

DAVID V. NIELSEN, ISB NO. 3607  
P.O. Box 1192  
Boise, Idaho 83701  
Telephone: (208)336-5525  
Facsimile: (208) 336-8848

FILED *gj*  
23  
SEP 26 2011

Department of Insurance  
State of Idaho  
*uncertone*

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

JAMES COLE MUNDELL,  
Non-Resident Producer License No. 155398,  
  
Respondent.

Docket No. 18-2685

**ORDER REGARDING REQUEST  
FOR RECONSIDERATION**

Findings of Fact, Conclusions of Law and a Preliminary Order (hereinafter "Preliminary Order") were issued on August 22, 2011. In a telephonic conference conducted on August 25, 2011, James Mundell (hereinafter "Mundell") indicated that he would proceed with a Petition for Reconsideration before the Hearing Officer. A Petition for Reconsideration was presented by Mundell on September 7, 2011. This Petition was comprised of a document entailing a request for reconsideration along with arguments regarding selective Findings and Conclusions. Based in part on the *Pro Se* status of Mr. Mundell and the matters discussed in the aforereferenced conference this document is being considered as a timely filed Motion for Reconsideration and Memorandum in Support of the Motion. The Department of Insurance filed a response document on September 13, 2011.

Mundell has initially advanced several general concerns followed by specific dispute of a number of the Findings and Conclusions. In sum, Mundell raises several

common matters throughout the Memoranda, first a claim of financial hardship and an inability to obtain representation not only at the hearing but during the course of initial events. That is Mundell asserts that had he been able to challenge the actions of Farmers through the assistance of counsel the subsequent outcome would have been different. Next, Mundell contends that Farmers is at fault for the precipitating event, namely the improper issuance of the errant policy and corresponding withdrawal of funds from his account for this policy. Furthermore, Mundell asserts that Farmers has acted in a manner which thwarted the full presentation of evidence by limiting information which current Farmers' employees would be willing to present on Mundell's behalf. Mundell also calls into question the actions of Farmers and whether the Company fully met its own fiduciary duty towards both customers and agents.

Several matters raised by Mundell present potential questions regarding the appropriateness of the activities of Farmers. Nevertheless, the substance of those matters do not directly address the issues presented in this proceeding. The substantive violations at issue are those of Mundell. Charges have not been made by the Department against Farmers. The contentions that Farmers committed violations are not at issue nor do they excuse Mundell's own improprieties. To the extent factually that the acts of Farmers led or contributed to Mundell's actions these events were relevant, and those matters as presented in evidence were considered and weighed. The application of that evidence, however, is towards the ultimate determination of whether Mundell committed the violations as contended by the Department.

Next, the claims of Mundell which contend financial inabilities to adequately present a defense do not unfortunately provide an exculpatory rationale sufficient to

justify the substantive reversal or modification of the preliminary order entered in this matter other than as detailed below. This Hearing Officer is not unsympathetic to the situation in which Mr. Mundell found himself. Nevertheless as with the decision to divert funds Mr. Mundell has consciously made a choice to proceed with his defense *pro se*.

In an effort to address those concerns raised by Mundell a number of matters will be discussed. These will address the respective Finding/Conclusion number referenced by Mundell in his Petition.

A number of counts raised by Mundell in his memoranda are not being directly addressed by substantive discussion as the content and matters noted do not upon consideration represent sufficient grounds or argument which require revision of the prior preliminary order. These include points raised regarding conclusions 32, 33, 35, 36, 38, 41 and 43.

Finding 22. Mundell asserts that the amounts diverted were in fact ultimately paid back by deduction from Mundell's folio by Farmers. Mundell contends that underlying efforts to track the course of payment application reveals an ultimate deduction from his folio directly by Farmers. In support Mundell advances documentation illustrating alleged commission statement reports. This documentation was not presented in the original hearing. The Department has also not raised specific protest to the submission of this documentary material.

This argument does not, however, address the basis for Finding 22 as originally made. While evidence may establish that the underlying sum was potentially recouped by way of folio deduction (an allegation not directly supported by the evidence submitted

at time of hearing) the underlying return or repayment of the sums diverted does not substantively impact the fact that the diversion did occur. The further allegations raised by Mundell concerning the appropriateness of Farmers in using this method to recoup the misappropriated funds cannot be found to be a basis to excuse Mundell's diversion.

Finding 23. Mundell next contends that the reimbursement to Farmers from the bonding company occurred after Farmers had already recouped the money from folio deductions. Again, this claim does not directly impact the underlying diversion of funds made by Mundell.

Finding 25. Mundell contends that his signed statement was done not only under duress but also represented a incomplete recitation of the events transpired. The statement which comprised the initial admission by Mundell to his diversion of the funds, however, did not represent his sole acknowledgment or confession. Testimony at the time of hearing established that Mundell had full knowledge that he was diverting monies and was consciously aware that insufficient funds existed to cover the subsequent checks written to Farmers. See Findings 15, 17, 18, 19 and 20. Furthermore, Mundell testified at the time of hearing that the signed statement was one which did not fully present all of the underlying facts at issue. Hearing Trans. 130/19-25; 131/4-25; 132/6-25. The present argument that the statement was incomplete is not sufficient to overturn the original finding. It was clearly revealed at hearing that there was more background and explanation to the course of events than just that presented in the signed statement. Mundell had opportunity and provided testimony augmenting or explaining any limitations. Consideration in turn, was given the potential shortcomings of the statement along with Mundell's testimony regarding additional information relevant to this matter.

Conclusion 30. Mundell notes that the Conclusion of Law states that the improper withdrawal by Farmers occurred for a premium payment for a policy allegedly “not issued.” Mundell contends that the policy was in fact issued. A review of the hearing transcript reveals that this assertion is correct that the policy was ultimately issued rather than as stated in the conclusion of law as “not issued.” As a result Conclusion 30 will be amended and the first sentence will now read as follows:

Mr. Mundell raised the defense that his financial problems originated in part as a result of an alleged improper withdrawal by Farmer’s Insurance Group of a premium payment for a policy alleged to have not been authorized for issuance.

Conclusion 33. Mundell asserts that inadequate consideration was given the lack of objection raised by Farmers initially to the financial shortfalls occurring with his practice and in turn the difficulties he encountered. Mundell asserts that Farmers ignored these problems as a means to ultimately generate grounds justifying termination of his appointment. Mundell contends that this represents part of an overall pattern by Farmers of inappropriate behavior or fiduciary misdealings. Mundell claims these actions were ignored in the prosecution of the case against him. He further argues that his financial limitations restricted his means to properly expose these actions.

These matters again raise claims which are not directly at issue in the case at bar. The relevant evidence presented was considered in connection with the applicable law. Broad allegations presented against Farmers concerning claimed improprieties and suspect motivations are not adequate to confront the specific evidence advanced regarding Mundell’s self admitted financial misdealings. As noted in the conclusion of law no. 37, Mundell’s chosen response to events is not justified by claims of suspect actions on the part of Farmers.

Conclusion 34. Mundell contends that insufficient weight was given to his explanation regarding the origination of the account deficiency and NSF charges imposed. Mundell further claims that evidence submitted was effectively controlled by Farmers who apparently restricted Mundell's capability to present a sufficient showing to establish a possible excuse or justification for his actions. This does not present sufficient justifiable grounds to modify the conclusion as made.

Conclusion 37. Mundell contends that his only effective recourse aside from diverting premium payments would have been abandonment of his agency which would in turn have presented a greater harm to customers/insureds and Farmers. Mundell further contends that he did not engage in "conscious wrongdoing" on "his part." His actions though, were as revealed at hearing, to be deliberate and intentional. Mundell was aware that funds were diverted. A claim of ignorance of the consequences or perceived indifference by the Company is not a valid legal defense. Furthermore, it cannot be concluded that no means other than a violation of his fiduciary duty existed.

Conclusion 39. Mundell again asserts that had he the capability to afford counsel during the initial course of events and the subject hearing that he could have properly defended his actions and established sufficient wrongful action by Farmers to absolve him of the claimed violations. Furthermore, Mundell asserts that Farmers ignored the fiduciary responsibility which it had to the agents of Farmers regarding adequate record keeping and safeguards concerning system error remediation. Consideration was given to the matters presented at hearing. Mundell's financial shortcomings and in turn incapability to allegedly present additional evidence in his defense does not present grounds requiring revision of the conclusion as made.

Conclusion 40. Mundell asserts that his lack of training by Farmers included deficiencies in the explanations and requirements for his fiduciary role as an agent. Furthermore Mundell contends that Farmers itself demonstrated a level of irresponsibility in the withdrawal of funds from his account which evidences a breach of the company's own fiduciary responsibilities towards its agents. These matters are unfortunately not enough from the standpoint of an evidentiary showing to justify a revision or modification of the conclusion as stated. Mundell's argued training deficiencies do not excuse his acting with knowledge in diverting funds.

Mundell further raises matters outside of the record concerning claimed improprieties by Farmers as regards other agents (similar allegations are raised in Mundell's challenge to Conclusion 41). An insufficient showing has been made to establish the underlying veracity of these allegations or their direct relevance to the issues pending before this hearing officer.

Conclusion 42. Mundell contends that Farmers did not inform him or provide other indication that the diversion of funds was a violation of his fiduciary duty or otherwise improper as an agent. This claim effectively ignores the statutory mandates to which agents are held under the applicable provisions of the Idaho Code. A claimed ignorance of the scope and force of these mandates does not excuse the underlying behavior. Furthermore the repeated nature of Mundell's diversion, while argued as necessary by Mundell is not explained by the simple excuse that Farmers allegedly raised no apparent protest.

Conclusion 44. Mundell asserts that his full disclosure is in sharp contrast to the selective and limited methods used by Farmers in disclosing and providing relevant

information. The presentation of evidence at hearing did, as noted, reveal that Mundell was notably forthcoming and nonevasive. These factors were considered by the hearing officer in the ultimate consideration made and order issued.

Based upon the matters discussed above, Mundell's Request for Reconsideration is granted in part as to the previously discussed modification of Finding No. 30. The remaining matters raised by Mundell in the Request for Reconsideration are denied.

DATED this 23<sup>rd</sup> day of September, 2011.

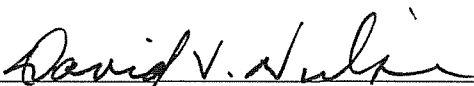
By: David V. Nielsen  
David V. Nielsen  
Hearing Officer



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of September, 2011, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

James Cole Mundell 220 SW 3 <sup>rd</sup> Street Fruitland, ID 83619	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
John C. Kennan Deputy Attorney General for Idaho Department of Insurance 700 W. State Street, 3 <sup>rd</sup> Floor Boise, ID 83720	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile

  
\_\_\_\_\_  
David V. Nielsen

FILED *ry*

AUG 23 2011

Department of Insurance  
State of Idaho

DAVID V. NIELSEN, ISB NO. 3607  
P.O. Box 1192  
Boise, Idaho 83701  
Telephone: (208)336-5525  
Facsimile: (208) 336-8848

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

JAMES COLE MUNDELL,  
Non-Resident Producer License No. 155398,

Respondent.

Docket No. 18-2685

**HEARING OFFICER'S FINDINGS  
OF FACT, CONCLUSIONS OF LAW  
AND PRELIMINARY ORDER**

This matter came before the hearing officer on and evidentiary hearing on July 14, 2011. John Keenan, Deputy Attorney General, appeared on behalf of the Department of Insurance. James Cole Mundell appeared representing himself. The Department alleges in a Verified Complaint that Mr. Mundell committed five separate violations of Idaho Code Sections 41-1024, 1016(1)(b) and (d) and further as a result has violated Section 41-1016(1)(h).

**FINDINGS OF FACT**

1. Mr. Mundell is licensed under the Idaho Department of Insurance, Non-Resident Producer License No. 155398. Mr. Mundell's office was operated in Ontario, Oregon. Mr. Mundell operated as an agent for Farmer's Insurance Company (hereinafter Farmers).

**HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
PRELIMINARY ORDER- 1**

2. As part of his agency operations Mr. Mundell received premium payments from customers and was responsible for forwarding those payments to the insurance company for each customer's respective policy payments by depositing the amount received into the agency's trust fund account. Hrg Trans. p. 127/11 19-25 (hereinafter page/line).

3. Mr. Mundell's appointment with Farmers was cancelled on December 22, 2010. Department of Insurance Exhibit 7.

4. As a result of this cancellation an investigation was undertaken by the Department of Insurance regarding the activities of Mr. Mundell. Hrg Trans. 17/2-10.

5. Following an investigation and contact with a fraud investigator for Farmers the Department of Insurance referred Mr. Mundell's file for administrative action. Hrg Trans. 40/23-41/10.

6. This administrative action resulted from information concerning five checks written by Mr Mundell to Farmers which were returned for having insufficient funds (hereinafter NSF). Exhibits 8, 10, 11.

7. Mr. Mundell contends that the need for writing the five subject checks arose from financial problems following an initial error in January 2010 when Farmers improperly withdrew a premium payment from his trust account for a policy erroneously written. Exhibit 2; Hrg Trans. 49/3-251; 50/3-13.

8. As a result of this his trust account had a negative balance. In turn, subsequent premium deposits when swept from the account by the company generated NSF charges for each separate account withdrawal. Exhibit 2; Hrg Trans. 54-59.

9. Mr. Mundell's practice utilized at least two trust fund accounts, each at different financial institutions but both related to Farmers Insurance Group companies. Ultimately

monies were transferred from one trust account into the second account and in turn credited to Mr. Mundell's agency and customers. Hrg Trans. 52/21-25; 53/1-6.

10. Multiple NSF charges were ultimately accrued. These charges were passed on to Mr. Mundell by Farmers which in turn deducted them from the monthly folio payments made by the company to Mr. Mundell for compensation for his work as an agent (the folio payments). Hrg Trans. 53/15-25; 54/1-10; 60/15-19; Exhibit A.

11. Additionally in March 2010, Mr. Mundell was required to reimburse Farmers for monies previously advanced as part of his business licensing expenses. Hrg Trans. 54/18-25; 55/1-4.

12. As of April 2010, Mr. Mundell was faced with a situation where his business operations were at a deficit status. Hrg Trans. 55/5-6.

13. Subsequent discussions with representatives of Farmers regarding both the alleged improper premium withdrawal and the resulting NSF charges were initially unproductive. Hrg Trans. 59/16-20; 60/12-19.

14. While the subject policy premium charge was ultimately reversed and credited to Mr. Mundell, Hrg Trans. 101/3-5, the resulting NSF charges which ostensibly resulted from the erroneous withdrawal were not in their entirety reimbursed by Farmers or reversed by the respective banks. Hrg Trans. 104/3-13; 105/15-18.

15. Mr. Mundell starting in April 2010 when faced with inadequate funding took premium payments from insureds and applied those payments to his business operations expenses. He then wrote checks to Farmers from his business account to cover the insureds funds for deposit into the trust account. In so doing he attempted to rely on overdraft protection in the account and the float time between the checks being cashed

and the receipt of his monthly folio payments which would be deposited into his business account. The funds in his business account, however, were inadequate to cover the amount of these checks. Hrg Trans. 61/4-7; 62/6-10; 110/11-16; 109/14; Exhibits 10 and 11.

16. At the time the first check was written in April, Mr. Mundell was aware that insufficient funds existed to cover the check. Hrg Trans. 62/9; 110/11-25.

17. Mr. Mundell during the time period from April to December 2010, on five occasions wrote checks from his business office checking account to Farmers for deposit in the Farmer's Trust Account which were ultimately were returned NSF. The dates of these checks were April 6, 12, May 10, September 13, and December 2, 2010. Exhibit 11; Hrg Trans. 33/20-25; 34/1-22; 35/10-24; 109/25; 114/17; 115/7; 115/11.

18. On at least three of these occasions Mr. Mundell had direct knowledge that insufficient funds existed in his business account to cover the checks written for deposit in the trust fund account. Hrg Trans. 116/15; 117/2-25; 118/8.

19. On the other two occasions Mr. Mundell at a minimum received notification that insufficient funds existed to cover the checks written to the Farmer's Trust Fund Account. Hrg Trans. 111/11; 115/1.

20. These actions established a pattern where Mr. Mundell would receive premium payments from policy applicants/insureds and then divert these proceeds in order to pay for business expenses in the operation of his agency. Hrg Trans. 114/1-3; 125/2-23; 127/14-18; 138/3.

21. The funds diverted by Mr. Mundell were used exclusively for business purposes and not personal items or expenses. Hrg Trans. 125/12-23; 127/6-10.

22. These amounts were not returned or paid back by Mr. Mundell. Hrg Trans. 126/1-25; 127/1-10.

23. Farmers by way of reimbursement from a bonding company ultimately paid for the amounts diverted. No insureds were impacted by the account deficiencies. Hrg Trans. 30/15-16; 36/7-14.

24. On December 14, 2010, representatives of Farmer's Insurance confronted Mr. Mundell and discussed the issue of the NSF checks. Hrg Trans. 31/2-14.

25. As a result of the discussion with Farmers regarding the NSF checks, Mr. Mundell signed a statement summarizing the events and his activities. Exhibit 10; Hrg Trans. 130/9-25.

26. No evidence was presented by the Department of Insurance that Mr. Mundell had experienced any past complaints or disciplinary proceedings as an insurance agent prior to this hearing matter.

#### **CONCLUSIONS OF LAW**

27. From the evidence submitted in this matter it is apparent that Mr. Mundell engaged in a pattern of activity where premium payments made by clients were diverted and not directly applied to the clients' respective accounts. On at least five occasions Mr. Mundell after taking money received from clients failed to deposit these proceeds appropriately into his agent trust fund account. He instead used the money for operation expenses of his agency.

28. Mr. Mundell did make proper entries regarding the clients' payment of premiums with the Farmer's on-line accounting system. As a result the clients received appropriate credit by Farmer's Insurance for their respective payment of premiums.

29. Mr. Mundell then covered the diversion by writing checks to Farmers from his business account as payment to the company in place of the monies received from the insureds. On each of the subject five occasions insufficient funds existed in the account to cover the checks written.

30. Mr. Mundell raised the defense that his financial problems originated in part as a result of an alleged improper withdrawal by Farmer's Insurance Group of a premium payment for a policy allegedly not issued. Hrg Trans. 46-51. Mr. Mundell contends that this improper withdrawal started a pattern where NSF charges were imposed on his trust account and continued to accrue starting in the month of January 2010.

31. Further compounding the financial difficulties of Mr. Mundell was the obligation to repay outstanding loans to Farmers for money provided as start up funds for his licensing and the agency operations. During 2010 these payments were being deducted from Mr. Mundell's monthly folio payments. Hrg Trans. 54/18-25; 55/1-4; 75/1-20.

32. Mr. Mundell asserts that he received in essence poor or inadequate training from Farmers regarding agency operations. Hrg Trans. 68/2-11; 124/2-6.

33. Mr. Mundell also contends that Farmers raised little or no objection to the financial shortfalls he was suffering and did not inform him initially that his actions were a violation of his duties as an agent. Hrg Trans. 68/25; 69/1-2, 13-18; 133/4-13.

34. Weight is given to the explanation provided by Mr. Mundell regarding the origination of the account delinquency and original NSF charges. The evidence,

however, was not sufficiently developed to adequately explain how a policy was erroneously issued, and in turn a premium dollar withdrawal from the account when no policy was intended to be issued. The evidence did establish that a series or cycle of numerous NSF charges were subsequently incurred, starting in January 2010, for account withdrawals. Submitted evidence showed NSF charges totaling several thousands of dollars. Exhibit A.

35. While Mr. Mundell undertook efforts to learn exactly what transpired and hopefully remedy it, these efforts were ultimately insufficient and less than fully productive. Hrg Trans. 102/18-21; 103/10-20.

36. Subsequent deductions by Farmers increased this deficit placing Mr. Mundell in a negative financial condition.

37. While the origin of the financial difficulties was identified and Mr. Mundell undertook efforts to remedy, his ultimate solution of diverting premium payments and floating checks in anticipation of receiving further folio payments from Farmers cannot be excused as actionable violations.

38. Mr. Mundell was certainly made aware that the initial alleged improper premium withdrawal created an account deficiency and began the series of NSF charges for subsequent checks written without sufficient funds. Hrg Trans. 101/6-21. While this amount ballooned rather quickly the evidence is insufficient to lead to a conclusion that Mr. Mundell exhausted all possible remedial efforts when the pattern of NSF checks was discovered.

39. Mr. Mundell raises question as to whether the actions of Farmers in first the erroneous premium withdrawal and second the apparent refusal to reimburse/credit the



entirety of the subsequent NSF charges were appropriate. Additionally, Mr. Mundell noted his financial difficulties in the operations of his agency and the shortfall suffered with mounting business bills. These financial difficulties, even if wrongfully caused (for which insufficient evidence exists to so conclude) and to the degree that it may have contributed to his financial condition do not justify or present a legal excuse for a violation of his fiduciary duty regarding the handling of funds and the decision to divert fiduciary monies. This Hearing Officer does note that the actions and responsiveness of Farmers to the events as they unfolded are worthy of scrutiny. A company should undertake timely appropriate action and attempt to find remedies for an agent's difficulties.

40. Even if the training provided by Farmers to Mr. Mundell as a new agent is viewed as somehow deficient, the fiduciary role which Mr. Mundell undertook as an agent, one of which he was or should have been aware, is paramount. The alleged training deficiency, to the extent raised as a defense to his actions, does not directly address the choice Mr. Mundell made when employing an improper solution to his situation. In other words, Mr. Mundell did know that the premiums received needed to be credited to the policyholders and paid to Farmers. It is also clear from his testimony concerning the ultimate application of diverted funds that he was cognizant of the need to protect the interest of the insureds. Nevertheless, he chose instead to divert these funds.

41. While sympathy exists for Mr. Mundell's situation, one where a precipitating event causes an apparent snowball effect leading to the brink of financial catastrophe, it is not apparent that all options were exhausted. Of concern is the time frame involved here. Given the initial account imbalance, which took place in January of 2010 it is

questionable that the subsequent NSF charges accrued could not have been addressed in some manner prior to the time that the diversion of funds occurred starting in April. Further, is the fact that this initial diversion in April was followed on four more occasions through December of 2010. Even though the financial deficit may have continued to grow larger with the subsequent demand of Farmers for repayment of previous monies advanced, it does not justify or excuse the continued course of Mr. Mundell's activities over the rest of the year. The circumstances of this case would be markedly different if the matter involved a single instance of money being diverted.

42. Mr. Mundell appears to have continued his course of diverting funds and writing/floating checks with insufficient money to cover them with a seemingly greater disregard for the ultimate consequences as this time period continued to grow. The explanation provided by Mr. Mundell evidenced a type of naïve optimism that his continuing inflow of folio payments would ultimately cover the diversion of funds. It also represents a type of indifference to his underlying fiduciary responsibilities.

43. The fiduciary standard to which an agent is held under Idaho law requires that those funds be handled and treated in a manner which ensures proper application of the monies for the insured. Mishandling of those funds in a deliberate manner presents a violation of applicable Idaho Code provisions. While Mr. Mundell may not have had ill intent with the outcome of his financial misdealings the result is still the same. The proceeds advanced to him by insureds were misappropriated. Even though they were accounted for and credit was applied to the insured's corresponding policies the payments were not properly treated as fiduciary funds require.

44. Mr. Mundell has not raised a substantive defense which would excuse the violations which occurred. In mitigation Mr. Mundell has not evaded inquiries into his activities or attempted to otherwise obfuscate the facts at hand.

46. The actions of Mr. Mundell represent violations of Idaho Code Sections 41-1016 and 41-1024.

#### PRELIMINARY ORDER

It is hereby ordered that James Cole Mundell pay the following administrative penalties; for improperly withholding and misappropriating moneys received in the course of doing insurance business, in violation of Idaho Code Sections 41-1016(1)(d) and (h) which also constitutes a violation of Idaho Code Section 41-1024, the sum of Five Hundred Dollars (\$ 500.00) for each incident which total five (5); for a total administrative penalty in the amount of Two Thousand Five Hundred Dollars (\$ 2,500.00) and that James Cole Mundell's Non-Resident Producer License No. 155398 be REVOKED.

#### NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Insurance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Insurance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer 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* Idaho Code §67-5243(3).

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 of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception 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 Director of the Department of Insurance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Insurance.

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

If the Director of the Department of Insurance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his 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 for good cause shown. The Director (or his 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 Idaho Code §§ 67-5270 and 67-5272, 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: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

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

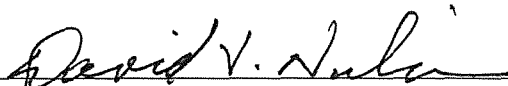
DATED this 22<sup>nd</sup> day of August, 2011.

By: David V. Nielsen  
David V. Nielsen  
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of August, 2011, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

James Cole Mundell 220 SW 3 <sup>rd</sup> Street Fruitland, ID 83619	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
John C. Kennan Deputy Attorney General for Idaho Department of Insurance 700 W. State Street, 3 <sup>rd</sup> Floor Boise, ID 83720	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile

  
\_\_\_\_\_  
David V. Nielsen