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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
ARTURO BARCENAS
LICENSE NO. 0014683937

VOLUNTARY SETTLEMENT
AGREEMENT

NOW COME, Arturo Barcenas (hereinafter "Mr. Barcenas") 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. Barcenas currently holds a resident producer's license with authority for Life, Accident & Health or Sickness, Property and Casualty lines of insurance issued by the Department; 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, 11 NCAC 04.0120 provides that an agent, broker or limited representative who deals directly with an applicant and who intends to charge a policy or service fee in accordance wit N.C. Gen. Stat. § 58-33-85(b), among other things must obtain the applicant's consent in writing on a separate form each time a policy or service fee is charged; such form shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged; and

WHEREAS, 11 NCAC 04.0121 provides that all premium receipts and copies issued by an agent, broker, or limited representative, shall be dated and contain the printed or stamped name of the agency or agent, broker, or limited representative, and the name of the insurer; and receipts shall be signed by the person accepting payment; and

WHEREAS, 11 NCSC 04.0429 provides that the accounting records maintained by agent, brokers, and limited representatives shall be separate and apart from any other business records and demonstrate at all times that the collected funds due to insurers and return premiums due to policyholders are available at all times; 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. § 58-2-164 (a)(3) defines "eligible risk" as a person who is an eligible risk as defined in G.S. 58-37-1(4) or G.S. 58-37-1(4a); and

WHEREAS, N. C. Gen. Stat. §§ 58-37-1(4) and (4a), among other things require proof of residency for the purchase of auto insurance in North Carolina; 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, a Department compliance examination was initiated by Department examiners on the Barecenas Insurance Agency owned and operated by Arturo Barcenas on May 20, 2018, which because of the violations discovered therein during the compliance check was modified into a target examination; and

WHEREAS, the examiners observed a receipt issued to Arias Reconstruction, LLC dated October 3, 2018, showing a $10.00 agency fee charged; discussions with Mr. Barcenas revealed that he was not obtaining signed consent forms as required by 11 NCAC 04.0120 although there was a sign posted in the lobby regarding the fee, but was not shown on the fee sign at his desk; and

WHEREAS, a review of the agency's premium bank statements from July 2018 through April 2019 reflected two (2) overdraft charges: October 3, 2018 in the amount of $36.00 and October 19, 2018 in the amount of $72.00, indicating that funds have not always been available to the insurers in violation of the provisions of N.C. Gen. Stat. § 58-33-46(a)(4) and 11 NCAC 04.0429; and

WHEREAS, a review of the agency's records showed that the agency's receipts do not consistently contain the names of the carriers, signature of the person receiving the premium, and the name and adress of the agency in violation of 11 NCAC 04.0121; it was recommended by Department examiners that the agent stamp each receipt with the name and address of the agency, the name of the insurer and include full signatures of employees accepting the payment; and

WHEREAS, the examination revealed that the agency has not reconciled its total receipts to deposits and has not kept copies of the deposit tickets, a violation of N. C. Gen. Stat. § 58-2-185; a review of receipts from October 1 through October 4, 2018 and the total transactions did not reflect the deposits shown in the October bank statement; and

WHEREAS, a review of the agency's records indicated that proof of North Carolina residency was not contained in its files as required by N. C. Gen. Stat. § 58-2-164(c) and (c1); and

WHEREAS, the violations found in the course of the examination of Barcenas Insurance Agency (BIA) and Mr. Barcenas, who is responsible for BIA's operations, demonstrate incompetence and financial irresponsibility on the part of Mr. Barcenas sufficient to support suspension, probation revocation or non-renewal of Mr. Barcenas's license as provided in N. C. Gen. Stat. § 58-33-46(a)(8); and

WHEREAS, as a result of the violations discovered by the audit, Mr. Barcenas was required to submit a written plan of action to prevent such occurrences in the future, which he did by a document dated June 11, 2018 and submitted to the Department; 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. Barcenas 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. Barcenas; 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. Barcenas and the Department hereby agree to the following:

1. Immediately upon the signing of this Agreement, Mr. Barcenas shall pay a civil penalty of **$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. Barcenas 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 **September 30, 2019**. 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. Mr. Barcenas in his written plan of action dated June 11, 2018 informed the Department that he has deposited an additional $6500 to his "Clients Payments" account to replace the $3,168 in overdrafts and for an additional "cushion" between deposits; all payments made to the agency will be documented on a spreadsheet and the receipts for which will be attached along with the deposit slip; all records will be saved as individual files and be available on request; and has established a rule in the agency that all applicants with out-of-state licenses requesting quotes will remain a quote until adequate proof of residency is provided.

3. Mr. Barcenas is required and agrees to maintain the procedures he has represented by preparation of his written plan of action, and that he has implemented to prevent the reoccurrence of the violations set forth in this Agreement, and is required and agrees to obtain Department approval for any changes thereto; and the Department reserves the right to make any follow up examinations of Mr. Barcenas's agency without prior notice to assure compliance; and any non-adherence to this requirement by Mr. Barcenas shall constitute a violation of an Order of the Commissioner pursuant to Paragraph No. 6. below; and

4 This Agreement does not in any way affect the Department's disciplinary power in any future examination of Mr. Barcenas or in any other complaints involving Mr. Barcenas.

5. Mr. Barcenas 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. Barcenas understands he may consult with an attorney prior to entering into this Agreement.

6. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Mr. Barcenas 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.

7. 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. Barcenas 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 routinely provides copies of voluntary settlement agreement to all companies that have appointed the licensee.

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

9. 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

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By: Angela Hatchell
Deputy Commissioner

Date: 10/17/19

Date: 10/18/19