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Hearing Officer

FILED
MAR 06 2020 *lma*
Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE,	}	
	}	
Complainant,	}	Docket No. 18-3599-18
	}	
vs.	}	HEARING OFFICER'S FINDINGS OF
	}	FACT, CONCLUSIONS OF LAW
CHARLOTTE JANE SHEPPARD,	}	AND PRELIMINARY ORDER
An individual holding Idaho Resident Producer	}	(ERRATA)
License No. 562297,	}	
	}	
Respondent.	}	
_____	}	

This matter came on for an evidentiary hearing on January 27, 2020, before Molly O'Leary, the designated Hearing Officer. The Idaho Department of Insurance ("IDOI" or "the Department") appeared by and through its Deputy Attorney General, John Keenan. Respondent Charlotte J. Sheppard appeared telephonically by and through counsel, Stratton P. Laggis of Reichert Laggis, PLLC, Pocatello, Idaho. The Department presented witness testimony and submitted Exhibits 001 – 037, which were admitted into the record without

objection. Tr. p. 8, L. 21 – p. 10, L. 16 Respondent did not present any testimony or independent exhibits.

FINDINGS OF FACT¹

1. Respondent Sheppard is a resident of the state of Idaho and holds Idaho Resident Producer License No. 562297, originally issued on February 18, 2016. IDOI First Amended Complaint, ¶ 7, p. 6.

2. At the time of the alleged violations, Sheppard was an appointed producer for multiple insurers in the line of property and casualty insurance. *Id.* at ¶ 8.

3. Department licensing records reflect that, from February 18, 2016 through June 4, 2018, Sheppard was associated with the Redgy J. Christensen Ins. Agency, Inc. ("Christensen Agency") of Ketchum, Idaho, Producer Agency License No. 257460. *Id.* at ¶ 12.

4. During the time of Sheppard's association with the Christensen Agency, the Christensen Agency maintained a fiduciary sweep account with Wells Fargo, N.A. (hereinafter the "Sweep Account"). IDOI Ex. 24; IDOI Ex. 27; IDOI Ex. 29; Tr. p. 31, L. 25 – p. 35, L. 6.

5. During said time, Sheppard was authorized by the Christensen Agency to

¹ To the extent a Finding of Fact is cited to the Department's First Amended Complaint rather than to an exhibit admitted into the record and/or sworn witness testimony, such factual allegation is deemed true if not expressly denied by the Respondent in its Answer or if no contradictory evidence was offered by Respondent to challenge the specific allegation.

access the Sweep Account, for the purpose of depositing customer premium into the account and paying said premium to the respective insurers entitled to such funds. *Id.*

6. On at least 23 occasions, Sheppard paid funds to insurers from the Sweep Account, for which Sheppard had either made no corresponding customer deposit or had made an insufficient customer deposit. Such funds were paid to cover premiums due on insurance policies issued to Sheppard's family members and customers. IDOI Ex. 24; IDOI Ex. 27.

7. On numerous occasions during said time period, Sheppard made small deposits into the Sweep Account, in the approximate amount of \$985.39 for the purported purpose of covering some of the shortfall. IDOI Ex. 24; IDOI Ex. 27; Tr. p. 80, L. 9 – p. 133, L. 11.

8. The total amount swept from the Sweep Account by Sheppard between October 20, 2016 and May 7, 2018, without corresponding deposits, was \$3,373.81. *Id.*

9. Respondent admitted misuse of the Christensen Sweep Account on several occasions. IDOI Exs. 2, 6, 7, 29.

10. Respondent did not proffer any contradictory evidence regarding the Department's allegations of her misuse of the Sweep Account.

11. On or about June 7, 2018, Sheppard became associated with High Desert Insurance Inc., an Idaho corporation. IDOI First Amended Complaint, ¶ 9, p. 6.

12. On or about April 18, 2019, Sheppard became a director and owner of High

Desert Insurance Inc. IDOI Ex. 33.

13. On or about February 12, 2019, while associated with High Desert Insurance, Inc., Sheppard obtained a quote from Kemper Insurance for homeowner's insurance coverage on behalf of a consumer identified herein as "J.P.," who was seeking to finance the purchase of a home in Shoshone, Idaho. The quote obtained by Sheppard was for a total annual premium of \$593.00 with a \$1,000 deductible. IDOI Ex. 34; IDOI Ex. 35.

14. On or about March 6, 2019, on behalf of J.P., Sheppard obtained a quote from NOVUS/Dual Specialty Property Insurance for flood insurance coverage, for a total annual premium of \$1,037.35 with a \$10,000 deductible. *Id.*

15. On or about March 13, 2019, J.P.'s purchase of the home in Shoshone, Idaho, was finalized and closed by Blaine County Title, Inc. (hereinafter "Blaine Title"). Tr. p. 185, LL. 8 – 17.

16. As a result of said closing and in accordance with instruction, Blaine Title forwarded a check in the amount of \$1,630.35 payable to High Desert Insurance, Inc., an insurance firm with which Sheppard was affiliated at the time. The check from Blaine Title was for the sum of the homeowner's insurance premium of \$593.00 and the flood insurance premium of \$1,037.35, as quoted by Sheppard. IDOI Ex. 35; Tr. p. 189, LL. 16 – 25.

17. Said check was negotiated on March 22, 2019. Tr. p. 191, L. 16 – p. 192, L. 13.

18. Sheppard failed to transmit the premium funds in the amount of \$593.00 to Kemper Insurance for purchase of the homeowner's insurance coverage on behalf of J.P. IDOI

Ex. 34; Tr. p. 205, LL. 5 – 11.

19. On or about May 24, 2019, J.P. received from Kemper Insurance a notice of cancellation of homeowner's insurance coverage due to nonpayment of premium. The notice stated that, unless payment was made on a timely basis, the effective date of cancellation of the homeowner's insurance coverage was June 20, 2019. *Id.*

20. On or about June 20, 2019, J.P. received from Kemper Insurance, a notice of balance due in the amount of \$183.54 for earned premium on the homeowner's insurance coverage. Tr. p. 207, LL. 11 – 25.

21. Without first obtaining consent from J.P., on or about June 20, 2019, Sheppard obtained an insurance binder for homeowner's insurance coverage for J.P.'s home from Foremost Insurance. The premium quoted for the binder was \$685.00. Tr. p. 209, L. 9 – p. 210, L. 2; IDOI Ex. 32.

22. On or about June 25, 2019, Foremost Insurance issued a homeowner's insurance policy for coverage of J.P.'s home. IDOI Ex. 32.

23. On or about July 19, 2019, the president of Blaine Title sent an email to Genevive Olivas², J.P.'s mortgage company, and Sheppard. In that email, the president of Blaine Title enclosed copies of the insurance binders relied upon in lending funds for the purchase of J.P.'s home, along with copies of the original check issued and data showing it had been negotiated. IDOI Ex. 35.

²Ms. Olivas is J.P.'s partner and was involved in the purchase of the subject property. Tr. p. 199, LL. 2 – 5; Tr. p. 220, LL. 7 – 22.

24. On or about August 18, 2019, J.P. received from Foremost Insurance a notice of cancellation of homeowner's insurance coverage due to nonpayment of premium, with a balance due of \$100.00. IDOI Ex. 32.

CONCLUSIONS OF LAW

A. Applicable Law

Jurisdiction in this matter is founded in title 41, Idaho Code ("the Idaho Insurance Code") including in Section 41-210, which authorizes the Director of the Department of Insurance ("Director") to enforce the provisions of the Idaho Insurance Code, including those governing Respondent's activities as an insurance producer.

Jurisdiction is further founded in Section 41-213, Idaho Code, 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.

Section 41-1016(1), Idaho Code, provides that the Director may suspend, revoke or refuse to issue or renew a producer's license and may impose an administrative penalty up to one thousand dollars (\$1,000), if the Director finds that any of the causes or violations set forth in subsections 41-1016(1)(a) through (o) exist.

Pursuant to Section 41-1016(1)(b), Idaho Code, the Director may suspend, revoke or refuse to issue or renew a producer's license and may impose an administrative penalty up to one thousand dollars (\$1,000), if the Director find that the licensee has violated any provision of title 41, Idaho Code, or department rule.

Pursuant to Section 41-1016(1)(d), Idaho Code, the Director may suspend, revoke or refuse to issue or renew a producer's license and may impose an administrative penalty up to one thousand dollars (\$1,000), if the Director finds that the licensee has misappropriated or converted any moneys or properties received in the course of doing insurance business.

Pursuant to Section 41-1016(1)(h), Idaho Code, the Director may suspend, revoke or refuse to issue or renew a producer's license and may impose an administrative penalty up to one thousand dollars (\$1,000), if the Director finds that the licensee has used fraudulent or dishonest practices, demonstrated incompetence, untrustworthiness, or financial irresponsibility, or has been a source of injury and loss to the public or others in the conduct of business in Idaho or elsewhere.

Section 41-117, Idaho Code, provides that each instance of violation of the Idaho Insurance Code or Department rule may be considered a separate offense.

Pursuant to Section 41-1026(3), Idaho Code, the Director shall not issue a license under title 41, Idaho Code, to any person whose license has been revoked until after the expiration of not less than one (1) year to a maximum of five (5) years and, upon a former licensee's application for re-licensure, the Director may require the former licensee "to show good cause why the prior revocation ... shall not be deemed a bar to the issuance of a new license."

B. The Department's First Amended Complaint

a. Count One – Each instance of Sheppard's misuse of the Christensen Agency Sweep Account violated Sections 41-1016(l)(d) and (h), Idaho Code

Sheppard's authorization and access to the Sweep Account and the funds therein, whether originating from Sheppard's clients or otherwise, constitutes Sheppard's receipt of moneys or properties in the course of doing insurance business.

Sheppard's payment of premiums from the Sweep Account without a sufficient corresponding customer deposit constitutes the misappropriation or conversion of moneys or properties maintained in the Sweep Account, for the benefit of Sheppard's family members and / or clients.

As detailed in the Findings of Fact, Sheppard violated Idaho Code § 41-1016(l)(d) on at least 23 separate occasions by misappropriating or converting funds in the Christensen Agency Sweep Account. By each such act, Sheppard also violated Idaho Code § 41-1016(l)(h) by using dishonest practices, by demonstrating incompetence, untrustworthiness, or financial irresponsibility, and by being the source of injury and loss to the Christensen Agency and/or the public in the course of business in this state.

b. Count Two – Sheppard's handling of coverage for J. P. 's home constitutes a violation of Sections 41-1016(l)(b), (d), and (h), Idaho Code; Section 41-1024, Idaho Code; and IDAPA Rule 18.06.02.014.01

Sheppard violated Section 41-1024, Idaho Code, when she failed to account for and pay the funds received from Blaine Title to the Kemper Insurance. Sheppard violated IDAPA Rule 18.06.02.014.01 when she failed to pay fiduciary funds received in the form

of a check to the insurer within the time allotted by said Rule. Sheppard violated Section 41-1016(I)(d), Idaho Code, by improperly withholding moneys received in the course of doing insurance business when she failed to pay the premium due to Kemper Insurance in the total sum of \$593.00. Sheppard violated Section 41-1016(I)(h), Idaho Code, when she used fraudulent and dishonest practices, and demonstrated incompetence and financial irresponsibility in withholding payment of the premium due Kemper Insurance, resulting in cancellation of the subject policy. Lastly, Sheppard violated Section 41-1016(I)(b), Idaho Code, when she: (a) violated Section 41-1024, Idaho Code; and (b) violated IDAPA Rule 18.06.02.014.01.

PRELIMINARY ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. That Sheppard's Idaho Resident Producer License No. 562297 shall be revoked pursuant to Section 41-1016, Idaho Code;
2. That, pursuant to Section 41-1026(3), Idaho Code, Sheppard shall not be issued a new license for a period of five (5) years after which time, in the event Sheppard seeks a new license, Sheppard must petition the Director and show good cause why the prior license revocation should not be deemed a bar to the issuance of a new license; and
3. That, pursuant to Sections 41-1016 and 41-117, Idaho Code, Sheppard shall be assessed an administrative penalty in the amount of \$1,000 for each of the twenty-three (23) violations of Section 41-1016(I)(d), as charged under Count One of the Complaint and as found herein, for a total penalty therefor of Twenty-three Thousand Dollars (\$23,000); and
4. That, pursuant to Sections 41-1016 and 41-117, Idaho Code, Sheppard shall be assessed an administrative penalty in the amount of \$1,000 for each of

the twenty-three (23) violations of Section 41-1016(1)(h), as charged under Count One of the Complaint and as found herein, for a total additional penalty therefor of Twenty-three Thousand Dollars (\$23,000); and

5. That, pursuant to Sections 41-1016 and 41-117, Idaho Code, Sheppard shall be assessed an administrative penalty in the amount of \$1,000 for each violation of Sections 41-1016(1)(b), (d) and (h), Idaho Code; Section 41-1024, Idaho Code; and IDAPA Rule 18.06.02.014.01, as charged under Count Two of the Complaint and as found herein, for a total additional penalty therefor of Five Thousand Dollars (\$5,000), resulting in a cumulative administrative penalty for the 51 foregoing separate violations of title 41, Idaho Code and Department Rule 18.06.02.014.01 of Fifty-One Thousand Dollars (\$51,000), payable within thirty (30) days of the entry of this Preliminary Order.

APPEAL RIGHTS

This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the

preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion.

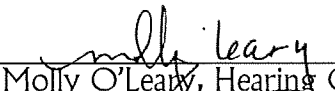
If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held;
- ii. The final agency action was taken;
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or
- iv. The real property or personal property that was the subject of the agency action is located in Idaho.

This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See, Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 6th day of March, 2020.

By  _____
Molly O'Leary, Hearing Officer



CERTIFICATE OF SERVICE

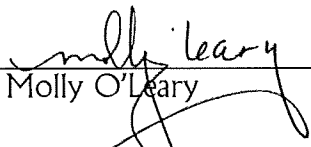
I HEREBY CERTIFY that on this 6th day of March, 2020, I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER (ERRATA) to be served upon the following by the designated means:

Stratton P. Laggis
Reichert Laggis, PLLC
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Pocatello, Idaho 83201

- ☐ First Class Mail
- ☐ Certified Mail
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- ☐ Facsimile _____
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