

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

**FILED**

**JUN 20 2014**

**INSURANCE COMMISSIONER  
OKLAHOMA**

STATE OF OKLAHOMA, ex rel. JOHN D. DOAK, Insurance Commissioner,

Petitioner,

v.

GERALD RUSSELL PENRY, a licensed insurance producer,

Respondent.

Case No. 13-0476-DIS

**FINAL ADMINISTRATIVE ORDER**

This matter is a disciplinary proceeding under the Oklahoma Producer Licensing Act. 36 O.S. §§ 1435.1 et seq. The Oklahoma Insurance Department ("OID") issued an Administrative Order of Suspension Instante (Case No. 13-0476) on February 6, 2014 alleging that Gerald Russell Penry ("Respondent") violated several statutory provisions of the Oklahoma Producer Licensing Act.

Respondent requested an administrative hearing and the hearing was held before the undersigned Hearing Examiner on May 14, 2014. Petitioner appeared by counsel Barron B. Brown. Respondent appeared by himself without counsel. Witnesses were sworn and testified, exhibits were presented and arguments heard.

**JURISDICTION**

1. John D. Doak is the Insurance Commissioner of the State of Oklahoma and is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq.

2. Respondent is a licensed by the State of Oklahoma as a resident insurance producer holding license number 81179. His address of record with the OID is 216 S. Ranchwood Manor Drive, Oklahoma City, Oklahoma 73139-8922.

3. The Insurance Commissioner may place on probation, censure, suspend, revoke or refuse to issue or renew a license issued pursuant to the Oklahoma Producer Licensing Act and/or may levy a fine up to \$1,000.00 for each occurrence of a violation of the Oklahoma Insurance Code, 36 O.S. § 1435.13(A) and (D).

### **FINDINGS OF FACT**

1. The Anti-Fraud Division of the OID received a complaint from Bryan Miles with The Ross Group ("TRG"), a general contractor in Tulsa, Oklahoma, on October 11, 2012. Mr. Miles's report involved payment and performance bonds issued to two subcontractors by The Metro Agency ("TMA"), a company owned by Respondent and a now-deceased business partner, Robert Nicholson ("Nicholson"). One of the subcontractors, Concrete Coring Company ("CCC") of Newcastle, Oklahoma, paid TMA \$36,452.64 in the form of a check to secure its bond. The other subcontractor, BFF Waterproofing ("BFF") of Harrah, Oklahoma, paid TMA \$23,966.65 in the form of a check to secure its bond. Both checks were deposited into the business account of TMA at J.P.Morgan Chase.

2. Mr. Miles stated that TRG had contacted the surety, American Contractors Indemnity Company ("ACIC"), to verify the bonds issued by TMA and TRG was told that there was no record of the bond numbers and that the authorized signatures on the bond documents were not recognized. Both of the bond documents bear the signature of Gerald R. Penry and the Acknowledgment of Surety have the typewritten name "Gerald Russell Penry." The bonds and power of attorney ("POA") documents for both the CCC bond and the BFF bond were each

stamped with the seal of ACIC. The POA and Acknowledgment of Surety for BFF were signed and notarized in the name of the now-deceased Nicholson, Respondent's business partner. The Acknowledgment of Surety for CCC was signed and notarized in the name of Nicholson but the POA is only signed in that name and bears no notary seal. The POAs for both sets of bond documents (i.e. for both CCC and BFF) have the signed and typed name Paul T. Bruflat and indicate that he is a senior vice-president of ACIC.

3. The Anti-Fraud Division of the OID received a second complaint from ACIC alleging fraud against TMA on November 6, 2012. Within this complaint, ACIC stated that Respondent was not appointed with ACIC

4. The Anti-Fraud Division of the OID received a third complaint from CNA Insurance Company ("CNA") also alleging fraud against TMA on December 21, 2012. Within that complaint, CNA stated that Paul Bruflat is a senior vice-president of CNA, not ACIC, and that his signature would never appear on documents from, or appearing to be from, ACIC.

5. Both the ACIC and CNA complaints allege that the bond documents issued by TMA were fraudulent and that the authorized signatures on the bond documents themselves were forged.

6. Respondent was interviewed by Anti-Fraud Division Investigator Rick Koch ("Koch") on January 29, 2013 at the OID's Oklahoma City office.

7. In his interview with Koch, Respondent stated that he had initially told BFF and CCC that he couldn't help them with getting a bond. Respondent then stated that Nicholson told him that "he could get it done" and that Respondent then told Nicholson to "get it done." Thereafter, Respondent stated that Nicholson told him that he had gotten bonds for both BFF and CCC but told Respondent "Don't ask me how I did it." Respondent told Koch the following: "I

assumed he had fudged on the financials.” Respondent then acknowledged that he should have questioned Nicholson at the time but he didn’t.

8. Continuing with the interview, Respondent went on to admit that at some point in time he became aware that the bonds issued to both CCC and BFF were not legitimate. Eventually, Respondent told Koch that Nicholson “confessed to [him]” that the bonds were “no good.” More specifically, Respondent stated that Nicholson told him “I thought they’d get the work done and that nobody would ever know” that the bonds were fraudulent. Thereafter, Respondent stated that, even though he was aware that the bonds were fraudulent, he did nothing and allowed both CCC and BFF to proceed without informing TRG, the police or the OID. Respondent acknowledged that the training he received to obtain his insurance producer license required him to report fraud and/or suspected fraud.

9. Ultimately, Respondent was asked to view the bond documents for both CCC and BFF and he stated to Koch that “Cleary [the bond documents are] fabricated” and “I’m wrong for letting it happen.” Respondent also stated that “Red flags should have gone up when [Nicholson] told me ‘Just don’t ask how I got it done.’” Respondent offered to make restitution to both BFF and CCC to make “injured parties whole.”

### **CONCLUSIONS OF LAW**

1. Respondent violated 36 O.S. § 1435.13(A)(4); improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.

2. Respondent violated 36 O.S. § 1435.13(A)(7); having admitted or been found to have committed any insurance unfair trade practice or fraud.

3. Respondent violated 36 O.S. § 1435.13(A)(8); using fraudulent, coercive or dishonest practices and by demonstrating incompetence, untrustworthiness and financial irresponsibility in the conduct of business in this state.

4. Respondent violated 36 O.S. § 1435.13(A)(10); forging another's name to an application for insurance or to any document related to an insurance transaction.

**ORDER**

**IT IS THEREFORE ORDERED THAT RESPONDENT'S RESIDENT INSURANCE PRODUCER LICENSE IS HEREBY REVOKED, THE TWO THOUSAND DOLLAR FINE (\$2,000.00) INITIALLY LEVIED IN ADMINISTRATIVE ORDER OF SUSPENSION INSTANTER CASE NO. 13-0476 IS IMPOSED AND RESPONDENT IS FURTHER ORDERED TO PAY THE COSTS OF THIS PROCEEDING IN THE AMOUNT OF ONE HUNDRED AND EIGHTY-SEVEN DOLLARS (\$187.00).**

Done this 14<sup>th</sup> day of May, 2014.



  
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JOHN D. MILLER  
INDEPENDENT HEARING EXAMINER  
OKLAHOMA INSURANCE DEPARTMENT



**CERTIFICATE OF MAILING**

I, Barron B. Brown, hereby certify that a true and correct copy of the above and foregoing Final Administrative Order was mailed by via certified mail with postage prepaid and return receipt requested on this 20<sup>th</sup> day of June 2014 to:

Gerald Russell Penry  
216 S. Ranchwood Manor Drive  
Oklahoma City, OK 73139-8922

**CERTIFIED MAIL NO:**


and that notification was sent to:

NAIC/RIRS

and a copy was delivered to:

Licensing Division

Anti-Fraud Division

  
Barron B. Brown  
Assistant General Counsel

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**sms/13-0476-DIS/Fin Adm Ord**

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