

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

IN THE MATTER OF:

Julie Keller,

APPELLANT

Docket No. 2005-INS-0001

Matter No. D 05-283

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INITIAL ORDER**

Cindy L. Burdue, Administrative Law Judge (ALJ), conducted an administrative hearing on November 15, 2005, and on November 30, 2005, in this matter. Appellant, Julie Keller, appeared by telephone, representing herself. The Office of Insurance Commissioner (OIC) was represented by Charles Brown, Attorney at Law. OIC presented testimony from the following:

Jose Morfin, M&M Roofing
Hannah McFarland, Handwriting and Document Examiner
Estanislao Solorzano, E&J Construction
John Paul Garcia, N.E. Agencies
Marcie Houts, CBIC, Property & Casualty Insurer
Catherine Oliver-Salbilla, Allstate Insurance Co., Security Investigator
Edmond Ganley, OIC Investigator

Appellant presented her own testimony.

STATEMENT OF THE CASE

This proceeding arises out of OIC's April 27, 2005, Order Revoking License, in matter number D 05-283, based on the OIC's investigation and determination that Appellant violated RCW 48.30.010(1); RCW 48.30.040; RCW 48.30.090; and RCW 48.17.480 and 48.17.600, as well as WAC 284-12-080. By reason of these violations, the Commissioner determined that Appellant had shown herself, and was deemed to be, untrustworthy and a source of injury and loss to the public, and not qualified to be an insurance agent in the State of Washington. The license of Appellant was therefore revoked by the Commissioner pursuant to RCW 48.17.530(1)(b), (d), (e), and (h).

Appellant disagrees with the Insurance Commissioner's findings and determination, and made a timely demand for a hearing on May 13, 2005.

FINDINGS OF FACT

1. Appellant, Julie Keller, has been licensed to sell insurance in the state of Washington since 1987. In 1997, Appellant became an agent of Allstate Insurance Company; during all times relevant to this matter, appellant continued as an agent of Allstate. Appellant is subject to the Insurance Code, Title 48 RCW, in terms of her rights and obligations as a licensed Insurance Agent in the State of Washington.
2. The testimony of various witnesses, and Appellant, conflicted on material points. In resolving these conflicts, we considered the demeanor of the witness, and his or her apparent fairness or lack of fairness; apparent candor or lack of candor; the reasonableness or unreasonableness of his or her story; and the interest, if any, he or she may have in the result of the hearing. We find that Appellant's version of the facts is, at times, inherently improbable; is inconsistent with prior statements made by her; and contains patent discrepancies in the details of her version of the events. Thus, on whole, we must find Appellant's testimony to be incredible.

M&M Roofing, Jose Morfin

3. Northeast Agencies ("N.E. Agencies") is an insurance broker, and a general agent appointed by Contractors Bonding and Insurance Company ("CBIC"). Northeast Agencies had a contract with Appellant to offer products that are not available through Allstate. (Exhibit 8) Appellant was a sub-agent of N.E. Agencies at the times pertinent to this matter, and had been since 1998. As a sub-agent of N.E. Agencies, Appellant had no authority to bind CBIC to coverage; nor does N.E. Agencies have binding authority for CBIC.
4. Appellant received training as a sub-agent of N.E. Agencies, which informed her that she had no authority to bind CBIC to coverage. Appellant was required to submit an application for insurance to N.E. Agencies for any customer seeking insurance through that agency. If the customer appeared eligible for insurance, from the application submitted, then a rate quote was given to the sub-agent. All applications submitted by Appellant for insurance with CBIC went through N.E. Agencies, without exception.
5. Jose Morfin spoke with Appellant in May, 2003, and told her he needed liability insurance; a bond; and contractor registration for a roofing business called "M&M Roofing." Appellant notarized Morfin's bond application in the spring of 2003, for "M&M Roofing." Appellant claims to have billed Morfin for insurance in the name of "M&M Roofing," in June and August, 2003. (Exhibit 13, pages 1-3) Clearly, Appellant knew that the business name was "M&M Roofing," and not "M&H Carpet Service," from May,

2003. Likewise, Appellant knew in May, 2003, that Morfin was requesting to purchase insurance for a roofing business, not any other type of business.

6. Morfin had previously operated a carpeting business, for which he provided various documents to Appellant. (Exhibit 12) The purpose of providing these documents to Appellant was to show that he had previously operated a business, and applied for a bond, insurance, and contractor registration. At no time did Morfin ask Appellant to insure a carpeting business. Appellant's testimony to the contrary is not credible; Morfin's testimony on this issue is the more credible.

7.. In May, 2003, Appellant's business accepted two cash deposits from Morfin; \$1,000.00 accepted by an employee, Ophelia Ochoa, and \$900.00 accepted by Appellant's husband. (Exhibit 1)

8. Appellant's office issued two Acord Certificates of Liability Insurance ("Certificates") certifying that Jose Morfin was insured as "M&M Roofing." The first covers the period from June 6, 2003, to June 6, 2004; the second Certificate covers the period from June 6, 2004, to June 6, 2005. (Exhibits 2 and 3) The Insurer name, noted on the Certificate, is CBIC. Both certificates bear a signature that purports to be that of Appellant, Julie Keller. Appellant denies the signatures are hers on either Certificate, and denies having had knowledge of the issuance of the two Certificates at the time they were issued.

9. In Appellant's interview with Allstate, during its investigation of this matter, Appellant stated that Morfin told her he was planning to operate a roofing business *with* his carpet business. (Exhibit 10, page 4) Appellant also told Allstate that, despite knowing that N.E. Agencies did not accept roofing businesses for insurance coverage, she had submitted an application for Morfin's roofing business. (Exhibit 10, page 5) Appellant further admitted to Allstate that she and her employee, Ms. Ochoa, jointly issued the Certificate "in anticipation" that Morfin would obtain liability insurance from CBIC. (Exhibit 10, pages 4 and 5) The transcribed copy of the taped interview with Allstate was admitted into evidence on the motion of Appellant, and without comment as to her version of events stated in that interview.

10. The testimony given by Appellant to Allstate differs from her testimony at hearing. At the hearing, Appellant denied even knowing that Morfin intended to insure a roofing business until sometime after the first part of June, 2003, claiming to know only of a carpeting business. Appellant also testified at hearing that she knew nothing about the June, 2003, Certificate being issued with her name on the signature line until contacted by N.E. Agencies in 2004. Appellant further testified that Maria Alfaro, an employee, signed the first Certificate with Appellant's name, without Appellant's knowledge or approval, in June, 2003. Appellant also testified that Ms. Alfaro subsequently signed Appellant's name to the renewal Certificate and then Ms. Alfaro issued that Certificate in

June, 2004, and that Appellant was "shocked" that Ms. Alfaro had issued either of these Certificates, when Appellant learned of this in 2004.

11. Ms. Alfaro was a licensed insurance agent and could have signed the Certificates in her own name. Appellant has provided no explanation as to why Ms. Alfaro would have issued the Certificates by signing Appellant's name, and without the knowledge or approval of Appellant. Nor did Appellant explain why she told Allstate that she and Ms. Ochoa had issued the 2003 Certificate together, anticipating approval of M&M Roofing by N.E. Agencies and CBIC for insurance coverage, but now claims that Maria Alfaro issued both certificates.

12. Clearly, Appellant's testimony is not credible on the question whether she signed and issued the Certificates. The clear evidence is that Appellant knew that she was not authorized to bind CBIC; knew in May, 2003 that Morfin's business was roofing, and not carpeting, or carpeting and roofing together; and knew that no insurance had been approved by N.E. Agencies or CBIC for M&M Roofing or Morfin. Appellant never submitted an application for insurance to either N.E. Agencies or CBIC on behalf of M&M Roofing or Morfin. Further, Appellant also knew in 2003 that CBIC does not even provide insurance for roofing businesses, and therefore could not insure M&M Roofing.

13. Appellant blamed the issuance of the first Certificate for M&M on *both* Ms. Ochoa (saying she and Ochoa did it jointly), *and* on Ms. Alfaro (saying Alfaro had issued it without the approval or knowledge of Appellant). Clearly, it cannot be both ways, and Appellant's credibility is badly damaged by the discrepancy in her stories. Although Appellant denies that she signed the two Acord Certificates, the evidence is clear that *both* of the Certificates were signed by Ms. Keller, or one of her employees, Maria Alfaro or Ophelia Ochoa, with Appellant's knowledge and/or approval. (Exhibits 2 & 3, Certified Copies of Certificates)

14. Contrary to what Appellant told Allstate, at no time did N.E. Agencies receive an application from Appellant's business to insure Jose Morfin or M & M Roofing. N.E. Agencies had no knowledge or information that Appellant had issued an Acord Certificate of Liability Insurance in June, 2003, purporting to bind CBIC to coverage, until CBIC began an investigation and asked questions of N.E. Agencies, in 2004.

15. Morfin was never insured by CBIC and that company never authorized Appellant to issue the Certificates issued by Appellant, or issued by Appellant's employees with Appellant's approval and knowledge. CBIC did not offer liability insurance for roofing business between May, 2003, and present.

16. From June, 2003, to sometime after June, 2004, Mr. Morfin believed he had liability insurance on his roofing business, and acted in reliance on that insurance in accepting work from customers and in holding himself out as fully insured to general contractors who were considering hiring, and did hire, M&M Roofing. The Department of

Labor & Industries (L&I) relied upon both of the Certificates issued by Appellant in providing contractor registration to Mr. Morfin doing business as M&M Roofing.

17. In June, 2004, Morfin was given the second Certificate by Maria Alfaro, in Appellant's office. (Exhibit 3) That Certificate, bearing Appellant's name on the signature line, purports to insure M&M Roofing from June, 2004 to June, 2005.

18. Sometime after issuance of the second Certificate, Morfin was told by Maria Alfaro, at the instruction of Appellant, that CBIC would no longer insure roofing companies and he had 90 days to find another insurance company. When Morfin inquired at another insurance agency about liability insurance, he learned that he had never been insured by CBIC at all.

19. CBIC subsequently learned that false Certificates of Liability Insurance had been issued bearing the purported signature of Appellant, and notified the Department of Labor & Industries and the Office of the Insurance Commissioner that the Acord Certificates were not valid. (Exhibits 2, 3)

20. The policy numbers on the Certificates are not numbers issued by CBIC and have no relation to CBIC. These numbers were created by Appellant or with her knowledge and/or approval by an employee in her office.

21. Appellant never refunded any of the monies due to Morfin. After payment of the charges for the bond and licenses, Morfin was due a refund of at least \$1,000.00, which was to have gone toward the liability insurance for M&M Roofing. Appellant informed Allstate that the monies left after payment for the business licenses, bond, and contractor's license, were applied to Morfin's commercial automobile policy. (Exhibit 10, page 5) Appellant's testimony at hearing differed, in that she maintains that \$1,000.00 was refunded, in cash, to Morfin, in August, 2003. Again, Appellant cannot have it both ways, and we do not find her testimony to be credible.

22. The receipt produced by Appellant purports to bear Morfin's signature, but based on Mr. Morfin's credible testimony that he never signed it, and upon the testimony of the handwriting expert, we find that the receipt does not bear the signature of Mr. Morfin. The expert stated her opinion that it is highly probable that the signature purporting to be Morfin's is, in fact, Appellant's writing; based on this testimony, in conjunction with Mr. Morfin's credible denial that he signed the receipt, we further find that Appellant did write Morfin's signature on that receipt in an attempt to prove Morfin received a refund from Appellant that he did not receive.

23. Appellant admits she failed to put the monies collected from Morfin for M&M Roofing into her trust account and that she knew this violated the law. According to information Appellant gave to the Office of the Insurance Commissioner (OIC), and in her

hearing testimony, she left the money in cash and in her office for at least three months, between May, 2003, and August, 2003, when she claims the monies were refunded.

E&J Construction, Estanislao Solorzano

24. Estanislao Solorzano is an owner of E&J Construction, which does construction on mobile and manufactured homes. He applied for liability insurance coverage with Appellant's business in October, 2003, as a renewal. On October 14, 2003, N.E. Agencies gave Appellant a price quote for this liability insurance. The quote was given before the formal application was received by N.E. Agencies, and was not binding, a fact of which Appellant was aware.

25. On October 20, 2003, N.E. Agencies was notified by CBIC that it declined to provide the coverage, based on the fact that CBIC would not insure a company working with mobile or manufactured homes. On that same day, N.E. Agencies notified Appellant by fax that it had tried to obtain coverage with CBIC, but that coverage had been declined and that there was no other company with whom to place E&J Construction. (Exhibit 9, page 1)

26. At some time *prior* to October 17, 2003, before N.E. Agencies or CBIC had even responded to the application for E&J Construction to be insured, Appellant's office issued an Acord Certificate of Insurance, naming "N.E. Agencies" as the "Producer" and "Estansilao Solorzano DBA E&J Construction" as the "Insured," and showing that the company was insured for \$1,000,000.00 per occurrence. The Certificate shows that E&J Construction was insured from October 17, 2003, through October 17, 2004. (Exhibit 7, page 1)

27. The Acord Certificate bears Appellant's name on the signature line. (Exhibit 7, page 1) Appellant again denies she signed the Certificate, however, claiming that an employee in her office signed it in Appellant's name, without Appellant's knowledge or approval. The evidence is clear that Appellant signed the Certificate herself; it bears her name and there is no evidence, save for Appellant's self-serving statements that someone else signed it, to show that an employee signed the Certificate. There is also no logical explanation why Appellant's employee, a licensed agent, would sign Appellant's name and not her own. However, even if true that an employee signed Appellant's name to the Certificate, we find that Appellant knew of and/or approved the issuance of the Certificate.

28. The policy number stated on the E&J Construction Acord Certificate bears no relation to any number issued by CBIC for a policy of insurance. (Exhibit 7, page 1)

29. Solorzano paid Appellant \$2,460.00, by check, for the liability insurance, and \$350.00 by separate check for a bond. (Exhibit 18, page 1) The company was

uninsured for the entire year indicated as the period of insurance on the Certificate, from October, 2003, to October 2004. E&J Construction and its owners had no knowledge of this fact until Solorzano went to renew the insurance in October, 2004.

30. E&J Construction and its owners had relied on the false Acord Certificate as evidence of liability insurance during that year long period, as did the Department of Labor & Industries in issuing contractor's registration to Solorzano for E&J Construction.

31. Appellant did not refund the monies paid by Solorzano/E&J Construction for the liability insurance until well *after* the Office of the Insurance Commissioner began its investigation on August 30, 2004. When asked by OIC's investigator to provide proof that \$2,370.00 of the \$2,460.00 paid had been refunded to E&J construction, as represented by Appellant, Appellant wrote to OIC and included a copy of a check written by her, dated November 20, 2003. (Exhibit 18, page 2) That check was purportedly drawn on Appellant's trust account. The date Appellant wrote to OIC and provided that check was November 12, 2004.

32. Appellant did not provide to OIC a copy of the *back* of the purported refund check from Appellant to E&J Construction, dated November 20, 2003, in her November 12, 2004, letter. Therefore, OIC could not verify that it had been negotiated by E&J Construction; OIC requested a copy of the back of that trust check which purported to be a refund to E&J Construction. In response, Appellant admitted that "the check sent to you was never cashed" by E&J, and Appellant informed OIC she had issued *another* refund check to E&J on November 3, 2004. Yet, when Appellant sent OIC the first, uncashed check on November 12, 2004, she obviously knew that the check had not been cashed by E&J and that she had issued a second check, just nine days prior to that November 12, 2004, letter, on November 3, 2004.

33. Clearly, Appellant was attempting to deceive the OIC investigator by providing evidence of a refund check which was never issued to E&J, and only when forced to reveal the true facts by repeated demands from OIC, did Appellant reveal she had actually only provided a refund check to E&J Construction on November 3, 2004, a *year* after she initially received the monies for the insurance from E&J Construction. We do not find Appellant's testimony on the issue of when and how the refund was issued to E&J to be credible.

Pounds Construction

34. Pounds Construction had been insured by Hartford Casualty and Insurance Company beginning in March, 1999. That insurance was placed by Appellant's agency for Pounds Construction, through N.E. Agencies. The Department of Labor & Industries records show that Pounds Construction was insured from March 25, 1999, to March 25, 2003, and from July 1, 2003, to July 1, 2004, with Hartford (with some gaps or lapses in

coverage during these times). The company was then insured from January 21, 2005, to January 26, 2006, with another insurer. (Exhibit 16, page 2)

35. The records of N.E. Agencies reveals that there were lapses and cancellations in the coverage during some of these periods, of which the Department of Labor & Industries had no knowledge. Appellant first issued an Acord Certificate for Pounds Construction for the period of March 25, 1999 to March 25, 2000; then from March 25, 2000, to March 25, 2001. These Certificates were correct and coverage did exist during these periods, according to N.E. Agencies.

36. Appellant again issued a Certificate verifying insurance coverage from March 25, 2001, to March 25, 2002. However, during this period, N.E. Agencies's records show that coverage lapsed for 46 days, from August 13, 2001, to September 28, 2001, when the insurance was cancelled for non-payment of premiums, and then reinstated. (Exhibit 16, page 2; testimony John Garcia) Appellant did not notify the Department of Labor & Industries of the lapse in coverage, and the Certificate was not rescinded.

37. Appellant claims that she is somehow less culpable for the erroneous Certificate because she believes it is also the insurance company's responsibility to notify the State of such lapses. Appellant further blames the error on a "typo" in her office, done by her staff and not Appellant. This testimony is not credible, in that the issue is not a typographical error, and such a typographical error has nothing whatsoever to do with the fact that coverage lapsed and Appellant did not take measures to notify the State that the Certificate issued by her was invalid. The State, and any customers of Pounds Construction, detrimentally relied on the Certificate to be accurate during the period when it was, in fact, invalid. It was Appellant's obligation to notify the State, whether the insurer *also* had that obligation or not.

38. Coverage was reinstated for Pounds with Hartford on September 28, 2001, but again cancelled on November 16, 2002, for non-payment. The Certificate, already in issued by Appellant and representing valid coverage from March 25, 2002, through March 25, 2003, was not rescinded by Appellant or her employees, and the State was not notified of the non-coverage of Pounds Construction by Appellant. N.E. Agencies has no record of ever again insuring Pounds Construction after November 16, 2002.

39. The Department of Labor & Industries' records show that the next Certificate of Liability Insurance recorded with that agency was valid from July 1, 2003, to July 1, 2004; the evidence is not clear, however, that Appellant or her agency issued that Certificate. The Certificates are not in evidence, and Mr. Garcia of N.E. Agencies testified that Pounds Construction was not insured by N.E. Agencies after November 16, 2002. Thus, while the evidence shows someone issued Certificates to Pounds after November 16, 2002, there is no evidence to show it was Appellant who issued the Certificates after that date.

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has jurisdiction over the parties and subject matter herein pursuant to RCW 48.04.010(5), Chapter 34.05 RCW, and Chapter 34.12 RCW. The provisions of RCW 48, the Insurance Code, are applicable here.
2. In determining the appropriate burden of proof, we agree with the attorney for OIC that the burden of proof required in this proceeding is a preponderance of the evidence. This is based on the fact that obtaining a license to sell insurance as an agent is not an arduous process, nor one taking many years of training or experience. It is unlike the professions requiring many years of college education, such as medicine, engineering, or law.
3. The Supreme Court of Washington, in *Nguyen v. State*, 144 Wn.2d 516, 29 P.3d 698 (2001), held that the burden of proof in a *medical* disciplinary hearing was clear and convincing. The Court limited that ruling to medical disciplinary hearings, however. The Court of Appeals also applied the higher standard of proof to a case involving the licence of an engineer. *Nims v. Washington Bd. of Registration*, 113 Wn. App. 499, 53 P.3d 52 (2002). The Court of Appeals has declined to apply the higher burden of proof to proceedings involving the Certified Real Estate Appraiser Act. *Eidson v. Dept. of Licensing*, 108 Wn.App. 712, 32 P.3d 1039 (2001). The most recent case to determine a burden of proof in a disciplinary hearing is *Ongom v. Dept. of Health*, 124 Wn.App. 935, 104 P.3d 29 (2005). There, the license of a registered nursing assistant was at issue. The appropriate standard for that license is a preponderance of the evidence, according to the *Ongom* court.
4. An insurance agent's license requires no specified educational level, not even a high school diploma. The pre-licensing education amounts to about 20 hours of classroom training; no practical experience is required. The applicant then must pass a three hour test for every line of insurance he or she wants to sell. A license of this type cannot be compared with a medical or engineering degree, requiring extensive higher education and training, and warranting the higher burden of proof. RCW 48.17; and WAC 284-17
5. We note, however, that while we agree that the appropriate burden of proof is the preponderance of evidence, the evidence presented here establishes the violations even when the higher standard of proof is applied, and we have applied the higher standard of clear and convincing evidence to the facts in this record.
6. The evidence is clear, cogent, and convincing that, by her actions in regard to the monies collected on behalf of and from Jose Morfin and Estanislao Solorzano, Appellant violated RCW 48.17.480(2),(3), and (4), which state:

RCW 48.17.480

Reporting and accounting for premiums.

(2) All funds representing premiums or return premiums received by an agent, solicitor or broker, shall be so received in his or her fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, or agent as entitled thereto.

(3) 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) Any agent, solicitor, broker, adjuster or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW.

7. Appellant misappropriated the monies entrusted to her by Jose Morfin to be used to pay for liability insurance for M&M Roofing, by wrongfully keeping those monies when the insurance was not purchased on behalf of Morfin and M&M Roofing. Appellant's dishonesty in attempting to show that she refunded the monies to Morfin only exacerbates the offense, including the "highly probable" forgery of Morfin's signature on a receipt. Those monies were received as "premiums" in Appellant's fiduciary capacity. Appellant violated the fiduciary trust when she did not "promptly account for or pay the funds" to Morfin when insurance was not purchased for him or his company. RCW 48.17.480(2) and (3) Jose Morfin has never received the monies paid for commercial liability insurance back from Appellant.

8. Further, if Appellant's own testimony were to be believed, Appellant kept the monies received from Morfin in *cash*, in her office, for about three months, rather than depositing the funds into her trust account, as required by WAC 284-12-080. That regulation is clear that all premiums received must be deposited into the agent's trust account and disbursed as appropriate from there. The regulation further provides, at WAC 284-12-080(5)(a):

The entire premium received (including a surplus lines premium tax if paid by the insured) must be deposited into the separate account. Such funds shall be paid promptly to the insurer or to another producer entitled thereto, in accordance with the terms of any applicable agreement between the parties.

Clearly, Appellant knowingly failed to adhere to the requirements of this regulation in regard to the Morfin/M&M Roofing funds.

9. As for the failure to refund the premium monies paid by Mr. Solorzano, for E&J Construction, the evidence is clear that Appellant made no effort to refund the monies until the OIC began an investigation. Even then, Appellant made false representations about the refund to the investigator, until forced to reveal more information, leading to the inescapable conclusion that the check Appellant provided as proof of the refund had not been given to the client at all, and that another, more recent check had been issued. It is clear from the evidence that Appellant attempted to deceive the investigator in her presentation of the evidence of a refund which never occurred. The eventual refund was made a year after the premium was paid, and only after Appellant was forced into making such refund by the OIC investigation.

10. **RCW 48.30.190**

Illegal dealing in premiums.

(1) No person shall wilfully collect any sum as premium for insurance, which insurance is not then provided or is not in due course to be provided by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall wilfully collect as premium for insurance any sum in excess of the amount actually expended or in due course is to be expended for insurance applicable to the subject on account of which the premium was collected.

(3) No person shall wilfully or knowingly fail to return to the person entitled thereto within a reasonable length of time any sum collected as premium for insurance in excess of the amount actually expended for insurance applicable to the subject on account of which the premium was collected.

(4) Each violation of this section which does not amount to a felony shall constitute a misdemeanor.

11. Appellant violated RCW 48.30.190(1), (2), and (3), when she took monies for premiums from Morfin (for M&M Roofing) and from Solorzano (for E&J Construction), in amounts more than what she eventually expended for insurance provided, and when Appellant knowingly failed to refund the monies to these persons once it was clear to her that insurance was not going to be provided to them. Appellant's wrongful retention of these monies was willful and done with her knowledge and/or approval, although the evidence does not show she took the monies initially with such design.

12. Appellant's actions in taking premiums, not purchasing insurance for the clients, and not refunding the monies promptly to the clients also constitutes unfair and deceptive acts or practices as intended by RCW 48.30.010(1).

13. RCW 48.30.040

False information and advertising.

No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein.

RCW 48.30.090

Misrepresentation of policies.

No person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof.

14. Appellant violated RCW 48.30.040 and RCW 48.30.090 when she knowingly issued false Certificates of liability insurance to clients and to the Department of Labor & Industries. Appellant signed, or had knowledge that her employee signed, and issued two false Certificates of Liability Insurance for Jose Morfin/M&M Roofing, and one such Certificate for Estanislao Solorzano/E&J Construction. Appellant knew that the Certificates were false when issued, and purposely issued same anyway. Appellant also knowingly allowed false, lapsed Certificates to remain on file with the Department of Labor & Industries in relation to Pounds Construction, when she had an obligation to notify both the client and the State of the lapses in coverage.

15. Appellant knew, when she issued or allowed to be issued the false Certificates, that the clients would rely, to their detriment, on these false Certificates. Likewise, Appellant had knowledge that the Department of Labor & Industries would rely, to the detriment of the public, on these false certifications of liability insurance.

16. RCW 48.17.530

Refusal, suspension, revocation of licenses.

(1) The commissioner may suspend, revoke, or refuse to issue or renew any license which is issued or may be issued under this chapter or any surplus line broker's license for any cause specified in any other provision of this code, or for any of the following causes:

(b) If the licensee or applicant wilfully violates or knowingly participates in the violation of any provision of this code or any proper order or regulation of the commissioner.

(d) If the licensee or applicant has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity.

(e) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction.

(f) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

17. The Commissioner revoked Appellant's license based on the above cited provisions of RCW 48.17.530. The evidence clearly establishes that Appellant's actions fall within the cited provisions and justifies the revocation of her agent's license.

18. The evidence clearly and convincingly shows Appellant wilfully or knowingly violated, or participated in the violation of, the provisions of the code or regulations. Appellant did this by misappropriating monies, as set forth above; and by knowingly making false certification of insurance coverage to clients and to the Department of Labor & Industries. (RCW 48.17.530(b))

19. As previously set forth, above, the evidence clearly and convincingly establishes that Appellant misappropriated or converted to her own use the premium monies paid by two clients, and illegally withheld those monies from the clients in violation of her fiduciary duty. (RCW 48.17.530(d))

20. The evidence clearly and convincingly establishes that Appellant materially misrepresented the terms or effect of insurance contracts, when she knowingly issued or allowed to be issued false Certificates of Liability Insurance on three clients, on at least 5 separate occasions (two times with M&M Roofing; once with E&J Construction; and twice with Pounds Construction). This behavior by Appellant violates RCW 48.17.530(e).

21. Finally, the evidence establishes clearly and convincingly that Appellant has shown herself to be, and is so deemed to be, untrustworthy, incompetent, and a source of injury and loss to the public. RCW 48.17.530(h)

22. The word "untrustworthy" is defined as "not worthy of trust or belief; unreliable; not worthy of confidence; not dependable; and of questionable honesty." (Dictionary.com; Ultralingua.net) Appellant's lack of trustworthiness is clearly demonstrated in her actions: misappropriation of client monies; allowing clients to believe for a year that they were protected by liability insurance knowing they were not; certifying to the State that clients were protected by liability insurance and worthy of a contractor's registration, when Appellant knew coverage did not exist; forgery of a client's signature on a receipt to portray a false impression that a refund had been made when it had not;

misrepresentations made to the OIC investigator regarding a refund Appellant claimed was made to E&J Construction, which was not made until after OIC placed pressure on Appellant regarding proof of that refund.

23. Appellant has shown herself to be incompetent to be an insurance agent and operate an agency selling insurance to the public. "Incompetent" means "without adequate ability or skills; failing to meet requirements." *Webster's New World Dictionary*, (1966) The evidence is clear and convincing that Appellant is without the ability or skill to manage and operate as an insurance agent, where she has misappropriated client monies; failed to protect premiums paid to her by placing those monies in her trust fund as required by law; misrepresented the insurance status of clients to the State and to the clients; and forged a client's name to a receipt to falsely prove a refund.

24. Even if Appellant's version of events were believable, we would be required to conclude that she is incompetent to continue as an agent. Appellant blames all of the errors, omissions, and dishonest acts on her staff, including accusations that they signed her name to legal documents without her authority or knowledge. Then, according to Appellant, without her knowledge or authority, the staff issued the false Certificates. The premiums obtained from clients were not used to pay for insurance for these clients, and Appellant cannot account for these monies. Yet, Appellant claims to have *known nothing about any of these matters*. Clearly, these events could not occur without knowledge of the owner/agent in an insurance office managed by one who possesses the skills and abilities required of an insurance agent; in other words, one who is "competent," to operate as an insurance agent.

25. Finally, the Commissioner found that Appellant had shown herself to be a source of injury and loss to the public. RCW 48.01.030 sets forth the guiding principles in this matter, and states:

Public interest.

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

26. The evidence clearly and convincingly supports the conclusion that Appellant is a source of injury and loss to the public. Appellant knowingly allowed construction companies and roofing contractors to work uninsured; Appellant knew that the public relied on the Certificates issued by her as verification of liability insurance and would determine whether it was "safe" to hire a particular contractor based on that

representation of insurance. The State Department of Labor & Industries requires liability insurance of contractors, and represents to the public that contractors are insured based on the Certificates of Liability Insurance received from insurance agents, such as Appellant.

27. By not acting in good faith; not abstaining from deception; and not practicing honesty and equity in all insurance matters, Appellant has proven herself a source of injury and loss to the public. In sum, Appellant has violated the Insurance Act in the ways specified and her agent's license was properly revoked under RCW 48.17 by the Commissioner.

INITIAL ORDER

IT IS HEREBY ORDERED That the Office of Insurance Commissioner's revocation of Appellant's license as an insurance agent is **AFFIRMED**.

The Insurance Commissioner will issue any Final Order in this matter. See "REVIEW RIGHTS" below.

Dated and Mailed on this 15th day of December, 2005, Olympia, WA.



Cindy L. Burdue
Administrative Law Judge
Office of Administrative Hearings

REVIEW RIGHTS

Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a Petition for Review of an Initial Order. The Petition for Review shall be filed with the agency head within **twenty (20) days** of the date of service of the Initial Order. Copies of the Petition must be served upon all other parties or their representatives at the time the Petition for Review is filed. The Petition for Review must specify the portions of the Initial Order to which exception is taken and must refer to the evidence of record which is relied upon to support the petition.

Any party may file a Reply to a Petition for Review. The Reply shall be filed with the office where the Petition for Review was filed within ten days of the date of service of the Petition for Review and copies of the Reply shall be served upon all other parties or their representatives at the time the Reply is filed.

A Petition for Review or Reply filed at the address of the Office of Administrative Hearings shall be deemed service upon the agency head. The Petition and Reply shall be forwarded to the Insurance Commissioner to be consolidated with the hearing file.

Copies of this *Initial Order* were mailed to:

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Legal Affairs
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CAMPUS MAIL

CERTIFICATE OF SERVICE BY MAIL

This will hereby certify that on the 15th day of December, 2005, I mailed a true and correct copy of the foregoing, via the United States Mail, first-class postage prepaid, in sealed envelopes to the above parties.



Rica Helberg
Legal Secretary
Office of Administrative Hearings

Initial Order
2005-INS-0001