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FILED
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Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO

IDAHO DEPARTMENT OF INSURANCE,)	
)	Docket No. 18-3068-15
Complainant,)	
v.)	PRELIMINARY DECISION
)	AND ORDER
MARK J. LEE, an individual holding Idaho)	
Resident Producer License No. 59414,)	
)	
Respondent.)	
_____)	

A contested case evidentiary hearing was held in this matter on February 17, 2016 as a contested proceeding pursuant to the Idaho Administrative Procedures Act ("APA") and the Idaho Insurance Code, Idaho Code §41-101, *et. seq.*, including Idaho Code §41-1016. Respondent Mark J. Lee ("Mr. Lee") appeared personally. Complainant, Idaho Department of Insurance ("DOI") appeared through its attorney John C. Keenan, Deputy Attorney General and agency representative Elaine Mellon. DOI presented testimony from Ms. Mellon and David Mulder. Mr. Lee cross-examined both of DOI's witnesses. Mr. Lee chose not to present any witnesses or request admission of any documents and did not testify himself.

DOI filed a Verified Complaint and Notification of Rights against Mr. Lee on July 16, 2015. DOI later filed an Amended Verified Complaint and Notification of Rights against Mr. Lee on January 14, 2016 ("Amended Complaint"). Mr. Lee requested an evidentiary hearing. The purpose of the hearing was to allow DOI and Mr. Lee to present evidence regarding the allegations contained in the Amended Verified Complaint.

DOI filed a closing statement with the Hearing Officer on March 16, 2016. No closing statement was received from Mr. Lee.

FINDINGS OF FACT

1. Mr. Lee is a resident of the state of Idaho;
2. Mr. Lee holds Idaho Resident Producer License No. 59414, originally issued on January 6, 1998;
3. On January 7, 2014, a client of Mr. Lee's ("Consumer 1") paid by check to Mr. Lee a homeowners insurance premium payment in the amount of \$822.00;
4. Mr. Lee deposited Consumer 1's \$822 premium payment check into Mr. Lee's bank account;
5. Mr. Lee did not forward the \$822 premium payment to an insurance company;
6. As a consequence of Mr. Lee's failure to forward the \$822 premium payment to an insurance company, Consumer 1's homeowner's insurance was cancelled and no homeowner's insurance coverage was in effect;
7. DOI made numerous information requests to Mr. Lee regarding the Consumer 1 \$822 premium payment, but Mr. Lee did not provide all requested information;
8. In early 2014, a client of Mr. Lee's ("Consumer 2") paid by check to Mr. Lee an insurance premium payment in the amount of \$279;
9. Mr. Lee deposited Consumer 2's premium payment check into Mr. Lee's bank account;
10. In 2015, Consumer 2 learned that the \$279 premium payment was not forwarded to an insurance company;
11. As a consequence of Mr. Lee's failure to forward the \$279 premium payment to an insurance company, Consumer 2 had no insurance coverage after February 4, 2014;
12. DOI made numerous information requests to Mr. Lee regarding the \$279 premium payment, but Mr. Lee did not provide all requested information.

ANALYSIS

Idaho Code §41-247 provides that the DOI Director has the power to:

direct an inquiry in writing to any person subject to his jurisdiction with respect to any insurance transactions or matter relative to a subject of insurance resident, located, or to be performed in this state. The person to whom such an inquiry is addressed shall upon receipt thereof promptly furnish to the director all requested information which is in his possession or subject to his control.

With respect to the Consumer 1 Complaint, a DOI Consumer Affairs Officer sent Mr. Lee letters of inquiry dated February 13, 2015, March 6, 2015, March 19, 2015, April 1, 2015 and April 27, 2015. Each letter asked for copies of all agency notes, documentation of the \$822 premium check, documentation of the deposit into a trust account, and documentation of remittance to an insurer, a copy of the deposit slip, bank statements from January through August, 2014, and information regarding the status of the policy in question. Mr. Lee never fully responded to DOI's inquiries regarding the Consumer 1 \$822 premium check. Mr. Lee did provide partial responses dated March 11, 2015 and April 10, 2015. In his response, Mr. Lee included an acknowledgment that the funds were not properly applied or forwarded to an insurance company. Mr. Lee provided a copy of the insurer's policy history, a copy of the insurer's billing, and a copy of the reimbursement check to Consumer 1. In this second letter, Mr. Lee also included a copy of the application, a copy of the deposit slip in question, and a copy of email correspondence between Mr. Lee and Consumer 1 from December 13, 2014 to January 8, 2014. Despite the numerous DOI inquiries, Mr. Lee failed to provide agency notes or a copy of bank statements as requested.

With respect to the Consumer 2 Complaint, the DOI Consumer Affairs Officer sent letters of inquiry to Mr. Lee on February 17, 2015, March 6, 2015, March 19, 2015, April 10, 2015 and April 27, 2015. These letters requested information related to Consumer 2, including agency or diary notes, information on the complainant's statement about the 2014 insurance renewal, documentation regarding the \$279 premium check, and evidence that the \$279 premium check had been deposited into a trust account and remitted to the insurer, and copies of bank statements from March 2014 to July 2014. Mr. Lee responded to the Consumer 2 inquiries by letters dated March 11, 2015 and April 10, 2015. Mr. Lee provided only partial responses to

DOI's inquiries. Mr. Lee failed to provide agency notes or requested bank records and documents showing that the premium funds had been remitted to an insurance company.

Mr. Lee violated Idaho Code §41-247 by failing to fully respond to the Consumer 1 and Consumer 2 DOI inquiries.

Idaho Code §41-1024(1) provides:

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, in the applicable regular course of business, account for and pay the same to the person entitled to the funds. The producer shall establish a separate account for funds belonging to others in order to avoid a commingling of such fiduciary funds with his own funds.

Idaho Code §41-1024(2) provides “[f]iduciary funds shall include all funds collected by an insurance producer from or on behalf of a client...that are to be paid to an insurance company.” Mr. Lee failed to remit the fiduciary Consumer 1 premium payment in the amount of \$822 to the insurer. Mr. Lee has admitted that these premium funds were not properly applied to the Consumer 1 policy. These funds were deposited into Mr. Lee's account but were not withdrawn from the account to be sent to an insurer. The insurer never received the premium funds tendered to Mr. Lee by Consumer 1 and cancelled the insurance resulting in a period of time during which Consumer 1 was uninsured. Mr. Lee violated Idaho Code §41-1024 by failing to pay over the Consumer 1 premium funds to the insurer.

With respect to Consumer 2, the \$279 premium payment was likewise deposited into Mr. Lee's account but not forwarded to an insurer. Mr. Lee admitted in his letter to Consumer 2 dated March 10, 2015 that the premium payment was not forwarded to an insurer and Mr. Lee sent Consumer 2 a refund in the amount of \$279 for the 2014 premium payment.

Mr. Lee twice violated his legal obligation to account for and remit premium funds to insurers resulting in violations of Idaho Code §41-1024.

Idaho Code §41-1016(1) provides in relevant part:

The director may impose an administrative penalty not to exceed one thousand dollars (\$1,000), for deposit in the general fund of the state of Idaho, and may suspend for not more than twelve (12) months or may revoke or refuse to issue or continue any license issued under this

chapter...if the director finds that as to the licensee or applicant any one (1) or more of the following causes or violations exist:

(b) Violating any provision of title 41, Idaho Code, department rule, subpoena or order of the director or of another state's insurance director...

DOI has authority to revoke or suspend an insurance license and to impose an administrative penalty of up to \$1,000 per violation. Here there were four violations proven. Thus, DOI may suspend or revoke Mr. Lee's license and impose administrative penalties up to \$1,000 for each of the four violations.

CONCLUSIONS OF LAW

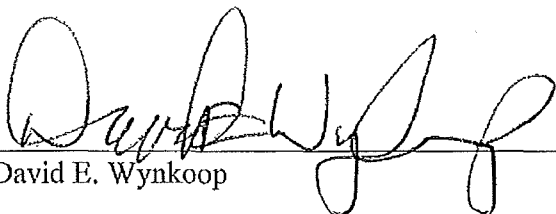
- A. The DOI Director has jurisdiction in Idaho over insurance regulation and licensing pursuant to Title 41, Idaho Code.
- B. Mr. Lee violated Idaho Code §41-247 by failing to fully respond to inquiries from DOI with respect to the Consumer 1 premium payment, as alleged in the Amended Complaint.
- C. Mr. Lee violated Idaho Code §41-1024(1) by failing to pay the Consumer 1 premium payment to the insurer entitled to the funds, leaving Consumer 1 without insurance coverage as alleged in the Amended Complaint.
- D. Mr. Lee violated Idaho Code §41-247 by failing to fully respond to inquiries from DOI with respect to the Consumer 2 premium payment, as alleged in the Amended Complaint.
- E. Mr. Lee violated Idaho Code §41-1024(1) by failing to pay the Consumer 2 premium payment to an insurer entitled to the funds, leaving Consumer 2 without insurance coverage as alleged in the Amended Complaint.
- F. DOI has cause for and is entitled to relief against Mr. Lee pursuant to Idaho Code §41-1016.

PRELIMINARY ORDER

Mr. Lee's Idaho Resident Producer License No. 59414 is hereby revoked. Mr. Lee shall pay DOI an administrative penalty in the amount of \$500 for the failure to fully respond to DOI's inquiries regarding Consumer 1. Mr. Lee shall pay DOI an administrative penalty in the amount of \$500 for the failure to fully respond to DOI's inquiries regarding Consumer 2. Mr.

Lee shall pay DOI an administrative penalty in the amount of \$1,000 for the failure to pay over the premium payment with respect to Consumer 1. Mr. Lee shall pay DOI an administrative penalty in the amount of \$1,000 for the failure to pay over the premium payment with respect to Consumer 2. The total administrative penalty owed by Mr. Lee to DOI shall be the sum of three thousand dollars (\$3,000.00). Said sum shall be due and payable in full sixty (60) days from the date of this preliminary decision.

DATED this 22nd day of March, 2016.



David E. Wynkoop

APPEAL RIGHTS

a. 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.

b. 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.

c. 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.

d. 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.

e. 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 what was the subject of the agency action is located.

f. 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 22nd day of March, 2016, I served true and correct copies of the foregoing PRELIMINARY DECISION AND ORDER upon the following, by the methods indicated below:

Mark J. Lee
High Mountain Insurance
1237 Filer Ave. East
Twin Falls, Idaho 83301

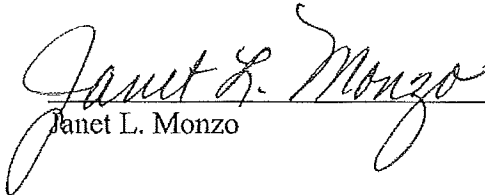
XX via U.S. mail, postage prepaid
XX via email to mark@himtnins.com

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Attorney for Idaho Dept. of Insurance

XX via facsimile to 208-334-4298
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Kelly Grady
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XX original via U.S. mail, postage prepaid



Janet L. Monzo