

NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE COMMISSIONER  
OF INSURANCE

IN THE MATTER OF  
THE LICENSURE OF  
EARL E. GAY, JR.

ORDER and FINAL  
AGENCY DECISION

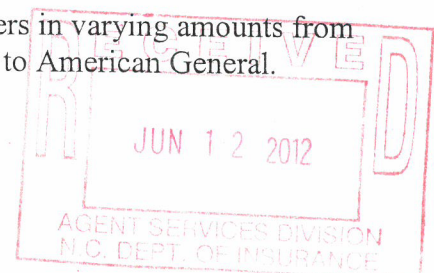
DOCKET NO. 1597

This matter was heard on Thursday, May 3, 2012, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55. The administrative hearing was held in Room #3099 of the Dobbs Building, located at 430 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General LaShawn S. Piquant represented the North Carolina Department of Insurance, Agent Services Division (hereinafter "Agent Services"). Earl E. Gay, Jr. (hereinafter "Gay") did not appear.

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

**Findings of Fact**

1. The Notice of Administrative Hearing was properly served on Gay pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.
2. Gay was issued his Life, and Accident & Health or Sickness producer/insurance agent licenses by Agent Services on or about June, 2003.
3. Gay was appointed with American General Life and Accident Insurance Company (hereinafter "American General"). Gay resigned from American General on or about June 14, 2010.
4. Upon Gay's resignation, American General initiated a deficiency audit of all the customer accounts handled by Gay.
5. The American General audit found that Gay failed to submit approximately \$7,234.89 in premiums. Gay failed to submit premiums for approximately 38 different policies.
6. Gay received payments from consumers and policyholders in varying amounts from \$10.06 to \$3823.38 and failed to submit these payments to American General.



7. American General's audit showed that Gay received the following policyholder premiums and that he did not submit the following policyholder premiums to American General:

a)	\$3823.38
b)	240.00
c)	260.00
d)	444.00
e)	995.15
f)	190.00
g)	50.00
h)	25.36
i)	29.76
j)	33.88
k)	47.49
l)	36.66
m)	18.41
n)	36.18
o)	18.41
p)	44.15
q)	39.03
r)	30.00
s)	79.04
t)	72.88
u)	18.02
v)	10.06
w)	22.33
x)	19.33
y)	18.77
aa)	26.96
bb)	80.66
cc)	49.79
dd)	66.00
ee)	36.00
ff)	13.23
gg)	37.58
hh)	130.21
ii)	22.29
jj)	46.22

8. American General contacted the Department regarding the actions of Gay. It submitted its audit findings and report to the Department including corroborating signed statements from policyholders and consumer receipts.
9. American General has worked to ensure that all premium deficiencies did not subject policyholders to a lapse in coverage due to the premium deficiencies.

10. To date, Gay has not repaid the deficient premiums to American General.
11. There is substantial evidence that supports the foregoing findings. Additionally, due to Respondent's failure to appear at the administrative hearing, the undersigned Hearing Officer finds, pursuant to 11 N.C.A.C. 1.0423(a)(1), that the allegations set out in the Notice of Hearing are taken as true and are deemed to be proved without the need of further evidence. The allegations set out in the Notice of Hearing are incorporated by reference as if set forth herein.

### **Conclusions of Law**


1. This matter is properly before the North Carolina Commissioner of Insurance (hereinafter "Commissioner"), and the Commissioner has jurisdiction over the parties and the subject matter pursuant to N. C. Gen. Stat. §58-33-46, as well as 11 N.C.A.C. 10401 *et seq.* and other applicable statutes and regulations.
2. Gay was properly served with the Notice of Administrative Hearing and failed to appear.
3. Gay is in violation of N.C. Gen. Stat. § 58-33-46(a)(4) which provides that the Commissioner may place on probation, suspend, revoke or refuse to renew any license if a licensee has engaged in "improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business." Gay has improperly withheld, misappropriated and converted monies received in the course of doing insurance business.
4. Gay is in violation of N.C. Gen. Stat. § 58-33-46(a)(8) which provides that the Commissioner may place on probation, suspend, revoke or refuse to renew any license if a licensee has engaged in "fraudulent, coercive, or dishonest practices," or demonstrated "incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere." Gay has engaged in fraudulent and dishonest practices and has demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this State.
5. The evidence presented at the hearing, in the form of testimony and the exhibits introduced, is sufficient to support the revocation of Gay's licenses.
6. Additionally, the allegations contained in the Notice of Hearing, when taken as true pursuant to 11 N.C.A.C. 1.0423(a)(1), are also sufficient to support the revocation of Mr. Gay's licenses.
7. Gay's licenses should be revoked pursuant to N.C. Gen. Stat. §§ 58-33-46(a)(4) and 58-33-46(a)(8).

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

**Order**

It is ordered that Mr. Gay's Life, and Accident & Health or Sickness producer/insurance agent licenses are hereby revoked.

This the 7<sup>th</sup> day of June, 2012.

  
Stewart L. Johnson, Hearing Officer  
N.C. Department of Insurance


APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days of receipt, as set forth in the General Statutes of North Carolina.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Order and Final Agency Decision by US mail, first class postage affixed and addressed as follows:

Earl E. Gay, Jr.  
785 Green Hill Road  
Leland NC 28451

This the 11<sup>th</sup> day of June, 2012.



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