

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
JAVIER ROMERO ALVARADO
(NPN #17602670)

and

ROMERO INSURANCE GROUP
(NPN#1000577697)

Respondents.

ORDER AND
FINAL AGENCY DECISION

Docket No. 2175

THIS MATTER came on for hearing on June 6 and 7, 2024, in Hearing Room #131 the Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina before the undersigned Hearing Officer, as designated by the North Carolina Commissioner of Insurance (“Commissioner”) pursuant to North Carolina General Statutes §§ 58-2-50, 58-2-55, 58-2-70, 58-2-162, 58-2-185, 58-2-195(a) & (e), 58-2-200, 58-33-46(a)(2), (4), & (8), 58-35-5, 58-35-45, 58-35-50, 58-35-55, 58-35-90, 58-33-85, 150B-38, 150B-40, 150B-41, 150B-42, 11 NCAC 1.0401, 11 NCAC 19.0102 and 11 NCAC 6A.0402(d)(2) et. seq., and other applicable statutes and rules.

Petitioner, the Agent Services Division (“Petitioner” or “ASD”) of the North Carolina Department of Insurance (“NCDOI”), was represented by Assistant Attorney General Anne Goco Kirby. Respondents Javier Romero Alvarado and Romero Insurance Group (individually, “Respondent Alvarado” and “RIG” and, together, “Respondents”),¹ were represented by Tina Krasner, Esq.

¹ Respondent Alvarado is alternately referred to in ASD’s investigative materials as Mr. Romero or Mr. Alvarado. “Romero” is his paternal last name, while “Alvarado” is his maternal last name. For the sake of consistency, the Undersigned refers to Respondent Alvarado by his maternal last name throughout this Order.

Petitioner's Exhibits 1-34 were admitted into evidence. Respondents did not present or offer any exhibits into evidence.

Petitioner presented testimony from the following witnesses: Joni Locklear, Ritchie Dabbs, and Jennifer Collins. Respondents presented testimony from the following witnesses: Daniel Lopez Gonzalez and Respondent Alvarado.

ISSUES

1. Whether Respondents charged a cancellation fee to insureds who entered premium finance agreements with RIG and who failed to make a payment when due.

2. Whether Respondents collected the cancellation fee by entering insufficient funds draft corrections ("NSFs") into National General Insurance Company's (hereinafter, "NGIC") computer system, causing NGIC to credit Respondents with the fee.

3. Whether the fees Respondents received as a result of entering the NSFs included policyholder funds that Respondents did not return to the policyholders.

3. Whether Respondents provided premium financing to NGIC policyholders without being licensed to do so, in violation of N.C. Gen. Stat. § 58-33-85(a).

4. Whether Respondents violated N.C. Gen. Stat. §§ 58-2-185, 58-2-195(a) and 11 NCAC 6A.0402(d)(2) by failing to produce records of their insurance business in response to ASD's requests.

5. Whether Respondents improperly withheld, misappropriated, or converted monies received in the course of doing insurance business within the meaning of N.C. Gen. Stat. § 58-33-46(a)(4).

6. Whether Respondents used "fraudulent, coercive, or dishonest practices, or demonstrate[d] incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in North Carolina or elsewhere" within the meaning of N.C. Gen. Stat. § 58-33-46(a)(8).

7. Whether grounds exist to revoke Respondents' licenses pursuant to N.C. Gen. Stat. § 58-33-46(a)(2),(4) & (8).

BASED UPON the allegations set forth in the Notice of Hearing, the Petition for Administrative Hearing, the Affidavit of Service, the testimony of the witnesses, arguments, documentary exhibits presented at the hearing, the parties' stipulations,

as amended during the hearing, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Record Evidence and Testimony

1. NCDOT 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 producers.

2. The parties stipulated to 59 facts which were admitted into evidence as Petitioner's Exhibit 7. Stipulations 11, 14, 15, and 17 were amended *sua sponte* to correct the year referenced therein from 2023 to 2022.

3. At all times relevant to this proceeding, Respondent Alvarado held a resident insurance producer license with lines of authority in Property, Life, Casualty, Accident, Health & Sickness issued by the Department. *See* Pet'r Ex. 7, Stipulation 1. Respondent Alvarado was first issued a producer license by the Department on June 23, 2015. Respondent Alvarado's producer license expired on June 23, 2023. *See* Pet'r Ex. 32.

4. In June 2022, Respondent Alvarado applied for a resident business entity license for RIG and was issued this license on June 27, 2022. *See* Pet'r. Ex. 7, Stipulation 2. RIG's business entity license expired on March 31, 2023. *See* Pet'r Ex. 34. On June 21, 2023, RIG's business entity license was canceled for failure to pay its license renewal fee. *See* Pet'r Ex. 7, Stipulation 5.

5. As a licensed business entity, RIG was required to designate "a licensed producer, who is a natural person, responsible for the business entity's compliance with the insurance laws and administrative rules of this State and orders of the Commissioner." N.C. Gen. Stat. § 58-33-31(b)(2). Respondent Alvarado has at all relevant times been RIG's designated licensed responsible producer. *See* Pet'r Ex. 7, Stipulation 3.

6. Respondent Alvarado has been and continues to be the Director of RIG. *See* Pet'r Ex. 7, Stipulation 4. At all times relevant to this proceeding, Respondent Alvarado directed and had control over the management, operations, and insurance activities of RIG, including its recordkeeping and accounting. *See* Pet'r Ex. 7, Stipulation 6.

7. In 2019, Joni Locklear, an NGIC Sales Manager, interviewed Respondent Alvarado in response to his inquiry regarding becoming appointed to sell NGIC products.

8. On October 20, 2019, after meeting with Ms. Locklear, Respondents entered into an Agency Agreement with NGIC which authorized Respondents to market and sell NGIC policies. *See* Pet'r Ex. 11.

9. Respondents and their employees were appointed with and have sold insurance policies for NGIC and its underwriting companies in the states of North Carolina, Virginia, Louisiana, Tennessee, and South Carolina pursuant to contracts between NGIC and Respondents. *See* Pet'r Ex. 7, Stipulation 7.

10. NGIC offers policyholders the option of paying their insurance premiums through automatic draft or debit to their bank account or credit card or by "direct bill." NGIC sends premium bills to policyholders who choose to pay their premiums via direct bill, and those policyholders may either mail their premium payment directly to NGIC or submit their payment to their agent, who is then responsible for ensuring that the payment is remitted to NGIC.

11. Ms. Locklear testified that 58 percent of Respondents' NGIC customers were direct-bill customers.

12. Respondents had a bank account ("sweep account") from which NGIC regularly withdrew (or "swept") policyholder premium payments deposited there by Respondents. NGIC authorized Respondents to enter NSF's to reverse a premium payment previously swept from RIG's premium sweep account whenever an insured's premium check was returned for insufficient funds.

13. When Respondents entered an NSF for a customer, it would cause NGIC to reverse the customer's premium payment and credit it back to Respondents' sweep account. *See* Pet'r Ex. 7, Stipulation 9.

14. RIG was located in one of Joni Locklear's sales territories. Ms. Locklear was Respondents' primary contact with NGIC after Respondent Alvarado entered into the Agency Agreement.

15. The Parties' Stipulation 10 states: "Respondents entered into Premium Finance Agreements [hereinafter 'PFAs'] with NGIC's insureds without having obtained a license to act as a Premium Finance Company." *See* Pet'r Ex. 7, Stipulation 10. N.C. Gen. Stat. § 58-35-5(a) requires that no person "except an authorized insurer shall engage in the business of an insurance premium finance

company without obtaining a license from the Commissioner, as provided in this Article.”

16. Respondent Alvarado and Mr. Lopez testified for Respondents. Mr. Lopez, a resident licensed insurance producer, testified that he started working at RIG as a sales agent in 2017 and was later promoted to the position of office manager.

17. While Respondents were appointed with NGIC, Ms. Locklear had routine conversations with Respondents as needed and made notes of those conversations. Ms. Locklear testified that, on February 4, 2021, Respondent Alvarado called her to ask if RIG could use premium financing for customers. Ms. Locklear’s notes of that February 4, 2021 conversation stated, in pertinent part: “Javier called asking if they could use OPC, he plans to start financing payments, advised they would have to use an approved OPF company for us to allow OPF.” See Pet’r Ex. 17.

18. Mr. Lopez testified that, a few days later, Respondent Alvarado told Mr. Lopez that Ms. Locklear had followed up with him and advised that Respondents could start financing customers’ premiums. Respondent Alvarado further testified that Ms. Locklear had given him permission for Respondents to finance customers’ premiums so long as he let the customers know what they were signing up for.

19. On August 3, 2022, Kathy Pickard, an NGIC internal auditor, sent an email to Ms. Locklear which, in pertinent part, notified Ms. Locklear that she was in the “initial stages of an analysis of [RIG] 9018835 and 9019856 due to activity involving Agent Draft NSF corrections that are being processed by the Agency’s on multiple policies and in some policy examples it involves multiple payments per policy.” See Pet’r Ex. 10.

20. Rob Owens, an NGIC Sales Director, and Ritchie Dabbs, an NGIC Regional Sales Manager, were copied on Ms. Pickard’s August 3, 2022 email. Mr. Dabbs supervises Ms. Locklear and six other NGIC sales managers, and Mr. Owens is his boss.

21. After receiving Ms. Pickard’s email, the NGIC representatives discussed the matter and decided to immediately schedule a meeting with Respondent Alvarado to discuss the concerns that Ms. Pickard raised in her August 3, 2023 e-mail.

22. The Parties’ Stipulation 11 states: “In August 2023, Rob Owens, a [sic] NGIC regional sales manager ... met with Respondent Alvarado to discuss the

concerns raised by his agency's excessive number of Agent Draft insufficient funds corrections." See Pet'r Ex., Stipulation 11.

23. The Parties' Stipulation 12 states: "During his meeting with NGIC[,] Respondent Alvarado told the NGIC representatives that his agency was entering into premium finance agreements." See Pet'r Ex 7, Stipulation 12.

24. The Parties' Stipulation 15 states: "During Respondent Alvarado's August 2023 meeting with NGIC, the representatives requested Respondents to provide NGIC with copies of all records of Respondents' premium finance business, including copies of all premium finance contracts." See Pet'r Ex. 7, Stipulation 15.

25. Respondent Alvarado provided the NGIC representatives with copies of four premium finance agreements that Respondents had entered into with NGIC customers. See Pet'r Ex.7, Stipulation 13. Respondents never produced any other records requested by the NGIC representatives. See Pet'r Ex. 7, Stipulations 16 and 40. Respondent Alvarado testified that, after this telephone conversation with the NGIC representatives, he decided not to provide NGIC representatives with any other records because their actions and demands signaled to him that NGIC had become "hostile."

26. The four executed premium finance agreements that Respondents provided to NGIC were introduced into evidence as Petitioner's Exhibits 12-15. Exhibits 12 and 13 were dated May 13 and May 20, 2022, respectively. Those two agreements were labeled in bold letters "Premium Finance" and stated in pertinent part: "I [policyholder], agree to (Romero Insurance Group) financing my insurance premium for the policy period 5/13/2022 for policy # [_____]. Repayment of Loan Payments will be financed by Romero Insurance Group into payments of \$ [] weekly. If you fail to make a payment, the policy will be terminated at the time of the last payment due date of the carrier. If the policy gets terminated due to non-payment *there will be no refunds.*" See Pet'r Exs. 12 and 13 (emphasis added).

27. The two premium finance agreements which were introduced into evidence as Petitioner's Exhibits 14 and 15 were both dated June 3, 2022. These later premium finance agreements included the same language as Petitioner's Exhibits 12 and 13 but added the name "Romero Insurance Group" above the heading "Premium Finance," provided an option for either weekly or biweekly payments, and included the following sentence: "There is a *one-month cancellation fee* if the payments are not made on their due date." See Pet'r Ex. 7, Stipulation 19 and Pet'r Exs. 14 and 15 (emphasis added).

28. The Parties' Stipulation 8 states: "Respondents would deposit *premium payments received from NGIC customers* into a bank account and NGIC would sweep *the customers' premium payments* from Respondents' account on a regular basis per the terms of the policies." See Pet'r Ex. 7, Stipulation 8 (emphasis added).

29. Respondents stipulated in Petitioner's Exhibit 7, Stipulation 56 that RIG's premium finance agreements "provided that Respondents would charge and collect a cancellation fee equal to one-month of *premium previously paid to RIG by the insured* if the insured failed to timely make a payment to Respondents." (Emphasis added).

30. Respondents stipulated in Petitioner's Exhibit 7, Stipulation 57 that "Respondents collected the one-month premium cancellation fee by entering *false* draft corrections, agent draft NSF, and returned NSF fees into NGIC's system indicating that the insured's last payment was returned for insufficient funds *even though the insured had in fact paid Respondent RIG and Respondent RIG had remitted the payment to NGIC.*" (Emphasis added).

31. In their August 2023 meeting with Respondent Alvarado, the NGIC representatives also instructed him to remit to NGIC any premiums that his agency had accepted under premium finance agreements but then recouped through the NSF correction tool. See Pet'r Ex.7, Stipulation 17. Respondents never returned any such funds to NGIC.

32. Respondent Alvarado claimed that he did not understand paragraph 57 of the Stipulations at the time that he agreed to it, asserting that he has difficulty understanding English at times because it is a second language for him. Respondent Alvarado, however, applied for and passed the North Carolina examination to become a licensed insurance producer, obtained approval to write policies for insurers, applied for and obtained approval for RIG to become a licensed insurance business entity, and formed and operated RIG, all of which required significant use and understanding of both informal and formal English. Additionally, Respondent Alvarado testified in English in great detail and with proficiency during the hearing on this matter, including when he was subject to lengthy cross-examination by ASD's counsel.

33. At no time did Respondents move the Undersigned to permit them to withdraw or amend Stipulations 8, 56, or 57. The Undersigned is in the unique position as factfinder to evaluate the credibility of the parties' live testimony. Given this fact, as well as Respondent Alvarado's employment experience and his ability to testify at the hearing in English, the Undersigned, who is in the unique position as

factfinder does not credit Respondent Alvarado's assertion that he failed to understand paragraph 57 of the Stipulations at the time that he agreed to them on behalf of himself and RIG.

34. Respondent Alvarado testified that he only entered NSF's to recover premiums that RIG had paid to NGIC as advances to customers. Respondent Alvarado testified that he never entered NSF's to recover premium funds actually paid by the customers to RIG and then swept from RIG's account by NGIC.

35. Respondents' employee Mr. Lopez testified that, although he did not enter NSF's himself, he understood Respondent Alvarado's practice to be to only enter NSF's to recover funds that Respondents had advanced to policyholders. Mr. Lopez further testified that, if a policyholder had paid Respondents for the first two weeks of coverage in a month but then failed to pay for the second two weeks which Respondents had already advanced to NGIC, Respondent Alvarado only recovered the premium for the last two weeks. Neither Mr. Lopez nor Respondents offered any explanation of whether or how NGIC's NSF correction tool would permit or accommodate a partial refund or a policy cancellation for only part of a month.

36. Ultimately, Respondent Alvarado's testimony that Respondents did not recover and retain any funds paid by policyholders is irreconcilable with Petitioner's Exhibit 7, Stipulations 8, 56 and 57, in which Respondents admitted that at least some cancellation fees were drawn from funds paid to them by the policyholders. As noted, Respondents never moved to amend or modify any of these Stipulations.

37. Respondent Alvarado's assertion that Respondents never recovered their customers' funds also conflicts with the language in their premium finance agreements stating there would be "no refunds" in the event of the policyholders' failure to pay and with the language in Petitioner's Exhibits 14 and 15 that Respondents were charging a "cancellation fee." Simply put, if Respondents were in fact recovering only their own advanced premiums by entering NSF's, then Respondents would have had no need to advise their policyholders who entered into financing agreements that the policyholders would not receive a refund and would be charged a cancellation fee.

38. Moreover, as detailed above at Finding of Fact 25 and below at Findings of Fact 47, 54, and 57, Respondents never produced the most basic documents about their premium financing business to either NGIC or ASD, despite repeated requests. Typically, such documents would include policyholder receipts, Respondents' bank records, and internal financial records, all of which might have supported

Respondents' contention that their premium finance operations only involved recovery of Respondents' own funds advanced to policyholders.

39. The Undersigned finds that Respondents entered NSF's and as a result recovered at least some policyholder funds that they did not return to the policyholders. The Undersigned does not credit Respondents' assertions to the contrary. Moreover, it is implicit in Respondents' contention they only recovered their own advances that Respondents did not refund to their policyholders any of the funds they recovered.

40. The Parties' Stipulation 39 in Petitioner's Exhibit 7 states: "During his November 1, 2022 interview, Respondent Alvarado informed ASD that if the insured failed to make a timely payment when due, Respondents would complete a draft NSF correction in NGIC's system in order to reverse the last month's premium payment either *before or after the policy had been canceled for nonpayment of premium*, causing NGIC to credit that month's premium to Respondent RIG's bank account. Respondents kept the returned premium as a cancelation fee." (Emphasis added).

41. Respondent Alvarado claimed that he did not understand paragraph 39 of the Stipulations due to his alleged lack of proficiency in English. At no time, however, did Respondents move the Undersigned to permit them to withdraw or amend Stipulation 39. Given this fact, as well as Respondent Alvarado's employment experience and his ability to testify at the hearing in English, the Undersigned does not credit Respondent Alvarado's assertion that he failed to understand paragraph 39 of the Stipulations at the time that he agreed to them on behalf of himself and RIG.

42. Respondents did not contest at the hearing that their use of the NSF correction tool ultimately led to customers' policies being canceled.

43. NGIC's Mr. Dabbs testified that insurance producers such as Respondent Alvarado do not have the authority to terminate NGIC customer policies or to determine whether a policyholder receives any refunds upon termination of the policy.

44. The same week that the NGIC representatives spoke to Respondent by phone, NGIC decided to shut off Respondents' ability to write new business and to terminate RIG's Agency Agreement.

45. Jennifer Collins, an ASD Agency Investigation Supervisor, received a copy of NGIC's notice to NCDOI that it had terminated its Agency Agreement with

Respondents for cause. After receiving the letter, Ms. Collins opened an investigation of Respondents pursuant to N.G. Gen. Stat. § 58-2-195(e) and obtained copies of the four RIG premium finance agreements from NGIC.

46. In an October 24, 2022 email, Ms. Collins informed Respondents that ASD was initiating a target examination of Respondents because ASD had received the notice of termination for cause letter from NGIC. *See* Pet'r Ex. 7, Stipulations 20 and 21 and Pet'r Ex. 18, October 24, 2022 email.

47. In her October 24, 2022 e-mail to Respondents, Ms. Collins requested that Respondents provide the following documents to ASD:

- (a) Bank statements from when the agency opened for any account that premium is deposited into,
- (b) The complete copies of all underwriting files, including the application, emails, and all papers contained within the file,
- (c) Service fees and consent forms,
- (d) A list of all policies the agency premium financed and copies of all the premium finance contracts, and
- (e) A list of employees, as well as the number of policies the agency has and the premium volume.

See Pet'r Ex.7, Stipulation 22.

48. Ms. Collins' October 24, 2022 email to Respondents requested that Respondent Alvarado confirm whether RIG had an office address and advised that, if it did not, ASD would email Respondent Alvarado a computer link to a document storage program named Sharefile for Alvarado to upload the documents responsive to ASD's requests. *See* Pet'r Ex.7, Stipulation 24.

49. Respondent Alvarado did not reply to Ms. Collins' email. However, he called Ms. Collins on October 27, 2022 to confirm the date when he was required to provide the requested documents to ASD and left her a voicemail message.

50. Ms. Collins returned Respondent Alvarado's call on October 28, 2022 and, in their ensuing conversation, he stated that he was financing insureds' payments due on NGIC policies and asserted that NGIC had given him permission to

finance insureds' payments due on NGIC policies. *See* Pet'r Ex. 7, Stipulations 27 and 28.

51. During the October 28, 2022 phone call, Ms. Collins informed Respondent Alvarado that his responses to ASD's requests for documents were due on or before November 4, 2022. *See* Pet'r Ex. 7, Stipulation 26. Respondent Alvarado indicated that he would comply with ASD's requests, and Ms. Collins scheduled a telephone interview with him to take place on November 1, 2022.

53. On November 1, 2022, Ms. Collins and Sherri Bumgarner, an ASD investigator, conducted a telephone interview of Respondent Alvarado. *See* Pet'r Ex.7, Stipulation 30. During the interview, Respondent Alvarado told ASD that he had been financing insureds' premium payments for NGIC policies for the past one and a half years. *See* Pet'r Ex. 7, Stipulations 31 and 32.

54. During his November 1, 2022 interview, Respondent told ASD that he would send ASD spreadsheets that his wife prepared and which recorded all of the premium finance payments that the agency advanced and received for NGIC policies along with his other documentary responses due to ASD by the November 4, 2022 deadline. *See* Pet'r Ex.7, Stipulation 40. However, Respondent did not do so. *See id.*, Stipulation 41.

55. On November 8, 2022, Ms. Collins emailed Respondent Alvarado regarding Respondents' past due responses and requested that Respondents upload the records as soon as possible so that ASD could begin reviewing them. *See* Pet'r Ex.19, November 8, 2022 e-mail.

56. On November 29, 2022, Ms. Collins sent another email to Respondent Alvarado. In that email, Ms. Collins informed Respondents that ASD had not received any documents in response to ASD's requests, requested that Respondents upload their responsive records to the Sharefile folder no later than December 6, 2022, and cited for Respondents relevant statutes under Chapter 58 requiring them to maintain such records. *See* Pet'r Ex.20, November 29, 2022 e-mail.

57. Respondents never provided any of the records that ASD requested they produce to ASD. *See* Pet'r Ex. 7, Stipulations 41 and 42. At the hearing, Respondent Alvarado explained that, although he was initially responsive to Ms. Collins's inquiries, he decided not to provide any records to ASD because, originally, he told Ms. Collins that he had documents demonstrating that NGIC approved of his premium financing, but he later realized that he actually did not have any such documents.

58. On May 16, 2023, Ms. Collins emailed Respondents a letter which alleged that grounds existed under N.C. Gen. Stat. § 58-33-46(a)(2), (4), and (8) to take disciplinary action against their licenses and set forth the language of insurance statutes and regulations which Respondent allegedly violated, including the provisions requiring agents to maintain and produce records of their insurance business when demanded, provisions of the Premium Finance Act under Article 35 of Chapter 58, and provisions of N.C. Gen. Stat. § 58-33-46.

59. Ms. Collins' May 16, 2023 letter requested that Respondent Alvarado appear for an informal conference with ASD on June 8, 2023 in order to discuss the allegations against Respondents and requested that Respondents have any attorney representing Respondents at the conference notify ASD with a letter of representation at least two weeks before the conference. See Pet'r Ex. 23. Respondents did not reply to Ms. Collins' May 15, 2023 e-mail.

60. ASD had to reschedule the June 8, 2023 conference to June 9, 2023 due to a conflict. On June 1, 2023, Ms. Collins emailed Respondent to inform him of the new date and attached a June 1, 2023 conference letter which included the new conference date. With the exception of the dates, the June 1, 2023 conference letter was identical to the May 15, 2023 conference letter. See Pet'r Ex. 24.

61. On June 3, 2023, Respondent Alvarado replied to Ms. Collins' June 1, 2023 email simply stating: "Sorry I can't make it on June 9th, the agency has pretty much been shut down for almost a year and I'm focusing on our lending company. *Please contact my attorney as he will be handling everything.*" See Pet'r Ex. 25 (emphasis added). Respondent did not provide the name and contact information for Respondents' attorney, and no attorney submitted a letter of representation to Ms. Collins in response to her May 15 and June 1, 2023 conference letters.

62. On December 15, 2023, prior to initiating this administrative proceeding, Ms. Collins emailed a letter to Respondent Alvarado which set forth additional allegations against Respondents and informed Respondent Alvarado that ASD would like to discuss these allegations with him by telephone conference at 10:00 am on January 9, 2024. Ms. Collins attached a draft of the Petition for Administrative Hearing against Respondents to her December 15, 2023 email, listing ASD's allegations in greater detail. Ms. Collins informed Respondent Alvarado that he was not required to participate in the conference with ASD prior to the hearing in this matter and requested that Respondent Alvarado let her know as soon as possible if he did not intend to participate in the January 9, 2024 telephone conference. See Pet'r Ex. 26. Respondents did not reply to Ms. Collins' email and did not participate in the telephone conference.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. The Notice of Administrative Hearing with attached Petition for Hearing was properly served on Respondents pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

3. The Notice of Administrative Hearing with attached Petition for Hearing gave Respondents notice of all the factual and legal allegations which ASD relies upon to support taking disciplinary action against their licenses pursuant to N.C. Gen. Stat. § 58-33-46(a)(2), (4), and (8). This is the only legally required notice under Article 3A of Chapter 150B. See N.C. Gen. Stat. § 150B-38(b).

4. N.C. Gen. Stat. § 58-33-46(f) provides that “[t]he Commissioner shall retain the authority to enforce the provisions of, and impose any penalty or remedy authorized by, this Chapter against any person who is under investigation for or charged with a violation of this Chapter even if the person’s license or registration has been surrendered or has lapsed by operation of law.”

Premium Finance Act Violations

5. N.C. Gen. Stat. § 58-35-5(a) of the Insurance Premium Financing Act provides: “No person except an authorized insurer shall engage in the business of an insurance premium finance company without obtaining a license from the Commissioner, as provided in this Article.”

6. N.C. Gen. Stat. § 58-35-1(1) of the Premium Finance Act defines an insurance premium finance company as:

- a. Any person engaged, in whole or in part, in the business of entering into insurance *premium finance agreements* with insureds; or
- b. Any person engaged, in whole or in part, in the business of acquiring insurance premium finance agreements from other insurance premium finance companies.

(Emphasis added).

7. N.C. Gen. Stat. § 58-35-1(2) defines “insurance premium finance agreement” as meaning a “promissory note or other written agreement by which an

insured promises or agrees to pay to, or to the order of, an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance producer, in payment of premiums on an insurance contract, *together with a service charge* as authorized and limited by this Article.” (Emphasis added).

8. Respondents assert that RIG’s premium finance agreements do not meet the definition of that term under N.C. Gen. Stat. § 58-35-1(2) and that Respondents were therefore not acting as an insurance premium financing company under N.C. Gen. Stat. § 58-35-1(1) and were not required to be licensed under N.C. Gen. Stat. § 58-35-5(a). Respondents’ argument appears to be that: (a) although RIG’s premium finance agreements refer to a non-refundable “cancellation fee” to be charged policyholders if they failed to pay RIG for any payments advanced, the agreements do not contain a “service charge” within the meaning of N.C. Gen. Stat. § 58-35-1(2).

9. In Findings of Fact 36-39 above, however, the Undersigned resolved the evidentiary conflicts among the cited Stipulations, Respondent Alvarado’s testimony, and Respondents’ lack of supporting documentation by determining that Respondents entered NSFs and, as a result, recovered and retained at least some policyholder funds already paid to them by their customers without returning the funds to the customers. *See Brackett v. Thomas*, 371 N.C. 121, 126, 814 S.E.2d 86, 89 (2018) (“It is the role of the [hearing officer], rather than a reviewing court, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence.”) (internal quotation marks omitted). Consequently, what Respondents themselves characterized as “premium finance” agreements in their very agreements and in the Stipulations indeed qualify as such under N.C. Gen. Stat. § 58-35-1(2), including because the agreements’ non-refundable “cancellation fees” qualify as “service charges” under the statute.

10. Because Respondents entered into insurance premium finance agreements, they were acting as an insurance premium financing company under N.C. Gen. Stat. § 58-35-1(1) and were required to be licensed as such under N.C. Gen. Stat. § 58-35-5(a). Further, it is not necessary for the Undersigned to decide on the evidentiary dispute as to whether NGIC in some manner approved of Respondents’ premium finance agreements because, even if it did so, NGIC cannot bind ASD or the Commissioner.

11. N.C. Gen. Stat. § 58-35-45(a) provides that “No insurance premium finance agreement form or related form shall be used in this State unless it has been filed with and written approval given by the Commissioner.” Respondents violated

N.C. Gen. Stat. § 58-35-45(a) by using premium finance agreements which had not been filed with and given written approval by the Commissioner.

12. In relevant part, N.C. Gen. Stat. § 58-33-46(a)(2) authorizes the Commissioner to suspend or revoke the license of an agent or business entity for “violating any insurance law of this or any other state, violating any administrative rule” of the Commissioner. Respondents’ violations of the law described in Conclusions of Law 10-11 above constitute grounds to revoke their licenses under N.C. Gen. Stat. § 58-33-46(a)(2).

13. N.C. Gen. Stat. § 58-33-46(a)(8) authorizes the Commissioner to suspend or revoke the license of an agent or business entity for “[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in North Carolina or elsewhere.” Respondents’ violations of the law described in Conclusions of Law 10-11 above constitute grounds to revoke their licenses under N.C. Gen. Stat. § 58-33-46(a)(8).

Withholding, Misappropriation, and Conversion of Customer Funds

14. In Findings of Fact 36-39 above, the Undersigned resolved the evidentiary conflicts among the cited Stipulations, Respondent Alvarado’s testimony, and Respondents’ lack of supporting documentation by determining that Respondents entered NSFs and, as a result, recovered and retained policyholder funds already paid to them by their customers without returning those funds to their policyholders. *See Brackett*, 371 N.C. at 126, 814 S.E.2d at 89 (“It is the role of the [hearing officer], rather than a reviewing court, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence.”) (internal quotation marks omitted).

15. N.C. Gen. Stat. § 58-33-46(a)(4) provides that: “[t]he Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under this Article . . . [for] [i]mproperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.” Respondents’ ultimate conduct described in Finding of Fact 39 above constitutes grounds to revoke Respondents’ licenses under N.C. Gen. Stat. § 58-33-46(a)(4).

16. Additionally, Respondents’ withholding, misappropriation, or conversion of policyholder funds constitutes grounds to revoke their licenses under N.C. Gen. Stat. § 58-33-46(a)(8).

Recordkeeping Violations

17. N.C. Gen. Stat. § 58-2-185 provides:

Record of business kept by companies and agents; Commissioner may inspect. – 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. *Information 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 Commission when demanded.*

(Emphasis added).

18. N.C. Gen. Stat. § 58-2-195(a) provides:

The Commissioner is empowered to make and promulgate reasonable rules and regulations governing the recording and reporting of insurance business transactions by insurance agencies, insurance producers, and producers of record, any of which agencies, insurance producers, or producers of record are licensed in this State or are transacting insurance business in this State to the end that such records and reports will accurately and separately reflect the insurance business transactions of such agency, insurance producer, or producer of record in this State. *Information from records required to be kept pursuant to the provisions of this section must be furnished the Commissioner on demand and the original records required to be kept pursuant to the provisions of this section shall be open to the inspection for the Commissioner or any other authorized employee described in G.S. 58-2-25 when demanded.*

(Emphasis added).

19. 11 NCAC 6A.0402(d)(2) states that “Every licensee shall, upon demand from [Agent Services] Division, furnish in writing any information relating to the licensee’s insurance business within 10 business days after the demand in accordance with G.S. § 58-2-195(a).”

20. Respondent Alvarado testified that he knowingly declined to provide documents related to Respondents’ premium finance agreements to NGIC because he

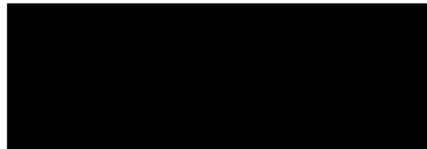
felt NGIC's representatives were hostile to him when they asked for the documents. Further, Respondent Alvarado testified that he knowingly declined to provide business records to ASD, including ones related to Respondents' premium finance agreements, after he told ASD that he had documentation of NGIC's alleged approval of the agreements but later realized that he did not.

21. Respondents violated N.C. Gen. Stat. §§ 58-2-185 and 58-2-195(a) and 11 NCAC 6A.0402(d)(2) by failing to produce the records of their insurance business responsive to ASD's October 24, 2022 and November 29, 2022 requests. These violations of North Carolina statutes and a regulation constitute grounds to revoke Respondents' licenses under N.C. Gen. Stat. § 58-33-46(a)(2).

ORDER

Based on the foregoing Findings of Facts and Conclusions of Law, it is ordered that Respondent Alvarado's resident producer's license and Respondent RIG's business entity license issued by the North Carolina Department of Insurance are hereby **REVOKED** effective as of the date of the signing of this order.

This the 9th day of January, 2025.



Terence D. Friedman
Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. S 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 11. NCAC 01.0413 and N.C. Gen. Stat. S 1 A-I, 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. S 150B-46 describes the contents of the Petition, including explicitly stating what exceptions are taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. The mailing address to be used for service on the Department of Insurance is: Amy Funderburk, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served 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 residential address provided to the Commissioner pursuant to N.C. Gen. Stat. 58-2-69(b) and (d); via first class U.S. mail to Respondents' counsel; and via State Courier to Attorney for Petitioner, addressed as follows:

Javier Romero Alvarado
225 S. Poplar St., Apt. 2814
Charlotte, NC 28202
(Respondent)

Certified Mail Tracking Number: 9589 0710 5270 0742 5897 16

Javier Romero Alvarado
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(Respondent)

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Romero Insurance Group
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This the 9th day of January, 2025.



Kimberly W. Peatce, NCCP
Clerk of Court for Administrative Hearings
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