

**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
YOLANDA LEE JOHNSON
(NPN #6603104)**

Respondent.

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**ORDER AND
FINAL AGENCY DECISION**

Docket Number: 1805

THIS MATTER was heard on August 2, 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 an Amended Notice of Administrative Hearing that was duly issued and served.

Respondent Yolanda Lee Johnson ("Respondent") was present at the hearing and proceeded *pro se*. Respondent testified on her own behalf at the hearing.

The Agent Services Division ("ASD") of the North Carolina Department of Insurance ("NCDOI") was present at the hearing and was represented by M. Denise Stanford, Special Deputy Attorney General. NCDOI employees Cathy O'Connor and Roderick Davis testified at the hearing. The following witnesses also testified at the hearing: licensee Ronald Frederick; James Spears of Millennium Transportation; Barbara Jenkins, a paralegal with the Industrial Commission; Debbie Cox, a supervisor with the North Carolina Rate Bureau; Tommy Hefner of Jackson Sumner & Associates, Inc.; Larry Rogers of L&H Rogers Investment, LLC; and Donna Blackmon, the bookkeeper for the Charlotte Firefighters Association.

ASD offered into evidence Petitioner's Exhibits 1 through 37, which were admitted into evidence.

Respondent did not offer any Exhibits into evidence.

BASED UPON careful consideration of the evidence and arguments presented, and based upon the entire record in this 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 agents.
2. Respondent is a citizen and resident of Raleigh, Wake County, North Carolina.
3. Respondent holds an active license with NCDOI as an insurance producer with lines of authority for Casualty and Property Lines. Respondent's broker license with NCDOI is cancelled due to nonpayment.
4. In 2008, Respondent was hired as office manager of the insurance agency Frederick Insurance Service of Raleigh, Inc. d/b/a Frederick Insurance and Benefits ("Agency").
5. In her capacity as officer manager, Respondent handled the banking and accounting for the Agency, supervised the employees of the Agency, and ran the property and casualty insurance side of the Agency.
6. In April of 2014, Respondent purchased the property and casualty accounts owned by the Agency.
7. On April 4, 2014, Respondent was designated pursuant to N.C. Gen. Stat. § 58-33-31(b)(2) as a licensed insurance producer responsible for the Agency's compliance with the North Carolina insurance laws, administrative rules, and orders of the Commissioner.
8. On June 16, 2015, ASD Examiners Cathy O'Connor and Roderick Davis conducted an examination of Respondent's operations to investigate allegations that an employee of the Agency had mishandled customers' policies and payments. Respondent was present during the examination.
9. In the Examiners' review of the Agency manual receipts, they discovered that receipts were poorly kept. Some receipts were not in chronological order and

receipts were not reconciled to deposits and payment to the insurance companies.

10. In the Examiners' review of the business records of the Agency, they discovered that collected funds due to insurers and return premiums due to policyholders were not available at all times.

11. The Agency had a premium trust account and an operating account through North State Bank until August of 2014.

12. The Examiners reviewed the bank statements for North State Bank premium trust account number 7172 from December 2012 through August 2014. The North State Bank premium trust account had 31 negative balances and a total of \$2,574.00 in fees that were charged to the account. Monies were transferred back and forth from the premium trust and operating accounts. Collected funds due to insurers and return premiums due to policyholders were not available at all times.

13. In July of 2014, Respondent opened two (2) new accounts for the Agency at PNC Bank, premium account number 6965 and operating account number 6404.

14. The Examiners reviewed PNC premium account number 6965 bank statements from July 2014 through May 2015. PNC premium account number 6965 had ten (10) negative balances and a total of \$893.48 in fees that were charged to the account. Monies were transferred back and forth from PNC premium account number 6965 and PNC operating account number 6404. Collected funds due to insurers and return premiums due to policyholders were not available at all times.

15. The Examiners reviewed the deposit records for PNC operating account number 6404 from January 2015 through March 2015. The Agency deposited numerous policyholder checks meant for premium payments into this account. Many of the checks were never remitted to the carrier and the applications were never processed.

16. The Examiners observed that premium checks were deposited into PNC operating account number 6404, that monies were transferred back and forth from PNC premium account number 6965 and PNC operating account number 6404, and that Respondent used the premium payments to pay for various non-premium items, such as credit cards and car payments, and to pay for other customers' policies.

17. James Spears, owner of Millennium Transportation, purchased commercial automobile insurance coverage and workers' compensation for his company through the Agency.

18. A certificate of liability insurance was issued by an employee of the Agency certifying workers' compensation coverage for Millennium Transportation for a period between 2013 and 2014.

19. The Examiners attempted to trace payments made by Mr. Spears. The Examiners were unable to trace payments made by Mr. Spears due to poor recordkeeping and because the checks were deposited into PNC operating account number 6404 and used for non-premium payments. The Examiners reviewed check number 2323 dated November 3, 2014 in the amount of \$5,500.00 and payable to the Agency for "Insurance and down payment." The Examiners reviewed check number 2605 dated March 16, 2015 in the amount of \$5,325.00 and payable to the Agency for "workers compensation down payment." The Examiners reviewed check number 2613 dated March 19, 2015 in the amount of \$700.00 and payable to "cash" and the Agency for "workers compensation."

20. The Examiners reviewed check number 2490 written by Mr. Spears dated January 27, 2015 in the amount of \$9,852.94 for his business automobile insurance policy down payment which was deposited into PNC premium account number 6965 on that day. The balance in PNC premium account number 6965 at the end of the day was \$10,128.16. The next day, on January 28, 2015, \$8,000.00 was transferred into PNC operating account number 6404 and used to pay a non-premium item, a Capital One Agency credit card in the amount of \$7,156.84. The Agency failed to remit the premium to Jackson Sumner and Associates causing the policy to cancel effective April 29, 2015 for nonpayment of premium. Premium money was used to pay non-premium items causing harm to the consumer.

21. According to the Industrial Commission, Millennium Transportation obtained workers' compensation on November 10, 2013, which coverage cancelled on November 27, 2013. After this time period, Millennium Transportation did not have workers' compensation coverage until July 29, 2015, despite payments made to the Agency for workers' compensation coverage during this lapsed period.

22. The Examiners reviewed a certificate of insurance for Exterior Cleaning dated October 2, 2014 listing a workers' compensation policy with effective dates of October 1, 2014 to October 1, 2015 and signed by Respondent certifying that the policy listed had been issued to the insured for the policy period indicated. According to the NC Rate Bureau, the workers' compensation policy did not exist at that time. Exterior Cleaning wrote the Agency a check for workers' compensation on October 2, 2014 in the amount of \$475.85. The check was deposited into PNC operating account number 6404 rather than PNC premium account number 6965, and workers' compensation coverage was not obtained.

23. On January 5, 2015, check number 5259 in the amount of \$1,200.00 was paid to the Agency by SCS-Systems Solutions, Inc. for "E2E" workers' compensation coverage. The check was written on the account of SCS-Systems Solutions, Inc. On January 8, 2015, a check from SCS-Systems Solutions, Inc. was deposited into PNC operating account number 6404. According to the Industrial Commission, "E2E" did not have workers' compensation coverage until September 1, 2015. The Agency failed to remit the payment to obtain workers' compensation coverage for this insured and used the money for non-premium purposes.

24. On January 9, 2015, a representative of Harrison Construction paid the Agency \$1,000.00 by check number 1108 for the company's business automobile and general liability policy. The check was deposited into PNC premium account number 6965 on January 9, 2015. The premium money was not sent to the insurance carrier. On January 23, 2015, the money was transferred out of PNC premium account number 6965 into PNC operating account number 6404. On January 23, 2015, a payment was made to the Capital One credit card in the amount of \$689.14. Premium money was used to pay non-premium items.

25. On June 15, 2015, a representative of Build Tech, Inc. gave the Agency check number 1154, payable to the Agency for \$1,500.00 for workers' compensation coverage. The check was deposited into PNC operating account number 6404 on June 15, 2015. According to the NC Rate Bureau, as of June 22, 2015, the application and payment for Build Tech, Inc. had not been received. As of June 22, 2015, the balance in PNC operating account number 6404 was \$416.43. The balance in PNC premium account number 6965 was \$1,202.64. The \$1,500.00 payment from Build Tech, Inc. was not in PNC operating account number 6404 and was misappropriated.

26. On January 26, 2015, a representative of Pro Force, LLC made a down payment on the company's workers' compensation and general liability policies to the Agency by check in the amount of \$1,634.13. The premium was deposited into PNC operating account number 6404 on January 26, 2015. Respondent converted the premium money for her own use by using this money to pay various for non-premium items, such as credit card and CarMax payments. The premium money was not sent to the insurance carrier.

27. On February 6, 2015, a representative of Advanced Structural Repair paid the Agency by check for renewal of the company general liability insurance policy in the amount of \$4,163.15. The money was deposited into PNC operating account number 6404. The premium check was not sent to the insurance carrier. Respondent converted the premium money for her own use by using this money to pay various non-premium items, such as credit card payments.

28. On February 20, 2015, Christopher Schafer, the owner of Schafer Fence Company, made a down payment to the Agency by check in the amount of \$359.80 on the company general liability policy with Johnson & Johnson. On that day, the premium check was deposited into PNC operating account number 6404. Respondent converted the premium money for her own use by using this money to pay a non-premium item, a payment to CarMax.

29. In January of 2015, the amount of \$21,013.62 in premium checks was deposited into PNC operating account number 6404. In February of 2015, the amount of \$13,133.69 in premium checks was deposited into PNC operating account 6404. In March of 2015, the amount of \$13,665.49 in premium checks was deposited into PNC operating account number 6404. The starting balance for the March 2015 bank statement for PNC operating account number 6404 was \$25,090.72. The total amount of deductions from PNC operating account number 6404 for non-premium items was \$29,769.95. If premium checks had not been deposited into PNC operating account number 6404, the account would have had a negative balance of \$4,679.23. The premium checks deposited into PNC operating account number 6404 between January 2015 and March 2015 were not sent to the insurance carriers and the money was used to pay for non-premium items.

30. On August 17, 2015, the Examiners returned to the Agency and reviewed bank statements for PNC premium account number 6965 for June and July 2015. The Examiners observed two (2) negative balances and insufficient fund fees totaling \$108.00 and miscellaneous fees totaling \$259.75 in PNC premium account number 6965. In reviewing PNC operating account number 6404 bank statements for June and July 2015, there were 11 negative balances, insufficient fund fees totaling \$575.00 and miscellaneous fees totaling \$622.00. Monies had also been transferred from one account to another, thus demonstrating that collected funds due to insurers and return premiums due to policy holders were not available at all times.

31. A review of the August 2015 bank statements for PNC operating account number 6404 showed ten (10) negative balances and insufficient fund fees. On August 31, 2015, the account balance was negative \$755.45.

32. A review of the September 2015 bank statements for PNC premium account number 6965 showed that the Agency deposited \$4,327.24 into PNC premium account number 6965 and transferred \$4,586.00 into PNC operating account number 6404. PNC operating account number 6404 had a negative balance ten (10) times during that month. The premium money was transferred into PNC operating account number 6404 and premium money was used to pay for non-premium items.

33. On September 24, 2015, Larry Rogers of L&H Investments, Inc. made two (2) payments to the Agency of \$737.35 for general liability and property coverage. According to Mr. Rogers, L&H Investments, Inc. never received the insurance coverage paid for and Respondent did not return the money paid for coverage.

34. On September 23, 2015, the account balance for PNC operating account number 6404 was negative \$382.30. On September 24, 2015, the two (2) payments by L&H Rogers Investments, LLC, totaling \$1,474.70 were deposited into PNC operating account number 6404. On September 24, 2015, check number 1723, signed by Respondent and made payable to Christy Davis, an employee of the Agency, in the amount of \$824.07 cleared the bank. The check was dated September 11, 2015. Money was not available in PNC operating account number 6404 until the checks for premium payments by L&H Rogers Investments, LLC were deposited into the account. Premium money was used to cover this check to pay an Agent employee, a non-premium item.

35. On October 6, 2015, a representative of Traks, LLC paid \$1,500.00 to the Agency for its workers' compensation coverage through the NC Rate Bureau by check number 1079. Christy Davis issued receipt number 1490 for the payment. According to the NC Rate Bureau, the Agency had sent the application to the NC Rate Bureau in October for the coverage, but failed to include the payment along with other information. The NC Rate Bureau received the completed application and payment on November 16, 2015, 41 days after receipt number 1490 was issued. The \$1,500.00 was deposited into PNC operating account number 6404 on October 7, 2015. The \$1,500.00 premium payment was used to pay non-premium items. Respondent submitted to the Examiners a deposit ticket for PNC premium account number 6965 dated October 6, 2015 showing that the \$1,500.00 check was deposited into PNC premium account number 6965. However, according to the bank records, this check was deposited into PNC operating account number 6404 and was never transferred back into PNC premium account number 6965.

36. A review of the October 2015 bank statement for PNC premium account number 6965 showed nine (9) negative balances. The ending balance in October in PNC premium account number 6965 was negative \$422.62. The ending balance in October in PNC operating account number 6404 was \$21.37.

37. On March 28, 2016, a representative of the Charlotte Firefighters Association ("Association") paid the premium for a commercial property policy to the Agency by check in the amount of \$3,540.10, which was deposited into PNC operating account number 6404. The check cleared the Association account on April 4, 2016. On April 22, 2016, the Association received notice of cancellation of the policy for

nonrenewal. The Agency failed to pay the premium for the policy resulting in no insurance coverage for the Charlotte Fire Fighters Association. Respondent misappropriated the premium money to pay for non-premium items. Respondent admitted that the premium money was used to pay for non-premium items.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and he has jurisdiction over the parties and the subject matter pursuant to N.C. Gen. Stat. §§58-2-50, 58-33-46, 150B-38 and 150B-40, and other applicable statutes and regulations.

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

3. N.C. Gen. Stat. §58-33-46, entitled "Suspension, probation, revocation, or nonrenewal of licenses," provides in pertinent part:

- (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:

...

- (2) 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 insurance regulator, or violating any rule of the FINRA.

...

- (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.

4. 11 NCAC 04 .0429, entitled "Commingling," provides:

The accounting records maintained by agents, brokers, and limited representatives shall be separate and apart from any other business records and demonstrate at all times that collected funds due to insurers and return premiums due to policyholders are available at all times.

5. Respondent's actions in improperly withholding, misappropriating, and converting premium funds received in the course of doing insurance business subjects her license to disciplinary action pursuant to N.C. Gen. Stat. § 58-33-46(a)(4).

6. Respondent's actions in taking premium funds collected and using the funds to pay for non-premium items constitutes fraudulent, coercive, and dishonest practices and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in North Carolina and subjects her license to disciplinary action pursuant to N.C. Gen. Stat. § 58-33-46(a)(8).

7. Respondent's records showing numerous negative balances, insufficient fund fees, and overdraft fees, demonstrates that Respondent improperly withheld, misappropriated, or converted monies received in the course of doing insurance business. Respondent used fraudulent, coercive, and dishonest practices and Respondent demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in North Carolina and subjects her license to disciplinary action pursuant to N.C. Gen. Stat. § 58-33-46(a)(4) and (8).

8. Respondent's records did not demonstrate that collected premium funds due to insurers were available to insurer at all times, in violation of 11 NCAC 4 .0429 and subjects her license to disciplinary action pursuant to N.C. Gen. Stat. § 58-33-46(a)(2).

ORDER


BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's licenses as a resident insurance producer and resident broker 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 11 NCAC 01 .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 29th day of August, 2017.



A. John Hoomani, Hearing Officer
N.C. Department of Insurance

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.G. Gen. Stat. § 58-2-69(b); and, via State Courier, addressed as follows:

Yolanda Lee Johnson
13116 Old Creedmoor Road
Raleigh, NC 27613-7420
Certified Mail Receipt Number: 70170530000073185555

M. Denise Stanford
Special Deputy Attorney General
Insurance Section
N. C. Department of Justice
P.O. Box 629
Raleigh, NC 27602

This the 24th day of August, 2017.


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