

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
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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 of a true copy of this document to parties listed below
DATED this 6th day of December 2006 at Tumwater, Washington.

Signed: Wendy Galloway

Patricia D. Petersen
Chief Hearing Officer
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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	NO. D06-153
)	
CLEO E. CHITTENDEN)	FINDINGS OF FACTS,
)	CONCLUSIONS OF LAW,
Licensee.)	AND FINAL ORDER
_____)	ON HEARING

TO: Cleo E. Chittenden, Licensee
P.O. Box 7187
Kent, Washington 98042

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Charles Brown, Senior Staff Attorney, Legal Affairs Division
John F. Hamje, Deputy Insurance Commissioner, Consumer Protection Div.
Office of the Insurance Commissioner
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Pursuant to RCW 34.04.090, 34.04.120, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington (OIC) on August 28, 2006, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The OIC appeared pro se, by and through Charles Brown, OIC Senior Staff Attorney. Cleo E. Chittenden appeared pro se.



NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear argument as to whether the Insurance Commissioner's (Commissioner) Order Revoking License, No. D06-153, entered by the Commissioner on March 9, 2006, should be confirmed, set aside or modified. Said Order Revoking License revokes the insurance agent's license of Cleo E. Chittenden (Licensee) based upon the facts alleged therein. The Licensee requested this hearing to contest this Order Revoking License.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. Further, it is reasonable that the deadline for entry of this Order was extended for nine days based upon good cause shown as permitted by RCW 34.05.461(8)(a).
2. The Licensee is an approximately 47 year old woman who is a resident of Kent, Washington, and has been licensed as an insurance agent in Washington State to sell property and casualty insurance since on or about 2001. She has not been licensed in any other state. [Testimony of Licensee.]
3. The Licensee worked for the Bell-Anderson Insurance Agency for approximately eight years ending on or about 1995, handling cash and communicating with clients. [Testimony of Licensee.] During her time there, she was considered to be a diligent worker demonstrating a professional approach to handling commercial insurance files for a number of producers and assisting the team in providing service to customers. [Ex. 14.] In 1995, she received Employee of the Second Quarter 1995 for her work in handling commercial files for a number of producers and providing service to customers. [Ex. 14.]
4. From 1999 to 2003, she worked as a Customer Service Representative and Account Manager in the commercial insurance department of Rourke & Bell Insurance Agency in Seattle (which merged into Kibble and Prentice Insurance). In this capacity, she rated policies, renewed contracts, maintained files, reported claims, handled customers, invoiced business, using several computer systems, and worked with a variety of company representatives. In this work, her boss and the person for whom she worked, Philip G. Rourke, advises that the Licensee kept the interests of the customer in mind and yet worked within company expectations, worked to learn and help others with company procedures and exhibited herself to be trustworthy and a loyal worker; further, he supported the Licensee in her application for her insurance agent's license, advising that she was an excellent worker who performed with the utmost integrity. [Ex. 4, July 17,

2006 letter from Philip G. Rourke, President of Rourke & Bell Insurance Agency; Ex. 13, September 3, 2001 letter from Philip G. Rourke, Sr. Vice President, agent and broker with Kibble & Prentice.]

5. The Licensee worked as an insurance agent with Balco Insurance Agency (Balco) in Kent, Washington, from on or about November 2004 until August 31, 2005, when she voluntarily left her employment there. It was during her employment with Balco that the activities at issue in this proceeding occurred.

6. From October 7, 2005 until June 13, 2006, three months after receiving the subject Order Revoking License, the Licensee worked as a support person for the Large Commercial Unit of Brown & Brown Insurance Agency in Tacoma. In that capacity, Lesley Haithcox, the insurance agent for whom the Licensee worked, reports that she worked with efficiency, integrity, dependability and dedication. [Ex. 11, July 25, 2006 letter from Lesley Haithcox, insurance agent and board member of the Independent Agents and Brokers of Pierce County.]

7. On or about May 23, 2005, during the period of time in which the Licensee was working for Balco, Scott Sanford of Sanford Construction (Sanford), a new customer to Balco, brought \$1,464.82 to the Licensee, in her position as an employee of Balco, as payment for general liability insurance and a bond for his business. Upon receiving the cash, the Licensee prepared and gave to Sanford an "invoice" [Ex. 1; Testimony of Licensee; Testimony of Moffett], indicating the account number, the type of insurance, the carrier issuing the insurance, effective dates, current date of receipt and "Amount Due" and Invoice Balance" of \$1,464.82. Although the Licensee created the "invoice" she is not the individual who wrote "Paid" on it. [Testimony of Licensee.]

8. Based upon the evidence presented by both parties - the Licensee and Jean "Scottie" Moffett, (Moffett) Commercial Department Manger who was the Licensee's supervisor - and in the absence of testimony from Sanford, there was insufficient evidence to prove that the Licensee advised Sanford that Sanford must bring cash as opposed to the Licensee advising Sanford that he could bring cash, cashiers check or money order in payment of this premium.

9. While the Licensee asserts that, after receiving the cash from Sanford, she gave it along with a copy of the receipt to Moffett for transmission to accounting or Scott or Mark Balco, the agency owners [Testimony of Licensee]. Moffett asserts that she never received the cash or a copy of the "invoice" from the Licensee [Testimony of Moffett].

10. After the Sanford transaction, the Licensee remained employed by Balco for approximately three more months. On or about late September 2005, approximately three weeks after the Licensee left her employment with Balco, Balco discovered that Sanford had paid for insurance, but that their records did not show that insurance had been ordered. Upon recognizing a problem, Scott Balco, an owner of Balco, went to Sanford, obtained a copy of the "invoice" and had the agency pay the premium for

insurance coverage and bond in October 2005. [Testimony of Moffett.] Sanford had been without general liability insurance, or a bond, from effective date stated on the "invoice," May 23, 2005, until the date the coverage was actually purchased in October 2005. Absent testimony from Sanford, there is insufficient evidence to find that Sanford had placed multiple calls to the Licensee to inquire about his coverage between May 2005 and September 2005.

11. The document entitled "invoice" which the Licensee gave to Sanford on receipt of the subject funds did not indicate that any funds had been received, just that these funds were due, even though at the time she prepared this document and gave it to Sanford, she also collected the \$1,464.82. [Ex. 1; Testimony of Licensee.] This document was not a cash receipt; because she had actually received the funds from Sanford at time of preparation of the document, the Licensee should have created for Sanford a cash receipt and not this "invoice" document. [Testimony of Moffett.]

12. It is more likely than not that the Licensee received the subject \$1,464.82 in premium funds paid in cash from Sanford and - either due to a gross inefficiency, surprising for an insurance professional with her years of experience, or due to an intent to withhold these funds - failed to turn them over to Moffett or any other Balco representative. Given her years of successful performance in this industry, however, it is reasonable that Commissioner's Order Revoking Licensee should be modified to impose a suspension of her insurance agent's license for three months instead of the imposition of the penalty of revocation of her license.

13. Cleo Chittenden presented herself as the sole witness on her behalf (other than letters admitted as exhibits herein). She presented herself as fairly credible during most of her testimony. However, her credibility was in question at other times including, for example, her testimony that - with all of her years as a professional in the insurance industry - she should testify that she "did not know how to [prepare] a cash receipt [until July 2005] and never prepared them at Kibble and Prentiss, her previous employer of several years, either.

14. Jean "Scottie" Moffett, an experienced insurance professional, testified as the sole witness on behalf of the OIC. Ms. Moffett presented her testimony in a detailed, reasonable and credible manner and exhibited no apparent biases. She has been employed by Balco for approximately eight years and approximately one year ago became its Commercial Department Manager. She is in charge of the Licensee and others in the service staff and works directly with Mark and Scott Balco, the agency owners.

15. Based upon the above findings of facts, together with recognition that the Licensee's insurance agent's license has already been in a revoked status since March 29, 2006 because it was not automatically stayed upon her request for hearing, it is reasonable that the OIC's Order Revoking License be modified to impose a suspension of three months from the date of entry of this Order instead of the imposition of an order revoking license.

However, should the OIC have any future cause to investigate, and/or enter a disciplinary order against the Licensee, then the facts found herein shall be considered at that time.

CONCLUSIONS OF LAW

1. RCW 48.17.480(2) provides that all funds representing premiums received by an agent shall be so received in her fiduciary capacity, and shall be promptly accounted for and paid to the insurer or agent as entitled thereto. Based upon her activities in failing to account for and pay the funds received from Sanford to the Balcos agency, the Licensee violated her fiduciary duty as an insurance agent and the standards set forth in RCW 48.17.480(2).
2. RCW 48.17.480(3) provides that any person licensed as an insurance agent in the state of Washington 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, and that the licensee shall promptly account for and pay the funds to the person entitled to the funds. Based upon her activities in failing to account for and pay the funds received from Sanford to the Balcos agency, the Licensee violated her fiduciary duty and the standards set forth in RCW 48.17.480(3).
3. By willfully collecting premium funds from Sanford and failing to provide Sanford with the requested bond and insurance coverage or even ordering said coverage, the Licensee violated RCW 48.30.190(1).
4. RCW 48.17.530(1) provides that the Commissioner may suspend, revoke, or refuse to issue any license...for any cause specified in any other provision of the insurance code, or for any of the following causes: (b) If the licensee...willfully violates...any provision of the insurance code.... (d) If the licensee...has misappropriated ...moneys required to be held in a fiduciary capacity. Based upon the facts found above, the Licensee has willfully violated provisions of the insurance code, misappropriated moneys required to be held in her fiduciary capacity as contemplated by RCW 48.17.530(1).
5. RCW 48.17.530(1) provides that the Commissioner may suspend, revoke, or refuse to issue any license...(h) If the licensee...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. By reason of the Licensee's conduct, found above, she has shown herself to be, and is so deemed to be, untrustworthy and a source of injury to the public.
6. It is reasonable that, given the above findings of facts and conclusions of law, the OIC's Order Revoking License, No. D06-153, should be modified to impose a suspension of three months instead of revocation of license.

ORDER

Given the above Findings of Facts, and Conclusions of Law, to the effect that the Licensee, Cleo E. Chittenden, by her actions violated RCW 48.17.480(2) and (3), RCW 48.30.190(1), and committed the actions contemplated by RCW 48.17.530(1) (b) and (d) and has shown herself to be, and has been so deemed to be, untrustworthy and a source of injury to the public as contemplated by RCW 48.30.530(1)(h), and taking into account the above findings concerning her years of successful service in the industry without problem,

IT IS HEREBY ORDERED that the OIC's Order Revoking License, No. D06-153, is hereby modified to impose a suspension of her insurance agent's license for three months from the date of entry of this Order instead of revocation of her insurance agent's license. However, the findings, conclusions and order herein shall be considered in the event that any further inquiry or action of the OIC be conducted against this Licensee.

This Order is entered at Tumwater, Washington, this 6th day of December, 2006.



PATRICIA D. PETERSEN
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 in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the paralegal to the undersigned.