BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF OKLAHOMA

FILED
MAR 14 2024
INSURANCE COMMISSIONER
OKLAHOMA

STATE OF OKLAHOMA, ex rel. **GLEN MULREADY**, Insurance Commissioner, Petitioner, v. **JAY MCMENAMY,** **a licensed resident producer,** Respondent.	)	Case No. 23-0780-DIS

CONDITIONAL ADMINISTRATIVE ORDER
AND NOTICE OF RIGHT TO BE HEARD

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

JURISDICTION

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. §§ 101–7402, the Oklahoma Producer Licensing Act, 36. O.S. §§ 1435.1–1435.41 and the Unfair Claims Settlement Practices Act, 36 O.S. §§ 1250.1–1250.15.

2. Jay McMenamy ("Respondent") is an Oklahoma producer holding license number 139989. Respondent's mailing address of record is P.O. Box 734, Jenks, OK 74037-0734.

3. The Insurance Commissioner has jurisdiction over the subject matter raised in this dispute and may issue penalties pursuant to 36 O.S. §1435.13(A) and (D).

4. Pursuant to 36 O.S. § 1435.13(D), in addition to or in lieu of any applicable denial, probation, censure, suspension or revocation of a license, the Insurance Commissioner may levy a fine up to $1,000.00 for each violation of the Oklahoma Producer Licensing Act.

5. If Respondent requests a hearing in writing in this matter, pursuant to OAC 365:1-7-1, the Insurance Commissioner, pursuant to 36 O.S. §319, will appoint an independent hearing examiner who shall sit as a quasi-judicial officer and preside over the hearing requested by Respondent.

6. The Insurance Commissioner, pursuant to OAC 365:1-7-5, upon written request reasonably made by a person affected by the hearing and at such person's expense, shall cause a full stenographic record of the proceedings to be made by a competent court reporter.

FINDINGS OF FACT

7. On or about November 9, 2023, the Oklahoma Insurance Department Consumer Affairs Division (OID) received a complaint that Respondent was acting as an agent of GlobalHealth and listed GlobalHealth on the back of his business cards (OID File Number 119246).

8. On or about November 14, 2023, OID emailed a letter and the complaint to Respondent to requesting information and to seek Respondent's position on the complaint. The letter was emailed to jmcmenamy@humana.com, the email address on file in the National Association of Insurance Commissioners (NAIC) State Based Systems (SBS) database and the email requested a response within twenty (20) days of receipt. The email letter was returned to OID as "undeliverable."

9. On or about December 5, 2023, OID emailed a second letter to Respondent that OID had not received a response to the November 14, 2023 inquiry and that failure to respond within twenty (20) calendar days of receipt of the inquiry constitutes a violation of 36 O.S. § 1250.4. The letter was emailed to jmcmenamy@humana.com, the email address on file in the National Association of

Insurance Commissioners (NAIC) State Based Systems (SBS) database. The letter was returned as "Undeliverable."

10. On or about December 6, 2023, OID called Respondent and left a message stating Respondent was in violation of not responding to the Department's inquiries that had been emailed to Respondent. The voicemail stated that Respondent is a producer of all major carriers.

11. On or about December 6, 2023, Respondent returned OID's phone call and Respondent indicated that he did receive the email on December 5, 2023, but not the one sent on November 14, 2023, and asked what he needed to do to comply with OID's inquiry.

12. On or about December 6, 2023 OID explained that Respondent needed to submit a formal response addressing the concerns listed in the complaint. OID shared that the complainant was a representative of GlobalHealth and could verify that Respondent was not appointed with GlobalHealth.

13. On or about December 7, 2023, Respondent provided an emailed copy of Respondent's business card to OID, which listed GlobalHealth as one of the companies listed.

14. On or about December 8, 2023, OID emailed Respondent saying OID still needed a formal response.

15. In an email to OID, Respondent explained that the business cards were a "printing error."

16. On or about December 8, 2023, OID received Respondent's formal response.

17. Respondent's formal response indicated that Respondent had the business cards listing GlobalHealth printed in late September, thinking his new brokerage firm would be appointed with GlobalHealth and in October, after not having been appointed with GlobalHealth, Respondent had new business cards made removing GlobalHealth's name.

18. Respondent indicated in his formal response that his business cards listing GlobalHealth were "in circulation for less than 2 weeks."

19. Respondent indicated in his formal response that he "expect[s] to be appointed with them (GlobalHealth) in the future."

20. As of the date of this Conditional Order, Respondent has not been appointed as an agent with GlobalHealth.

21. Pursuant to 36 O.S. § 1250.4 (B) "any person subject to the jurisdiction of the Commissioner, upon receipt of any inquiry from the Commissioner, shall, within twenty (20) calendar days from the date of the receipt of the inquiry, furnish the Commissioner with an adequate response to the inquiry."

22. Pursuant to 36 O.S. § 1435.15(A) "an insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer."

23. Pursuant to 36 O.S. § 1203, no person shall engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

24. 36 O.S. § 1204 defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance as:

> . . .
> 2. . . . "Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed in the public . . . in the form of a notice, circular, pamphlet, . . . or in any other way an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business which is untrue, deceptive or misleading. . . . No person that is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer."

25. Pursuant to 36 O.S. § 1435.13 (A)(2)(7)(8) and (D):

> A. 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 or may levy a civil penalty in accordance with subsection D of this section or any combination of actions, for any one or more of the following causes:

2. Violating any insurance laws, or regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance Commissioner;

7. Having admitted or been found to have committed any insurance unfair trade practice or fraud;

8. Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

D. In addition to or in lieu of any applicable denial, probation, censure, suspension or revocation of a license, a person may, after opportunity for hearing, be subjected to a civil fine of not more than One Thousand Dollars ($1,000.00) for each occurrence. The said penalty may be enforced in the same manner in which civil judgements may be enforced.

CONCLUSIONS OF LAW

26. Respondent violated 36 O.S. §§ 1250.4(B), 1435.15(A), 1203, 1204(2), 1435.13(A)(2)(7)(15) & (D) by failing to respond within twenty calendar days to an inquiry from OIC, for acting as an agent of insurer when Respondent was not appointed agent of said insurer, and for making, publishing, disseminating, circulating or placing before the public false information and advertising in the form of a business card misrepresenting himself to be an agent of said insurer which was untrue and demonstrating deceptive, unfair trade and dishonest practices in the conduct of business in this state.

ORDER

IT IS THEREFORE ORDERED, that Respondent is hereby **CENSURED** and **FINED SEVEN HUNDRED FIFTY DOLLARS ($750.00).** The fine shall be paid within thirty (30) days of the date of this Conditional Administrative Order and made payable to the Oklahoma Insurance Department. The fine shall be sent to the Oklahoma Insurance Department located at 400 NE 50th Street, Oklahoma City, Oklahoma, 73105. Failure to comply with a proper order of the Commissioner will result in further administrative action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Insurance Commissioner that this Order is a Conditional Order. Unless the Respondent requests a hearing with respect to the Findings of Fact set forth above within thirty (30) days of the date of mailing of this Order, 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 Julie Reding, Oklahoma Insurance Department, Legal Division, 400 NE 50th St. Oklahoma City, Oklahoma 73105. The request for hearing must state the grounds for the request to set aside or modify the Order and must be served on the Oklahoma Insurance Department within the 30 days allotted. The proceedings on such requested hearing will be conducted in accordance with the Oklahoma Insurance Code, 36 O.S. §§ 101 *et seq.*, and the Oklahoma Administrative Procedures Act, *75 O.S.* §§ 250-324. If Respondent serves a timely request for hearing on the Oklahoma Insurance Department, this Conditional Order shall 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 shall be considered withdrawn, pending final resolution at the hearing.

WITNESS My Hand and Official Seal this 14th day of March 2024

GLEN MULREADY
INSURANCE COMMISSIONER
STATE OF OKLAHOMA

Julie Reding

Julie Reding, OBA No.15522
Assistant General Counsel
400 N.E. 50th St.
Oklahoma City, OK 73105

CERTIFICATE OF MAILING

I, Julie Reding, 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 email and certified mail with postage prepaid and return receipt requested on this 14th day of March 2024 to:

Jay McMenamy
P.O. Box 734
Jenks, OK 74037-0734
Email: [redacted]

CERTIFIED MAIL NO:
9214 8902 0982 7500 0609 34

and

that a copy was delivered to:

Consumer Assistance and

Licensing Division

Julie Reding
OBA No.15522