

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

Docket Number: D-1665

IN THE MATTER OF
THE LICENSURE OF
CHRISTOPHER MCPHATTER

FINAL AGENCY DECISION

This matter was heard on May 30, 2013 by the undersigned Hearing Officer, as designated by the Commissioner of Insurance, pursuant to North Carolina General Statutes §§ 58-2-70, 58-2-162, 58-2-185, 58-33-30, 58-33-46, 150B-38, 150B-40 and 11 N.C.A.C. 1.0401 et seq. and other applicable statutes and regulations. Petitioner, the North Carolina Department of Insurance ["the Department"], was represented by Assistant Attorney General Anne Goco Kirby. Respondent Christopher McPhatter ["Mr. McPhatter"] failed to appear at the hearing.

Eric Lautzenheiser and Rachel Brown were present and testified for the Department at the hearing.

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

FINDINGS OF FACT

1. Notice of Hearing in this matter was issued on April 11, 2013 and Mr. McPhatter was duly served by certified mail on April 12, 2013. A copy of the Notice of Hearing was admitted into evidence as Department Exhibit 1.
2. The Affidavit of Service and the signed return receipt show that Mr. McPhatter accepted service of the Notice of Hearing on April 17, 2013. The originals of the Affidavit of Service and return receipt were admitted into evidence as Department Exhibit 2.
3. Mr. McPhatter failed to appear at the hearing and the hearing proceeded in his absence pursuant to N.C. Gen. Stat. §150B-40(a). Evidence and testimony set forth below were offered by the Department in support of the allegations contained in the Notice of Hearing, Department Exhibit 1.

4. Mr. McPhatter holds active Life, Accident & Health or Sickness, and Personal Lines agent licenses issued by the Department.

5. Mr. McPhatter was hired to work as an insurance agent for Monumental Life Insurance Company [an affiliate of Transamerica and hereinafter, "Monumental Life"] in October 2010. As an agent, Mr. McPhatter's responsibilities included collecting premium payments from customers on an assigned book of business, maintaining daily records of all premiums collected on a company-issued laptop, daily uploading records of all premiums collected to Monumental Life, and depositing all premiums collected in Monumental Life's bank account within one day of collection.

6. Rachel Brown is an insurance agent who has worked for Monumental Life since April 2009. Between November 2010 and April 2013, Ms. Brown was a sales manager for Monumental Life. As a sales manager, Ms. Brown was responsible for training and supervising agents, including Mr. McPhatter.

7. Ms. Brown testified that on or about September 17, 2012, she noticed that an unusual number of Mr. McPhatter's customers had lapsed policies due to nonpayment of premiums. Ms. Brown spoke to Mr. McPhatter about the policy lapse notices and asked him whether he had in fact collected these customer's premiums. During this conversation, Mr. McPhatter admitted to Ms. Brown that he had stolen these customers' premium payments and indicated that he used the money to buy cocaine.

8. Upon learning that Mr. McPhatter had stolen customers' premiums, Ms. Brown informed Mr. McPhatter that he could not continue working as an agent. Ms. Brown also instructed Mr. McPhatter to meet her at Monumental Life's Wilmington office that afternoon so that she could confiscate his company issued laptop and they could discuss the premiums which he had stolen. Later that day, Mr. McPhatter called Ms. Brown and informed her that he was at his mother's gravesite and that he planned to commit suicide by overdosing on pills. Ms. Brown persuaded Mr. McPhatter not to commit suicide and encouraged him to come into the Wilmington office to discuss the situation as previously planned.

9. Later that evening, Mr. McPhatter appeared at the Wilmington office to meet Ms. Brown and turn in the company issued laptop. Ms. Brown was concerned for Mr. McPhatter's wellbeing and thus contacted Monumental Life's human resources department to inform them of Mr. McPhatter's fragile emotional state and admitted drug problem. Monumental Life then made arrangements for a doctor to contact Mr. McPhatter so that he could get professional help and immediately placed Mr. McPhatter on medical leave.

10. A few days later, Mr. McPhatter came into the Wilmington office again and brought Ms. Brown a letter. In his letter, Mr. McPhatter admitted stealing his customers' premiums and apologized for his behavior. Mr. McPhatter also attached a list which identified the customers whose premiums he had stolen as well as the amount of the premium payments he had stolen from each of those customers. On October 1, 2012, Mr. McPhatter met again with Ms. Brown.

During that meeting, Mr. McPhatter signed both the letter, which he addressed to Ms. Brown, and the attached list identifying the stolen premium payments.

11. Ms. Brown subsequently conducted an audit of Mr. McPhatter's accounts and confirmed that Mr. McPhatter had collected the premiums from the customers which appeared on the list which Mr. McPhatter gave her. Ms. Brown also confirmed that those payments had not been reported and remitted to the company. During the course of the audit, Ms. Brown discovered that Mr. McPhatter had stolen other premium payments which he collected from his customers. When Ms. Brown discussed these additional premium payments with Mr. McPhatter, he admitted that he had also stolen those premiums.

12. Ms. Brown typed out a list of the additional premium payments which Mr. McPhatter admitted to stealing. During a meeting with Ms. Brown on October 18, 2012, Mr. McPhatter signed the typewritten list of additional premium payments to signify his agreement that he had also stolen these premiums and that he thus owed these additional amounts to Monumental Life.

13. Ms. Brown provided copies of Mr. McPhatter's October 1, 2012 and October 18, 2012 statements which listed the premiums he had stolen to Monumental Life. Monumental Life indemnified those customers for the premiums which Mr. McPhatter had stolen.

14. Ms. Brown later received an e-mail from Holly Litrenta, a Monumental Life compliance officer, informing her that Mr. McPhatter had agreed to repay the company for the premiums he had stolen and instructing her to forward any payments she may receive from Mr. McPhatter to Monumental Life's home office. Ms. Brown subsequently collected payments of \$50 and \$200 from Mr. McPhatter and forwarded those payments to the company. Copies of the checks in the amounts of \$50 and \$200 were admitted into evidence as Department Exhibit 9. Mr. McPhatter has not made any other payments to Monumental Life.

15. On October 1, 2012, Monumental Life terminated Mr. McPhatter for mishandling company funds and sent a letter to Mr. McPhatter notifying him of its decision. A copy of the notification letter to Mr. McPhatter was admitted into evidence as Department Exhibit 5F. By letter to the Department dated November 28, 2012, Monumental Life also informed the Department that it had terminated Mr. McPhatter for mishandling company funds. A copy of the November 28, 2012 letter from Monumental Life (Transamerica) to the Department was admitted into evidence as Department Exhibit 3.

16. Eric Lautzenheiser, a Complaint Analyst in the Department's Agent Services Division, testified that he was assigned to investigate the allegations against Mr. McPhatter which the Department received from Monumental Life. By letter to Monumental Life (Transamerica) dated December 7, 2012, Mr. Lautzenheiser requested the company to provide a summary of the allegations against Mr. McPhatter which led to his termination and the supporting documents. A copy of the letter from Mr. Lautzenheiser to Monumental Life (Transamerica) was admitted into evidence as Department Exhibit 4.

17. By letter to Agent Services Division dated December 20, 2012, a copy of which was admitted into evidence as Department Exhibit 5, Monumental Life provided a summary of the allegations against Mr. McPhatter which led to his termination and copies of the following supporting documents:

- (a) Mr. McPhatter's October 1, 2012 statement to Ms. Brown identifying premiums stolen from customers, a copy of which was admitted into evidence as Department Exhibit 5A.
- (b) Mr. McPhatter's October 18, 2012 statement identifying additional premiums that Mr. McPhatter stole from his customers, a copy of which was admitted into evidence as Department Exhibit 5B.
- (c) A table identifying the insured/payor and the amount and date of shortage for each account that was deficient and/or missing deposits, a copy of which was admitted into evidence as Department Exhibit 5C.
- (d) Documentation showing Monumental Life's indemnification of these customers, a copy of which was admitted into evidence as Department Exhibit 5D.
- (e) Mr. McPhatter's agent agreement with Monumental Life, a copy of which was admitted into evidence as Department Exhibit 5E.
- (f) The October 1, 2012 termination report and letter sent to Mr. McPhatter, Department Exhibit 5F, *supra*.

18. The documentation which Monumental Life provided to the Department shows that Mr. McPhatter admitted to stealing \$3,644.93 in premiums from Monumental Life customers and that Monumental Life indemnified the policyholders for those stolen premiums.

19. By letter to Mr. McPhatter dated December 7, 2012, a copy of which was admitted into evidence as Department Exhibit 6, Mr. Lautzenheiser requested that Mr. McPhatter provide a written, notarized response to Monumental Life's allegations that he was terminated for cause for mishandling company funds. By letter dated December 17, 2012, a copy of which was admitted into evidence as Department Exhibit 7, Mr. McPhatter admitted that Monumental Life had terminated him. However, Mr. McPhatter did not explain the reasons for his termination. Mr. McPhatter further stated that "After my termination from Monumental some discrepancies came forward from the district office. We had a meeting and discussed every situation. Both parties came to an agreement to repay all discrepancies in monthly payments until paid off. . . ."

20. By letter to Mr. McPhatter dated December 27, 2012, a copy of which was admitted into evidence as Department Exhibit 8, Mr. Lautzenheiser requested that Mr. McPhatter attend an informal conference with Agent Services on January 28, 2013 to discuss the allegations against his agents' licenses. Mr. McPhatter appeared at the conference on January 28, 2013. During the conference, Mr. Lautzenheiser asked Mr. McPhatter to explain the circumstances which led to his termination from Monumental Life. In response, Mr. McPhatter confessed to Mr. Lautzenheiser that he had stolen his customers premiums and that he used their money to buy cocaine. At the conclusion of the conference, Mr. Lautzenheiser requested that Mr. McPhatter

surrender his agent's licenses. Mr. McPhatter refused to surrender his agent's licenses and informed Mr. Lautzenheiser that he wanted an administrative hearing.

21. Mr. McPhatter improperly withheld, misappropriated, or converted \$3,644.93 in monies which he collected from Monumental Life customers.

22. Mr. McPhatter used fraudulent, coercive, or dishonest practices and demonstrated untrustworthiness and incompetence in his dealings with Monumental Life and with the Monumental Life customers from whom he collected monies.

CONCLUSIONS OF LAW

1. Mr. McPhatter was properly served with the Notice of Hearing in this matter. The Department has personal jurisdiction over Mr. McPhatter and subject matter jurisdiction in this matter.

2. Grounds exist to revoke Mr. McPhatter's agent licenses under: (a) N.C.G.S. § 58-33-46(a)(4) for improperly withholding, misappropriating, or converting monies or properties received in the course of doing insurance business and (b) N.C.G.S. § 58-33-46(a)(8) for using fraudulent, coercive, or dishonest practices and demonstrating incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this State.


3. Alternatively, as a result of Mr. McPhatter's failure to appear at the hearing, the Hearing Officer may also revoke Mr. McPhatter's licenses as sanctions under 11 N.C.A.C. 1.0423 (a)(1) and (2).

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

ORDER

1. Mr. McPhatter's Life, Accident & Health or Sickness, and Personal Lines agent licenses are hereby permanently revoked.

This the 19 day of June, 2013.



Sherri L. Hubbard, Hearing Officer
N.C. Department of Insurance

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **FINAL AGENCY DECISION** by first class mail, postage prepaid, addressed as follows:

Christopher McPhatter
1765 Brunswick Road
Lumberton, NC 28358-4405

This the 20th day of June, 2013.


Anne Goco Kirby
Assistant Attorney General
N. C. Department of Justice
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