

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
THE LICENSURE OF)
DEANNA L. CARTER)
(NPN #18580965))
)
and)
)
BROAD STREET)
INSURANCE AGENCY, INC.)
(NPN #18627732))
)
Respondents.)
)

ORDER AND
FINAL AGENCY DECISION
Docket Number: 2031

THIS MATTER was heard on April 22, 2021, by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance (“Commissioner”) under N.C. Gen. Stat. § 58-2-55, pursuant to a Notice of Hearing that was duly issued and served.

Respondent Deanna Carter (“Ms. Carter”), on her own behalf and on behalf of Respondent Broad Street Insurance Agency, Inc. (“Agency” and, together with Ms. Carter, “Respondents”), was present and testified at the hearing.

The Agent Services Division (“ASD”) of the North Carolina Department of Insurance (“NCDOI”) was present at the hearing and was represented by James R. Baker, Assistant Attorney General. NCDOI employee Sherri Bumgarner testified at the hearing.

ASD offered into evidence Petitioner’s Exhibits 1 through 14, which were admitted into evidence.

Respondents offered into evidence Respondents’ Exhibits 1 through 5, which were admitted into evidence.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, the Hearing Officer hereby makes the following:

FINDINGS OF FACT

1. Ms. Carter has a North Carolina resident insurance producer's license with lines of authority for Property, Life, Casualty and Accident & Health or Sickness issued by the Department. Ms. Carter also has a North Carolina resident broker's license.

2. The Agency is a corporation with a business entity license to sell, solicit or negotiate insurance. Ms. Carter testified that she is a 25% owner of the Agency and that Napoleon Reed is a 75% owner of the Agency. Ms. Carter acknowledged that, at all relevant times, she was the only licensed agent of the Agency, the designated responsible licensed producer for the Agency, and ultimately responsible for the Agency's operations. Napoleon Reed does not have an insurance producer's license or a broker's license.

3. In December 2018, Discovery Insurance Company ("Discovery") contacted ASD alleging non-sufficient fund activity when attempting to draft the Agency's bank account. Following the complaint, ASD conducted an examination of the Agency's operations from February 2018 through December 2018 (the "2018 Examination").

4. In the 2018 Examination, ASD Examiner Sherri Bumgarner observed, among other things, that:

- a. Premium accounts were overdrawn, resulting in overdraft fees and negative account balance and non-sufficient fund fees, reflecting that premium funds were not available to carriers at all times constituting violations of N.C. Gen. Stat. 58-33-46(a)(4) and 11 NCAC 04.0429.
- b. Manual receipts issued by Ms. Carter did not contain the agency name and address and were not signed by the person accepting payment constituting a violation of 11 NCAC 04.0121.

5. Following the 2018 Examination, Ms. Carter submitted an Action Plan to the Department on March 29, 2019. Under the Action Plan, Ms. Carter stated, among other things, that she would address certain violations as follows:

- a. "NCAC 4.0121 – Premium Payment Receipts – I have hand written the Agency Information on the remaining receipt and in the process of purchasing a new receipt book with the agency information printed on them already. I am now signing my entire signature as requested instead of initials."
- b. "NCAC 4.0429 & NCGS-58-33-46(4) & NCGS 58-33-46(8) – I have marked ATM cards to identify them appropriately as premium/commission accounts. I have also put a cushion amount in the premium account so the account will not go in the negative. I also now make daily deposits, regardless of how busy my day is/was it is very imperative that I make daily deposits."

6. On August 17, 2019 ASD and Ms. Carter entered into a voluntary settlement agreement (the "2019 VSA").

7. The 2019 VSA imposed a \$250.00 penalty on Ms. Carter and, in relevant part, contained the following stipulations:

Ms. Carter in her written plan of action dated March 29, 2019 informed the Department that she has obtained her broker's license in February 2019 to avoid future violations of N.C. Gen. Stat. 58-33-26(a); has hand-written agency information on the remaining receipts and is in the process of purchasing a new receipt book with the agency information printed thereon, and will be signing her entire signature on such receipts as opposed to initialing them to correct violations of 11 NCAC 04.0121, and has marked ATM cards to identify them appropriately as premium/commission accounts and has deposited a cushion amount in the premium account to avoid future negative balances and will make daily deposits to the account to correct prior occurrences of violations of 11 NCAC 04.0429, N.C. Gen. Stat. 58-33-46(4) and 58-33-46(8).

Ms. Carter is required and agrees to maintain the procedures she has represented by preparation of her written plan of action, and

that she has implemented to prevent the reoccurrence of the violations set forth in this Agreement, and is required and agrees to obtain Department approval for any changes thereto; and the Department reserves the right to make any follow up examinations of Ms. Carter's agency without prior notice to assure compliance; and any non-adherence to this requirement by Ms. Carter shall constitute a violation of an Order of the Commissioner pursuant to Paragraph No. 6 below.

...

The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Ms. Carter understands that N.C.G.S. § 58-33-46(a)(2) provides that a producer's license may be revoked for violating an Order of the Commissioner.

8. Ms. Carter did not dispute the truthfulness of the 2019 VSA or the underlying violations.

9. In January 2020, ASD conducted a compliance examination of the Agency's operations (the "2020 Examination"). Sherri Bumgarner conducted the 2020 Examination, which included interviewing Ms. Carter, an onsite visit to Broad Street's office located at 821-A Queen Street, New Bern, North Carolina 28560, a file review, and a financial review of documentation provided by Ms. Carter.

10. Following the 2020 Examination, ASD concluded and advised Ms. Carter and the Agency that, among other things, it appeared: (a) the Agency had failed to issue premium payment receipts containing the information required by 11 NCAC 4 .0121; (b) the Agency had commingled funds in violation of 11 NCAC 4 .0429 by incurring overdraft fees and NSF fees; and (c) the Agency's overdrafts and NSF activity violated N.C. Gen. Stat. §§ 58-33-46(a)(4) and (a)(8).

11. The Examination found that the address of the Agency and the name of the insurer were not identified on Broad Street's manual receipts. During her testimony, Ms. Carter acknowledged the errors on the receipts were in violation of 11 NCAC 04.0121, the Action Plan, and the 2019 VSA.

12. The Examination found an instance of untimely premium remittance during its financial review. Jewel Harris paid one hundred twenty dollars and sixty-nine cents (\$120.69) to the Agency on November 26, 2019. The \$120.69 payment was drafted from the Agency by Discovery on December 2, 2019. However, the Agency did not deposit these funds in its premium account until December 3, 2019. During

her testimony, Ms. Carter admitted that she did not make daily deposits in violation of the Action Plan and 2019 VSA, and that this constituted untimely premium remittance and commingling in violation of 11 NCAC 04.0429.

13. The Examination found a total of thirty-two (32) days in which the Agency bank account was over drawn and/or fees were assessed, with twenty-seven (27) of those days resulting in overdraft fees of \$1,008, continuous overdraft fees of \$98, and non-sufficient fund fees of \$216, during the period from August 2019 to December 2019. Ms. Bumgarner testified as to her deduction that PNC Bank charged NSF fees and overdraft fees to the Agency account because there had not been sufficient funds in the account to satisfy the premium withdrawals. Ms. Carter admitted to this overdraft and NSF activity, that such activity was in violation of the 2019 VSA and Action Plan, and that this constituted untimely premium remittance and commingling in violation of 11 NCAC 04.0429.

14. During the course of the examination, Discovery Insurance reported failed premium draft(s) from the Agency totaling one hundred eighty-eight dollars and eighty-nine cents (\$188.89) on December 23 and 24, 2019.

15. During the course of the examination, NCJUA/NCIUA reported failed premium drafts for funds on December 27, 2019 and January 31, 2020.

16. In her defense, Ms. Carter admitted violating the Action Plan and 2019 VSA, but testified that she had fixed these violations following the 2020 Examination. In support of her testimony, Ms. Carter admitted Defendants' Exhibits 1-5.

17. Defendants' Exhibit 3 consists of the Agency's PNC Bank statements for January 2020 through March 2021. The statement for January 2020 shows a total of nineteen (19) days in which the Agency bank account was overdrawn, with those days resulting in overdraft fees of \$833 and non-sufficient fund fees of \$828. The statement for February 2020 shows a total of six (6) days in which the Agency bank account was overdrawn, with those days resulting in non-sufficient fund fees of \$288. For the year-long period of March 2020 to March 2021, there are zero days with negative balances, overdraft fees, or non-sufficient fund fees in the Agency's bank account.

18. Defendants' Exhibit 5, consisting of copies of Agency's manual receipts dated February 5, 2020, February 7, 2020, two dated February 11, 2020, and three dated February 12, 2020, show violations of 11 NCAC 04.0121 in that the February 5, 2020 receipt does not include the address or the name of the insurer, a February 11, 2020 receipt does not include the policy numbers, and a February 12, 2020 receipt does not include the name of the insurer. Ms. Carter testified that her receipts are now correctly prepared and in compliance with 11 NCAC 04.0121.

19. Ms. Carter further testified that she had attempted to comply with the 2019 VSA, but that this took several months because she had incorrectly structured the Agency based upon the guidance of Napoleon Reed and did not have sufficient funds to immediately prevent overdrafts. Mr. Reed, a co-owner of the Agency, was previously licensed as a producer and broker but lost his licenses following disciplinary action.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and he has jurisdiction over the parties and the subject matter.

2. Respondents were properly served with the Notice of Administrative Hearing in this matter.

3. 11 NCAC 04 .0121 is entitled "Premium Payment Receipts" and provides:

All premium payment receipts and copies issued by an agent, broker, or limited representative, shall be dated and contain the printed or stamped name and address of the agency or agent, broker, or limited representative, and the name of the insurer. Receipts shall be signed by the person accepting the payment.

4. The premium receipts that ASD collected from the Agency in the 2020 Examination do not comply with 11 NCAC 04 .0121 in that three of the receipts do not contain the address of the Agency or state the name of the relevant insurer.

5. 11 NCAC 04 .0429, entitled "Commingling," provides:

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.

6. The PNC Bank records for the Agency establish that, between August 2019 and December 2019, the balance in the PNC Bank account was overdrawn and/or fees were assessed on thirty-two occasions, and PNC Bank charged overdraft fees of \$1,008, continuous overdraft fees of \$98, and non-sufficient fund fees of \$216 during this period. These instances of negative balances, overdrafts, and NSF fees

violated 11 NCAC 04 .0429.

7. Ms. Carter did not dispute the findings by Ms. Bumgarner regarding the Agency's premium account.

8. The evidence establishes that Discovery Insurance reported failed premium draft(s) from the Agency totaling one hundred eighty-eight dollars and eighty-nine cents (\$188.89) on December 23 and 24, 2019. This constitutes commingling in violation of 11 NCAC 04.0429.

9. The evidence establishes that NCJUA/NCIUA reported failed premium drafts for funds on December 27, 2019 and January 31, 2020. This constitutes commingling in violation of 11 NCAC 04.0429.

10. Ms. Carter testified that she did not dispute ASD's conclusions regarding the 2020 Examination, which included the conclusions that Respondents violated 11 NCAC 04 .0121, 11 NCAC 04 .0429, the Action Plan, and the 2019 VSA, but that she has addressed these violations following the 2020 Examination.

11. In relevant part, N.C. Gen. Stat. § 58-33-46(a) permits the Commissioner to place on probation, suspend or revoke Ms. Carter's producer and broker licenses and the Agency's business entity license for:

(2) 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 insurance regulator, or violating any rule of the FINRA.

...

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.

...

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

12. Ms. Carter's producer and broker licenses and the business entity license of the Agency should be revoked under N.C. Gen. Stat. § 58-33-46(a)(2) due to

the violations described above of 11 NCAC 04 .0121 and .0429 and of the Commissioner's Order in the form of the 2019 VSA.

13. Ms. Carter's producer and broker licenses and the business entity license of the Agency should be revoked under § 58-33-46(a)(4) because the overdrafts described above in violation of 11 NCAC .0429 constitute the improper withholding or misappropriating of monies received in the course of doing insurance business.

14. Ms. Carter's producer and broker licenses and the business entity license of the Agency should be revoked under N.C. Gen. Stat. § 58-33-46(a)(8) because the violations described above of 11 NCAC 04 .0121 and .0429 and of the VSA demonstrate incompetence or financial irresponsibility in the conduct of business in this State.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Ms. Carter's licenses as a resident insurance producer and resident broker and the Agency's business entity license be revoked.

This the 30th day of June, 2021.



A. John Hoomani
Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with the 11 NCAC 1.0413 and N.C.G.S. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The mailing address to be used for service on the Department of Insurance is: A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. Mail, return receipt requested; via first class U.S. mail to the licensee, at the addresses provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

Deanna Carter
821-A Queen Street
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(Respondent)

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James R. Baker
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This the 30th day of June, 2021.


Mary Faulkner
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