BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF OKLAHOMA

FILED

MAY 20 2010

INSURANCE COMMISSIONER
OKLAHOMA

STATE OF OKLAHOMA, ex rel.	)	
KIM HOLLAND, Insurance Commissioner,)	)	
Petitioner,	)	
	)	**Case No. 10-0398 DIS**
v.	)	
	)	
ROBERT TRAVIS MONTGOMERY, a licensed	)	
Resident Producer,	)	
Respondent.	)	

ORDER REVOKING RESPONDENT'S RESIDENT PRODUCER LICENSE

This matter comes on for hearing before Hearing Examiner Sue Wycoff on the 13th day of May, 2010, at the office of the Insurance Commissioner, 5 Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma. The hearing is held upon Respondent's request for hearing following the emergency suspension of his Resident Producer License, number 17854.

The Insurance Commissioner is represented by Robert Noll, Attorney at Law. Robert Travis Montgomery ("Respondent") is present and represents himself.

This Order is issued pursuant to the Oklahoma Insurance Code, Title 36, Sections 101 *et seq.*

The Hearing Examiner, after reviewing the pleadings, hearing and considering all the evidence presented and being fully advised, finds by clear and convincing evidence and enters the following Findings of Fact and Conclusions of Law and Order.

FINDINGS OF FACT

After hearing all the evidence presented and upon due consideration thereof, the Hearing Examiner finds by clear and convincing evidence the following facts:

1. Proper notice of this hearing has been sent certified mail, return receipt requested, to Respondent at his address of record. Because this is an emergency hearing, set at Respondent's request on short notice, Respondent has not actually received the mailed notice as of the date of the hearing, but he acknowledges being notified by telephone by Mr. Noll and Respondent waives receipt of written notice and consents to proceed.

2. On May 4, 2010, the Insurance Commissioner, Kim Holland, at the request of Robert Noll, Assistant General Counsel of the Insurance Department, filed an Administrative Order of Suspension Instanter, suspending Respondent's Resident Producer License and alleging facts that constitute a violation of the Oklahoma Insurance Code and Rules.

3. On May 6, 2010, Respondent requested a hearing on the emergency suspension.

4. At the hearing, evidence presented included that on October 21, 2009, the Insurance Department received Respondent's application for a provisional producer license, filed electronically. (State's Exhibit 1; Testimony Leah Scoles, Producer Licensing Manager).

5. On page 5 of the application the following question appears:

> Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration? "Involved" means having a license censured, suspended, revoked, canceled, terminated; or being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

6. Respondent answered "no" to that question.

7. On page 6 of the application is the following question:

> Are you currently a party to, or have you ever been found liable in, any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?

8. Respondent answered "no" to that question, as well.

9. Evidence included that on November 29, 2009, the Insurance Department received Respondent's application for a resident producer license, filed electronically. (State's Exhibit 2; Testimony Leah Scoles, Producer Licensing Manager).

10. On the resident producer application Respondent answered "no" to the same questions set out above in paragraphs #5 and #7. (State's Exhibit 2).

11. Evidence also showed that Respondent had been named as a defendant in at least thirty-two (32) civil proceedings in Oklahoma. (State's Exhibit 4). In at least six of those cases, the allegations involved breach of contract or breach of trust. (Testimony Rick Wagman, Chief, Fraud Investigation Unit; State's Ex. 4.)

12. Evidence admitted included certified copies of pleadings in three of the thirty-two cases; CJ-2009-318 (State's Exhibit 5); CJ-2008-5849 (State's Exhibit 6); and CJ-2008-6880 (State's Exhibit 7). In each case, Respondent was a defendant and in each case judgment was for the plaintiff. The first two cases involved failure to repay promissory notes. In the third case, the allegations included breach of contract, deceit, and false representation. In his Answer in the third case, Respondent admitted all the allegations of the Petition, and he signed an Agreed Journal Entry accepting full liability.

13. Evidence admitted also included certified copies of four Consent Orders for disciplinary proceedings before the Insurance Commissioner, all from December, 1997. (State's Exhibits 8, 9, 10 & 11). Only the first Consent Order was signed by Respondent. It involved an admission that Respondent had filled out a license application for someone else that included misrepresentations. Respondent testified that the misrepresentations were those of the applicant, not him, but he acknowledged that he had filled it out and that filling out an application for someone else constituted a violation of the Insurance Code and Rules. (Testimony of Respondent).

14. The other three Consent Orders were not signed by anyone; neither the Respondent nor officials at the Insurance Department. For this reason, they are of very limited evidentiary value. The Respondent did admit knowing about all three issues and admitted talking to Department officials about the issues on the telephone, but he denied receiving the last three Consent Orders and denied paying the fines included in the Orders. (Testimony of Respondent).

15. Evidence admitted also included a letter of admonishment to Respondent from the Insurance Commissioner in December, 1997. Respondent admitted receiving the letter. (Testimony of Respondent).

16. Respondent testified that he did not remember the prior disciplinary matters with the Insurance Department because they happened twelve years ago. He also testified that he did not believe that any of the lawsuits in which he was named as a defendant involved allegations of fraud or misappropriation or breach of fiduciary duty or misrepresentation and that was why he had answered no to the questions about such lawsuits. Respondent testified that he did not intend or try to deceive the Insurance Department. Respondent testified that he thought the language of the questions was misleading and or confusing.

17. Leah Scoles, Producer Licensing Manager, testified that the application form and questions were part of a uniform application form developed by the National Association of Insurance Commissioners that is in use in fifty two state and territorial jurisdictions in the United States.

18. The Hearing Examiner finds there was clear and convincing evidence presented at the hearing on this date to support the allegations against the Respondent.

19. This Order constitutes formal disciplinary action.

CONCLUSIONS OF LAW

The Hearing Examiner has jurisdiction to hear this matter pursuant to 36 Oklahoma Statutes Section 101 *et seq.* and Oklahoma Administrative Code 365:1-7-9. of the Rules promulgated by the Oklahoma Insurance Department.

The Hearing Examiner finds that Respondent is guilty of providing incorrect, misleading, incomplete or materially untrue information in his license application and of obtaining or attempting to obtain a license through misrepresentation or fraud in violation of Sections 1435.13.A.1. & 3. of Title 36, the Oklahoma Insurance Code.

The Hearing Examiner further finds that Respondent has "committed any act that is a ground for denial, suspension or revocation set forth in Section 1435.13 of [Title 36]" and has failed to "demonstrate to the Insurance Commissioner that the applicant is competent, trustworthy, financially responsible, and of good personal business reputation". 36 O.S. § 1435.7. A.2; §1435.7A.A.2; and §1435.7.C.

The Hearing Examiner concludes that this conduct is grounds to place on probation, censure, suspend, revoke or refuse to issue or renew a license issued pursuant to the Oklahoma Producer Licensing Act as provided in Section 1435.13 of the Oklahoma Insurance Code.

ORDER

IT IS THEREFORE ORDERED that Respondent's Resident Producer License, number 17854, issued by the Oklahoma Insurance Department should be and hereby is revoked. Upon receipt or refusal of a fully executed copy of this Order, Respondent shall immediately surrender his resident producer license to the Insurance Commissioner's Office.

IT IS FURTHER ORDERED that this Order constitutes disciplinary action and may be used in any subsequent hearings by the Insurance Department. In the event other misconduct is reported to the Department, this Order may be used as evidence against

Respondent to establish a pattern of behavior and for the purpose of proving additional acts of misconduct.

Date: 5/18/10

OKLAHOMA INSURANCE DEPARTMENT

By: ____________________
Sue Wycoff, Hearing Examiner

CERTIFICATE OF SERVICE

I, Robert H. Noll, hereby certify that a true and correct copy of the above and foregoing Order Revoking Respondent's Resident Producer License was mailed by certified mail with postage prepaid and return receipt requested on this 20 day of May, 2010 to:

Robert Travis Montgomery
3730 E. 82nd Street
Tulsa, OK 74137

CERTIFIED MAIL NO. 7006 0810 0002 6164 0443

Notification was sent to:

NAIC/RIRS

A copy was mailed to:

All appointing insurers

A copy was delivered to:

Leah Scoles
Agents Licensing Division

Rick Wagnon
Investigations/Anti-Fraud Division

Robert Noll

Robert Noll, OBA # 18974
Assistant General Counsel