

FILED

HEARINGS UNIT
OFFICE OF THE INSURANCE COMMISSIONER 2015 MAR 25 P 1:04

In the Matter of)	Docket No. 14-0196
)	
KARLA PADILLA REYNA,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Licensee.)	AND FINAL ORDER
_____)	

TO: Karla Padilla Reyna
10050 Mieras Road
Yakima, WA 98901

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

On March 16, 2015, this matter came before me in Tumwater, Washington, for evidentiary hearing, pursuant to the Notice of Hearing, filed February 11, 2015. The Office of the Insurance Commissioner ("OIC") appeared by Darryl Colman, Attorney at Law, Insurance Enforcement Specialist, Legal Affairs Division. Licensee, Karla Padilla Reyna ("Ms. Padilla"), represented herself.

I have considered the exhibits admitted into evidence (including the audio recording of an interview of Miguel Torres and the Washington State Court Certified Interpreter's March 19, 2015, English-language translation of the Spanish language written statement of Maria Serratos), the testimony of the witnesses – Ms. Padilla, Allison Hanson (OIC Legal Affairs Division Investigator), Luis Hernandez (client of Licensee), David Magana (client of Licensee), Luis Luna (client of Licensee), Rosa Teran (client of Licensee), Van Bevins (Director of Client Services, Appalachian Underwriters), Isabel Olivas (formerly Briceno) (client of Licensee), Elizabeth Escobar (Licensee's employee), Theresa Rocha (Licensee's employee), Maria Licea (Licensee's sister and co-worker) – and the arguments of the parties, including post-hearing submissions.

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FINDINGS OF FACT

1. On October 13, 2014, the OIC issued an Order Revoking License, No. 14-0196 ("Order Revoking"), effective October 31, 2014, which revoked Ms. Padilla's Washington State insurance producer's license.

2. The Order Revoking was pursuant to RCW 48.17.530(1)(b), (d), and (h), and RCW 48.17.540(2), based in substantial part upon the OIC's allegations that Ms. Padilla: 1) failed to forward to State Farm a down payment for a general liability policy issued to one of her business customers, resulting in cancellation of the policy, of which the customer did not receive notice because Ms. Padilla Reyna had entered the customer's address incorrectly; 2) cashed a reimbursement check related to this general liability insurance policy that she had erroneously been sent and ignored requests for repayment until the insurer threatened an OIC complaint; 3) on numerous occasions, retained cash and checks that her clients paid her for insurance coverage, instead of forwarding the cash or checks to the insurer or using the funds to pay the premiums for clients' policies; 4) utilized unlicensed producers in her agency to generate quotes or submit applications; and 5) incorrectly wrote policies.

3. On January 2, 2015, Ms. Padilla Reyna submitted a Demand for Hearing ("Demand"), which asserted that the information set forth in the Order Revoking was based on false accusations made by State Farm Insurance after she and her agency, KPR Insurance and Financial Services ("KPR"), terminated their appointment with that company.

4. On February 10, 2015, I held a first prehearing conference, during which the evidentiary hearing on Ms. Padilla's Demand was set for March 16, 2015.

5. On March 2, 2015, I issued an Order on Request for Stay of Order Revoking License, denying Ms. Padilla's "request to rescind the revocation," by which she sought a stay of the Order Revoking pending the outcome of the evidentiary hearing.

6. A January 27, 2012, letter to OIC from State Farm licensing supervisor, Bob Nelson, Ex. 18 herein, attaches as Exhibits A-E materials related to State Farm's termination of its appointment of KPR, Ex. 19-23 herein. Exhibits 18-23 reflect State Farm's internal investigation under its own standards of KPR's possible termination, not application of the statutes applicable in the present matter.

7. No witness from State Farm testified in the present matter as to its investigative process, the circumstances under which State Farm gathered evidence, or other issues bearing on the appropriate weight to be given to its investigation. Ms. Hanson testified that she did not take State Farm's word for the facts, or what should be made of the facts, but instead (appropriately) conducted an independent investigation on behalf of OIC. Ms. Padilla did not have the opportunity to question State Farm representatives or those witnesses State Farm interviewed or

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relied on. I did not have the opportunity to evaluate the testimony of State Farm witnesses or those it relied on. I give limited weight to Exhibits 18-23 and to the conclusions of State Farm's investigation.

8. Ms. Hanson's investigation was difficult. Many of Ms. Padilla's clients were native Spanish-speakers with limited or no English. Some lacked sophistication and/or were undocumented. Certain potential witnesses may, for these or other reasons, have been vulnerable and reluctant to cooperate. The evidence does not, however, support a finding that Ms. Padilla or others directed by her intimidated or interfered with potential witnesses. I must base my decision on the evidence presented and not speculate as to possible testimony concerning Ms. Padilla's alleged financial improprieties of witnesses who did not appear.

9. According to Arturo Mendez's January 30, 2012, declaration: On December 19, 2011, he brought his 2006 Dodge Ram pickup to KPR to get it insured, making a \$100 cash down payment. ~~He later learned that the money was not applied to the Ram and that he had been driving without insurance.~~ Ex. 27. I cannot find based on this limited evidence that Ms. Padilla or KPR retained the down payment or otherwise failed to pay over to State Farm moneys that Mr. Mendez had paid for coverage.

10. Other clients of Ms. Padilla and KPR appear to have told State Farm and/or Ms. Hanson that they paid for policies that they did not receive or that their policies were canceled despite payments being made to Ms. Padilla or KPR. See Ex. 18-22. In her March 6, 2012, translated signed Statement, Ms. Serratos in substance appears to say that she was upset because 1) she told Ms. Padilla that her tires and rims had been stolen from her garage, but her policy did not cover the loss, and 2) Ms. Padilla didn't write properly a letter to the Commissioner questioning why Ms. Serratos was not covered. However, the accusations lack detail and are unclear. Further, Ms. Serratos and other witnesses did not testify at the evidentiary hearing subject to cross-examination and my evaluation. See, Ex. 28. I cannot find based on this limited evidence that Ms. Padilla or KPR retained the down payment or otherwise failed to pay over to State Farm moneys that clients had paid for coverage. (I recognize that under RCW 34.05.452(1) evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Although I admitted Ex. 18-22, I do not find them persuasive and do not rely on them.)

11. As Ms. Hanson stated, the history of the relationships among Miguel Torrez, Ms. Padilla and KPR, Appalachian, and two premium financing companies is confusing -- the record is at many points contradictory or unclear. See, Ex. 1-17.

12. In his September 3, 2013, sworn recorded interview with Ms. Hanson, Mr. Torrez stated: In 2012 he purchased an insurance policy through Ms. Padilla and KPR for his business, Quality Plastering, Yakima. The total premium was \$4,907.26, of which he paid \$1,485.01 down, in the form of a check made out to KPR, with the balance of \$3,422.25 to be financed. After making the down payment, Mr. Torrez made five payments of \$405.97 per month from September 2012

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through January 2013. Mr. Torrez's policy was cancelled for non-payment, but he never received notice of cancellation from the insurer, Ms. Padilla, or KPR. As a consequence of cancellation, Mr. Torrez's business lacked coverage between September 2012 and April 2013, putting him at risk with the Washington State Department of Labor and Industries and otherwise.

13. Van Bevins, Appalachian Underwriters ("Appalachian") Client Services Director, prepared a Timeline, Ex. 7, which reflects his examination of Appalachian's business records related to Mr. Torrez's policies, but not his direct involvement with the transactions at issue. Based on the timeline, Mr. Bevins' testimony, and other evidence:

14. Appalachian Policy xxx58-00 was in effect from 3/23/2012 to 5/3/2012. Appalachian received a request to bind this policy from KPR on 3/24/12, PIPCO, the company through which Appalachian then offered premium financing, paid the financed amount, and KPR paid over the down payment by "agent check #1018," dated 3/26/12. KPR's agent check was \$34.71 short, but KPR sent a check for the difference. On 5/3/12, after Mr. Torrez failed to timely pay PIPCO on the financed amount, the policy was canceled. Appalachian received reinstatement on 6/7/12, but denied this as untimely. Ms. Padilla's actions related to Policy xxx58-00 demonstrated her forwarding of Mr. Torrez's down payment, although with a small shortage that was quickly corrected, not a wrongful withholding of that payment.

15. Policy xxx89-12 was in effect from 8/23/12 to 9/25/12. Ms. Padilla sent Appalachian a signed agreement with IPFS, the company through which Appalachian then offered premium financing, to request funding from IPFS Atlanta, Georgia. Appalachian also received a check from IPFS in Spokane, Washington, indicating that Ms. Padilla or KPR had applied for duplicate financing. Since Appalachian received the Spokane check later, it voided that check and returned it to IPFS Spokane, with a letter advising that Appalachian had already received financing. On 4/19/13, Appalachian advised IPFS Spokane that it had canceled Policy xxx89-12 because it had been paid twice by finance companies, but had not received the down payment.

16. Policy xxx53-12 was bound effective 10/17/12 to 12/22/2012. KPR sent a check for \$3,337.97 payable to Appalachian. After Appalachian informed KPR that its check had gone NSF and that it required certified replacement funds, Ms. Padilla called and made a replacement credit card payment. However, after she later disputed the charge (according to Appalachian, alleging fraud), Appalachian never received the funds and canceled Policy xxx53-12.

17. Ms. Padilla asserted during Ms. Hanson's investigation that she had paid Appalachian the funds due and would provide documentation of such payment. She did not provide such documentation to Ms. Hanson or during the evidentiary hearing. If Ms. Padilla had made such payment to Appalachian, its records would have been expected to reflect this, and they did not. Ms. Padilla provided no evidence otherwise. I find that she did not make such payment, which was due to Appalachian.

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18. Luis Hernandez, David Magana, Rosa Teran, and Isabel Olivas are former clients of Ms. Padilla. Their testimony was, in sum, that they had experienced no problem in making premium payments to Ms. Padilla or KPR and receiving receipts for such payments, or with making claims, but that they had problems with State Farm after Ms. Padilla no longer represented that company. That Ms. Padilla has loyal clients who say she has served them effectively, without incident, does not establish that she did not engage in misconduct with other clients, but weighs in her favor.

19. Teresa Rocha worked for Ms. Padilla and KPR in approximately 2011. Ms. Rocha's duties included opening the office, answering the telephone, and taking client payments. Her duties also included logging onto the State Farm computer system and inputting financial and other information provided by clients, which led to the generation of insurance rate quotes (though quotes were reviewed by Elizabeth Escobar, a producer at KPR, or by Ms. Padilla).

20. Ms. Rocha testified that, while many KPR clients paid in cash, many also paid with debit or credit cards, and KPR always provided receipts. Elizabeth Escobar, who worked at KPR beginning in 2009 -- first taking calls and payments, making deposits, and scheduling appointments, and later as a producer -- confirmed that clients made all forms of payment and that KPR always provided receipts. Maria Licea, Ms. Padilla's sister, who was a producer at KPR in 2007 and now works with Ms. Escobar in another insurance agency at the same location, also confirmed that KPR consistently gave receipts. Although certain KPR clients apparently told Ms. Hanson that Ms. Padilla and KPR only permitted cash payments, this was not proven.

CONCLUSIONS OF LAW

1. This adjudicative proceeding was properly convened, and all substantive and procedural requirements under the laws of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW, specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.

2. RCW 48.17.480(2) provides: "All funds representing premiums or return premiums received by an insurance producer ... shall be so received in the insurance producer's ... fiduciary capacity, and shall be promptly accounted for and paid to the ... insurer ... as entitled thereto."

3. RCW 48.17.480(3) provides: "Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds."

4. RCW 48.17.530(1) provides: "The commissioner may place on probation, suspend, revoke ... 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 ... of the commissioner;....

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(d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;....

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility....”

5. The minimum standard of proof in a professional disciplinary hearing is clear and convincing evidence. *Ongom v. Dept. of Health*, 159 Wn.2d 132, 142 (2006) (nursing assistant); *Nguyen v. DSHS*, 144 Wn.2d 516, 534 (2001) (physician).

6. I believe the professional disciplinary hearings standard of proof set forth in *Ongom* and *Nguyen* applies in insurance producer license revocation proceedings. As was true for the nursing assistant in *Ongom*, Ms. Padilla’s loss of reputation, if her license revocation continues, would be stigmatizing and would curtail her employment options. *See, Ongom*, at 139. *Cf. Kraft v. DSHS*, 145 Wn.App. 708, 716 ((2008) (a program manager facing an administrative determination that she mentally abused a vulnerable adult is a lay person subject to the preponderance standard, not a licensee subject to the clear and convincing standard).

7. Although I apply a clear and convincing evidence standard of proof for purposes of this Order, my Findings of Fact and Conclusions of Law would not be altered if I applied a preponderance of the evidence standard.

8. I find by clear, cogent, and convincing evidence, and conclude, that Ms. Padilla failed to promptly account for and pay over funds to the entitled insurer, Appalachian, when she: 1) submitted an NSF check to Appalachian; 2) then tendered a credit card payment, which she later disputed as fraudulent; and 3) never paid the funds due to Appalachian. I do not find by clear, cogent, and convincing evidence, or conclude, that Ms. Padilla wrongfully retained cash and checks that her clients paid her for insurance coverage. *See, RCW 48.17.480(2); RCW 48.17.480(3); RCW 48.17.530(1)(d), (h).*

9. I find by clear, cogent, and convincing evidence, and conclude, that Ms. Padilla violated insurance laws by utilizing an unlicensed producer in her agency (Ms. Rocha) to generate customer insurance rate quotes, RCW 48.17.530(1)(b).

10. I find by clear, cogent, and convincing evidence, and conclude, that Ms. Padilla demonstrated incompetence or financial irresponsibility in her handling of Mr. Torrez’s Appalachian policies. RCW 48.17.530(1)(h).

11. Given the confusion of the record concerning the transactions at issue, and the failure of proof as to wrongful retention of client payments -- suggesting incompetence and/or financial irresponsibility rather than the predatory exploitation of vulnerable consumers alleged by the OIC -- I believe suspension, rather than revocation, is appropriate.

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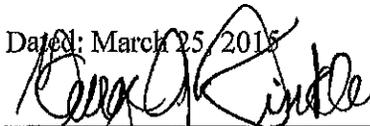
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ORDER

Karla Padilla Reyna's insurance producer's license is suspended from October 31, 2014, to April 30, 2015, and reinstated effective May 1, 2015.

Dated: March 25, 2015



Judge George Finkle (Ret.)
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.

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: Karla Padilla Reyna, Mike Kreidler, James T. Odiorne, John F. Hamje, AnnaLisa Gellermann, Esq., and Darryl Colman.

DATED this 25th day of March, 2015.



KELLY A. CAIRNS