

LAWRENCE G. WASDEN  
Attorney General

JUDY L. GEIER, ISB No. 6559  
Deputy Attorney General  
State of Idaho  
Department of Insurance  
700 W. State Street, 3<sup>rd</sup> Floor  
P.O. Box 83720  
Boise, Idaho 83720-0043  
Telephone: (208) 334-4204  
Facsimile: (208) 334-4298  
judy.geier@doi.idaho.gov

**FILED**  
SEP 07 2016 *YCG*  
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.

ALAN C. RZESZUTKO,  
Resident Producer License No. 358750,

Respondent.

Docket No. 18-3183-16

**STIPULATION FOR ENTRY OF  
FINAL ORDER AND FINAL  
ORDER**

The parties herein, namely the Idaho Department of Insurance (“**Department**”) and its counsel of record, Judy L. Geier, Deputy Attorney General, and Alan C. Rzeszutko (“**Respondent**”), do hereby enter into this Stipulation for Entry of Final Order (“**Stipulation**”) to resolve certain matters at issue between them, and in lieu of further litigation of such matters, do hereby stipulate and agree as follows:

## I. JURISDICTION

1. Jurisdiction is founded in the Idaho Insurance Code, Idaho Code §§ 41-101 *et seq.*, including Idaho Code § 41-210, which authorizes the Department's Director ("**Director**") to enforce the provisions of title 41, Idaho Code, including those that relate to Respondent's activities as a resident producer.

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 suspension or revocation of insurance licenses and the imposition of administrative penalties.

3. At all relevant times, Respondent resided in, and currently resides in, Pocatello, Idaho. Respondent was issued Resident Producer License No. 358750 on October 8, 2010, which license is due to expire on March 31, 2017.

## II. STATEMENT OF UNDISPUTED FACTS

4. During all relevant times, Respondent operated an insurance agency located in Pocatello, Idaho, and was authorized as a producer to sell, solicit and/or negotiate property and casualty and life insurance products for Farmers Insurance ("**Farmers**").

5. Respondent held appointments for the following Farmers' affiliates: Bristol West Insurance Company; Farmers Insurance Company of Idaho; Farmers Insurance Exchange; Farmers New World Life Insurance Company; Foremost Insurance Company Grand Rapids, Michigan; Mid-Century Insurance Company; and Truck Insurance Exchange.

6. On July 23, 2015, Farmers terminated Respondent's appointment with each of its affiliates listed above, stating that Respondent had willfully misrepresented the companies and

mishandled premiums belonging to the companies based on the following facts, which Respondent does not dispute.

7. Between February 19, 2015, and April 17, 2015, Respondent entered advance credits for premium payments totaling \$9,199 and electronically generated receipts for thirty-four (34) customers for those credits.

8. Respondent admitted that he often entered advance credits and relayed electronic receipts to long-time clients, who sometimes would fail to ultimately remit payment. The credited payments ensured that customers' coverage would remain in force until payment was received as well as initially generated commissions for Respondent.

9. Respondent subsequently failed to collect and remit to Farmers the actual payments that corresponded to the credits totaling \$9,199. Thereafter, Farmers elected to apply the credits to the customers' accounts although the corresponding funds were never remitted.

10. Farmers requires all of its agents to deposit premium monies into a "co-banking account." Agents have deposit-only access to the co-banking account, which is exclusively owned by Farmers.

11. Between February 2014 and May 2015, Respondent entered five advance payments into Farmers' computer system making them applicable to his personal auto policy and inputting an incorrect bank account number on the entries to keep the policy in force. Each payment was entered as a "check payment." After an audit revealed that corresponding deposits were never made to the co-banking account, Farmers eventually reversed each payment from the computer records.

12. Respondent later admitted that he was incurring financial difficulties when he entered the five payments as credits to his auto policy. He believed he would catch the payments

up through his upcoming commissions, but the commissions fell short of paying the full premium amount that was due.

13. Between October 2014 and July 2015, Respondent diverted approximately four of his customers' premium payments for his own use, identified as follows:

- a. On October 15, 2014, Respondent diverted a payment in the amount of \$1,089.34;
- b. On February 6, 2015, Respondent diverted a payment in the amount of \$1,195.87;
- c. On February 13, 2015, Respondent diverted a payment in the amount of \$1,813.76; and
- d. On July 3, 2015, Respondent diverted a payment in the amount of \$2,683.18.

### III. CONCLUSIONS OF LAW

14. Respondent improperly withheld, misappropriated or converted monies or insurance benefits/coverage in the course of doing insurance business in that he: a) obtained unearned commissions by entering premium payment credits that were unsupported by actual payments; b) procured insurance coverage and delayed cancellation by making false payments on his personal auto policy; and c) diverted premium funds for his personal use. Such acts are violations of Idaho Code § 41-1016(1)(d).

15. Respondent also used fraudulent, coercive and dishonest practices, or demonstrated "...incompetence, untrustworthiness or financial irresponsibility, or [was] a source of injury and loss to the public or others, in the conduct of business in this state," by repeatedly advancing credit payments for long-time customers; by repeatedly advancing credit payments for himself in

anticipation of commission payments; and by diverting premium payments for his personal use. Such business practices are violations of Idaho Code § 41-1016(1)(h).

16. Each violation of Idaho Code § 41-1016(1)(d) and (h) establishes a separate basis for the revocation of Respondent's Resident Insurance Producer License No. 358750 and for the imposition of an administrative penalty in an amount not to exceed One Thousand Dollars (\$1,000) per violation.

#### IV. THE AGREEMENT

17. In lieu of proceeding to a hearing, Respondent and the Department agree to resolve as between them the matters at issue herein through this negotiated and stipulated settlement. As such, the Parties stipulate and agree to the following terms:

18. Respondent admits that the Director and the Department have jurisdiction over this matter, as detailed in paragraphs (1) through (3) of this Stipulation.

19. Respondent admits to each and every fact detailed in Section II of this Stipulation and to the Conclusions of Law recited in Section III of this Stipulation.

20. Respondent stipulates and agrees that:

- a. His Idaho Resident Producer License No. 358750 shall be revoked as of the date of the Final Order;
- b. After a period of not less than five (5) years commencing as of the date of the Final Order and after payment in full of the administrative penalty described herein, Respondent shall be allowed to submit an application to the Department for licensure and to demonstrate good cause why the revocation herein should not be deemed a bar to the issuance of a new license; and

- c. Respondent shall be issued an administrative penalty in the amount of Five Thousand and 00/100 Dollars (\$5,000), which amount must be paid in full prior to the Department's consideration of any application for licensure.

21. By entering into this Stipulation, Respondent knowingly and voluntarily waives any rights he would otherwise have to litigate the matters and issues addressed herein, including but not limited to the rights afforded by Idaho Code § 41-232A, which provides for: the right to a hearing; the right to be represented at a hearing by counsel chosen and retained by Respondent; the right to present a defense, oral and documentary evidence and to cross-examine witnesses at such hearing; and the right to seek judicial review.

22. The Department and Respondent each agree that this Stipulation is a full and final settlement of the issues raised between them herein.

23. Respondent enters into this Stipulation freely and voluntarily, after having had the opportunity to consult with his counsel, and with full understanding of the legal consequences of this Stipulation and the Final Order approving this Stipulation.

24. Respondent agrees that, upon execution of this Stipulation, no subsequent action or assertion shall be maintained or pursued in any manner asserting the invalidity of this Stipulation and Final Order and its provisions.

25. Respondent understands that this Stipulation and the Final Order approving this Stipulation shall be reported to the Regulatory Information Retrieval System ("RIRS") maintained by National Association of Insurance Commissioners ("NAIC").

26. Upon the Director's entry of the Final Order approving this Stipulation, this Stipulation and the Final Order shall be a public record under the Idaho Public Records Act.

27. This Stipulation is subject to approval by the Director or the Director's designee,



AGREED THIS 29 day of July, 2016.

IDAHO DEPARTMENT OF INSURANCE

By: Elaine Mellon  
Elaine Mellon, CLU, ChFC  
Bureau Chief, Consumer Services  
Idaho Department of Insurance

**FINAL ORDER**

**IT IS HEREBY ORDERED,**

1. That the preceding Stipulation is approved and adopted in full;
2. That Idaho Resident Producer License No. 358750, held in the name of ALAN C. RZESZUTKO, is hereby revoked commencing as of the date of this Final Order;
3. That after a period of not less than five (5) years from the date of this Final Order and payment in full of the administrative penalty described herein, ALAN C. RZESZUTKO shall be allowed to apply for relicensure and to demonstrate good cause why the prior revocation shall not be deemed a bar to the issuance of a new license; and
4. That ALAN C. RZESZUTKO shall pay an administrative penalty of Five Thousand and 00/100 Dollars (\$5,000) and that the Department shall not consider any license application submitted by him nor shall the Department issue any license to him until said amount is paid to the Department in full.

DATED this 7 day of September, 2016.

STATE OF IDAHO  
DEPARTMENT OF INSURANCE



\_\_\_\_\_  
DEAN CAMERON  
Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7 day of ~~August~~ <sup>September</sup>, 2016, I caused a true and correct copy of the foregoing **STIPULATION FOR ENTRY OF FINAL ORDER AND FINAL ORDER** to be served upon the following by the designated means:

Alan C. Rzeszutko  
3759 Flamingo Place  
Pocatello, ID 83201-5472

- first class mail
- certified mail
- hand delivery
- via facsimile

Judy L. Geier  
Deputy Attorney General  
Idaho Department of Insurance  
700 W. State Street, 3<sup>rd</sup> Floor  
P.O. Box 83720  
Boise, ID 83720-0043

- first class mail
- certified mail
- hand delivery
- via facsimile

  
\_\_\_\_\_  
Kelly Grady