

FD# 115455

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**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
KENNETH M. McGEE
LICENSE NO. 0007231745**

**VOLUNTARY SETTLEMENT
AGREEMENT**

NOW COME, Kenneth M. McGee (hereinafter "Mr. McGee") 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. McGee currently holds a resident producer's license with authority for Property, Casualty, Life and Accident and Health or Sickness lines of insurance issued by the Department; and

WHEREAS, a Department routine examination was conducted by Department examiners on NFP Agency in Cornelius, NC, formerly "Aquesta Insurance, managed by Mr. McGee, on July 18, 24 and September 05, 2019, such examination occasioned by a consumer complaint made to the Department by Mr. Jonathan Messer; 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 this Article, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes 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, Mr. Messer requested Mr. McGee to add a 2018 cargo trailer to his policy which was not done; policy coverage was later transferred to Central Carolina Insurance Agency and rewritten based on the NFP coverage, resulting in no coverage for the trailer when a tree fell on it on February 02, 2019; and

WHEREAS, Mr. McGee's failure to comply with Mr. Messer's request to add the Cargo Trailer and the resulting lack of coverage therefor when the loss occurred demonstrates a basis for suspension, revocation or non-renewal of his producer's license pursuant to the provisions of N.C. Gen. Stat. § 58-33-46 (a) (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, 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: 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

WHEREAS, 11 NCAC 19.0102 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.

WHEREAS, Mr. McGee was requested to provide the NFP bank statements and initially agreed to provide them, but was unable to do so, with such being violative of the provisions of N.C. Gen. Stats. §§ 58-2-185, 58-2-195(b) and 11 NCAC 19.0102; 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, 11 NCAC 04.0429 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, the examiners reviewed premium account bank statements for the years 2016 through 2018 and observed thirty (30) instances of negative balances therein resulting in funds belonging to insurers not being available to insurers constituting violations of N.C. Gen. Stat. § 58-33-46(a)(4) and 11 NCAC 04.0429; 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. McGee 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. McGee; 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, Mr. McGee and the Department hereby agree to the following:

1. Immediately upon the signing of this Agreement, Mr. McGee shall pay a civil penalty of **\$1,500.00** 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. McGee 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 25, 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. This Agreement does not in any way affect the Department's disciplinary power in any future examination of Mr. McGee or in any other complaints involving Mr. McGee.
3. Mr. McGee 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. McGee 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. McGee 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. McGee 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 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.

N. C. Department of Insurance

[Redacted Signature]

By: Kenneth M. McGee
License No. 0007231745

[Redacted Signature]

By: Angela Hatchell
Deputy Commissioner

Date: 6/6/20

Date: 6/10/2020