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an ... insurance producer's license... or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of the following causes:
(b) Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner.

RCW 48.17.530(1); WAC 284-02-070(2)(c).

5.3 The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and this title against any person who is under investigation for or charged with a violation of this chapter or this title, even if the person's license or registration has been surrendered or has lapsed by operation of law. RCW 48.17.530(3).

5.4 On November 5, 2012, Chief Presiding Officer Patricia Petersen issued a Final Order to Appellants, clearly identifying several tasks Appellants needed to complete within specified timeframes in order to avoid losing their insurance producer licenses. Although Appellants complied with part of the Final Order, i.e.

¹ Appellants sought to introduce evidence that, since July 23, 2013, they have substantially complied with the Final Order such that revoking their insurance producer licenses is unnecessary. Because such evidence is irrelevant to the determination of whether Appellants fully complied with the Final Order within the timeframes established therein, it was excluded from the evidentiary record.

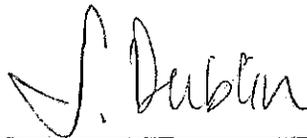
they paid the \$1,000.00 fine, they admittedly failed to comply with the rest, and in fact intentionally disregarded and defied the remainder of the Final Order. Instead of divesting themselves of their agency-billed accounts by the end of 2012, Appellants renewed and issued more. Instead of establishing a proper accounting system within the next three months to track premiums, Appellants continued to commingle funds, make untraceable deposits to the premium account, overdraw their premium account, and otherwise mismanage client funds in violation of Chapter 48.17 RCW. Although Appellants may believe that license revocation is too harsh, and although Appellants may have now completed other tasks assigned by the Final Order, the Final Order unequivocally required full compliance by the established deadlines. Because Appellants did not fully comply by the established deadlines, Appellants' insurance producer licenses are hereby revoked under RCW 48.17.530(3).

INITIAL ORDER

IT IS HERBY ORDERED THAT:

1. The insurance producer licenses of Gholam Reza Nikzad and Wood Financial Services Company are revoked.
2. OIC's Order Revoking License, No. 13-0222 is AFFIRMED.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Lisa N. W. Dublin
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Final Order and Right to Petition for Review:

1. Under WAC 284-02-070(2)(c)(i), the Initial Order of an administrative law judge will not become a Final Order without the Insurance Commissioner's review. The Insurance Commissioner's Chief Hearing Officer will automatically review this matter and issue a Final Order; no further action is needed by either party to start this process.

2. In addition to the automatic review described above, RCW 34.05.464 and WAC 10-08-211 allow any party to an administrative hearing process to file a "Petition for Review" of an Initial Order. The Chief Hearing Officer may then consider your specific objections to the Initial Order and your arguments for a different outcome. To "file" means to "deliver." RCW 34.05.010(6).

3. The Petition for Review must be filed with (delivered to) the Office of the Insurance Commissioner (OIC) within twenty (20) days of the date of service of the Initial Order. "Service" means the date the document(s) was/were: (a) mailed to the parties, by first class, registered, or certified mail, postage pre-paid and properly addressed (as shown by the postmark date or other dated receipt); or by fax with same-day mailing of the documents; or (b) delivered to the party. RCW 34.05.010(19); WAC 10-08-110(2).

4. Copies of the Petition for Review must be served (mailed in the way described above, or delivered) to all other parties or their representatives at the time the Petition is filed with the OIC.

5. The Petition for Review must specify all parts of the Initial Order that the petitioner disagrees with and the evidence in the record that supports the Petition.

6. If desired, a "Reply" to the Petition for Review may be filed with the Insurance Commissioner. Any Reply must be filed with the OIC within ten days of the date the Petition for Review was received or was properly mailed to the party providing the Reply (as shown by a postmark). Copies of the Reply shall be served (properly mailed or delivered) on all other parties or their representatives at the same time. A Petition for Review and Reply to Petition for Review must be mailed to:

Office of Insurance Commissioner
James Finkel
Chief Hearing Officer
Hearings Unit, OIC
PO Box 40255
Olympia, WA 98504-0255

CERTIFICATION OF MAILING IS ATTACHED

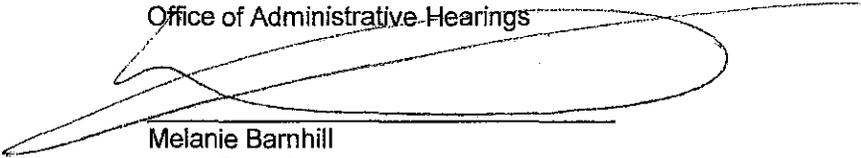
Certificate of Service – OAH Docket No. 2013-INS-0006

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

<p>Gholam Reza Nikzad 14404 SE 15th Street Bellevue, WA 98007</p>	<p><input checked="" type="checkbox"/> First Class US Mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid Certified mail, return receipt</p>
<p>James Schermer Mosler Schermer & Jacobs 1001 Fourth Avenue, Suite 4105 Seattle, WA 98154</p>	<p><input checked="" type="checkbox"/> First Class US Mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid Certified mail, return receipt</p>
<p>Charles Brown OIC Staff Attorney Office of the Insurance Commissioner Legal Affairs Division PO Box 40255 Olympia, WA 98504</p>	<p><input checked="" type="checkbox"/> First Class US Mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid Certified mail, return receipt</p>
<p>James Finkel, Chief Hearing Officer Chief Hearing Officer Hearings Unit, OIC PO Box 40255 Olympia, WA 98504</p>	<p><input checked="" type="checkbox"/> First Class US Mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid Certified mail, return receipt</p>

Date: November 24, 2014

Office of Administrative Hearings



Melanie Barnhill
 Legal Secretary