

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

CRISTINA LOPEZ SILVA
LICENSE NO. 9192122,

RUDY AGUILERA,
LICENSE NO. 18623363
And

VOLUNTARY SETTLEMENT
AGREEMENT

BURLINGTON INSURANCE
AGENCY, INC.
LICENSE NO. 18792433

NOW COME Cristina Lopez Silva, (hereinafter "Ms. Silva"), Rudy Aguilera (hereinafter "Mr. Aguilera"), Burlington Insurance Agency, Inc., and the Agent Services Division of the North Carolina Department of Insurance (hereinafter "Agent Services"), 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 producers; and

WHEREAS, Ms. Silva currently holds a resident producer's license with authority for Property, Casualty, and Personal Lines of insurance issued by the Department; and

WHEREAS, Mr. Aguilera currently holds a resident producer's license with authority for Property, Casualty, and Life insurance issued by the Department; and

WHEREAS, Burlington Insurance Agency, Inc. (hereinafter, "the Agency") holds a producer license issued by the Department. Ms. Silva maintains the Agency's financials. Mr. Aguilera is the Agency General Manager, operates the office, and is responsible for the day-to-day operations of the Agency. Ms. Silva and Mr. Aguilera are the Agency's designated responsible licensed producers; and

WHEREAS, Agent Services' investigators conducted an audit of the Agency on February 8 and 9, 2024; and

WHEREAS, N.C. Gen. Stat. § 58-33-46(a)(2) authorizes the Commissioner to suspend or revoke a producer's license if the Commissioner finds that the produce has "Violat[ed] any insurance law of this or any other state, violat[ed] any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violat[ed] any rule of the FINRA"; and

WHEREAS, N.C. Gen. Stat. § 58-33-26(a) states, in pertinent part, that "No person shall act as or hold himself or herself out to be an agent . . . unless duly licensed"; and

WHEREAS, N.C. Gen. Stat. § 58-3-130 provides, in pertinent part, that: "If any person shall assume to act either as principal, insurance producer . . . without license as is required by law or, pretending to be a principal, insurance producer . . . , shall solicit, examine or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, investigate or advise relative to the nature and amount of damages to motor vehicles or the amount necessary to effect repairs thereto, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making or executing any contract of insurance of any kind otherwise than the law permits, or as principal or agent shall violate any provision of law contained in Articles 1 through 64 of this Chapter, the punishment for which is not elsewhere provided for, he shall be deemed guilty of a Class 1 misdemeanor"; and

WHEREAS, Josue Roman worked as an agent with the Agency. Mr. Roman's North Carolina Property and Casualty license expired December 31, 2021 for failure to complete the continuing education requirements. Since that time, Agent Roman has been acting and holding himself out to be an agent although not duly licensed and has written 591 auto policies with National General in violation of N.C. Gen. Stat. §§ 58-33-26(a) and 58-3-130. Mr. Roman, Ms. Silva and Mr. Aguilera should have known that Mr. Roman's license expired on December 31, 2021; and

WHEREAS, upon being informed by Agent Services Division that Mr. Roman's license had been expired since December 31, 2021, Ms. Silva and Mr. Aguilera reassigned Mr. Roman to performing office duties that do not require a producer's license; and

WHEREAS, N.C. Gen. Stat. § 58-2-185 states: "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"; and

WHEREAS, 11 NCAC 4.0429 states: "Commingling – 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"; and

WHEREAS, the Agency maintains 2 Bank of America checking accounts: (a) a premium account which is designated for the premiums collected from consumers to be made available for insurers to sweep (b) an operating account. Agent Services Division Investigators observed 6 negative balances on July 7, 2022, December 2, 2022, July 5, 2022, October 3, 2023, November 24, 2023, and December 4, 2023 and \$30.00 in overdraft fees in the Agency's premium account; and

WHEREAS, Agent Services Investigators observed that the Agency is diverting customer premiums by first depositing premiums collected into the operating account and later transferring those premiums to the Agency's premium account. Agent Services Investigators further observed that the Agency is not transferring the exact amount of customer premium deposited into the operating account into the premium account. On some days, transfers from the operating to the premium account were less than the premiums collected for those days, which caused the negative balances that Agent Services Investigators observed in the Agency's premium account; and

WHEREAS, the foregoing observations demonstrate that Burlington Insurance Agency, Inc. failed to ensure that collected funds due to insurers and return premiums due to policyholders are available at all times in violation of 11 NCAC 4.0429; and

WHEREAS, N.C. Gen. Stat. § 58-2-195(a) states: "Commissioner may require records, reports, etc., for agencies, insurance producers, and others. – 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"; and

WHEREAS, 11 NCAC 19.0102(b) states: "Every agency, agent, broker, or producer of record shall maintain a file for each policy sold. The file shall contain all work papers and written communications in his or her possession pertaining to that policy. These records shall be retained for at least five years after the final disposition or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later"; and

WHEREAS, Agent Services Investigators attempted to review the Agency's premium remittance from June 2023 through July 2023 in order trace premiums collected, deposited, a remitted but could only partially trace premium funds being transferred from the operating

account into the premium account because the agency failed to maintain records enabling the Investigators to identify the specific consumer premiums being deposited into the operating account and then transferred to the premium account; and

WHEREAS, Ms. Silva, Mr. Aguilera, and the Agency violated N.C. Gen. Stat. §§ 58-2-185 and 58-2-195(a), 11 NCAC 19.0102(b) by failing to maintain records of all consumers premium payments being deposited into the operating account and then transferred to the premium account; and

WHEREAS, N.C. Gen. Stat. § 58-33-46(a)(4) authorizes the Commissioner to suspend or revoke a producer's license if the Commissioner finds that the producer has "Improperly with[held], misappropriate[ed], or convert[ed] any monies or properties received in the course of doing insurance business"; and

WHEREAS, N.C. Gen. Stat. § 58-33-46(a)(8) authorizes the Commissioner to suspend or revoke a producer's license if the Commissioner finds that the producer has "Us[ed] fraudulent, coercive, or dishonest practices, or demonstrate[ed] incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere"; and

WHEREAS, the foregoing observations by Agent Services Investigators provide a basis to take disciplinary action against Ms. Silva, Mr. Aguilera, and Burlington Insurance Agency, Inc.'s producer licenses pursuant to N.C. Gen. Stat. § 58-33-46(a)(2), (4), (8); and

WHEREAS, the Agent Services has reviewed and approved the Corrective Action Plan which Ms. Silva, Mr. Aguilera, and the Agency submitted to the Agent Services in order to address the violations outlined in this Voluntary Settlement Agreement. The Corrective Action Plan is attached and incorporated with this Voluntary Settlement Agreement as Exhibit A; and

WHEREAS, Ms. Silva, Mr. Aguilera, and the Agency agree to immediately implement the Corrective Action Plan attached as Exhibit A; and

WHEREAS, Ms. Silva, Mr. Aguilera, and the Agency have agreed to settle, compromise, and resolve the matters referenced in this Agreement and Agent Services has agreed not to pursue additional penalties, sanctions, remedies, or restitution based on these matters against Ms. Silva, Mr. Aguilera, and the Agency; and

WHEREAS, Ms. Silva, Mr. Aguilera, and the Agency and Agent Services Division hereby voluntarily enter into the following Agreement; and

WHEREAS, this Agreement is civil in nature and does not preclude criminal prosecution that may result from ongoing investigations by the Department's Criminal Investigation Division for violations of criminal laws; and

WHEREAS, the parties to this Agreement mutually wish to resolve this matter by consent before Agent Services Division initiates an administrative hearing and have reached a mutually agreeable resolution of this matter as set out in this Agreement; and

WHEREAS, the parties to this Agreement have reached a mutually agreeable resolution of this matter as set out in this Agreement.

NOW, THEREFORE, in exchange for, and in consideration of the promises and agreements set out herein, Agent Services, Ms. Silva, Mr. Aguilera, and the Agency hereby agree to the following:

1. Immediately upon the signing of this Agreement, Burlington Insurance Agency, Inc shall pay a civil penalty of **\$2000.00** 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." Burlington Insurance Agency, Inc. 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 , **2024**. 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. Ms. Silva, Mr. Aguilera, and the Agency agree to comply with all provisions of Chapter 58 of the North Carolina General Statutes and Title 11 of the North Carolina Administrative Code that are applicable to them and to follow their Corrective Action Plan attached as Exhibit A.
3. This Agreement does not in any way affect the Department's disciplinary power in any future examination of Ms. Silva, Mr. Aguilera, and the Agency or in any other complaints involving Ms. Silva, Mr. Aguilera, and the Agency.
4. Ms. Silva, Mr. Aguilera, and the Agency into this Agreement, freely and voluntarily and with the knowledge of her right to have an administrative hearing on this matter. Ms. Silva, Mr. Aguilera, and the Agency have consulted with an attorney prior to entering into this Agreement.
5. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Ms. Silva, Mr. Aguilera, and the Agency understand that N.C.G.S. § 58-33-46(a)(2) provides that a producer's license may be revoked for violating an Order of the Commissioner.
6. This Agreement, when finalized, will be a public record and will **not** be held confidential by the Department. Following the execution of this Agreement, any and all licenses issued by the Department to Ms. Silva, Mr. Aguilera, and the Agency shall reflect that Regulatory Action has been taken against them. 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.

7. The parties have read and understand this Agreement and agree to abide by the terms and conditions stated herein.
8. Ms. Silva, Mr. Aguilera, and the Agency voluntarily waive any right to notice of an administrative hearing and any right to a hearing on the violations and disciplinary action referenced in this Agreement. Ms. Silva, Mr. Aguilera, and the Agency also waive any right to appeal and agrees not to challenge the validity of this Agreement in any way.
9. The promises, Agreements, representations, and consideration contained herein are not mere recitals but are contractual in nature.
10. This written document contains the entire Agreements between the parties. There are no other oral or written Agreements of any kind that alter or add to this Agreement.
11. This Agreement shall become effective when signed by Ms. Silva, Mr. Aguilera, and the Agent Services Division.
12. 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 and the Agency, that regulator may require you and the Agency 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.

[Redacted Signature]

Cristina Lopez Silva
License No. 9192122

Date: 07-04-24

[Redacted Signature]

Rudy Aguilera
License No. 18623363

Date: 9/4/24

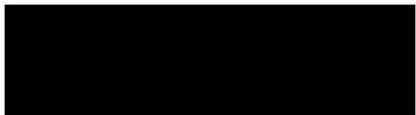
N. C. Department of Insurance

[Redacted Signature]

By: Joe Wall
Deputy Commissioner

Date: 10/1/2024

Burlington Insurance Agency, Inc.
License No. 18792433



By: Rudy Aguilera
Designated Licensed Responsible Producer

Date: 2/4/24