

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)
WILLIAM H. McLEAN)
(NPN # 6556152))

ORDER AND
FINAL AGENCY DECISION

Docket Number: 1798

Respondent.)
)

THIS MATTER was heard on July 6, 2017 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 Administrative Hearing that was duly issued and served on Respondent William H. McLean.

Mr. McLean, proceeding *pro se*, failed to appear at the hearing.

Petitioner Agent Services Division ("ASD") of the North Carolina Department of Insurance ("NCDOI") was present at the hearing and was represented by Terence D. Friedman, Assistant Attorney General. NCDOI employee Joseph Wall testified at the hearing.

ASD offered into evidence Petitioner's Exhibits 1 through 35, which were admitted into evidence.

BASED UPON careful consideration of the evidence and arguments presented, and based upon the entire record in the proceeding, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. NCDOI is a state agency responsible, in accordance with Chapter 58 of the North Carolina General Statutes, for enforcement of the insurance laws of North Carolina and for regulating and licensing insurance adjusters.

2. Mr. McLean holds a license as a resident insurance producer with lines of authority for Life, Accident and Health or Sickness and Personal Lines.

3. Mr. McLean was appointed by Transamerica Life Insurance Company ("Transamerica") to serve as its agent in North Carolina and South Carolina. Monumental Life Insurance Company ("Monumental") is a subsidiary of Transamerica.

4. Monumental trained Mr. McLean in how to handle insurance premium payments by clients. Monumental's training materials included the Agent's Agreement and Field Code of Professional Conduct.

5. The Agent's Agreement provided in relevant part:

(a) . . . All premiums and deposits paid to or received by me shall be remitted to the Company on the next report day following collection, and shall never be intermingled with my personal funds. . . .

. . .

(c) I acknowledge that all Company funds held by me shall be held in a fiduciary capacity. I understand the Company's policy that misappropriation and/or conversion of Company funds will be viewed as embezzlement and theft, subject to criminal and/or civil prosecution, as may be deemed appropriate.

6. The Field Code of Professional Conduct provided in relevant part:

The company depends on me to follow proper procedures for collecting and handling Company funds. I will always follow such established procedures and make every effort to properly handle premium collection and cash, money orders or checks tendered to me by customers so that the Company's and customer's funds are always adequately protected. Further, I will never negotiate, endorse or deposit any funds payable by

the Company or customers into my personal account or take any other steps that would co-mingle such funds with my own.

7. The evidence presented at the hearing established that, in 2014, Mr. McLean obtained a \$313.89 personal loan from Transamerica insured Donald Holt, a South Carolina resident, and that Mr. McLean credited this loan toward premium payments owed by Transamerica insureds other than Mr. Holt, including one North Carolina resident. Transamerica compensated Mr. Holt for this \$313.89 and debited Mr. McLean's deficiency account for the amount.

8. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$131.60 in premium payment from Transamerica insured Joyce Grady, a North Carolina resident, but failed to apply the funds to Ms. Grady's account. Transamerica credited Ms. Grady with this \$131.60 and debited Mr. McLean's deficiency account for the amount.

9. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$38.50 in premium payment from Transamerica insured Terence Gore, a South Carolina resident, but failed to apply the funds to Mr. Gore's account. Transamerica credited Mr. Gore with this \$38.50 and debited Mr. McLean's deficiency account for the amount.

10. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$94.66 in premium payment from Transamerica insured Willie Gore, a South Carolina resident, but failed to apply the funds to Mr. Gore's account. Transamerica credited Mr. Gore with this \$94.66 and debited Mr. McLean's deficiency account for the amount.

11. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$201.10 in premium payment from Transamerica insured Joe Huffman, a South Carolina resident, but failed to apply the funds to Mr. Huffman's account. Transamerica credited Mr. Huffman with this \$201.10 and debited Mr. McLean's deficiency account for the amount.

12. The evidence presented at the hearing also established that, in 2014, Mr. McLean failed to apply \$143.97 in premium to the account of Transamerica insured Arthur Williams, a South Carolina resident. Transamerica credited Mr. Williams with this \$143.97 and debited Mr. McLean's deficiency account for the amount.

13. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$363.38 in premium payment from Transamerica insureds and South Carolina residents John and Christine Bennett but failed to apply the funds to the Bennetts' account. Transamerica credited the Bennetts with this \$363.38 and debited Mr. McLean's deficiency account for the amount.

14. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$160.45 in premium payment from Transamerica insureds and South Carolina residents Ora and Genette Drayton but failed to apply the funds to the Draytons' account. Transamerica credited the Draytons with this \$160.45 and debited Mr. McLean's deficiency account for the amount.

15. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$101.80 in premium payment from Transamerica insured Lucila Brown, a South Carolina resident, but failed to apply the funds to Ms. Brown's account. Transamerica credited Ms. Brown with this \$101.80 and debited Mr. McLean's deficiency account for the amount.

16. The evidence presented at the hearing also established that, in 2014, Mr. McLean failed to apply \$74.50 in premium to the account of Transamerica insured Elizabeth Richardson, a South Carolina resident. Transamerica credited Ms. Richardson with this \$74.50 and debited Mr. McLean's deficiency account for the amount.

17. The evidence presented at the hearing also established that, in 2014, Mr. McLean received \$63.16 in premium payment from Transamerica insured Clarence Oliver, a South Carolina resident, but failed to apply the funds to Mr. Oliver's account. Transamerica credited Mr. Oliver with this \$63.16 and debited Mr. McLean's deficiency account for the amount.

18. The evidence presented at the hearing also established that, in 2014, Mr. McLean failed to apply \$163.89 in premium to the account of Transamerica insured Linda McLeod, a South Carolina resident. Transamerica credited Ms. McLeod with this \$163.89 and debited Mr. McLean's deficiency account for the amount.

19. Additionally, the evidence presented at the hearing established that, in 2014, Mr. McLean deposited \$118.12 for certain Transamerica policyholders but only credited them with \$37.60, resulting in an overage of \$80.52.

20. Further, the evidence presented at the hearing established that, in 2014, Mr. McLean credited certain Transamerica policyholders with a total of \$975.46 in premium payments but never actually deposited this amount.

21. On June 2, 2015, Transamerica informed ASD that it had terminated Mr. McLean's appointment "for cause."

22. In relevant part, N.C. Gen. Stat. § 58-33-46 provides:

(a) 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 any one or more of the following causes:

...

(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.

CONCLUSIONS OF LAW

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

2. Mr. McLean was properly served with the Notice of Administrative Hearing in this matter.

3. Pursuant to N. C. Gen. Stat. § 58-33-46(a)(4), one of the causes for which the Commissioner may revoke an insurance producer's license is for improperly withholding, misappropriating or converting monies received in the course of doing insurance business. By failing to properly credit insurance clients with premium

payments they had made, crediting insurance clients with premium payments they had not made and obtaining a loan from an insurance client for Mr. McLean's own purposes, Mr. McLean improperly withheld, misappropriated and converted monies received in the course of doing insurance business. The Hearing Officer finds that Mr. McLean's license should be revoked under N. C. Gen. Stat. § 58-33-46(a)(4).

4. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), another cause for which the Commissioner may revoke an insurance producer's license is using fraudulent or dishonest practices or demonstrating untrustworthiness in the conduct of business in this state or elsewhere. By failing to properly credit insurance clients with premium payments they had made, crediting insurance clients with premium payments they had not made and obtaining a loan from a client for Mr. McLean's own purposes, Mr. McLean used fraudulent or dishonest practices and demonstrated untrustworthiness in the conduct of business in this state and in South Carolina. The Hearing Officer finds that Mr. McLean's License should also be revoked under N. C. Gen. Stat. § 58-33-46(a)(8).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that pursuant to N.C. Gen. Stat. §§ 58-33-46(a)(4) and 58-33-46(a)(8), Mr. McLean's resident insurance producer's license be revoked.


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. Gen. Stat. § 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.

This the 27th day of September, 2017


A. John Hoomani, Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of 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 address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and, via State Courier, addressed as follows:

Terence D. Friedman
Assistant Attorney General
N.C. Department of Justice – Insurance Section
P.O. Box 629
Raleigh, NC 27602


Attorney for Petitioner

William H. McLean
610 N JK Powell Blvd # 24
Whiteville, NC 28472
VIA CERTIFIED MAIL: 70170530000073185593

William H. McLean
PO Box 2131
Whiteville, NC 28742
VIA CERTIFIED MAIL: 70170530000073185609

Pro Se Respondent

This the 27th day of September, 2017.



Mary Faulkner
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201