

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED

FEB 21 2024

STATE OF OKLAHOMA, ex rel. GLEN)
MULREADY, Insurance Commissioner,)
)
Petitioner,)
v.)
)
MISTY KISSELBURG,)
a resident producer,)
)
Respondent.)

INSURANCE COMMISSIONER
OKLAHOMA

Case No. 23-0139-DIS

FINAL ADMINISTRATIVE ORDER

This matter is a disciplinary proceeding under the Oklahoma Producer Licensing Act. 36 O.S. §§ 1435.1 et seq. On February 7, 2024, a show cause hearing was held at the Oklahoma Insurance Department (“OID”) on OID’s Notice of Hearing and Order to Show Cause (“Notice”), filed November 29, 2023. The hearing was held at the offices of OID before Independent Hearing Examiner Stephan Mathis. Present at the hearing were Antuanya “Bo” DeBose, Assistant General Counsel for OID. Respondent Misty Kisselburg (“Respondent”) appeared pro se. Witnesses were sworn and testified, exhibits were admitted and argument of the parties heard.

FINDINGS OF FACT

1. That OID has jurisdiction over the subject matter of this action pursuant to 36 O.S. §§ 101-7401, including the Oklahoma Producer Licensing Act, 36 O.S. §1435.1 et seq..
2. That the Insurance Commissioner has the authority to render an Order concerning the above styled matter and has lawfully appointed Independent Hearing Examiner, Stephan Mathis, who shall sit as a quasi-judicial officer pursuant to 36 O.S. § 319.

3. Misty Kisselburg (“Respondent”) holding license number 3000203610, is licensed by the State of Oklahoma as a resident insurance producer as defined and required by 36 O.S. § 1435.2(7). Her address of record is P.O. Box 3529, Fort Smith, Arkansas 72913-3529.

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 36 O.S. § 1435.13(A) and (D).

5. Petitioner afforded Respondent an opportunity for hearing by sending the Notice by certified mail return receipt requested and by electronic mail on November 29, 2023. The Notice stated the matters asserted, and stated the time, place and nature of the hearing, cited legal authority and jurisdiction, and referred to particular sections of the statutes involved.

6. The hearing was recorded electronically by an employee of the Oklahoma Insurance Department.

7. The following exhibits were introduced and admitted:

- a) Petitioner’s Exhibit A: Termination Letter from Farmers for Misty Kisselburg
- b) Petitioner’s Exhibit B: Misty Kisselburg’s Signed Statement to Farmers
- c) Petitioner’s Exhibit C: Farmers’ Chart
- d) Petitioner’s Exhibit D: Email from Farmers to Misty Kisselburg

8. The following witnesses were sworn and testified under oath:

- a) Matthew Carr, Farmers Investigator
- b) Misty Kisselburg, Respondent

9. Farmers received a complaint from consumer Larry Garner who stated he made two (2) check payments to Respondent that were not credited to his policy. Farmers then initiated an investigation into Respondent. (See Testimony of Matthew Carr).

10. When producers choose to use the Farmers' mobile application to make customer premium payments, producers are required to use the application to deposit all customer cash collections into a premium trust account, then remit a check from that account to Farmers. That check, along with any customer checks are then deposited via the application by logging in, entering deposit amounts and taking photos of the checks. (See Testimony of Matthew Carr).

11. During their investigation, Farmers found Respondent deposited at least seven (7) customer premium check payments and did not timely remit those payments to Farmers until up to five (5) months later. Further, Farmers alleges Respondent completely failed to remit at least four (4) of those customer premium check payments. (See Testimony of Matthew Carr, Petitioner's Exhibit A and Petitioner's Exhibit C).

- a) Farmers was notified by policyholder Larry Garner that two (2) check payments made to Respondent were not properly credited to his auto policy resulting in a policy cancellation. Farmers determined that one of the policyholder's checks was deposited to Respondent's premium trust account and the other to her general account. Neither check was timely remitted to Farmers. Approximately four (4) months later, Farmers received two (2) EFT payments from Respondent as reimbursement for Larry Garner's checks.
- b) Payments for policyholder Ruth Anderson's auto and home policies were reversed because Respondent never deposited the funds in Farmers' account. Respondent later processed EFT payments to Farmers, showing Respondent as the payor, to bring Ruth Anderson's account current.
- c) Policyholder Vue Chang paid Respondent in cash, but the money was never deposited to Farmers' bank account.

- d) Respondent received a check from policyholder Sam Bolin. The check was deposited into Respondent's premium trust account but was never remitted to Farmers, therefore the payment was reversed. Respondent deposited a check to Farmer's account to reimburse the reversed payment.
 - e) Respondent received a check payment from policyholder Kenneth Williams. There is no evidence showing the money was deposited into Respondent's accounts. No deposit was made to Farmer's account and the payment was reversed. Respondent deposited a check to Farmer's account to reimburse the reversed payment.
 - f) Respondent received a check payment from policyholder Bailey Curry. The check was deposited into Respondent's premium trust account. However, the payment was not received by Farmers and was reversed. Respondent deposited a check to Farmer's account to reimburse the reversed payment.
 - g) Respondent received a check payment from policyholder Ellen Hutchinson. There is no evidence showing Respondent deposited the check into any of her accounts. No deposit was made to Farmers and the payment was reversed. There is no evidence showing this payment was reimbursed.
 - h) Respondent received a check payment from policyholder Joseph Everett. There is no evidence showing Respondent deposited the check to any of her accounts. No deposit was made to Farmers and the payment was reversed. There is no evidence showing this payment was reimbursed.
12. From Respondent's bank statements, Farmers found several instances where Respondent comingled business operating funds with customer premium payments. (See Testimony of Matthew Carr).

13. Farmers interviewed Respondent on or about February 9, 2022. Respondent stated issues with Farmers' application and her premium trust account led to her depositing all premium monies into her general account. Respondent provided bank statements for her trust and general accounts for review. Farmers obtained a signed statement from Respondent after the interview concluded. (See Testimony of Matthew Carr, Testimony of Misty Kisselburg, and Petitioner's Exhibit B).

14. Respondent's appointment with Farmers was terminated on or about May 10, 2022. (See Petitioner's Exhibit A).

15. Pursuant to the provisions of 36 O.S. §1435.13 (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 for:

- a) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;
- b) Violating any insurance laws, or violating any regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance Commissioner;
- c) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

16. 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, a person may, after opportunity for hearing, be subject to a civil fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence. Said penalty may be enforced in the same manner in which civil judgments may be enforced.

17. Pursuant to 36 O.S. §1435.13a(A), all premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by the insurance producer licensee in a fiduciary capacity.

a) All premiums received less commissions, if authorized, shall be remitted by the insurance producer licensee to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five (45) days after receipt.

b) All returned premiums received from insurers or credited by insurers to the account of the insurance producer licensee shall be remitted to or credited to the account of the licensee entitled thereto within thirty (30) days after receipt or credit.

18. Pursuant to 36 O.S. §1435.13a(C), no insurance producer licensee under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds with the personal funds of the insurance producer licensee or with any other funds except those directly connected with the producer licensee's insurance business.

CONCLUSIONS OF LAW

19. That OID has jurisdiction over this matter and Respondent pursuant to 36 O.S. § 1435.1 et seq.

20. That Respondent is licensed by the OID as a resident producer pursuant to 36 O.S. § 1435.1 et seq.

21. That Respondent was provided adequate notice and a hearing pertaining to the Notice of Hearing and Order to Show Cause filed on November 29, 2023, in accordance with the Oklahoma Insurance Code and the Oklahoma Administrative Procedures Act.

22. Based upon the above provided findings of fact there is clear and convincing evidence to find that Respondent violated 36 O.S. §1435.13(A)(8) and 36 O.S. § 1435.13(A)(4) by improperly withholding, misappropriating, comingling and converting at least seven (7) customer premium check payments.

23. Based upon the above provided findings of fact there is clear and convincing evidence to find that Respondent violated 36 O.S. §1435.13a(A) and by failing to treat premiums belonging to insurers in a fiduciary capacity.

24. 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. 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, also be subject to a civil fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence. Said penalty may be enforced in the same manner in which civil judgments may be enforced.

ORDER

IT IS THEREFORE ORDERED that Respondent Misty Kisselburg's resident insurance producer license number 3000203610 is hereby **SUSPENDED** for a period of twelve (12) months, to run from February 7, 2024 until February 7, 2025. Respondent is ordered to pay the costs of the proceeding in the amount of One Hundred Fifty Dollars (**\$150.00**) and is fined Two Thousand Dollars (**\$2,000.00**). The Insurance Commissioner shall notify all appointing insurers of the suspension and shall notify the Central Office the National Association of Insurance Commissioners of Respondent's suspension. The fine and costs shall be submitted to the Oklahoma Insurance Department within thirty (30) days of the date of this Order. The fine shall be made payable to the Oklahoma Insurance Department and 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.

Done this 14th day of February, 2024.



Handwritten signature of Stephan Mathis in blue ink.

Stephan Mathis
INDEPENDENT HEARING EXAMINER
OKLAHOMA INSURANCE DEPARTMENT

CERTIFICATE OF MAILING

I, Antuanya "Bo" DeBose, hereby certify that a true and correct copy of the above and foregoing *Order* was mailed by first class U.S. Mail and by certified mail with postage prepaid and return receipt requested on this 21st day of February, 2024 to:

Misty Kisselburg
P.O. Box 3529
Fort Smith, Arkansas 72913-3529
mkisselburg@farmersagent.com

CERTIFIED MAIL
9589 0710 5270 0679 4454 20

Misty Kisselburg
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFIED MAIL
9589 0710 5270 0679 4454 37

and that a copy was delivered to: Licensing and Anti-Fraud Division

Handwritten signature of Antuanya "Bo" DeBose in blue ink.

Antuanya "Bo" DeBose