

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
AMY HOLSCLOW
NPN # 18515318

Respondent.

ORDER AND FINAL
AGENCY DECISION

Docket Number: 2005

This matter was heard on Thursday, September 24, 2020, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to North Carolina General Statutes §§ 58-2-70, 58-33-85(a), 58-33-30, 58-33-46, 58-33-105, 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 Amy Holsclaw (hereinafter, “Respondent”) did not appear. The administrative hearing was held in the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina.

Tommy Walls, Senior Complaint Analyst for the Department’s Agent Services Division (“ASD”), appeared and testified for the Department. The Department also called James Looyzen to testify.

Based on the allegations set forth in the Notice of Hearing, the Petition for Administrative Hearing, Affidavit of Service, the testimony of James Looyzen and Tommy Walls, and documentary exhibits presented at the hearing, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. N.C. Gen. Stat. § 58-2-69(b) requires, in pertinent part, that all licensees inform the Commissioner of the applicant's residential address and e-mail address and give written notification to the Commissioner of any change of the licensee's residential or e-mail address within 10 business days after the licensee moves into the licensee's new residence or obtains a different e-mail address.

2. N.C. Gen. Stat. § 58-2-69(d) provides that "[n]otwithstanding any other provision of law, whenever the commissioner is authorized or required to give any notice under this Chapter to a licensee, the notice may be given personally or by sending the notice by first-class mail to the licensee at the address that the licensee has provided to the Commissioner under subsection (b) of this subsection."

3. The Notice of Administrative Hearing and attached Exhibit A (Petition for Administrative Hearing) was properly served on Petitioner by mailing it by first class mail to the Respondent at the residential address of record which Respondent has on file pursuant to N.C. Gen. Stat. § 58-2-69(d).

4. The Department has the authority and responsibility for the enforcement of insurance laws of this State and for regulating and licensing insurance agents. Respondent holds a resident producer's license with authority for Life, Accident & Health or Sickness, Property and Casualty lines of insurance and a Medicare Supplement Long-Term Care license issued by the Department. Respondent's National Producer License Number (NPN) is 18515318.

5. James Looyesen, a licensed insurance agent, testified that he is a proprietor of an Allstate insurance agency named the Maddie Looyesen Agency ["the agency"], located in Gastonia, North Carolina. The agency hired the Respondent to work as a licensed sales producer in April 2019.

6. On October 15, 2019, Mr. Looyesen received an e-mail from James Cosgrove, an investigator with Allstate Insurance Company ["Allstate"], informing him that incorrect bank account information had been entered for several policy applications for the purpose of setting up automatic bank drafts of premium payments referred to as ezipay or auto pay. Mr. Cosgrove provided Mr. Looyesen with the policy numbers for the 3 accounts for which the incorrect bank information has been entered.

7. Shortly after receiving the e-mail, Mr. Looyesen undertook an audit of the agency's accounts and observed that Respondent's unique subproducer identification number was listed as the enrolling agent in the policy records for those three policies and that the account records for these policies, which were for unrelated policyholders, listed the same bank account number and bank routing number for the

establishment of ezpay premium drafts. Mr. Looyesen then audited the agency's records of all of the policies written by Respondent and found 4 other policies for unrelated policyholders for which Respondent had entered the same bank account number and routing number for the establishment of automatic bank drafts. Mr. Looyesen printed and saved copies of the records of the 7 policies for which Respondent entered fictitious bank account and routing numbers and those records were introduced into evidence at the hearing as Department's Exhibit 13.

8. On October 16, 2019, Mr. Looyesen sent an e-mail reply to Mr. Cosgrove informing Allstate of the four additional policies written by Respondent that he identified as having fictitious bank account and routing numbers entered for the establishment of ezpay.

9. Mr. Looyesen confronted Respondent about her misconduct shortly after discovering it. When confronted by Mr. Looyesen, Respondent readily admitted having entered the fictitious bank account and routing numbers in order to obtain discounts that Allstate makes available to consumers who pay their premiums through ezpay, thereby lowering these policyholders' premiums. Respondent alleged that this was a practice that was done at the Allstate agency where she previously worked. Respondent resigned her position with the agency after Mr. Looyesen requested Respondent to do so.

10. Mr. Looyesen testified that he determined that the policyholders who received a discount as a result of Respondent's entering of fictitious bank account and routing numbers were harmed to the extent they received discounts that they were not entitled to and would have increased rates at renewal. Mr. Looyesen took corrective action towards these policyholders by contacting them and allowing them the opportunity to set up ezpay with their true bank account.

11. Allstate terminated Respondent's appointments with the company. By letter dated October 23, 2019, Allstate notified the Department that it had terminated Respondent for cause due to "falsification." In a November 7, 2019 response to the Department's request for additional information, Allstate provided correspondence regarding its investigation into this matter which explained how Allstate discovered during an October 15, 2019 audit that Respondent had put the same fictitious bank account number in the alliance system in order to get a discount for insurance applicants in an effort to generate more business and that due to Respondent's conduct, these policyholders received discounts for which they were not entitled. Allstate's October 23, 2019 termination notice and November 7, 2019 response were introduced into evidence as Department's Exhibits 5 and 7, respectively.

12. Tommy Walls, Senior Complaint Analyst with the ASD, sent an e-mail to Respondent on November 6, 2019 which informed her that the Department had received information from Allstate indicating that she was terminated for cause due to falsification and requested that Respondent provide a written response to that information within 10 days. Respondent did not provide the requested response. Thus, on November 21, 2019, Mr. Walls sent Respondent a follow up request e-mail reminding her of the Department's pending request and her past due response. The November 6 and 21, 2019 e-mails were admitted into evidence as the Department's Exhibits 8 and 9, respectively.

13. In a December 2, 2019 e-mail response to Mr. Walls which was admitted into evidence as the Department's Exhibit 10, Respondent admitted having put a "number" in for customers to get a discount for auto pay and alleged that this was an innocent practice that was engaged in by another agency where she previously worked.

14. On January 22, 2020, Mr. Walls sent an e-mail to Respondent summarizing allegations that may justify administrative action against her agent's license and requesting that she attend an informal conference with the Department to discuss these allegations. Respondent participated in the informal conference as scheduled on February 22, 2020. During the conference, Respondent again admitted having used fictitious numbers to get customers a discount for auto pay and alleged that this was an innocent practice that was engaged in by another agency where she previously worked.

15. Petitioner requested that Respondent's license be revoked pursuant to N.C. Gen. Stat. §§ 58-33-85(a), 58-33-105, 58-33-46(a)(2), (5), & (8). Petitioner also requested that a penalty be imposed upon Respondent pursuant to N.C. Gen. Stat. § 58-2-70.

CONCLUSIONS OF LAW

1. N. C. Gen. Stat. § 58-33-85(a) provides that:

No insurer, agent, broker or limited representative shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner. *No insurer, agent, broker or limited representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance.*

(Emphasis added).

2. On seven occasions, Respondent improperly entered a fictitious bank account and routing number for the purpose of obtaining premium discounts for policyholders to which the policyholders were not entitled to in violation of N.C. Gen. Stat. § 58-33-85(a).

3. N. C. Gen. Stat. § 58-33-105 prohibits any agent from “knowingly or willfully making any false or fraudulent statement or representation in or with reference to any application for insurance.”

4. On seven occasions, Respondent knowingly and willfully made false and fraudulent statements and representations in or with reference to applications for insurance when she entered the same fictitious bank account and routing number in connection with seven Allstate insurance applications in violation of N.C. Gen. Stat. § 58-33-105.

5. N.C. Gen. Stat. § 58-33-46(a)(2) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee that has “violated any insurance law of this or any other state, violated any administrative rule, subpoena, or order of the Commissioner or of another state’s insurance regulator, or violated any rule of FINRA.”

6. Respondent’s resident agent’s license should be suspended or revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) based upon her violations of N.C. Gen. Stat. §§ 58-33-85(a) and 58-33-105.

7. N.C. Gen. Stat. § 58-33-46(a)(5) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee for “intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.”

8. Respondent’s resident agent’s license should be suspended or revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(5) for having intentionally misrepresented the terms of actual or proposed insurance contracts and the terms of applications for insurance. Respondent’s conduct in entering a fictitious bank account and routing number for payment of premiums due on insurance policies constitutes grounds to revoke her license under N.C. Gen. Stat. § 58-33-46(a)(5).

9. N.C. Gen. Stat. § 58-33-46(a)(8) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee for “Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.”

10. Respondent's conduct in entering a fictitious bank account and routing numbers for payment of premiums due on insurance policies constitutes fraudulent and dishonest practices and demonstrates incompetence and untrustworthiness in the conduct of business within the meaning of N.C. Gen. Stat. § 58-33-46(a)(8) and constitutes grounds to revoke her license under this provision.

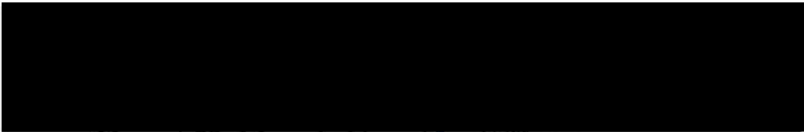
11. N.C. Gen. Stat. § 58-2-70 authorizes the Commissioner to order the payment of a monetary penalty upon a finding of a violation of Chapter 58 of the North Carolina General Statutes.

12. A monetary penalty should be imposed against Respondent for each of her seven violations of N.C. Gen. Stat. §§ 58-33-85 and 58-33-105. Pursuant to N.C. Gen. Stat. § 58-2-70, the Respondent should be ordered to pay a monetary penalty of fifteen hundred dollars (\$1,500.00) for these violations.

ORDER

Based on the foregoing Finding of Facts and Conclusions of Law, it is ordered that Respondent's licenses issued by the North Carolina Department of Insurance are hereby REVOKED effective as of the date of the signing of this order. It is further ORDERED that Respondent pay civil monetary penalties totaling fifteen hundred dollars (\$1,500.00) within (30) days of receipt of this Order and Final Agency Decision. Payment of this civil penalty shall be remitted by certified mail, return receipt requested, and shall be made by certified check, cashier's check, or money order made payable to the "North Carolina Department of Insurance." These civil penalties shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of the public schools.

This the 6th day of October 2020.



Sherri Hubbard, Hearing Officer
North Carolina Department of Insurance

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 11. NCAC 01.0413 and N.C. Gen. Stat. § 1 A-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, 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: A. John Hoomani, 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 addresses provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

Amy Holsclaw
749 Circle Dr NE
Lenoir, NC 28645-4525
(Respondent)

Certified Mail Tracking #: 70170530000073199644

Anne Goco Kirby
Assistant Attorney General
N.C. Department of Justice
Insurance Section
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This the 6th day of October 2020.



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