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Office of Administrative Hearings
Spokane

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

In the Matter of: BRYAN K. JARRETT, **Appellant.**	**OAH Docket No.:** 2013-INS-0005 **Agency No.:** 13-0246 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER**

RECITAL

A hearing in the above-entitled matter was conducted on April 21 & 22, 2014, at Spokane Valley, Washington, before Mark H. Kim, Administrative Law Judge, with the Washington State Office of Administrative Hearings. The Appellant/Licensee, Bryan K. Jarrett, appeared and was represented by Adam Scott, Attorney at Law with The Rosenberg Law Group, PLLC. The Office of Insurance Commissioner (OIC) appeared and was represented by Marcia Stickler, Staff Attorney. OIC's Information Technology Specialist 6 David Musgrave was present at the proceedings.

The OIC called witness Tom Talarico, OIC's Investigator, who offered testimony. The Appellant called the following witnesses who offered testimony: Sandra Bartel, Todd Claypoool, Richard Rousseau, Scott Draper, Ryan Donckers, and Geoff Slye. The Appellant also testified.

The OIC's Exhibits 1 through 27 and the Appellant's Exhibits A through C were

admitted into evidence. The hearing record was kept open for submission of post-hearing argument/briefs. The parties submitted their respective written closing argument. The hearing record closed on May 30, 2014.

ISSUES

Should the Appellant's insurance producer license be revoked?

ORDER SUMMARY

The OIC's Order Revoking License is affirmed. HOWEVER, THIS TRIBUNAL STRONGLY SUGGESTS TO THE COMMISSIONER TO CONSIDER AMENDING THE SANCTION TO A LESS SEVERE SANCTION. A LESS SEVERE SANCTION WOULD STILL HAVE THE EFFECT OF DETERRING OTHER LICENSEES FROM SIMILAR ACTIONS WHILE STILL IMPOSING A CORRESPONDING PENALTY.

BASED ON THE PREPONDERANCE OF THE EVIDENCE, THIS TRIBUNAL MAKES THE FOLLOWING FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND INITIAL ORDER:

FINDINGS OF FACT

1. The Appellant in this matter is Bryan K. Jarrett, a resident of Liberty Lake, Washington.

2. Mr. Jarrett is licensed by the Office of Insurance Commissioner (OIC) as an insurance producer of life, disability, property, casualty, and variable lines insurance.

3. On September 6, 2013, the OIC entered and issued its Order Revoking License No. 13-0246 to Mr. Jarrett. The Order alleged that Mr. Jarrett violated Revised Code of Washington (RCW) 48.17.530 subsections (e), (g), (h), and (j); and RCW 49.30.210. Specifically, that Mr. Jarrett: 1) Intentionally misrepresented the terms of an insurance application; 2) Committed insurance unfair trade practice or fraud; 3) Used fraudulent,

dishonest, or untrustworthiness practices; and 4) forged another's name on an insurance application.

4. On September 17, 2013, Mr. Jarrett, through his attorney, filed his request for hearing contesting the Order Revoking License.

5. In 2008, Mr. Jarrett began as an agent for Farmers Insurance Group (Farmers). He was licensed by OIC on October 3, 2008.

6. Mr. Jarrett was a successful agent with Farmers. In February 2010, Mr. Jarrett began his own insurance agency, Jarrett Insurance Agency.

7. In 2010, Mr. Jarrett submitted three (3) renter's insurance application to Farmers for clients without their permission. Mr. Jarrett also used his business address in the applications.

8. Under his own insurance agency and prior to the OIC's Order, Mr. Jarrett submitted at least six (6) term life insurance applications to Farmers New World Life (FNWL) for clients without their permission. He also used his agency's bank account as the customers' accounts. For two of the applications, Mr. Jarrett used his business address as the customers' addresses.

9. From May 2011 to January 2012, Mr. Jarrett submitted six (6) commercial insurance applications for five business clients to Farmers without the clients' permissions, some using his business address as the customers' addresses.

10. Farmers credited Mr. Jarrett for commissions in the amount of $5,150 for the commercial policies. He received $982.12 in commission for the term life policies. He also received $66.79 in commission for the renter's policies.

11. All commissions received by Mr. Jarrett for the commercial, term life, and renter's

policies were reversed by Farmers and FNWL.

12. Some of the commercial insurance clients were sent to Farmers internal collection process when the premiums were not paid. All the collection matters were resolved without financial harm to the customers.

13. None of the clients (insureds) suffered financial harm from the actions taken by Mr. Jarrett.

14. Approximately in late 2011 or early 2012, Mr. Jarrett attempted to correct the wrongful actions he had taken with the applications at issue by attempting to backdate the applications to cancel the applications.

15. Mr. Jarrett informed Farmers' managers of these actions. Farmers conducted an internal audit and determined that Mr. Jarrett issued six commercial policies without the insureds' authorization.

16. In May 2012, Mr. Jarrett submitted his resignation to Farmers effective on May 31, 2012.

17. On or about July 2012, Thomas Talarico, OIC's Investigator, began an investigation of Mr. Jarrett based on information OIC received from Farmers.

18. During Mr. Talarico's investigation, Mr. Jarrett was not responsive to Mr. Talarico's requests for a meeting for an interview.

19. From the beginning of the investigation to approximately the time of his deposition in March 2014, Mr. Jarrett did not completely own up to what he had done regarding the fictitious insurance applications. He used various excuses for what had occurred.

20. Ultimately, at the deposition, Mr. Jarrett acknowledged his wrongdoings. He

attributed his actions to his pride in competition to maintain his reputation as a top insurance agent. He also attributed his actions to the "sink or swim" attitude of Farmers and their lack of proper training.

21. After resigning from Farmers and terminating his own agency, Mr. Jarrett was employed by Legacy Northwest Insurance from about May 2012 to September 2013. Then, beginning in September 2013 Mr. Jarrett was employed at Pemco Mutual Insurance Company. He is currently still employed at Pemco.

22. Mr. Jarrett asserts that Pemco encourages and fosters high ethical conduct and training.

23. Mr. Jarrett asserts that he has matured and understands the importance of being a trustworthy insurance professional.

24. Mr. Jarrett asserts that he is currently a different person than he was while working as a Farmers agent. He asserts that his business practices and even areas of his personal life have changed to a more trustworthy professional and person.

25. The insurance applications at issue are a very small portion of the insurance activities Mr. Jarrett processed.

26. Mr. Jarrett does not have any prior disciplinary history with the OIC.

27. Mr. Jarrett is extensively involved in his community and has a good reputation. He is involved in several civic efforts and possesses a leadership position in his community.

28. Mr. Jarrett is remorseful for the wrongful actions he engaged in that is at issue in this matter.

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CONCLUSIONS OF LAW

1. This Tribunal has jurisdiction in this matter pursuant to Revised Code of Washington (RCW) 48.04.010 and chapter 34.05 RCW.

2. RCW 48.17.530 provides as follows:

> **Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license.**
>
> (1) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title insurance agent's license, or any surplus line broker'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:
>
> (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
>
> (b) Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner;
>
> (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
>
> (d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;
>
> (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
>
> (f) Having been convicted of a felony;
>
> (g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
>
> (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;
>
> (i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
>
> (j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or

(m) Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements.

(2) The license of a business entity may be suspended, revoked, or refused if the commissioner finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the commissioner nor corrective action taken.

(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.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request.

(5) The commissioner may probate a suspension or revocation of a license under reasonable terms determined by the commissioner. In addition, the commissioner may require a licensee who is placed on probation to:

(a) Report regularly to the commissioner on matters that are the basis of the probation;

(b) Limit practice to an area prescribed by the commissioner; or

(c) Continue or renew continuing education until the licensee attains a degree of skill satisfactory to the commissioner in the area that is the basis of the probation.

(6) At any time during a probation term where the licensee has violated the probation order, the commissioner may:

(a) Rescind the probation and enforce the commissioner's original order; and

(b) Impose any disciplinary action permitted under this section in addition to or in lieu of enforcing the original order.

3. In the present matter, the preponderance of the evidence shows clearly that Mr. Jarrett violated at least one of the provisions of RCW 48.17.530. Specifically, subsection (1)(j) for "[f]orging another's name to an application for insurance..." This fact was admitted by Mr. Jarrett. Mr. Jarrett submitted insurance applications on behalf of clients/insureds without their knowledge or authority. His admitted actions support the conclusion that he also violated subsections (1)(e), (1)(g), and (1)(h) of RCW 48.17.530. Thus, as argued by the respective counsel, the main contested fact is not so much whether a violation occurred, but whether the OIC's sanction was appropriate.

4. As stated in the above-cited statute, the Commissioner has the authority to impose several types of sanctions, including imposition of a civil penalty/fine. See RCWs 48.17.530, 48.17.550, and 48.17.560. The Commissioner may place a license on probation, or suspend or revoke a current license. Here, the Commissioner elected to revoke Mr. Jarrett's license.

5. As correctly stated in the OIC's closing argument, this Tribunal, as an administrative tribunal, does not possess equitable powers enjoyed by a court of law. The Office of Administrative Hearings is an administrative agency; and administrative agencies are creatures of the Legislature, without inherent or common-law powers and, as such, may exercise only those powers conferred by statute, either expressly or by necessary implication. The power of an administrative tribunal to fashion a remedy is

strictly limited by statute. *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 958 P2d 962. Therefore, in order to reverse or amend the Commissioner's Order Revoking License in this case, it must be concluded that said Order is an arbitrary or capricious action. See *Johnson v. Dep't of Health*, 133 Wn.App. 403, 414, 136 P.3d 760 (2006); and RCW 34.05.570(3)(i). However, "[a]n agency's determination of sanctions must be given considerable deference..." Id. Additionally, "[t]he 'harshness' of the sanction is not the test for arbitrary and capricious action." Id. "Arbitrary and capricious action is willful and unreasoning action, without consideration and in disregard of facts and circumstances. Where there is room for two opinions, that standard is not met." Id citing *Heinmiller V. Dep't of Health*, 127 Wn.2d 595 (1995).

6. Here, the preponderance of the evidence shows that the OIC considered many facts gathered from its investigation as provided in its Order Revoking License. The facts and circumstances which appeared to have not been considered by the OIC was Mr. Jarrett's remorsefulness, his involvement in the community, his admission to the transgressions, and other reasons for his actions. However, these facts were not known by the OIC until Mr. Jarrett's deposition and the hearing. His lack of cooperation with the OIC's investigator was the primary cause for OIC's inability to consider these facts. The evidence shows that the OIC did consider the fact that Mr. Jarrett did not financially benefit from his actions as well as the fact that the insureds in question were not financially harmed.

7. Based on the above, this Tribunal does not have a basis to conclude that the OIC's Order Revoking License was arbitrary or capricious. However, based on the evidence submitted at hearing, this Tribunal can conclude that the elected sanction of

revocation of Mr. Jarrett's appear to be disproportionate to the totality of Mr. Jarrett's actions and the consequences rising from those actions. But unfortunately, this is not enough for this Tribunal to reverse or amend the OIC's action as that is not a basis to find the Order arbitrary or capricious.

8. As stated above, this Tribunal does not have the equity powers to fashion a remedy that would be more reasonable. That is, a suspension or a probation of the license. HOWEVER, THIS TRIBUNAL STRONGLY SUGGESTS TO THE COMMISSIONER TO CONSIDER AMENDING THE SANCTION TO A LESS SEVERE SANCTION. A LESS SEVERE SANCTION WOULD STILL HAVE THE EFFECT OF DETERRING OTHER LICENSEES FROM SIMILAR ACTIONS WHILE STILL IMPOSING A CORRESPONDING PENALTY.

9. Based on the foregoing, the OIC's Order Revoking License dated September 6, 2013, No. 13-0246, should be affirmed.

INITIAL ORDER

NOW, THEREFORE, IT IS ORDERED that the Office of Insurance Commissioner's Order Revoking License No. 13-0246 of Mr. Bryan K. Jarrett, dated September 6, 2013, is hereby affirmed.

DATED this 9th day of July, 2014, at Spokane Valley, Washington.

Mark H. Kim
Administrative Law Judge

APPEAL RIGHTS

This Initial Order will not become a Final Order without Insurance Commissioner review. WAC 284-02-070(2)(d)(i). The Insurance Commissioner's Hearing Officer will automatically review every Initial Order and issue a Final Order; no further action is needed by either party to start this process.

In addition to the automatic review described above, any party to an administrative hearing process may file a "Petition for Review" of an Initial Order. RCW 34.05.464; WAC 10-08-211. In your Petition for Review, you must specify all parts of the Initial Order you disagree with and identify the evidence in the record that supports your petition. RCW 34.05.546; WAC 10-08-211. If a party wants to file a Petition for Review, it must deliver the petition to the Insurance Commissioner so the Commissioner receives it within twenty (20) days of when OAH mailed the Initial Order. RCW 34.05.010(19); WAC 10-08-110(2). A party filing a Petition for Review must serve copies on all other parties at the same time. It may serve copies by (a) mail; (b) fax and mail; (c) parcel delivery company; or (d) hand delivery. RCW 34.05.437; WAC 10-08-110(2). If you properly file a Petition for Review, the Insurance Commissioner's Hearing Officer will consider your objections to the Initial Order before issuing a Final Order.

The other party may file a Reply to the Petition for Review with the Insurance Commissioner. WAC 10-08-211(4). Any reply must be filed with the Insurance Commissioner's office within 10 days of when the petitioning party filed its petition. The other party should serve all other parties with copies of it Reply at the same time.

To file a Petition for Review or Reply, mail it to the Insurance Commissioner's Hearing Officer at:

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

Certificate of Service

I certify that true copies of the foregoing document were served from Spokane Valley, Washington, upon the following as indicated:

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Date this 9th day of July, 2014.

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