

BEFORE THE INSURANCE COMMISSIONER FOR THE
STATE OF OKLAHOMA

FILED
SEP 29 2023
INSURANCE COMMISSIONER
OKLAHOMA

STATE OF OKLAHOMA, *ex rel.* GLEN)
MULREADY, *Insurance Commissioner,*)
)
Petitioner,)
)
vs.)
)
AVITUS, INC., *a nonresident registered*)
professional employer organization,)
)
Respondent.)

Case No.: 23-0498-DIS

CONDITIONAL ADMINISTRATIVE ORDER
AND NOTICE OF RIGHT TO BE HEARD

Petitioner, the State of Oklahoma, *ex rel.* Glen Mulready, Insurance Commissioner (“Commissioner”), for this action against Respondent Avitus, Inc. (“Respondent”), alleges and states as follows:

JURISDICTION

1. Respondent has applied to renewal of its registration as a nonresident professional employer organization (“PEO”) in the State of Oklahoma.
2. The Commissioner is charged with enforcing all provisions of the Oklahoma Professional Employer Organization Recognition and Registration Act (the “Act”), OKLA. STAT. tit. 40, §§ 600.1, *et seq.*, and has jurisdiction over this matter. 40 O.S. § 600.9; OAC 365:1-1-3.

RIGHT TO HEARING

3. Respondent may request that a hearing be held regarding the allegations asserted in this Conditional Order. 40 O.S. § 600.9; O.A.C. § 365:1-7-1(b).

4. A request for a hearing must be in writing, whether by mail or electronic mail, must state the specific grounds to be relied upon as a basis for setting aside or modifying this Conditional Order, and should be addressed to Seth D. Coldiron, Assistant General Counsel, Oklahoma Insurance Department, Legal Division, 400 NE 50th Street, Oklahoma City, Oklahoma 73105, or, electronically, seth.coldiron@oid.ok.gov. OAC § 365:1-7-1(a).

5. All hearings are open to the public, and Respondent has a right to appear in person and with counsel to present evidence, examine witnesses, and make oral arguments. 75 O.S. §§ 309(C) & 310(3) & (5); OAC § 365:1-7-4(a)-(b).

6. If a hearing is requested, a person affected thereby may, at his or her expense, request a stenographic record of the proceeding be made by a competent court reporter. 75 O.S. § 309(G); OAC § 365-1-7-5(a).

7. The proceedings shall be conducted in accordance with the Oklahoma Administrative Procedures Act, OKLA. STAT. tit. 75, §§ 250 *et seq.*, and the promulgated rules pertaining to the Administrative Operations of the Oklahoma Insurance Department, OKLA. ADMIN. CODE, §§ 365:1-7-1 *et seq.* 75 O.S. § 309 & 310; OAC §§ 365:1-7-1 – 365:1-7-9.

FINDINGS OF FACT

8. On October 12, 2022, Respondent applied for renewal of its nonresident PEO registration.

9. On October 26, 2022, the Oklahoma Insurance Department's Regulated Industry Services Division ("RIS") informed Respondent that it was subject to a hold imposed by the Oklahoma Tax Commission for unpaid corporate franchise taxes.

10. By separate correspondence on December 2, 2022, RIS reminded Respondent that its nonresident PEO registration numbered 515721043 would expire on December 16, 2022, unless the tax issue was resolved.

11. On December 16, 2022, Respondent's nonresident PEO registration numbered 515721043 expired.

12. Nearly six (6) months later, on June 26, 2023, Respondent applied to renew nonresident PEO registration numbered 515721043.

13. With its application, Respondent submitted an Activity Attestation affidavit indicating that it had transacted insurance business during the period in which it was not registered.

14. From October 31, 2022 to February 14, 2023, Respondent transacted Fifty-nine Thousand Seven Hundred Sixty Dollars and Fifty-six Cents (\$59,760.56) of business on behalf of four (4) clients while not registered.

CONCLUSIONS OF LAW

15. Respondent violated the Act, OKLA. STAT. tit. 40, § 600.4, by providing, advertising, or holding itself out as providing professional employer services while unregistered.

16. The Commissioner may refuse to register, suspend, or revoke the registration, or impose administrative fines of not less than One-Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) if the Commissioner finds that the registrant or applicant has violated any provisions of the Act. 40 O.S. § 609.1(1); OAC 365:25-30-4.

CONDITIONAL ORDER

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Commissioner that Respondent transacted business without a registration in violation of OKLA. STAT. tit. 40, § 600.4, by providing, advertising, or holding itself out as providing professional

employer services while unregistered and a **FINE** in the amount of **TWO HUNDRED FIFTY DOLLARS (\$250.00)** is, hereby, imposed. The fine **SHALL BE PAID WITHIN THIRTY (30) DAYS** of the date of this Conditional Order. The civil fine shall be paid by money order or cashier's check made payable to the Oklahoma Insurance Department and mailed or delivered to the Oklahoma Insurance Department at 400 NE 50th Street, Oklahoma City, Oklahoma 73105. Failure to comply with a proper order of the Insurance Commissioner will result in further administrative action.

IT IS, FURTHER, ORDERED, ADJUDGED, AND DECREED by the 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 this Conditional Order, it and the penalties set forth above will become a Final Order on the thirty-first (31st) day from the date of mailing. If the Respondent timely requests a hearing, this Conditional Order shall serve 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 withdrawn, pending final resolution at the hearing.

WITNESS my hand and official seal this 29th day of September 2023.



GLEN MULREADY
INSURANCE COMMISSIONER
STATE OF OKLAHOMA



SETH D. COLDIRON (OBA No. 20041)

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*Attorney for Petitioner,
State of Okla., ex rel. Glen Mulready,
Ins. Comm'r*

CERTIFICATE OF MAILING

I, Seth D. Coldiron, hereby certify that a true and correct copy of the above and foregoing Conditional Order and Notice of Right to be Heard was mailed with postage prepaid, on September 29, 2023 to the following:

Original via Certified Mail to:

VENSURE EMPLOYER SERV.
Valerie Nielsen, Compliance Mgr.
1475 S. Prince Rd.
Chandler, AZ 85286

Copies delivered to:

Regulated Industry Service Division

**CERTIFIED MAIL NO:
7017 1070 0001 1036 9238**

Copies via Regular Mail to:

AVITUS, INC.
Willis Chrans, Pres.
175 N. 27th Street, Ste 800
Billings, MT 59101-2065

*Respondent,
Avitus, Inc., a registered nonresident
professional employer organization*



SETH D. COLDIRON
ASSISTANT GENERAL COUNSEL