

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE MATTER OF
THE LICENSURE OF
ARTURO BARCENAS
LICENSE NO. 0014683937

BEFORE THE COMMISSIONER
OF INSURANCE

VOLUNTARY SETTLEMENT
AGREEMENT

Dist. 5032-34372

RECEIVED IN AGENT SERVICES A.S. - N.C.D.O.I.	
MAY 18 2021	
CHECK NO. [REDACTED]	CHECK AMT \$4,000.00
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NOW COME, Arturo Barcenas (hereinafter "Mr. Barcenas") and the North Carolina Department of Insurance (hereinafter "Department"), and hereby voluntarily and knowingly enter into the following Voluntary Settlement Agreement (hereinafter "this Agreement").

WHEREAS, the Department has the authority and responsibility for enforcement of the insurance laws of this State, and for regulating and licensing insurance agents; and

WHEREAS, Mr. Barcenas currently holds a resident producer's license with authority for Life, Accident & Health or Sickness, Property and Casualty lines of insurance issued by the Department and is the owner and responsible for the operations of the Barcenas Insurance Agency in Cary, NC; and

WHEREAS, N.C. Gen. Stat. § 58-33-46(a) (8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the General Statutes of NC, for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere; and

WHEREAS, Department investigators conducted a follow-up review of the Barcenas Insurance Agency (the Agency) to verify compliance with violations discovered in the original review; due to violations discovered during the compliance check, the agency review was modified to a target review and was conducted on intermittent days from October 23 through November 24, 2020; and

WHEREAS, N.C. Gen. Stat. § 58-2-164(c)-Rate evasion fraud; prevention programs- provides: The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency or eligible risk status or may rely upon the agent verification of residency or eligible risk status to meet the insurer's verification obligations under this section. The agent shall retain copies of any items obtained under this section as required under the record retention rules adopted by the Commissioner and in accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section by obtaining from the applicant reliable proof of North Carolina residency and the applicant's status as an eligible risk; and

WHEREAS, Department investigators reviewed agency files and determined that no proof of residency was obtained in approximately fifteen (15) policies, with such omission being in violation of the provisions of N.C. Gen. Stat. § 58-2-164(c); additional information was received from Progressive Insurance indicating that an additional four policies did not contain proof of residency; and

WHEREAS, N.C. Gen. Stat. § 58-33-26(a) and (b) provide that no person shall act as or hold himself or herself out to be an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser unless duly licensed; or make application for, procure, negotiate for, or place for others, any policies for any kinds of insurance as to which that person is not then qualified and duly licensed; and

WHEREAS, N.C. Gen. Stat. § 58-33-40 (a) provides that no individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed; and

WHEREAS, N.C. Gen. Stat. § 58-33-46 (8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Article 33 of Chapter 58 of the General Statutes of NC for, among other things, demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere; and

WHEREAS, Department investigators found that five (5) Workers' Compensation and five (5) General Liability policies were placed with insurers for which no one in the agency had been appointed or was authorized to do so pursuant to having a broker's license or any other authority; and

WHEREAS, the Agency and Mr. Barcenas violated N.C. Gen. Stat. §§ 58-33-26(a) and (b) and/or 58-33-40 (a) by allowing the employees to write insurance policies without being properly licensed, appointed or possessing a broker's license; and such violations were also reflective of a violation of the provisions of 58-33-46 (8) and

WHEREAS, 11 NCAC 04 .0120 POLICY OR SERVICE FEES provides:

An agent, broker, or limited representative who deals directly with an applicant and who intends to charge a policy or service fee in accordance with G.S. 58-33-85(b) shall not do so unless he complies with the following:

(1) A sign that informs the applicant in large bold print that a policy or service fee of [amount] will be charged, shall be displayed in a prominent place so as to be seen and read from any part of the office lobby.

(2) The applicant's consent in writing is obtained on a separate form each time a policy or service fee is charged. The form shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged.

(3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium; and

WHEREAS, Department investigators found that one (1) policyholder was charged a \$150.00 service fee that was not listed on the agency service fee sign, in violation of the provisions of 11 NCAC 04.0120 (1); and

WHEREAS, N. C. Gen. Stat. § 58-33-80. Discrimination forbidden provides: No agent or representative of any company doing the business of insurance as defined in G.S. 58-7-15 shall make any discrimination in favor of any person; and

WHEREAS, Department investigators noted that in one (1) instance, one policyholder was not charged a service fee, a violation of N. C. Gen. Stat. § 58-33-80; and

WHEREAS, 11 NCAC 04 .0429 COMMINGLING provides that the accounting records maintained by agents, brokers, and limited representatives shall be separate and apart from any other business records and demonstrate at all times that collected funds due to insurers and return premiums due to policyholders are available at all times; and

WHEREAS, N. C. Gen. Stat. § 58-33-46(a)(4) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license issued under Article 58 of the General Statutes of North Carolina for improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business; and

WHEREAS, N. C. Gen. Stat. § 58-33-46(a)(8) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license issued under Article 58 of the General Statutes of North Carolina for, among other things demonstrating financial irresponsibility in the conduct of business in this State or elsewhere; and

WHEREAS, Department investigators reviewed the Wells Fargo premium account from November 2019 through September 2020 and observed one (1) negative balance (-\$10.00) resulting in the imposition of a \$35.00 Non-Sufficient Fund Fee indicating that premium funds were not available to insurers at all times as required by 11 NCAC 04 .0429 and reflective of violations of N. C. Gen. Stats. 58-33-46(a)(4) and (8); and

WHEREAS, N. C. Gen. Stat. § 58-2-185 provides that all companies, agents, or brokers doing any kind of insurance business in this State must make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from these records must be furnished to the Commissioner on demand, and the original books of records shall be open to the inspection of the Commissioner when demanded; and

WHEREAS, N. C. Gen. Stat. § 58-2-195 (a) provides that the Commissioner is empowered to make and promulgate reasonable rules and regulations governing the recording and reporting of insurance business transactions by insurance agencies, agents, brokers and producers of record, any of which agencies, agents, brokers or producers of record are licensed in this State or are transacting insurance business in this State to the end that such records and reports will accurately and separately reflect the insurance business transactions of such agency, agent, broker or producer of record in this State. Information from records required to be kept pursuant to the provisions of this section must be furnished the Commissioner on demand and the original records required to be kept pursuant to the provisions of this section shall be open to the inspection for the Commissioner or any other authorized employee described in G.S. 58-2-25 when demanded; and

WHEREAS, 11 NCAC 19 .0102 MAINTENANCE OF RECORDS provides:

(a) Every insurer licensed to do business in this State shall maintain for at least five years all records, books, documents, and other business records that are required by this Section and by Chapter 58 of the North Carolina General Statutes.

(b) Every agency, agent, broker, or producer of record shall maintain a file for each policy sold. The file shall contain all work papers and written communications in his or her possession pertaining to that policy. These records shall be retained for at least five years after the final disposition or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later; and

WHEREAS, 11 NCAC 19.0104 POLICY RECORDS provides:

Each insurer or its agents shall maintain or cause to be maintained a record of each policy that specifies the policy period, basis for rating, and if terminated, documentation supporting policy termination by the insurer or policyholder, and accounting records indicating return premium amounts. These records shall be retained for at least five years after the termination of the policy or, for domestic companies until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

WHEREAS, the Agency and Mr. Barcenas, as owner, were not able to produce and did not respond to Department investigators' requests for a certain premium bank statement, declaration pages for individual policies and consent form for a service fee charge representing violations of N. C. Gen. Stat. §§ 58-2-185 and 58-2-195 and 11 NCAC 19.0102 and 11 NCAC 0104; and

WHEREAS, N. C. Gen. Stat. § 58-33-46(a)(2) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license issued under Article 58 of the General

Statutes of North Carolina for violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's regulator; and

WHEREAS, Mr. Barcenas has agreed to settle, compromise, and resolve the matters referenced in this Agreement on behalf of himself, and the Department has agreed not to pursue additional penalties, sanctions, remedies, or restitution based on these matters against Mr. Barcenas; and

WHEREAS, the parties to this Agreement mutually wish to resolve this matter by consent before the Department initiates an administrative hearing and have reached a mutually agreeable resolution of this matter as set out in this Agreement.

NOW, THEREFORE, in exchange for the consideration and promises and agreements set out herein, the AGENCY and the Department hereby agree to the following:

1. Immediately upon the signing of this Agreement, Mr. Barcenas shall pay a civil penalty of **\$4,000.00** to the Department. The form of payment shall be by certified check, cashier's check, or money order. The check or money order for the payment of this civil penalty shall be payable to the "North Carolina Department of Insurance." Mr. Barcenas shall remit the civil penalty by certified mail, return receipt requested, to the Department along with a copy of this signed Agreement. The civil penalty and the signed Agreement must be received by the Department no later than **May 17, 2021**. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.
2. This Agreement does not in any way affect the Department's disciplinary power in any future examination of Mr. Barcenas or in any other complaints involving Mr. Barcenas.
3. Mr. Barcenas enters into this Agreement, on behalf of himself, freely and voluntarily and with the knowledge of his right to have an administrative hearing on this matter. Mr. Barcenas understands he may consult with an attorney prior to entering into this Agreement.
4. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Mr. Barcenas understands that N.C.G.S. § 58-33-46(a)(2) and 58-71-80(a)(7) provide respectively that a producer's license may be revoked for violating an Order of the Commissioner.
5. This Agreement, when finalized, will be a public record and will **not** be held confidential by the Department. Following the execution of this Agreement, all licenses issued by the Department to Mr. Barcenas shall reflect that Regulatory Action has been taken against him. The Department is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. The Department, upon request, routinely provides a copy of the voluntary settlement agreement to all companies that have appointed the licensee.
6. The parties have read and understand this Agreement and agree to abide by the terms and conditions stated herein.
7. Be aware that if a state or federal regulator other than the N. C. Department of Insurance has issued an occupational or professional license to the AGENCY, that regulator may require you to report this administrative action to it. The N.C. Department of Insurance cannot give you legal advice as to the specific reporting requirements of other state or federal regulators.

N. C. Department of Insurance


By: Arturo Barceñas
License No: 0014683937

Date: 05/17/2021


By: Angela Hatchell
Deputy Commissioner

Date: 5/18/2021