

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

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DEC 17 2020

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

CHECK NO. [REDACTED]
CHECK AMT. \$1,000
PROCESSOR

IN THE MATTER OF
THE LICENSURE OF
K & K INSURANCE
LICENSE NO. 6614837

VOLUNTARY SETTLEMENT
AGREEMENT

NOW COMES, K & K Insurance (hereinafter "K & K") by Jimmy Keener (hereinafter "Keener"), 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, Keener (NPN 6614837) currently holds a resident producer's license with authority for Life, Accident & Health or Sickness, Property and Casualty lines of insurance; a Broker's license, and a Medicare Supplement Long-term Care license, all issued by the Department; 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, and that information obtained 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(b) provides that every insurance agency transacting insurance business in this State shall at all times have appointed some person employed or associated with such agency who shall have the responsibility of seeing that such records and reports as are required pursuant to the provisions of this section are kept and maintained; and

WHEREAS, 11 NCAC 4.0429 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, 11 NCAC 19.0102(a) and (b) provide that 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; and every agency, agent, broker, or producer of record shall maintain a file for each policy sold; and the file shall contain all work papers and written communications in his or her possession pertaining to that policy; and 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, 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, N.C. Gen. Stat. § 58-33-46(a)(4) 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 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 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, on April 24, 2019, Department Investigators ("Investigators") initiated a routine examination of K & K, owned and operated by Keener, which was elevated to a target examination based upon apparent violations; and

WHEREAS, it is alleged that a review of K & K records revealed that the agency did not maintain a full record or file for each customer on site, did not maintain 5 years of customer receipts, could not provide premium remittance and bank deposit receipts upon request, and did not reconcile receipts to deposits, a violation of N. C. Gen. Stat. § 58-2-185; and

WHEREAS, it is alleged that a review of K & K records revealed that the agency did not maintain a full record or file for each customer, did not maintain 5 years of customer receipt on site, could not provide premium remittance and bank deposit receipts upon request, and did not reconcile receipts to deposits, a violation of N. C. Gen. Stat. § 58-2-195(b); and

WHEREAS, it is alleged that a review of K & K records revealed that the agency did not maintain full records, books, documents and other business records and he maintained a file for each policy sold on site, in violation of 11 NCAC 19.0102; and

WHEREAS, it is alleged that a review of the K & K bank statements and records from August 2014 to December 2019 showed thirty-seven negative balances and twenty-two overdrafts totaling \$608.00 in fees; [removed language that funds would not have been available]

WHEREAS, it is alleged that the violations by the agency are attributable to Jimmy Keener as owner of the agency; and

WHEREAS, it is alleged that the violations found during the agency reviews violate Chapter 58 of the North Carolina General Statutes and rules of the North Carolina Administrative Code as set forth above and may be sufficient to support suspension, probation, revocation or non-renewal of K & K's license as provided in N.C. Gen. Stat. § 58-33-46(a)(2); and

WHEREAS, it is alleged that the violations found during the agency reviews show that insurance premium payments were misappropriated in the course of doing insurance business which may support suspension, probation, revocation or non-renewal of K & K's license as provided in N.C. Gen. Stat. § 58-33-46(a)(4); and

WHEREAS, it is alleged that violations found during the agency reviews demonstrate incompetence and financial irresponsibility on the part of K & K which may support suspension, probation revocation or non-renewal of K & K's license as provided in N. C. Gen. Stat. § 58-33-46(a)(8); and

WHEREAS, to avoid the expense and uncertainties of further litigation, K & K has agreed to settle, compromise, and resolve the matters referenced in this Agreement on behalf of itself, and the Department has agreed not to pursue additional penalties, sanctions, remedies, or restitution based on these matters against K & K; 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, K & K and the Department hereby agree to the following:

1. Immediately upon the signing of this Agreement, K & K shall pay a civil penalty of **\$1,000.00** 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." K & K 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 **November 30, 2020**. 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. K & K is required and agrees to maintain a daily ledger to show payments taken, make daily premium deposits, maintain deposit tickets, and maintain a copy of its banking records on site in its office so as to prevent such occurrences in the future; and the Department reserves the right to make any follow-up review of the agencies without prior notice to assure compliance; and any non-adherence to these requirements shall constitute a violation of an Order of the Commissioner pursuant to Paragraph No. 5. below.
3. This Agreement does not in any way affect the Department's disciplinary power in any future review of K & K or in any other unrelated complaints involving K & K.
4. K & K enters into this Agreement, on behalf of itself, freely and voluntarily and with the knowledge of his right to have an administrative hearing on this matter. K & K understands it may consult with an attorney prior to entering into this Agreement.
5. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. K & K understands that pursuant N.C. Gen. Stat. § 58-33-46(a)(2), a producer's license may be revoked for violating an Order of the Commissioner.
6. 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 K & K shall reflect that Regulatory Action has been taken against it. 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 routinely provides, upon request, a copy of the voluntary settlement agreement to companies that have appointed the licensee.

7. The parties have read and understand this Agreement and agree to abide by the terms and conditions stated herein.
8. 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 you, 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.

K&K Insurance

[Redacted Signature]

By: ~~Jimmy Koener~~
for K&K Insurance

Date: 11-23-2020

N.C. Department of Insurance

[Redacted Signature]

By: Angela Hatchell
Deputy Commissioner

Date: 12/16/2020