BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF OKLAHOMA

FILED
JAN 18 2019
INSURANCE COMMISSIONER OKLAHOMA

STATE OF OKLAHOMA, ex rel. GLEN MULREADY, Insurance Commissioner, Petitioner, v. KEY INSURANCE COMPANY, a nonresident insurance company in the State of Oklahoma, and ORIANIZ ODETH BYERS, a nonresident formerly licensed adjuster in the State of Oklahoma, Respondents.	)	Case No. 18-0903-DIS

CONDITIONAL ADMINISTRATIVE ORDER
<u>AND NOTICE OF RIGHT TO BE HEARD</u>

COMES NOW the State of Oklahoma, ex rel. Glen Mulready, Insurance Commissioner, by and through his attorney, Teresa L. Green, and alleges and states as follows:

<u>JURISDICTION</u>

1. Glen Mulready 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.*, including Oklahoma Adjusters Licensing Act, *36 O.S. §§ 6201 et seq*.

2. Key Insurance Company ("Respondent Insurer") is a nonresident insurance company in the State of Oklahoma. Its address of record is 8595 College Blvd., Overland Park, KS 66210

3. Orianiz Odeth Byers ("Respondent Byers") is a nonresident formerly licensed adjuster in the State of Oklahoma, license number 40050987. Her address of record is 8595 College Blvd. Ste 200, Overland Park, KS 66210-2617.

4. 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 violation of the Oklahoma Insurance Adjuster Licensing Act, *36 O.S. § 6220(A) and (B).*

FINDINGS OF FACT

5. On or about October 8, 2018, Oklahoma Insurance Department ("OID") received a request for the Consumer Assistance Division with regard to Respondent Insurer's claim KIKC111183 (the "Claim").

6. Based on the documentation provided by Respondent Insurer, OID identified Respondent Byers as the adjuster in the Claim.

7. Respondent Byers' adjuster license expired on March 31, 2016.

8. On or about April 10, 2018, Respondent Byers started employment with Respondent Insurer.

9. As of December 6, 2018, Respondent Byers was no longer employed by Respondent Insurer.

10. During her employment with Respondent Insurer, Respondent Byers performed activities on eighty-eight (88) Oklahoma claim files.

11. Respondent Insurer asserts that "[t]he extent of [Respondent Byers'] involvement on any of these claims may or may not have risen to the level of performing as an 'adjuster' based on our understanding of the licensing requirements for Oklahoma."

12. Respondent Insurer admits "Key failed to ensure that Ms. Byers completed the process to apply for and obtain her Oklahoma adjuster license."

13. Respondent Insurer's File Activity Report for the Claim shows "Orianiz Byers" performed all activities in the Claim, including taking statements, creating reserves, coverage evaluation, closing reserve, requesting appraisals, and liability evaluation.

14. Pursuant to *36 O.S. § 6202(3)*, adjusting includes "acts in this state for an insurer, and that investigates claims, adjusts losses, negotiates claim settlements, or performs incidental duties arising pursuant to the provisions of insurance contracts on behalf of an insurer…."

15. Pursuant to *36 O.S. § 6216(B)*, an insurer shall not knowingly refer any claim of loss for adjustment in Oklahoma to any person purporting to be or acting as an adjuster unless such a person is currently licensed as an adjuster.

16. Prior to referring any claim of loss to an adjuster, the insurer shall ascertain whether or not the adjuster is currently licensed. *36 O.S. § 6216(C).*

17. Pursuant to *36 O.S. § 6220(F)*, it shall be unlawful for any person to act as an adjuster without first obtaining a license.

18. Pursuant to *36 O.S. § 6220(B)*, any person violating the provisions of the Insurance Adjusters Licensing Act may be subject to a civil fine of up to $1,000.00 for each violation.

CONCLUSIONS OF LAW

19. Respondent Byers violated *36 O.S. § 6220(F)* for failing to obtain an adjuster license before adjusting claims of loss in the State of Oklahoma by adjusting the Claim without an active adjuster license.

20. Respondent Insurer violated *36 O.S. § 6216(C)* for knowingly referring claims of loss for adjustment in Oklahoma to a person acting as an adjuster but not currently licensed as an adjuster in Oklahoma by referring the Claim to Respondent Byers even though Respondent Insurer admittedly did not confirm Respondent Byers was licensed to adjust in Oklahoma and permitting her to adjust the Claim including creating reserves, evaluating coverage, closing reserves, requesting appraisals and evaluating liability.

21. Respondent Insurer violated *36 O.S. § 6216(B)* for not ascertaining whether or not the adjuster was licensed by failing to determine whether Respondent Byers obtained her license during employment and referring claims in Oklahoma to Respondent Byers to adjust the same.

22. Pursuant to *36 O.S. § 6220(B)*, Respondents' violations of Oklahoma Adjusters Licensing Act are sufficient cause for the Insurance Commissioner to levy a civil penalty on Respondents.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Insurance Commissioner that Respondents are **each** **FINED** in the amount of **TWO HUNDRED FIFTY DOLLARS ($250.00)** for the violations of *36 O.S. §§ 6220(B), 6220(F), 6216(B), and 6216(C)*. **The Fine is to be paid within thirty (30) days of receipt of this Order.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Insurance Commissioner that this Order is a Conditional Order. Unless the Respondents request a hearing with respect to the Findings of Fact set forth above within thirty (30) days of the date of mailing of this Order, this Order and the penalties set forth above will become a Final Order on the thirty-first (31st) day following the date of mailing this Order. A request for hearing should be in writing addressed to Teresa L. Green, Oklahoma Insurance Department, Legal Division, 3625

NW 56th Street, Suite 100 Oklahoma City, Oklahoma 73112. A request for hearing must state the grounds for the request to set aside or modify this Order.

Any such hearing will be conducted according to the procedures for contested cases under the Insurance Code and *75 O.S. § 250 et seq*. If the Respondents serve a timely request for hearing on the Oklahoma Insurance Department, then this Conditional Order will act as notice of the matters to be reviewed at the hearing, and the Findings of Fact, Conclusions of Law, and penalties imposed in this Conditional Order will be considered withdrawn, pending final resolution at the hearing.

WITNESS My Hand and Official Seal this 18th day of January, 2019.

GLEN MULREADY
INSURANCE COMMISSIONER
STATE OF OKLAHOMA

Teresa L. Green, OBA #32897
Assistant General Counsel
3625 NW 56th Street, Suite 100
Oklahoma City, OK 73112
Telephone: (405) 521-4063
Facsimile: (405) 522-0125

CERTIFICATE OF MAILING

I, Teresa L. Green, hereby certify that a true and correct copy of the above and foregoing *Conditional Administrative Order and Notice of Right to be Heard* was sent by certified mail with postage prepaid and return receipt requested on this 10th day of January 2019 to:

Key Insurance Company
8595 College Blvd.
Overland Park, KS 66210

CERTIFIED MAIL NO. 9214 8902 0982 7500 0167 57

Orianiz Odeth Byers
8595 College Blvd. Ste. 200
Overland Park, KS 66210-2617

CERTIFIED MAIL NO. 9214 8902 0982 7500 0167 64

and a copy was delivered to:

Consumer Assistance Division

Teresa L. Green