

**BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA**

**FILED**  
MAR 1 2017  
INSURANCE COMMISSIONER  
OKLAHOMA

STATE OF OKLAHOMA, ex rel. JOHN D. )  
DOAK, Insurance Commissioner, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
AMY MICHELLE WISKUS, a licensed )  
insurance producer in the State of Oklahoma, )  
 )  
Respondent. )

Case No. 16-1121-DIS

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came on for a Show Cause hearing on February 16, 2017. Petitioner, State of Oklahoma, ex rel. John D. Doak, Insurance Commissioner, appeared by counsel, Sandra LaVenue, Senior Counsel. Respondent, Amy Wiskus, appeared Pro Se. Although offered the opportunity to retain counsel, Respondent elected to appear Pro Se and represent her interests.

Petitioner alleges that Respondent violated various provisions of the Oklahoma Statutes including:

(1) 36 O.S., 2011, Section 1435.13(A)(1) and (A)(3) by providing false information in her application to secure a producer's license;

(2) 36 O.S., 2011, Section 1435.13(A) (2) by failing to provide accurate business and contact information in her application for a producer's license;

(3) 36 O.S., 2011, Section 1435(A)(8) by providing false information to the Oklahoma Insurance Department as well as Union Mutual Insurance Company and Equity Insurance Company;

(4) By conspiring with her father, Ronnie Burns, to continue the operation of Colclazier Insurance Agency, a suspended agency, under the guise of the purchase thereof by another company,

Colclazier Durant Insurance Agency, when in fact the purchase was a sham transaction which was designed and intended to avoid administrative action by the Oklahoma Insurance Department, and, otherwise to perpetuate the operation of an unlicensed entity in violation of 36 O.S., 2011, Section 1435.13(A)(8).

The evidence consisted of the testimony of seven (7) witnesses, including Respondent, and the introduction of multiple documents. Based on the evidence presented, the Hearing Examiner finds and orders as follows:

### ***JURISDICTION***

1. Petitioner is the Insurance Commissioner of the State of Oklahoma who is charged with the responsibility to administer and enforce the insurance laws of the State as well as regulations lawfully promulgated by the Insurance Commissioner's office.

2. Respondent, Amy Wiskus, is a licensed insurance producer whose mailing address of record is 2206 Hillcrest, Durant, Oklahoma 74701-2223, and who currently holds producer license number 40039215.

3. The Oklahoma Insurance Department has jurisdiction over the parties and subject matter hereof pursuant to 36 O.S., 2011, Section 101-7301. The undersigned, having been appointed by the Insurance Commissioner to hear this matter, has jurisdiction under the authority conferred by 36 O.S., 2011, Section 319.

### ***FINDINGS OF FACT***

1. In general, the subject matter of most of the evidence in this case relates to the relationship between the Respondent and her father, Ronnie Burns, and other relatives, as well as the relationship between two separate entities, Colclazier Insurance Agency (referred to by the

parties as “Old Conclazier”) and Colclazier Durant Insurance Agency, an Oklahoma Limited Liability Company authorized to do business by the Secretary of State on December 9, 2016. (“New Colclazier”). (Petitioner’s Exhibit 9). The evidence indicates that on October 19, 2016, Respondent entered into a Letter of Intent Agreement For Sale of Business under the terms of which Ronnie Burns, the apparent owner of Colclazier Insurance Agency (Old Colclazier) agreed to sell the business, its good will and its book of business to Respondent. The purchase price was fixed at the fair market value of the book of business on the date of sale. The specific terms of the sale were agreed to be confidential as to the parties and contained in a separate sale agreement to be executed contemporaneously with the letter of intent. (Petitioner’s Exhibit 6). An allegedly modified version of the letter of intent dated November 28, 2016, was also introduced as Petitioner’s Exhibit 7. However, the essential terms, conditions and requirements of both exhibits are basically the same and the undersigned finds that both documents reflect the agreement of the parties. Petitioner contends that the transaction was the result of a conspiracy between Burns, Respondent and Joe and Betty Colclazier, and that the same was a sham. And, while the evidence was circumstantial, it appears that two interpretations of the proof, i.e. a legal intent and motive or an illegal intent and motive, are possible.

A conspiracy is an agreement between two or more persons by some concerted action to accomplish some criminal or unlawful purpose or to accomplish some purpose not criminal or unlawful in and of itself by unlawful means. *Dill v. Rader*, 1978 OK 78, 583 P.2d 496; *Wright v. Ceis*, 1982 OK CIV APP 5, 648 P.2d 51. The burden of proof of conspiracy is clear and convincing evidence. *Dill, supra*; *Shadid v. Monsour*, 1987 OK CIV APP 48, 746 P.2d 685. However, the evidence must raise more than mere suspicion - it must lead to a belief. And, while a conspiracy may

be proved by circumstantial evidence, if the facts and circumstances in evidence are as consistent with an innocent purpose as with and unlawful one, it is the duty of the tribunal to find that no conspiracy has been established. *Dill, supra.*; *Shadid, supra.*

Here, the evidence establishes an agreement to sell Colclazier Insurance Agency between Respondent, Ronnie Burns and the Colclaziers. However, there is no direct evidence of an unlawful agreement and the circumstantial evidence is as consistent with a lawful purpose, i.e. to enable Respondent to purchase the agency and conduct an insurance business through her own license, as with an unlawful one, setting up a sham business so as to carry on the business of Old Colclazier under the guise of another company, Colclazier Durant, LLC.

2. On November 14, 2016, Respondent applied to the Oklahoma Department of Insurance for a producer's license. The application was made under oath and required responses to questions relating to the qualifications of Respondent to hold such license. Question No. 6 asked if Respondent had any interest "as owner, partner, officer, director or member or manager of a limited liability company which previously had an insurance agency contract or any other business relationship with any insurance company terminated for alleged misconduct." To this question, Respondent answered "No." (Petitioner's Exhibit 3).

Respondent's answer to the posed question was not true. On December 16, 2011, Colclazier Insurance Agency (Old Colclazier) filed an application for reinstatement of its license as an insurance entity. Therein, Respondent was identified as owning at least a 10% interest in that business; and she was also listed as a director thereof. (Petitioner's Exhibit 4). The evidence established that Colclazier Insurance Agency had at least one agency contract with American Farmers and Ranchers Insurance Company cancelled because the agency repeatedly mishandled

client funds which were intended to be used as premiums for insurance. And, while the Respondent disclaims knowledge of her status as a director, it defies logic that she was not aware of her ownership interest in “Old Colclazier.”

3. Petitioner contends that Respondent provided false information to the Oklahoma Insurance Department in the form of a federal Employer Identification Number because it was apparently obtained before she received a Certificate of Limited Liability Company from the Secretary of State. The evidence failed to show and Petitioner did not contend that the Employer Identification Number was fraudulently obtained from the Internal Revenue Service.

4. The evidence established that Respondent also obtained an Errors and Omissions insurance policy in the name of Colclazier Durant Insurance Agency before she had been approved by the Oklahoma Insurance Department to use that name. The evidence also establishes that Respondent provided the policy to Union Mutual Insurance Company and Equity Insurance Company in order to obtain agency contracts/appointments for Colclazier Durant Insurance Agency. While it is doubtful that simply obtaining an insurance policy prior to official approval of the company name violates the insurance code, using that name to induce insurance companies to enter into agency contracts and appointments amounts to at least a false statement and probably a fraudulent statement since Respondent plainly knew that the Durant agency was not authorized to conduct insurance business.

#### ***CONCLUSIONS OF LAW***

1. Respondent violated the mandatory provisions of 36 O.S., 2011, Section 1435.13(A)(1), (2) and (3) by submitting untrue information on her application for a producer’s license. Specifically, she attested that she had no interest in any company which had an agency

contract revoked for misconduct. Official records of the Oklahoma Insurance Department list her as a director of Colclazier Insurance Company (Old Colclazier). Moreover, those same records indicate that Respondent owned at least a 10% interest in Colclazier Insurance Agency. Respondent has denied any knowledge of Petitioner's Exhibit 4 or its contents.

The undersigned concludes that while it might be true that Respondent did not know she had been listed as a director of Old Colclazier, it is not credible that she was unaware of her ownership interest in an ongoing business. Given that fact, she must have known the true facts when she filed her own application for a producer's license and misrepresented her interest in Colclazier Agency. Even without such knowledge, the law imposes upon her the affirmative duty to insure that her answers to questions in her application were true - which she failed to do.

2. Respondent violated the mandatory provisions of 36 O.S., 2011, Section 1435.13(A)(8) by misrepresenting the status of Colclazier Durant Insurance Agency to Union Mutual Insurance Company and Equity Insurance Company. She took out and received an Errors and Omission Insurance Certificate naming Colclazier Durant Insurance Agency as the insured at a time when its application for agency license had not been granted. This conduct amounts to an intentional misrepresentation and, had it not been for the fact that the application of Colclazier Durant Agency had been flagged (placed on hold) by the Oklahoma Insurance Department, and the fact that the hold was discovered by Equity representatives, Respondent would have received an agency contract for a then non-existent and unlicensed insurance agency.

3. The hearing examiner finds that Petitioner's claims of conspiracy and fraud in connection with the sale of Colclazier Agency have not been established by clear and convincing evidence. The circumstantial evidence presented, while consistent with a conspiracy, is just as

consistent with a legitimate business sale.

**CONCLUSION**

The hearing officer finds that, for the violations committed by her, Respondent should be disciplined. Her producer's license is ordered suspended for a period of ninety (90) days. In addition, Respondent is fined the sum of \$250.00. The costs of this proceeding in the sum of \$1,268.75 is assessed against Respondent.

Dated this 16th day of March, 2017.

Charles F. Alden, III, OBA #0187  
Charles F. Alden, III, Inc., P.C.  
309 N.W. 9th Street  
Oklahoma City, OK 73102  
(405) 235-5255  
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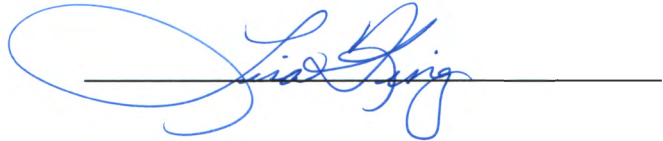
  
\_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE

**CERTIFICATE OF MAILING**

I hereby certify that on the 16<sup>th</sup> day of March, 2017, a true and correct copy of the above and foregoing document was sent via U.S. Mail, with postage prepaid thereon, to:

Amy Wiskus  
2208 Hillcrest  
Durant, OK 74701  
*Respondent*

Certified Mail No.  
7016 0910 0000 8401 6537

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PS Form 3800, April 2015 PSN

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 Durant, OK 74701  
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B. Received by (Printed Name)  
 Amy Wiskus

C. Date of Delivery  
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delivery address different from item 1?  Yes  
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MAR 21 2017

Legal Division

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