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In The Matter of

GHOLAMREZA NIKZAD, and
WOOD FINANCIAL SERVICES
COMPANY,

Licensees.

OIC No. 13-0222

OIC RESPONSE TO LICENSEES'
PETITION FOR REVIEW

Licensees' Petition for Review challenges one sentence in Conclusion of Law 5.7 and one sentence in Conclusion of Law 5.9 entered by OAH Administrative Law Judge Lisa Dublin in her Findings of Fact, Conclusions of Law, and Initial Order dated May 20, 2015. Licensees do not challenge any of Judge Dublin's Findings of Fact, and Licensees do not challenge the remainder of these Conclusions and or the other Conclusions that address and reject Licensees' waiver and estoppel argument and conclude that Licensees failed to comply with any aspect of Judge Petersen's Final Order of November 5, 2013, and still failed to comply as of the March 31, 2015 date of the remand hearing.

Licensees challenge the first sentence in Conclusion 5.7 and the first sentence in Conclusion 5.9, which Conclusions state as follows:

> 5.7 However, Appellants have produced no evidence other than conjecture to establish that identifying the Griffin clients and the premium credits owed them, and giving this information to Appellants, was inconsistent with the later enforcement of Judge Petersen's November 5, 2012 Final Order. Rather, the terms of FLE Portacio's April 2013 investigative

report clearly state Appellants failed to reconstruct their agency records regarding premium credits for 2009 as the Final Order required, and that she was able to independently identify over $4,000.00 in premium credits that Appellants owed simply to Griffin clients. Clear, cogent and convincing evidence on record shows that, in giving Appellants the information about Griffin clients and following up on Appellants' repayment efforts, FLE Portacio acted consistently with, and furtherance of, the July 2013 enforcement of Judge Petersen's November 5, 2012 Final Order, not inconsistently.

5.9 Similarly, Appellants have produced no evidence that FLE Portacio, on behalf of OIC, intentionally and voluntarily waived OIC's right to enforce Judge Petersen's November 5, 2012 Final Order by calling attention to premium refunds Appellants owed, and following up to make sure Appellants paid them. Even if FLE Portacio had the authority to waive the provisions of Judge Petersen's November 5, 2012 Final Order, as stated above, FLE Portacio acted far more consistently with enforcing the Final Order than with waiving it. In addition, in August 2013, Appellants validated the continued effectiveness of the terms of Judge Petersen's November 5, 2012 Final Order by asking OIC to halt the revocations, stating they could fully comply with the Final Order within 30 days. Consequently, Appellants have not established that OIC waived the right to enforce Judge Petersen's November 5, 2012 Final Order.

Ms. Portacio's July 8, 2013 follow up examination report (Exhibit 6) reveals that Licensees failed to comply with any of the conditions set out in the Final Order, and fully supports both of the above-cite Conclusions, stating in part as follows:

> Due to lack of information from the Licensees, I contacted Griffin Underwriting Services to gather information relating to the 2009 premium credits in order to come up with an approximate amount of refunds due to their customers.
>
> On April 23, 2013, I provided Mr. Gholam Reza Nikzad (Licensee) a list of return premiums amounting to $4,465.58 to be refunded promptly to their customers. On June 24, 2013, I returned to the Agency to verify and confirm if refunds have been made, but found that the Licensee had not done so. The Licensee then wrote refund checks, provided me copies and assured me that he will mail them that same day.

This hardly waives any requirement of the November 5, 2012 Final Order. Neither does Financial Examiner Ira Harte's March 31, 2015 testimony at the remand hearing regarding his

examination of October 28, 2013. Mr. Harte testified consistently with his report (Exhibit 9) which states in pertinent part as follows:

> On April 23, 2013, Financial Examiner Angelina Portacio provided Licensees a list of return premiums totaling $4,465.58 to be refunded promptly to their customers. I utilized this list to examine the Licensees' compliance with refunding these return premiums. The Licensees provided records that show they refunded return premiums to customers that aggregate to only $805.46.
>
> | | # Insureds | Total Amount |
> |---|---|---|
> | Return Premiums owed to insureds | 18 | $4,465.58 |
> | Actual Refunds to Insureds | 4 | $ 805.46 |
> | Return Premiums Still Owed @ 9/30/13 | 14 | $3,660.12 |
>
> Finding: Non-compliance. The Licensees failed to promptly and properly refund return Premiums to 14 insureds.

There is no testimony in this case that Mr. Nikzad was told by Ms. Portacio or by Mr. Harte that Mr. Nikzad need not comply with the requirement in Judge Petersen's Final Order to provide within three months "organized, clear evidence, to the satisfaction of the OIC, that the Licensees 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 there is no testimony that Ms. Portacio or any other OIC witnesses who testified in this case was authorized to vary or waive the requirements of the OIC Chief Hearing Officer's November 5, 2012, Final Order.

This case dates back to a complaint from 21st Century Insurance and Financial Services that Mr. Nikzad and his agency failed to remit premiums owed in the amount of $1,907.56. OIC

financial examiner, Angelina Portacio, spent two days in December 2010 attempting to examine the Licensees' books and records. Licensees' records were inadequate. Licensees were instructed to reconstruct their records by March 11, 2011, and to correct their record keeping deficiencies and Insurance Code violations. Ms. Portacio revisited the agency in November 2011. Licensees had failed to take any steps whatsoever to comply with her instructions, culminating in an enforcement action adjudicatory hearing and the November 5, 2012, Final Order. Another examination was then conducted by Ms. Portacio to determine whether Licensees had complied with the Final Order. They still had taken no steps whatsoever to comply. The OIC entered an Order on July 23, 2013 revoking their insurance licenses.

On August 7, 2013, Licensees requested an OAH hearing challenging revocation, indicating that "full compliance can be achieved within thirty days of this hearing request." This too was a false promise. OIC examiner, Ira Harte, revisited Licensees' office on October 28, 2013, and found that the Licensees still had yet to comply with any of the requirements of Judge Petersen's Final Order of November 5, 2012.

An OAH hearing was then conducted on September 24, 2014, by OAH Administrative Law Judge, Lisa N.W. Dublin, who entered Findings of Fact, Conclusions of Law, and an Initial Order on November 24, 2014, affirming the OIC's revocation of the licenses of Mr. Wood and his agency. Due to the exclusion of Mr. Harte's examination report and testimony concerning events subsequent to the OIC's Revocation Order, the matter was then remanded to OAH for a further evidentiary hearing to address whether the OIC waived or is estopped from asserting strict compliance deadlines; if so, whether licensees complied with Judge Petersen's Final Order

within a delayed deadline; and whether tardy compliance with the deadlines might warrant a lesser remedy than revocation.

As reflected in Judge Dublin's unchallenged Finding 4.5 (2), as of Mr. Harte's October 28, 2013 examination:

> Of the $4,465 in premium credits Appellants owed to a total of eighteen insureds according to Griffin Underwriting Services, Appellants refunded only $805.46 amongst four of the eighteen insureds. This left $3,330.12 owing to a total of fourteen insureds as of September 30, 2013.

At the time of Mr. Harte's October 28, 2013 examination, Licensees had not only failed to make the refund payments identified by Ms. Portacio; they still had not transferred their general agency accounts to an unaffiliated producer and still had not begun to maintain their accounts and records relating to their insurance business in compliance with the Insurance Code and regulations. See unchallenged Findings 4.5 – 4.8.

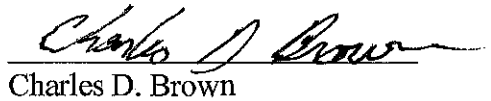
At the remand hearing, Licensees introduced their January 2015 bank statement for their premium account, presumably to demonstrate it was no longer overdrawn. Unfortunately, the bank statements show that Licensees, more than four years after Ms. Portacio's initial examination, were still commingling funds held in a fiduciary capacity by paying operating expenses out of their fiduciary premium account in violation of RCW48.17.600 and WAC 284-12-080. See unchallenged Finding 4.10.

CONCLUSION

Licensees' quarrel with two sentences in Judge Dublins' Conclusions of Law is factually unsupported and makes no legal sense. The OIC has never waived compliance with Judge

Petersen's November 5, 2012 Final Order, and Judge Dublin correctly concluded the OIC is not estopped from enforcing it. After more than four years, multiple examinations, and a prior adjudicatory proceeding, Licensees still have not seen fit to comply with the law or with Judge Petersen's Final Order, and they continue to scoff at their fiduciary duties under RCW 48.17.600 and WAC 284-12-080. The OIC Staff therefore requests that Judge Dublin's Findings of Fact, Conclusions of Law, and Initial Order of May 20, 2015 be approved and adopted and that the OIC's Order Revoking Licenses be upheld.

Respectfully Submitted this 17th day of June, 2015.



Charles D. Brown
OIC Insurance Enforcement Specialist

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing OIC Response to Petition for Review on the following individual in the manner indicated:

Judge George Finkle (Ret.)
Presiding Officer
Hearings Unit, OIC
Office of the Insurance Commissioner
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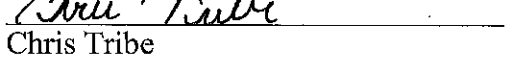
(XXX) **Copies** - Via Email and U.S. mail via state Consolidated Mail Service with proper postage affixed to

SIGNED this 17th day of June 2015, at Tumwater, Washington.



Chris Tribe