

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Petitioner,)
) Case No. 12-3426PL
vs.)
)
HAMID GOODARZI,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On December 17, 2012, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

Petitioner: David J. Busch, Esquire
Department of Financial Services
Division of Legal Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0333

Respondent: Orrin R. Beilly, Esquire
Law Offices of Orrin R. Beilly
105 South Narcissus Avenue
Suite 705
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUES

The issues are whether Respondent is guilty of demonstrating a lack of fitness or trustworthiness to engage in

the business of insurance and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated April 8, 2011, Petitioner alleged that Respondent is licensed as a general lines (2-20) insurance agent. At all material times, Respondent was appointed to sell certain insurance products offered by United Automobile Insurance Company (United Auto), and he was a signatory on the Wachovia Bank account of Carol City Discount Insurance (Carol City).

Count I alleges that, on December 27, 2008, Respondent signed check number 2640 in the amount of \$2233.82 and payable to United Auto. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the name "Meo T Van," and the check was issued to pay the premium on policy number 2126792. On January 2, 2009, United Auto presented the check for deposit, but, three days later, the bank returned the check to United Auto due to insufficient funds.

Count I alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer; section 626.611(7), which prohibits any agent from demonstrating

a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count II alleges that, on December 28, 2008, Respondent signed check number 2643 in the amount of \$898.60 and payable to United Premium Finance (United Finance), an affiliate of United Auto. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Transmittal (5 apps)," and the check was issued to pay the premium on policy numbers 2127231, 2127155, 2127060, 2127232, and 2126707. On January 6, 2009, United Finance presented the check for deposit, but, the next day, the bank returned the check to United Finance due to insufficient funds.

Count II alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer;

section 626.611(7), which prohibits any agent from demonstrating a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count III alleges that, on January 6, 2009, Respondent signed check number 2650 in the amount of \$658.04 and payable to United Finance. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Transmittal (5 apps)," and the check was issued to pay the premium on policy numbers 2127558, 2127642, 2127557, 2127385, and 2127910. On January 8, 2009, United Finance presented the check for deposit, but, four days later, the bank returned the check to United Finance due to insufficient funds.

Count III alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer;

section 626.611(7), which prohibits any agent from demonstrating a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count IV alleges that, on January 5, 2009, Respondent signed check number 2648 in the amount of \$151.90 and payable to United Finance. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Joyce Jolly," and the check was issued to pay the premium on policy number 2124852. On January 8, 2009, United Finance presented the check for deposit, but, four days later, the bank returned the check to United Finance due to insufficient funds.

Count IV alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer; section 626.611(7), which prohibits any agent from demonstrating

a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count V alleges that, on January 17, 2009, Respondent signed check number 2660 in the amount of \$1788.97 and payable to United Finance. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Transmittal (6 apps)," and the check was issued to pay the premium on policy numbers 2127986, 2128057, 2128322, 2122988, 2129323, and 2127990. On January 12, 2009, United Finance presented the check for deposit, but, 10 days later, the bank returned the check to United Finance due to insufficient funds.

Count V alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer;

section 626.611(7), which prohibits any agent from demonstrating a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count VI alleges that, on January 19, 2009, Respondent signed check number 2659 in the amount of \$2197.92 and payable to United Auto. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Kanagarja Kandaswamy" and the check was issued to pay the premium on policy number 2127845. On January 22, 2009, United Auto presented the check for deposit, but, the next day, the bank returned the check to United Auto due to insufficient funds.

Count VI alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer;

section 626.611(7), which prohibits any agent from demonstrating a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count VII alleges that, on January 20, 2009, Respondent signed check number 2661 in the amount of \$713.57 and payable to United Finance. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Transmittal (5 apps)," and the check was issued to pay the premium on policy numbers 2127989, 2128810, 2128433, 2128694, and 2128056. On January 23, 2009, United Finance presented the check for deposit, but, three days later, the bank returned the check to United Finance due to insufficient funds.

Count VII alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer;

section 626.611(7), which prohibits any agent from demonstrating a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count VIII alleges that, on January 22, 2009, Respondent signed check number 2663 in the amount of \$505.61 and payable to United Finance. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Transmittal (4 apps)," and the check was issued to pay the premium on policy numbers 2129191, 2129092, 2129302, and 2129290. On January 26, 2009, United Finance presented the check for deposit, but, the next day, the bank returned the check to United Finance due to insufficient funds.

Count VIII alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer;

section 626.611(7), which prohibits any agent from demonstrating a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Count IX alleges that, on January 26, 2009, Respondent signed check number 2665 in the amount of \$176.25 and payable to United Finance. The check was drawn on a Wachovia Bank account in the name of Carol City. The memo line bore the language "Allison Johnson," and the check was issued to pay the premium on policy number 2129427. United Finance presented the check for deposit, but, on January 28, 2009, the bank returned the check to United Finance due to insufficient funds.

Count IX alleges that Respondent thus violated section 626.561(1), Florida Statutes, which provides that all premiums belonging to insurers and received by an agent shall be trust funds received by the agency in a fiduciary capacity, and the agent shall account for and pay these funds to the insurer; section 626.611(7), which prohibits any agent from demonstrating

a lack of fitness or trustworthiness to engage in the business of insurance; section 626.611(9), which prohibits any agent from exhibiting fraudulent or dishonest practices in the conduct of insurance business; section 626.611(10), which prohibits any agent from misappropriating, converting, or unlawfully withholding money of insureds and received in the conduct of insurance business; and section 626.621(2), which provides that any violation of the Insurance Code in the conduct of insurance business is a violation of law.

Respondent timely requested a formal hearing.

At the hearing, Petitioner called three witnesses and offered into evidence 29 exhibits: Petitioner Exhibits 1-29. Respondent called one witness and offered into evidence no exhibits. All exhibits were admitted except for Petitioner Exhibits 9 and 17, which were proffered. As for Petitioner Exhibit 18, all of page 59 except paragraph 1 is admitted for the truth, and pages 60-61 are not admitted for the truth, but as notice to Respondent.

The court reporter filed the transcript on January 4, 2013. Petitioner filed its proposed recommended order on February 4, 2013.

FINDINGS OF FACT

1. At all relevant times, Respondent has held a 2-20 license as a property and casualty agent. At all relevant

times, Respondent was the agent in charge of Carol City; in fact, he was the lone agent employed by the agency. At all relevant times, Respondent was the lone signatory on Carol City's Wachovia banking account described below.

2. Respondent was first issued a 2-20 license in 1993. By Consent Order dated September 25, 2006, and approved October 17, 2006, Respondent agreed to cease and desist from making excess charges for insurance and from selling ancillary products with the informed consent of the insurer, to pay an administrative fine of \$3000 and restitution of about \$1600 to four customers, and to one year of probation. This is the sole discipline imposed on Respondent's license over 20 years.

3. At all material times, Respondent was an appointed agent with United Auto. In this case, Carol City effectively remitted premiums directly to United Auto or, for customers who chose to finance their premiums, indirectly to United Auto by remitting premiums directly to United Finance, a premium-financing affiliate of United Auto.

4. As relevant to this case, the subject insurance transactions are simple. Customers of Carol City purchase insurance underwritten by United Auto. As an appointed agent of United Auto, Respondent causes United Auto to commit to coverage upon Carol City's receipt of the premium payment from the customer (and the execution of certain documents that are

irrelevant to this case). If the customer chooses not to finance the premium, the customer pays the premium to Carol City, which deposits the customer's check and issues a Carol City check in the same amount, net of commission, to United Auto. If the customer chooses to finance the premium, the customer pays the premium downpayment to Carol City, which deposits the customer's check and issues a Carol City check in the same amount, net of commission, to United Finance. United Finance then advances the full premium payment to United Auto and collects installment payments from the insured.

5. At some point, the payment process changed. United Auto and United Finance electronically swept Carol City's bank account for the payments due each company, relieving Carol City of the responsibility of issuing separate checks to each company. This change in payment processing is irrelevant to this case.

6. As detailed below, Carol City issued a number of bad checks to United Auto and United Finance. Respondent's defenses are essentially that Carol City's checks were dishonored because: 1) customers' checks to Carol City were dishonored and 2) the electronic sweeping of the Carol City account did not provide Carol City an opportunity to follow the usual procedure to avoid liability to its insurers when customers' checks to Carol City were dishonored.

7. These defenses find no support in the evidence. First, the evidentiary record includes nine handwritten Carol City checks, corresponding to the nine counts, that failed to clear when presented for payment by United Auto or United Finance. In other words, these transactions occurred before electronic sweeping was implemented, at least by United Auto and United Finance.

8. Second, at all times--both before and after the institution of the electronic-sweeping process--United Auto and United Finance maintained a procedure by which Carol City could void any transaction if the customer's premium-payment check to Carol City failed to clear. In this procedure, as provided by section 626.9201(2)(a), Florida Statutes, the insurance transaction is void ab initio, once the agent provides statutory notice to the customer whose initial premium payment has been dishonored. United Auto requires the agent to send the insurer a copy of the bad check and a copy of the certified notice letter to the customer, after which United Auto will void the policy, and the agency and agent will have no liability to United Auto or United Finance.

9. Respondent testified vaguely that he thought that he had complied with this policy-cancelation process, but clearly he had not. He produced no documentary evidence of his having ever attempted to advise United Auto or United Finance that

Carol City's customers had given Carol City bad checks. And Respondent had many months during which he might have advanced this contention, if it had been true.

10. Instead, rather than following the liability-avoidance procedure outlined above or ever advising United Auto or United Finance of dishonored customers' checks, Respondent allowed United Auto's liabilities to these customers to become fixed and allowed Carol City's liabilities toward United Auto and United Finance to remain unsatisfied. By failing to follow the statutory procedure that would have allowed United Auto to relieve itself of liability to any customers who had failed to pay their initial premium, Carol City obligated itself to pay United Auto and United Finance for this coverage that Carol City allowed its customers to obtain, even if they had not paid for it.

11. After becoming dissatisfied with Carol City's instalment remittances of the unpaid balance due from the failure of its checks to have cleared, United Auto and United Finance obtained a judgment against Carol City for an amount probably a little in excess of \$10,000. After becoming dissatisfied with Carol City's payments on this judgment, United Auto and United Finance levied on Carol City's office furnishings. After losing possession of its computers and

office furniture, Carol City or Respondent promptly satisfied the amount still due on the judgment.

12. The dishonored checks that Carol City issued to United Auto or United Finance, the amounts, the last four digits of the United Auto policies corresponding to these remittances, and the dates of the checks are:

Check No.	Amount	Policy Nos.	Date of check
2640	\$2233.82	6792	12/27/08
2643	\$ 898.60	7231 7155 7060 7232 6707	12/30/08
2650	\$ 658.04	7558 7642 7557 7385 7910	1/6/09
2648	\$ 151.90	4852	1/5/09
2660	\$1788.97	7986 8057 8322 2988 9323 7990	1/17/09
2659	\$2197.92	7845	1/19/09
2661	\$ 713.57	7989 8810 8433 8694 8056	1/20/09
2663	\$ 505.61	9191 9092	1/22/09

		9302	
		9290	
2665	\$ 176.25	9427	1/26/09
TOTAL	\$9324.68		

13. The bank records of Carol City for January and February 2009 show a large number of \$35 charges for returned checks and overdrafts, as well as a number of returned deposited items. Although it is impossible, on this record, to determine if any of these returned deposits pertain to any of the 29 policy transactions detailed in the preceding paragraph, such a finding would be irrelevant because of Respondent's above-described failure to avail himself of the available policy-cancelation procedure. Likewise, although the imposition of extraordinary \$35 charges may explain why specific Carol City checks did not clear, such a finding would also be irrelevant because it would not excuse the dishonoring of Carol City's checks to United Auto and United Finance.

14. Petitioner has proved that Respondent collected initial premiums from Carol City's customers in 29 transactions, caused United Auto to commit to insurance coverage to these customers, and either: 1) Respondent did not remit these successfully collected premiums to United Auto or United Finance or 2) when the initial premium payments by Carol City's customers were dishonored, Respondent failed to take the

necessary steps to void the committed insurance coverage and relieve United Auto, Carol City, and himself of any further liability.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction. §§ 120.569 and 120.57(1), Fla. Stat.

16. Among the various statutes that Respondent is alleged to have violated, the most pertinent is section 626.611(7), which calls for compulsory suspension or revocation for a "[d]emonstrated lack of fitness or trustworthiness to engage in the business of insurance."

17. Petitioner must prove the material allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996).

18. Petitioner has proved that Respondent has demonstrated a lack of fitness or trustworthiness to engage in the business of insurance. He collected, but failed to remit, nearly \$10,000 of premiums. To whatever extent customers' checks for these initial premiums were dishonored, Respondent did not invoke the statutory procedure to allow United Auto to invalidate the policies that Respondent had already caused it to issue. By failing to do so, Respondent allowed United Auto to remain liable on these policies, even though it had not been paid the

initial premiums for these policies and regardless whether Carol City had been paid the initial premiums for these policies.

19. Florida Administrative Code Rule 69B-231.080(7) provides for a six-month suspension for a violation of section 626.611(7). In its proposed recommended order, Petitioner argues persuasively for this penalty.

RECOMMENDATION

It is

RECOMMENDED that the Department of Financial Services enter a final order finding Respondent guilty of violating section 626.611(7) and suspending his license for six months.

DONE AND ENTERED this 14th day of February, 2013, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of February, 2013.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.