

STATE OF WASHINGTON

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OFFICE OF  
INSURANCE COMMISSIONER

HEARINGS UNIT  
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MIKE KREIDLER  
STATE OF WASHINGTON  
**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 16th day of July 2008  
at Tumwater, Washington.

Signed: Wendy Galloway

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Hearings Unit, DIC  
Wendy Galloway Petersen  
Paralegal Chief Hearing Officer  
(360) 725-7002  
Wendyg@oic.wa.gov

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of: )

JULIE D. LEMERY and )  
MAIN STREET INSURANCE, )

Licensees. )

No. D07-0307

FINAL FINDINGS OF FACTS,  
CONCLUSIONS OF LAW,  
AND ORDER ON HEARING

TO: Julie D. Lemery and  
13117 291<sup>st</sup> Avenue N.E.  
Duvall, Washington 98019

Julie D. Lemery  
Main Street Insurance  
P.O. Box 1391  
Duvall, Washington 98019

COPY TO: Mike Kreidler, Insurance Commissioner  
Vernon Stoner, Chief Deputy Insurance Commissioner  
Carol Sureau, Deputy Commissioner, Legal Affairs Division  
Charles D. Brown, Sr. Staff Attorney, Legal Affairs Division  
John F. Hamje, Deputy Commissioner, Consumer Protection Division  
Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255

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 February 13, 2008, 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 D. Brown, OIC Senior Staff Attorney. While, as below, Julie D. Lemery (Licensee) had appeared pro se throughout all preliminary proceedings prior to the hearing in this matter,



she failed to appear at hearing.

On August 29, 2007, a Demand for Hearing was received from Julie D. Lemery (Licensee). The purpose of said Demand for Hearing is to contest the Insurance Commissioner's (OIC) letter of reprimand dated May 30, 2007. Said letter of reprimand, which was later rescinded by the OIC by e-mail which still maintained various allegations against her, states that the Licensee had advertised specific insurers with which she had no appointments. Subsequently, on November 2, 2007, the OIC issued a Notice to Show Cause Why an Order Should not be Entered Revoking Licenses and Statement of Grounds. In her Demand for Hearing, the Licensee challenged the reprimand, and the subsequent Notice to Show Cause, on the basis that each of the statements therein are false, that her insurance agency did have the right to advertise as it did and that she has the appointments, contracts, letters, e-mails and applications to prove this.

Accordingly, on October 1, 2007, the undersigned held a first prehearing teleconference in this matter. Ms. Lemery appeared pro se. The OIC appeared pro se, by and through Charles D. Brown, Senior Staff Attorney in the OIC's Legal Affairs Division. During said prehearing conference, the undersigned reviewed administrative procedure and addressed all questions and concerns of the parties. Also considered at the prehearing conference, as scheduled, was the OIC's Motion to Dismiss Demand for Hearing, which was denied as documented in the Order Denying OIC's Motion to Dismiss entered by the undersigned on October 22, 2007.

Subsequently, the parties requested, and were granted, numerous prehearing conferences primarily concerning motions involving discovery issues, all as documented in the hearing file. Each issue was properly addressed, and the parties agreed that the hearing should commence in Tumwater, Washington on January 4, 2008. Later, the Licensee requested, and was granted, a continuance of the hearing until 10 a.m. on February 13, 2008.

On February 13, 2008, just prior to the time for commencement of the hearing, because the Licensee had failed to appear, Wendy Galloway, Paralegal to the undersigned, attempted to contact the Licensee. Ms. Galloway telephoned the number the Licensee had asked to be contacted at (206) 228-4200, and also the Licensee's cellular telephone number that had been used for past telephone prehearing conferences. As there was no answer at either number, Ms. Galloway left detailed messages at both numbers telling the Licensee that the hearing would proceed and that she should call the hearings room directly in order to participate and not be in default. Further, as stated in the Notice of Hearing entered in the beginning of this proceeding, all parties were informed that failure to appear would result in a default order being entered against them. The Licensee failed to telephone the hearings room during the entire course of the hearing, and based upon her failure to appear was declared to be in default at that time. The OIC presented its testimony pursuant to said Notice of Hearing.

#### **NATURE OF PROCEEDING**

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the insurance agent's license of Julie D. Lemery and Main Street Insurance should be

revoked, as set forth in the OIC's Notice to Show Cause Why an Order Should Not be Entered Revoking Licenses and Statement of Grounds issued by the OIC on November 2, 2007.

### 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.
2. Julie D. Lemery, the Licensee, has been licensed in Washington as an insurance agent for life, disability, property, and casualty insurance since 1993. Main Street Insurance is a business entity owned by Ms. Lemery that has been licensed as a Washington insurance agency since March 9, 2007.
3. In 1995, Ms. Lemery was appointed as a Farmers insurance agent authorized to sell and service insurance policies issued by Farmers' companies Farmers Insurance Exchange, Farmers New World Life Insurance Company, Truck Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Exchange.
4. In March 2003, Farmers terminated Ms. Lemery's agent appointment for embezzlement. Ms. Lemery then sued Farmers in King County Superior Court. Farmers counterclaimed and obtained judgment against Ms. Lemery for Farmers' damages, including the amount that Ms. Lemery had embezzled. Ms. Lemery appealed and Division One of the Washington Court of Appeals affirmed the trial court judgment in favor of Farmers, holding in part as follows:

*Farmers' evidence showed that Lemery had, over the years, made numerous modifications to her personal policies in an apparent effort to avoid payment. Under the Farmers billing system, policy changes extend the due date by 30 days. In a two year period, Lemery made 31 changes on the three policies.*

*Farmers' evidence also showed that Lemery had repeatedly reinstated personal insurance policies that had been automatically cancelled due to nonpayment. Farmers' rules prohibit reinstatement of any policy that has been cancelled for nonpayment unless the agent reinstating the policy has collected payment of the unpaid premium owed on the cancelled policy as well as one half of the premium due on the reinstatement. Three policies issued to Lemery or members of her household had been reinstated 19 times after having been cancelled for nonpayment. Lemery did not collect payment or pay Farmers before the reinstatement of these policies.*

*Further investigation by Farmers found that one policy alone had, in a two year period, been cancelled for nonpayment four times and reinstated each time. Three changes had been made to that policy, including changing the policy's deductible from \$500 to \$250,*

*then changing it back to \$500 six days later. The investigator also found seven other Lemery household policies that showed a similar pattern of numerous changes, cancellation, and reinstatement. The investigator found that many of the reinstatements were stamped with Lemery's own agent identification number. The total amount due in payments on the policies, all of which Lemery cancelled after the audit, was \$4,411.84.*

*But Lemery did not merely fail to pay her bills. She intentionally violated Farmers' rules in a way that allowed her to continue to receive insurance coverage without paying her bills. She used her trusted position as a Farmers agent to fraudulently conceal her debts. She embezzled. And any intention she may have had to pay the money at some future time does not make her a mere debtor rather than an embezzler.*

5. On March 9, 2007, Ms. Lemery submitted a business entity insurance license application to the OIC for Main Street Insurance, an agency owned by Ms. Lemery. Question Number 3 on the application asked, *"Has any demand been made or judgment rendered against you for overdue monies by an insurer, insured or producer? If yes, submit a statement summarizing the details of the indebtedness and arrangements for repayment."* Despite the judgment that had been rendered against her in the above-referenced lawsuit, Ms. Lemery falsely answered "No" to this question.

6. Question Number 5 on the above-referenced application asked, *"Are you currently a party to, or have you ever been found liable in, any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?"* Despite the judgment that had been rendered against her in the above-referenced suit, Ms. Lemery falsely answered "No" to this question.

7. Question Number 6 on the above-referenced application asked, *"Have you or any business in which you are or were an owner, partner, officer or director ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct?"* Despite the fact that Ms. Lemery's agency contract with Farmers had been terminated for embezzlement, Ms. Lemery falsely answered "No" to this question.

8. Ms. Lemery signed the above-referenced application falsely certifying in part as follows:

*I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.*

9. In 2007, Ms. Lemery and Main Street Insurance advertised with the name of an insurance company with which they had no appointment and as to which they had no affiliation filed with any agency that had a direct appointment with the insurer.

10. In response to the OIC's investigation request, Ms. Lemery sought to mislead the OIC by providing it with an incomplete and inaccurate copy of her contract with Insurancezone.com of

Texas from which contract she intentionally removed and omitted key language that the *"Producer shall have no authority to utilize the names or trademarks of AgentSecure, its related entities or any of the contracted or partnering insurance carriers in the conduct of its business without the express written consent of AgentSecure."*

11. Ms. Lemery has refused to agree to cease advertising insurance companies with which neither she, nor Main Street Insurance is affiliated.

12. Ms. Lemery has advertised her agency, Main Street Insurance, on the internet as [www.mstreetins.com](http://www.mstreetins.com). The web page states that Main Street Insurance can provide insurance in 8 states. The National Association of Insurance Commissioner's (NAIC) web site shows that Main Street Insurance is licensed only in Washington.

13. By the conduct found above, Licensees Julie D. Lemery and Main Street Insurance have obtained the insurance agency license of Main Street Insurance through willful misrepresentation or fraud, Julie D. Lemery has misappropriated or converted or illegally withheld moneys required to be held in a fiduciary capacity, and Julie D. Lemery and Main Street Insurance have shown themselves to be incompetent, untrustworthy, or a source of injury and loss to the public.

14. On February 13, 2008 at 9:57 a.m. just prior to the scheduled hearing, Ms. Galloway dialed the telephone number, (206) 228-4200, provided by Ms. Lemery. There was no answer. Ms. Galloway left a message informing Ms. Lemery that she would be in default if she failed to participate in the hearing scheduled that morning.

15. During the hearing, at approximately 10:05 a.m., Ms. Galloway attempted to contact Ms. Lemery at (206) 228-4200 and at (425) 788-6270, Ms. Lemery's telephone number used during previous telephone conferences. There was no answer at either telephone number. Ms. Galloway left detailed messages for Ms. Lemery at both telephone numbers explaining that the hearing was proceeding as scheduled and that Ms. Lemery should contact the hearing room, by dialing (360) 725-7245, and if she failed to participate she would be in default.

16. Marianna Azevedo, an investigator with the Office of the Insurance Commissioner, appeared as a witness on behalf of the Insurance Commissioner. Her testimony was clear and detailed and presented no apparent biases and was determined by the undersigned to be credible.

17. Michael R. Huske, Chief Investigator with the Office of the Insurance Commissioner, appeared as a witness on behalf of the Insurance Commissioner. His testimony was clear and detailed and presented no apparent biases and was determined by the undersigned to be credible.

18. Georgia L. Cooper, an employee in the Insurance Commissioner's Licensing Division, appeared as a witness on behalf of the Insurance Commissioner. Her testimony was clear and detailed and presented no apparent biases and was determined by the undersigned to be credible.

19. Molly M. Dailey, an attorney employed by the law firm of Stoel Rives in Seattle, appeared as a witness on behalf of the Insurance Commissioner. Her testimony was clear and detailed and presented no apparent biases and was determined by the undersigned to be credible.

20. The undersigned recognizes recent case law which draws into question the proper standard of proof to be applied in administrative cases involving some types of professional licenses, and recognizes that such cases involving insurance agents' licenses have not been addressed. In recognition of the question that this recent case law raises, however, the undersigned has applied both the "clear cogent and convincing" standard of proof and the "preponderance of the evidence" standard of proof, and finds the above facts under application of either the lower or the higher standard of proof.

21. Based upon the above activities, it is here found that it is reasonable that the insurance agents' licenses of the Licensee and Main Street Insurance should be, as argued by the Insurance Commissioner, revoked.

#### CONCLUSIONS OF LAW

1. Based upon the above Findings of Facts, the Licensee and Main Street Insurance have knowingly made, published, or disseminated false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance, and has thereby violated the provisions of RCW 48.30.040.

2. Based upon the above Findings of Facts, the Licensee and Main Street Insurance have failed to promptly reply in writing to an inquiry of the Insurance Commissioner relative to the business of insurance, and have thereby violated the provisions of RCW 48.17.475.

3. Based upon the above Findings of Facts, the Licensee and Main Street Insurance have acted as a representative of an insurer and solicited insurance on its behalf when they were not appointed by the insurer, and have thereby violated the provisions of WAC 284-17-457.

4. Based upon the above Findings of Facts, Main Street Insurance failed to notify the Insurance Commissioner of all individual licensees that represented it and acted on its behalf and has thereby violated the provisions of WAC 284-17-473.

5. Based upon the above Findings of Facts, the Licensee and Main Street Insurance have obtained insurance agents' licenses through willful misrepresentation or fraud in violation of RCW 48.17.530(1)(c), have misappropriated or converted or illegally withheld moneys required to be held in a fiduciary capacity in violation of RCW 48.17.530(1)(d), have dealt with, or attempted to deal with, insurances, or to exercise powers relative to insurance outside the scope of their licenses, in violation of RCW 48.17.530(1)(i), and in so engaging in these activities have thereby shown themselves to be incompetent, untrustworthy, or a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h). Therefore, it is concluded that the Licensee's insurance agent's license should be revoked pursuant to RCW 48.17.530(1)(a), (b),

(c), (d), (h), and (i) and RCW 48.17.530(2). Because of the severity of revocation of these licenses, no additional penalties in the form of the fines sought by the Insurance Commissioner should be imposed.

### ORDER

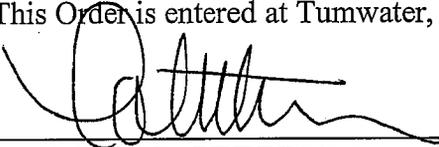
On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensees have violated RCW 48.17.475, WAC 284-17-457, WAC 284-17-473, RCW 48.17.530(1)(c), RCW 48.17.530(1)(d), RCW 48.17.530(1)(i), and in so engaging in these activities have thereby shown themselves to be incompetent, untrustworthy, or a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h), the above Conclusion that the Licensees' insurance agents' licenses should be revoked pursuant to RCW 48.17.530(1)(a), (b), (c), (d), (h), and (i) and RCW 48.17.530(2) and for good cause shown to RCW 34.05.461(8),

**IT IS HEREBY ORDERED** that the insurance agent's license of Julie D. Lemery, and the insurance agency license of Main Street Insurance are hereby revoked.

**IT IS FURTHER ORDERED** that the insurance agent's license of Julie D. Lemery and the insurance agency license of Main Street Insurance shall be surrendered to the Office of the Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255 by close of business on July 28, 2008.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210, Title 48 RCW and WAC Chapter 284.

This Order is entered at Tumwater, Washington, this 16<sup>th</sup> day of July, 2008.

  
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**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.