

**BEFORE THE INSURANCE COMMISSIONER
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex. rel. JOHN D. DOAK, Insurance Commissioner,
Petitioner,
v.
RONNIE M. BURNS,
an unlicensed Insurance
producer in the State of Oklahoma,
AND
COLCLAZIER INSURANCE AGENCY, INC.
Respondents.

Case No. 16-0374-DIS

FILED
APR 27 2017
INSURANCE COMMISSIONER
OKLAHOMA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for a show cause hearing on March 21, 2017. Petitioner, State, ex rel. John D. Doak, Insurance Commissioner, appeared by counsel, Sandra LaVenué, Senior Counsel. Respondents appeared by counsel, Robert F. Morgan, Jr. and Colin A. McCormick. Respondents are charged with violating the following provisions of the Oklahoma Insurance Code:

1. 36 O.S., 2011, Sections 1435 (A)(2) and (4) in that they allegedly withheld misappropriated or converted monies or properties received in the course of doing insurance business by accepting premium payments and by failing to forward them to the insurance companies entitled thereto in accordance with 36 O.S., 2011, Section 1435.13a.
2. 36 O.S., 2011, Sections 1435.15 and 1435.13(A)(2) by acting as agent for an insurer without receiving appointment by said insurer.

3. 36 O.S., 2011, Section 1435.13(A)(8), by using fraudulent, coercive or dishonest practices, or by demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business.
4. 36 O.S., 2011, Section 1435 (A)(12) by knowingly accepting insurance business from a person not licensed.

The evidence in the matter consisted of the testimony of Mark Drummond, Curtis Lisle, Lori Dozier, Chris Campbell and the testimony of Amy Wiskus, given by her in a separate hearing on February 16, 2017. Neither Respondent filed an Answer to the Commissions Administrative Order and Notice of Right to Be Heard; and neither Respondent called any witness or offered documentary evidence. Based on the evidence presented, the undersigned 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 promulgated by the Oklahoma Insurance Department.
2. Respondent, Ronnie Burns, was an Oklahoma licensed insurance producer holding license number 115984 until his license expired on October 31, 2016.
3. Respondent, Colclazier Insurance Agency, Inc., was an Oklahoma licensed insurance producer holding license number 100102126 until its license expired on October 31, 2016.
4. The Oklahoma Insurance Department has jurisdiction of the parties and the 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 of 36 O.S., 2011, Section 319.

5. Both Respondents have received notice and have been provided a hearing in accordance with O.A.C. 365:1-7-1.

FINDINGS OF FACT

1. Respondent, Ronnie Burns (hereinafter, at times, referred to as "Burns") was, at all material times, the owner, officer and managing agent of Respondent Colclazier Insurance Agency, Inc. (hereinafter, at times, referred to as "Agency").
2. The Oklahoma Insurance Department began an investigation after it received an e-mail from Chris Campbell of American Farmers and Ranchers Insurance Company (hereinafter, at times, referred to as "AFR") alleging complaints AFR had received from a number of its insureds. The insureds had alleged that premiums they paid to the Colclazier Insurance Agency had not been sent on to their carrier and properly credited to their policies.
3. In March, 2015, Mr. Campbell received a complaint from an insured that the insured had paid in full for an insurance policy but that the policy had been cancelled by AFR. Campbell secured a copy of the insured's cancelled check and decided to conduct an audit of Agency.
4. According to Insurance Department investigator, Mark Drummond, AFR had either started or was to begin an audit of the premiums made to Agency to determine whether any money was missing, delayed or perhaps stolen.
5. The audit referred to above was conducted by comparing premium payments received by Burns and Agency to funds uploaded to AFR by Respondents as premium payments.

6. Petitioner's Exhibit A details the results of the AFR audit. The audit revealed that from April, 2014 through May, 2015, Respondents failed to forward premium payments in a timely way as required by their appointment agreement with AFR. Those payments that were actually uploaded by Burns were consistently late and in excess of five (5) days from the date of receipt. In addition, such payments were in excess of two (2) business days required by the Managing Agent Agreement with AFR.
7. The AFR audit further revealed that on January 26, 2015, James Castleberry paid the sum of \$1,197.00 to Respondent Burns and Agency in full payment of a one (1) year premium for his homeowners insurance policy. The undersigned finds that Respondents Burns and Agency did not upload or otherwise forward the full payment as intended and instructed by Mr. Castleberry. Instead, and without his knowledge and consent, Burns and Agency set the Castleberry insurance premium payment up for monthly installments. Respondents Burns and Agency then failed to upload the premium even on a monthly basis which resulted in cancellation of Mr. Castleberry's coverage.
8. The evidence established that on June 11, 2014, Agency customer Ronnie Hall, paid the sum of \$2,162.00 as full payment of policy number FOH50606. Burns and Agency, again without the knowledge and consent of its customer, set the policy up for monthly installments. Instead of paying the entire premium to AFR, Burns and Agency initially uploaded \$261.00. That payment was insufficient and was made 45 days late under the Managing Agent Agreement. Thereafter, Burns and Agency made periodic premium payments of \$195.00 on September 2, 2014, \$185.00 on September 27, 2104, and \$1,640.00 on November 11, 2014. The undersigned finds that all of the premium payments set forth above were made in direct violation of the Managing Agent

Agreement with AFR which required payments of premiums received within 2 business days of receipt. The undersigned further finds and by clear and convincing evidence, that Burns and Agency misappropriated Mr. Hall's premium payment beginning on June 11, 2014 and ending on November 11, 2014. There was no evidence establishing what was done with the funds wrongfully withheld by Burns and Agency, but a reasonable inference from the evidence is that, at the very least, the funds were misappropriated.

9. The undersigned finds, by clear and convincing evidence, that Respondents Burns and Agency, on at least 60 occasions during the period of 2014 through May, 2015, received premium payments on behalf of AFR and thereafter improperly made multiple or monthly payments to the carrier. The number of improper payments over the period described, in and of itself, establishes that the premium funds were knowingly withheld.
10. The evidence establishes that each insured who was assessed a fee or suffered a lapse of coverage as detailed in Petitioner's Exhibit A, was negatively impacted by the wrongful conduct of Respondents Burns and Agency. The undersigned further finds that for each insured set forth in Petitioner's Exhibit A who experienced lapses in coverage, late fees, fees for restarting or reinstatement of their policy, their premium funds were either misappropriated or converted by Burns and Agency.
11. In excess of 100 insurance policies had been negatively affected by the unwanted delays which included late fees, reinstatement fees, and loss of discounts which would have been extended to insureds had the premium payments been made in a timely way.
12. Respondent, Burns, knew that multiple insurance payments were not timely made. He also knew that, in many instances, premiums which had been paid in full had been improperly set up for monthly installments.

13. When interviewed by the Oklahoma Insurance Department, Mark Drummond, Respondent, Burns, admitted that at least \$18,000.00 had been embezzled from Agency. He attempted to shift the blame for the thefts to his daughter, Leah, who was, according to him, no longer employed at the Agency. Burns also said that he took out a loan at the bank to cover the embezzlement during "the first couple of months" in 2015. Exhibit A, however, reveals that embezzlements and/or misappropriation of premium funds consistently happened throughout 2014 and through May, 2015.
14. Respondent, Burns, despite his knowledge of embezzlement, failed to report losses to either the Oklahoma Insurance Department or law enforcement, in an attempt to protect his daughter.
15. The Oklahoma Insurance Department investigator, Drummond, interviewed Respondent Burns, Joe Colclazier and Betty Colclazier on at least two (2) occasions. Each admitted knowledge that unlicensed staff had been improperly performing tasks reserved by statute only to licensed producers, including preparing and providing insurance quotes, preparing and reviewing contracts with customers and writing policies, all of which were prohibited by the Oklahoma Producer Licensing Act, 36 O.S., 2011, Section 1435.1 et seq. Those unlicensed employees included Jeanie St. John, who was a secretary, and Debra Koons, Respondent Burns' spouse. In addition, each admitted that many of the policies had been written through Agency to customers who had never met with any licensed insurance producer. One of the reasons given for allowing unlicensed employees to do the work of licensed producers was that it was believed necessary to keep the business open. However, the reason given provides no defense to the Commissioner's allegation and evidence. Even if it did, the so-called reason is not worthy of the belief. Joe and Betty

Colclazier had conducted insurance business in Durant for nearly three decades without incident, and no evidence was offered to show why such a necessity existed.

16. Respondent Burns admitted to the Oklahoma Insurance Department's fraud investigator, Mark Drummond, that he had signed Joe Colclazier's name to many insurance applications to companies in which Burns was not appointed. Among other things, Burns signed Joe Colclazier's name to an application for appointment with Union Mutual Insurance Company, a company with which Burns did not have an appointment. Burns' admission is corroborated by other evidence of his wrongful activities.
17. Lori Dozier, Marketing Manager for Equity Insurance Co., testified concerning a signature audit of policies written through Agency during the years 2014 and 2015. She had heard a rumor concerning alleged problems Agency had with AFR and, as a result, contacted the Oklahoma Insurance Department. At the request of Mark Drummond she conducted what she called a partial signature audit on new business for the Agency for the years 2014 and 2015. She found that during 2014 there had been 268 new business applications submitted to Equity and she audited 72 of them. Of the 72 applications she looked at, all contained what was represented as the signature of Joe Colclazier. For the year 2015, there had been 253 new business applications. Dozier looked at 84 of them and found 53 contained what appeared to be the signature of Joe Colclazier.
18. When Dozier compared the Joe Colclazier signatures on the new business applications with his appointment contract she found them to be different. She expressed the layman's opinion, without objection from either Respondent, that Respondent Burns had signed Joe Colclazier's name to the new business applications.

19. The evidence corroborated Dozier's testimony and confirmed that Respondent Burns had signed Joe Colclazier's name to the 2014-2015 new business applications to Equity. Both Burns and Joe Colclazier admitted to Mark Drummond that it was Burns and not Colclazier who had signed the applications.
20. As part of its application process, Equity Insurance Company requires the written certification of an agent that the application had been signed by the applicant in the agent's presence and the agent is legally qualified to submit the application on behalf of a proposed insured.
21. The undersigned finds that Ronnie Burns signed the name of Joe Colclazier to applications from insureds submitted to Equity Insurance Company 72 times during 2014. Further, the undersigned finds that Ronnie Burns signed Joe Colclazier's name on applications from insureds submitted to Equity 53 times during the year 2015. Accordingly, those applications contained false signatures and false agent certifications. The total number of false certifications and false signatures, as well as the pattern of misconduct evidenced by the testimony of Lori Dozier, establishes that the applications were knowingly fraudulent.
22. The evidence demonstrates that there was a pattern and practice at Agency which amounted to mishandling funds by its employees. Evidence showed that checks and receipts were received as payments and kept in an unsecured drawer for several days until an employee took them to a bank in irregular intervals. The undersigned finds by clear and convincing evidence, that this practice demonstrates financial irresponsibility at least and was in violation of 36 O.S., 2011, Section 1435 (A)(8).

23. Union Mutual Insurance Company, at all times material, had appointment agreements with Joe and Betty Colclazier, but not with Respondent Burns.
24. Curtis Lisle, marketing representative for Union Mutual attempted on many occasions to contact either Joe or Betty Colclazier at Agency because they were the only producers at Agency who had been appointed to sell Union business. He was never able to reach either when he called and he became concerned. At some point not disclosed by the evidence, he was contacted by Mark Drummond concerning signatures used by Burns and/or Agency. Mr. Lisle identified Petitioner's Exhibit J which consisted of three (3) pages. One page is a commission schedule allegedly signed by Joe Colclazier. The second page is a signature page for the appointment contract with Joe Colclazier. The third page is a signature page for a Union Mutual Insurance Company policy which also purported to contain the signature of Joe Colclazier. The evidence established that a comparison of Joe Colclazier's signatures on his Oklahoma Insurance Department producer license and application with the documents contained in Exhibit J appear to be different. Further, during an interview with Investigator Mark Drummond, Burns admitted that he had signed Joe Colclazier's name to all pages of Exhibit J. Respondent Burns has taken the position that he had Joe Colclazier's consent to sign his name to those documents. Even if true, his/their conduct is in violation of 36 O.S., 2011, Sections 1435.15(A) and 1435.13(A)(2).
25. There was testimony presented which related to alleged sale of Agency to Amy Wiskus. Petitioner contended that Wiskus submitted an Oklahoma Producer License application which contained false information regarding her status with Agency so that the Agency sale could be completed. Petitioner also contends that Respondent Burns actually filled

in the blanks on her application and that Wiskus signed whatever he put in front of her. Ms. Wiskus' testimony was admitted in this proceeding wherein she testified that Respondent Burns had "lied" when he submitted the information to the effect that she was an officer of Agency. She testified that she had not, nor had she ever, been in any position of authority at Agency. Finally, Petitioner contends that the alleged sale of Agency to Wiskus was a sham the object and purpose of which was for Agency to continually seek commissions on the premiums under the guise of another company, Colclazier Agency Durant, LLC and to avoid administrative action by the Oklahoma Insurance Department.

26. The hearing examiner finds, based on the unrefuted testimony of Amy Wiskus, that Respondent Burns, with her assistance, provided false information to the Oklahoma Insurance Department in the Wiskus application for producer's license. However, the evidence is insufficient to establish that the purpose of the sale was a fraud or a sham. The evidence is circumstantial, at best, and is just as consistent with a sale for lawful purposes as it is for unlawful purposes.

CONCLUSIONS OF LAW

1. The hearing examiner finds, by clear and convincing evidence, that both Respondent Burns and Agency violated the mandatory provisions of 36 O.S., 2011, Sections 1435 (A)(2) and (4) on multiple occasions over an extended period of time, by improperly misappropriating money they had received from their customers in the course of doing insurance business; and, by breach of their fiduciary duty to forward the premium payments on or before the contractual due date in direct violation of 36 O.S., 2011,

Section 1435.13(A) and, in further violation of a valid agency appointment agreement with American Farmers and Ranchers Insurance Company.

2. The undersigned further finds, by clear and convincing evidence, that Respondent Burns, acting for himself and Agency, violated 36 O.S., 2011, Sections 1435.15(A) and 1435.13(A)(2) on multiple occasions by acting as agent of an insurer without being an appointed agent of that insurer, specifically, Equity Insurance Company and Union Mutual Insurance Company.
3. The undersigned further finds, by clear and convincing evidence, that Respondents Burns and Agency violated the mandatory provisions of 36 O.S., 2011, Section 1435.13(A)(8) on multiple occasions by using fraudulent and dishonest practices, and practices which demonstrated financial irresponsibility in the conduct of insurance business in the safe keeping of premium funds it received; by allowing one or more employees to upload premium dollars, with full knowledge of extensive embezzlement of certain premium funds; by submitting false documents to Equity Insurance Company and Union Mutual Insurance Company; and, by misappropriating premium dollars intended for the payment of insurance premiums to American Farmers and Ranchers Insurance Company.
4. The undersigned further finds, by clear and convincing evidence, that Respondents Burns and Agency, by signing the name of Joe Colclazier to multiple insurance applications submitted to Equity Insurance Company in violation of 36 O.S., 2011, Section 1435.13(A)(8). While this conduct, technically, does not constitute a forgery as defined in the criminal law, it nevertheless violates the Insurance Code which prohibits a producer from using fraudulent or dishonest practices in the conduct of insurance business.

5. An application for insurance submitted to Equity Insurance Company and Union Mutual Insurance Company both require the signing agent to have knowledge and personal contact with a proposed insured at the time an application is signed. The clear and convincing evidence establishes that on multiple occasions, the purported agent, Respondent Burns; never solicited or sold or signed applications on behalf of proposed insureds. Respondent Burns signed the name of Joe Colclazier on multiple applications for insurance to both Equity and Union Mutual Insurance Companies and thus, violated the mandatory provisions of 36 O.S., 2011, Section 1435.13(A)(8) by employing dishonest practices in the conduct of insurance business.
6. The undersigned finds, by clear and convincing evidence, that Respondent Burns, in conjunction with Amy Wiskus, submitted a producer's license application to the Oklahoma Insurance Department which contained false information in violation of 36 O.S., 2011, Section 1435.13(A)(8).
7. The undersigned further finds, by clear and convincing evidence, that Respondent Burns violated 36 O.S., 2011, Section 1435.13(A)(12) by signing his name or the name of Joe Colclazier on applications for insurance and accepting insurance business from unlicensed office staff. Finally, Respondent Burns signed his name or that of Joe Colclazier with full knowledge that the Insurance Code requires solicitations or applications for insurance, as well as the provision of quotes for proposed insurance policies, and reviewing of insurance contracts with proposed insureds be accomplished by a licensed insurance producer.
8. The hearing examiner further finds, by clear and convincing evidence, that Respondent Burns, individually and as owner/officer, manager and agent of Respondent Colclazier

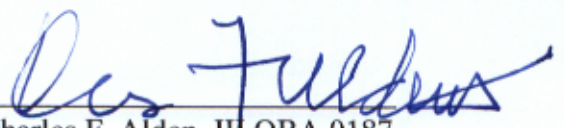
Insurance Agency, Inc., in many instances knew and in other instances should have known of multiple violations of the Oklahoma Producers Licensing Act, failed to take any corrective action and failed to report the violations to the Oklahoma Insurance Department.

9. The hearing examiner further finds, by clear and convincing evidence, that Respondent Burns, individually and as owner/officer, manager and agent of Respondent Colclazier Insurance Agency, Inc., violated the mandatory provisions of 36 O.S., 2011, Section 1435.13 more than 100 times thereby exhibiting an unlawful pattern and practice by Respondent Burns and by Respondent Agency during the years 2014 and 2015.

CONCLUSION

The undersigned finds, by clear and convincing evidence, that Respondents Burns and Agency routinely violated the provisions of the Oklahoma Producer Licensing Act. Those violations were willful, intentional and knowingly accomplished. The record in this matter exhibits a total indifference to legal obligation on the part of both Respondents. Accordingly, the hearing examiner ORDERS as follows:

1. That individual producer license number 119584 issued to Respondent Ronnie Burns is hereby revoked.
2. The individual producer license number 100102126 issued to Respondent Colclazier Insurance Agency, Inc. is hereby revoked.
3. The costs of this matter in the sum of **\$2,250.00** are assessed against both Respondents, Burns and Agency, jointly and severally. It is ORDERED that the costs herein be paid in full within thirty (30) days of the date of this Order.


Charles F. Alden, III OBA 0187
Administrataive Law Judge