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Attorney General

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FILED
OCT 23 2017 *AM*
Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE,

Complainant,

vs.

NICOLE PRESCOTT, an individual holding
Idaho Resident Producer License No. 344565;
and ROCKY MOUNTAIN AG
INSURANCE, INC., an administratively
dissolved Idaho corporation holding Idaho
Resident Producer Agency License No.
454544;

Respondents.

Docket No. 18-3351-17

ORDER OF DEFAULT

The Director of the Idaho Department of Insurance (“Director”) having reviewed the record herein; and NICOLE PRESCOTT (“PRESCOTT”), who currently holds Idaho Resident Producer License No. 344565, and ROCKY MOUNTAIN AG INSURANCE, INC. (“ROCKY MOUNTAIN”), which currently holds Idaho Resident Producer Agency License No. 454544,

having been lawfully served the Verified Complaint and Notice of Right to Hearing, a copy of which is attached hereto as Exhibit A and incorporated herein, and, as evident from the Affidavit of David M. Farney, having failed to file an answer thereto and having failed to request a hearing regarding said Verified Complaint; and the Director having found as a result thereof that PRESCOTT and ROCKY MOUNTAIN have waived their rights regarding the opportunity for hearing; and in consideration of the above;

IT IS HEREBY ORDERED that Idaho Resident Producer License No. 344565 issued to PRESCOTT is REVOKED effective immediately and that, pursuant to Idaho Code § 41-1026(3), PRESCOTT shall not be issued any license under title 41, Idaho Code, for a period of five (5) years, after which time PRESCOTT must petition and show good cause why this revocation should not be deemed a bar to the issuance of a new license.

IT IS FURTHER ORDERED that Idaho Resident Producer Agency License No. 454544 issued to ROCKY MOUNTAIN is REVOKED effective immediately.

IT IS FURTHER ORDERED that an administrative penalty in the amount of Ten Thousand Dollars (\$10,000) is imposed against PRESCOTT, with such penalty to be paid in full prior to submission by PRESCOTT of any new application or any application for reinstatement of any license under title 41, Idaho Code.

IT IS FURTHER ORDERED, pursuant to Idaho Code § 41-1027(1), that PRESCOTT and ROCKY MOUNTAIN shall immediately return Resident Producer License No. 344565 and Resident Producer Agency License No. 454544, respectively, to the Idaho Department of Insurance, P.O. Box 83720, Boise, Idaho 83720-0043.

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IT IS SO ORDERED.

DATED this 23 day of October, 2017.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

NOTICE REGARDING REPORTABLE PROCEEDINGS

The foregoing is considered a reportable administrative proceeding. As such, it is a public record and is public information that may be disclosed to other states and reported to companies as to which the Respondent is actively appointed. This information will be reported to the National Association of Insurance Commissioners (NAIC) and will appear in the online searchable database of the Idaho Department of Insurance. The Respondent should be aware that this proceeding must be disclosed on any insurance license application and must be reported to any and all states in which the Respondent holds an insurance license.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2017, I caused a true and correct copy of the foregoing ORDER OF DEFAULT to be served upon the following by the designated means:

Nicole Prescott
and Rocky Mountain Ag Insurance, Inc.
4043 N. 3500 E.
Kimberly, ID 83341-5072

☒ first class mail
☐ certified mail
☐ hand delivery
☐ facsimile

Nicole Prescott
and Rocky Mountain Ag Insurance, Inc.
315 Idaho Street
Eden, ID 83325-5208

☒ first class mail
☐ certified mail
☐ hand delivery
☐ facsimile

David M. Farney
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

☐ first class mail
☐ certified mail
☒ hand delivery
☐ facsimile


Pamela Murray

LAWRENCE G. WASDEN
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SEP 11 2017 *PM*
Department of Insurance
State of Idaho

Attorneys for the Department of Insurance

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
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IDAHO DEPARTMENT OF INSURANCE,

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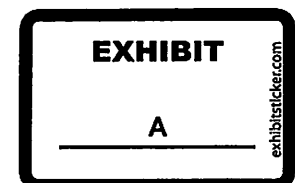
NICOLE PRESCOTT, an individual holding
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and ROCKY MOUNTAIN AG
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dissolved Idaho corporation holding Idaho
Resident Producer Agency License No.
454544;

Respondents.

Docket No. 18-3351-17

**VERIFIED COMPLAINT AND
NOTICE OF RIGHT TO HEARING**

COMES NOW the staff of the Idaho Department of Insurance ("Department"), by and
through its undersigned counsel, DAVID M. FARNEY, Deputy Attorney General, and does
hereby give notice of verified allegations constituting violation(s) of Idaho law, notice that relief



will be requested from the Director of the Department, and a notice of the right to contest the allegations and requested relief herein and right to hearing to:

NICOLE PRESCOTT
Resident Producer License No. 344565
and
ROCKY MOUNTAIN AG INSURANCE, INC.
Resident Producer Agency License No. 454544

The Department alleges the following facts and violations of title 41, Idaho Code, as itemized below. The Department will present an order seeking the relief described below upon twenty-one (21) days following service of this verified Complaint, and, NICOLE PRESCOTT and ROCKY MOUNTAIN AG INSURANCE, INC., you are further notified of your right to object to the requested relief, including the basis for any objection, and to request a hearing in writing.

JURISDICTION

1. Jurisdiction in this matter is founded in the Idaho Insurance Code, Idaho Code § 41-101 *et seq.*, including Idaho Code § 41-210, which authorizes the Director of the Department of Insurance (“Director”) to enforce the provisions of title 41 of the Idaho Code, including those governing Respondents’ activities as insurance producers.

2. Jurisdiction is further founded in Idaho Code § 41-213, which authorizes the Department to institute such proceedings as deemed necessary for the enforcement of any provision of the Idaho Insurance Code including, but not limited to, license revocation and the imposition of administrative penalties.

3. Pursuant to Idaho Code § 41-1016(5), the Director retains the authority to enforce the provisions of title 41, Idaho Code, “even if the person’s license ... has lapsed by operation of law”

4. This pleading also serves as notice to Respondents of their right to contest the allegations, of the requested relief, and of their right to a hearing.

RESPONDENTS

5. NICOLE PRESCOTT (hereinafter "PRESCOTT") is a resident of the state of Idaho and holds Idaho Resident Producer License No. 344565, which was originally issued on May 12, 2010.

6. ROCKY MOUNTAIN AG INSURANCE, INC. (hereinafter "ROCKY MOUNTAIN") is an administratively dissolved Idaho corporation that holds expired Idaho Resident Producer Agency License 454544, which license was originally issued on August 9, 2013.

7. ROCKY MOUNTAIN became a defunct entity as of October 4, 2016, when it was administratively dissolved by the Idaho Secretary of State. ROCKY MOUNTAIN's Idaho Resident Producer Agency License 454544 expired on September 1, 2017.

FACTUAL ALLEGATIONS

8. During all relevant times hereto, PRESCOTT was the president of ROCKY MOUNTAIN, as well as its designated responsible licensed producer in accord with Idaho Code § 41-1007(2)(b).

9. Pursuant to Idaho Code § 41-1007(2)(b), PRESCOTT was responsible for ROCKY MOUNTAIN's compliance with the insurance laws and rules of this state.

10. In August of 2013, PRESCOTT, on behalf of ROCKY MOUNTAIN, entered into an Agency/Company Agreement with Rain and Hail LLC (hereinafter "Rain and Hail"), whereby Respondents were given authority to, among other things, solicit and receive applications on behalf of ACE Property and Casualty Insurance Company. Rain and Hail

services insurance policies on behalf of ACE Property and Casualty Insurance Company. Rain and Hail and ACE Property and Casualty Insurance Company are subsidiaries of Chubb Limited.

11. According to the terms of the Agency/Company Agreement between Rain and Hail and ROCKY MOUNTAIN, all premium received by Respondents is the property of Rain and Hail, and such premiums are to be held in trust for the benefit of Rain and Hail.

12. On or about September 7, 2015, a policyholder serviced by Rain and Hail executed a check made payable to "Rocky Mountain Ag Ins." in the amount of \$46,477. The amount of the check represented the full premium due to Rain and Hail on a crop hail policy identified as Policy No. RH-██████████645.

13. On or about September 17, 2015, PRESCOTT endorsed the premium check on behalf of ROCKY MOUNTAIN and deposited the \$46,477 check, along with other premium checks, into ROCKY MOUNTAIN business accounts held at Mountain America Credit Union. PRESCOTT deposited nearly all of the subject premium check into the ROCKY MOUNTAIN business savings account ("MACU savings account"), and the remainder into the ROCKY MOUNTAIN business checking account ("MACU checking account").

14. On September 30, 2015, and again on October 24, 2015, PRESCOTT submitted payments from the MACU checking account to Rain and Hail related to premiums collected on its behalf; however, PRESCOTT did not remit any of the \$46,477 collected on Policy No. RH-██████████645 at these times.

15. During the months of September and October 2015, PRESCOTT made repeated transfers from the MACU savings account to the MACU checking account.

16. Between the dates of September 17, 2015, and November 17, 2015, PRESCOTT entered into more than 150 transactions from the MACU business checking account in which she

utilized premium funds she had collected related to Policy No. RH-██████████645. In addition to making domestic purchases and ATM cash withdrawals, PRESCOTT used the debit card linked to the MACU checking account to make multiple purchases from international vendors. Such international vendors included "MYBOUTIQUE," "UK GB," "Edinburgh GB," "FCLUB LONDON GB," "RBUSANE AB BEIJING CN," "AUXPAY.COM," "WWW.ROSEGAL.COM ENGLAND GB," and "ALLFORHOME."

17. By November 17, 2015, the MACU checking account had a negative balance, and the MACU savings account had a balance of less than \$1,000.

18. PRESCOTT was the only person with signing authority on the MACU business checking account.

19. On or about November 19, 2015, PRESCOTT, for the first time, remitted a payment to Rain and Hail in the amount of \$14,000 to be applied to Policy No. RH-██████████645. PRESCOTT made the payment from a ROCKY MOUNTAIN business checking account held at Columbia Bank ("Columbia checking account").

20. At all times relevant hereto, PRESCOTT did not transfer any funds from either of the ROCKY MOUNTIAN business accounts held at Mountain America Credit Union to the Columbia checking account.

21. On or about December 28, 2015, PRESCOTT issued a second payment to Rain and Hail in the amount of \$4,200 to be applied to Policy No. RH-██████████645. This payment was also drawn from the Columbia checking account.

22. On or about January 14, 2016, PRESCOTT sent an email to Rain and Hail in which she acknowledged that she had received the premium from the policyholder of Policy No. RH-██████████645 and that she was "in the process of getting the funds."

23. Effective April 26, 2016, ACE Property and Casualty Insurance Company terminated ROCKY MOUNTAIN's appointment.

24. In a letter dated May 11, 2016, Rain and Hail, on behalf of ACE Property Casualty Insurance Company, notified the Department that ROCKY MOUNTAIN's appointment with its company was terminated for cause.

25. As of May 11, 2016, PRESCOTT had not remitted the outstanding premium balance of \$28,277 to Rain and Hail.

26. As of the date of this Verified Complaint, there exists a tax lien against PRESCOTT, identified by the Idaho Secretary of State as Lien No. T821508.

VIOLATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Idaho Code §§ 41-1024(1), 41-1016(1)(b), and IDAPA 18.01.10.21.01

27. The Department incorporates by reference all of the above paragraphs as though fully set forth herein.

28. Pursuant to IDAPA 18.01.10.10.03, premium payments are fiduciary funds.

29. Idaho Code § 41-1024(1) provides that all fiduciary funds received or collected by a producer shall be trust funds received by the producer in a fiduciary capacity, and the producer shall account for and pay the same to the person entitled to such funds.

30. IDAPA 18.01.10.21.01 provides that a producer shall not use or allow other persons to use fiduciary funds as a personal asset.

31. The \$46,477 in premium collected by Respondents on or about September 7, 2015, were fiduciary funds to be held in trust for, and paid to, Rain and Hail. Respondents

violated Idaho Code § 41-1024(1) by failing to pay the fiduciary funds to Rain and Hail, and violated IDAPA 18.01.10.021 by using such fiduciary funds as a personal asset.

32. Idaho Code § 41-1016(1)(b) provides sanctions applicable to producers for “[v]iolating any provision of title 41, Idaho Code, [or] department rule,” including suspension or revocation of a license, and authorizes the Department to seek an administrative penalty not to exceed \$1,000 per violation.

33. The Department has cause for and is entitled to seek an order revoking ROCKY MOUNTAIN’s Resident Producer License No. 454544 and PRESCOTT’s Resident Producer License No. 344565, and to seek the imposition of an administrative penalty of \$1,000 for each violation.

SECOND CAUSE OF ACTION

Violation of Idaho Code § 41-1016(1)(h)

34. The Department incorporates by reference all the above paragraphs as though fully set forth herein.

35. Idaho Code § 41-1016(1)(h) provides sanctions applicable to producers for “[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere,” including suspension or revocation of a license, and authorizes the Department to seek an administrative penalty not to exceed \$1,000 per violation.

36. Respondents demonstrated dishonest practices, untrustworthiness, and financial irresponsibility by using premium funds collected from a consumer in an unauthorized manner.

37. As a result of Respondents’ demonstrated dishonesty, untrustworthiness, and financial irresponsibility, Rain and Hail suffered a loss of \$28,277 in unreceived premium funds.

38. The Department has cause for and is entitled to seek an order revoking ROCKY MOUNTAIN's Resident Producer License No. 454544 and PRESCOTT's Resident Producer License No. 344565, and to seek the imposition of an administrative penalty of \$1,000 for each violation.

THIRD CAUSE OF ACTION
Violations of Idaho Code § 41-1016(1)(d)

39. The Department incorporates by reference all the above paragraphs as though fully set forth herein.

40. Idaho Code § 41-1016(1)(d) provides sanctions applicable to producers for "[i]mproperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business," including suspension or revocation of a license, and authorizes the Department to seek an administrative penalty not to exceed \$1,000 per violation.

41. Respondents entered into more than 150 transactions in which fiduciary funds held in the ROCKY MOUNTAIN business accounts were improperly used. Respondents' use of fiduciary funds for purposes other than payment to Rain and Hail constitutes the misappropriation and conversion of moneys received in the course of doing insurance business.

42. Pursuant to Idaho Code § 41-117, each instance of misappropriation committed by Respondents may be viewed as a separate offense. Therefore, each of the more than 150 transactions in which Respondents misappropriated fiduciary funds held for Rain and Hail may be viewed as separate offenses.

43. The Department has cause for and is entitled to seek an order revoking ROCKY MOUNTAIN's Resident Producer License No. 454544 and PRESCOTT's Resident Producer License No. 344565, and to seek the imposition of an administrative penalty of \$1,000 for each offense.

FOURTH CAUSE OF ACTION – PRESCOTT ONLY
Violation of Idaho Code § 41-1016(1)(n)

44. The Department incorporates by reference all the above paragraphs as though fully set forth herein.

45. Idaho Code § 41-1016(1)(n) provides sanctions applicable to producers for, among other things, “[f]ailing to pay state income tax,” including suspension or revocation of a license, and authorizes the Department to seek an administrative penalty not to exceed \$1,000 per violation.

46. PRESCOTT has a current state income tax lien evidencing a failure to pay state income tax.

47. The Department has cause for and is entitled to seek an order revoking PRESCOTT’s Resident Producer License No. 344565, and to seek imposition of an administrative penalty of \$1,000 for each violation.

FIFTH CAUSE OF ACTION – ROCKY MOUNTAIN ONLY
Violation of Idaho Code §§ 41-1007(2) and 41-1016(1)(b)

48. The Department incorporates by reference all the above paragraphs as though fully set forth herein.

49. Idaho Code § 41-1007(2) provides that a business entity acting as an insurance producer is required to obtain an insurance producer license. At subsection (2)(b), the statute requires that the business entity have a designated licensed producer “who is an individual responsible for the business entity’s compliance with the insurance laws and rules of [Idaho].”

50. Revocation of the insurance producer license of PRESCOTT, the designated responsible licensed producer for ROCKY MOUNTAIN, as requested herein would leave

ROCKY MOUNTAIN without a licensed individual responsible for the business entity's compliance with the Idaho insurance laws, in violation of Idaho Code § 41-1007(2)(b).

51. Idaho Code § 41-1016(1)(b) prohibits, in part, "[v]iolating any provision of title 41, Idaho Code, or department rule."

52. The revocation of PRESCOTT's Resident Producer License as requested herein gives the Department cause for the simultaneous revocation of ROCKY MOUNTAIN's agency producer license pursuant to Idaho Code §§ 41-1007(2) and 41-1016(1)(b).

REQUEST FOR RELIEF

Based on the foregoing facts and allegations, the Department requests relief as follows:

- For the revocation of PRESCOTT's Idaho Resident Producer License No. 344565;
- For an Order providing that PRESCOTT shall not be issued a new license for a period of five (5) years;
- For an Order providing that, after the period of five (5) years has elapsed, PRESCOTT must petition and show good cause why the prior revocation should not be deemed a bar to the issuance of a new license pursuant to Idaho Code § 41-1026(3) should she make application for any license under title 41, Idaho Code;
- For the revocation of ROCKY MOUNTAIN's Resident Producer Agency License No. 454544;
- For the imposition of an administrative penalty against PRESCOTT in the amount of \$1,000 per violation in such number as shall be proven at hearing, but, in the event of default, an amount not less than Ten Thousand Dollars (\$10,000) to be

paid prior to submission by PRESCOTT of any new application or any application for reinstatement of any license under title 41, Idaho Code; and

- For such other and further relief as the Director deems just and necessary under the circumstances.

NOTICE OF RIGHT TO A HEARING

Pursuant to Idaho Code § 41-232A, Respondents have the right to a hearing on this matter. In order to exercise this right, a written request for a hearing must be filed and served upon the Department within twenty-one (21) days after service of this Complaint. Failure to file and serve a written request for a hearing upon the Department within the 21-day time period shall be deemed a waiver of the opportunity for a hearing and to contest the allegations in the Complaint, pursuant to Idaho Code § 41-232A(2).

Any written request for a hearing shall be served on the Director of the Idaho Department of Insurance, addressed as follows:

Dean L. Cameron, Director
Idaho Department of Insurance
P.O. Box 83720
Boise, ID 83720-0043

A copy shall also be provided to the Department's counsel, David M. Farney, Deputy Attorney General, in this matter at the following address:

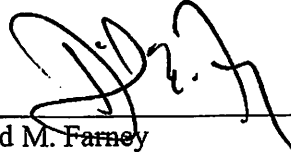
David M. Farney
Deputy Attorney General
Idaho Department of Insurance
P.O. Box 83720
Boise, ID 83720-0043

In lieu of a hearing, this matter may be resolved by negotiation, stipulation, agreed settlement, or consent order, pursuant to Idaho Code § 67-5241. Should you wish to discuss these options, please contact the undersigned deputy attorney general. If you fail to submit a timely

written response to the allegations within 21 days of the service of this Complaint, a final order will be entered imposing the relief described above.

RESPECTFULLY SUBMITTED this 11th day of September, 2017.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "D. Farney", is written over a horizontal line.

David M. Farney
Deputy Attorney General

VERIFICATION

STATE OF IDAHO)
 : ss.
County of Ada)

ELAINE MELLON, for the Department of Insurance, State of Idaho, being first duly sworn, deposes and says:

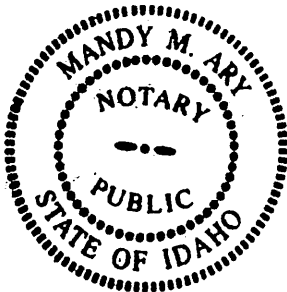
I have read the foregoing Verified Complaint and Notice of Right to Hearing and know the contents thereof, and the same are true to the best of my knowledge and belief and based on the records of the Department.


DATED this 11 day of Sept. 2017.



ELAINE MELLON
Bureau Chief, Consumer Services
IDAHO DEPARTMENT OF INSURANCE

SUBSCRIBED AND SWORN to before me this 11th day of Sept. 2017.




Notary Public for Idaho
My commission expires on 7/24/18

CERTIFICATE OF SERVICE

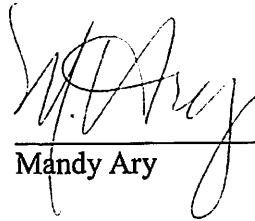
I HEREBY CERTIFY that on this 11th day of September, 2017, I caused a true and correct copy of the foregoing VERIFIED COMPLAINT AND NOTICE OF RIGHT TO HEARING to be served upon the following by the designated means:

Nicole Prescott
4043 N. 3500 E.
Kimberly, ID 83341-5072

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ facsimile

Rocky Mountain Ag Insurance Inc.
4043 N. 3500 E.
Kimberly, ID 83341-5072

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ facsimile



Mandy Ary