

STATE OF MISSISSIPPI
OFFICE OF THE COMMISSIONER OF INSURANCE

IN THE MATTER OF KIM W. HACKETT
INSURANCE PRODUCER LICENSE No. 9907006

FINDINGS AND ORDER

THIS CAUSE came on for hearing before the Commissioner of Insurance of the State of Mississippi (hereinafter “Commissioner”), by and through his specially designated appointee (hereinafter “Hearing Officer”), in the Office of the Commissioner, 10th Floor, Woolfolk State Office Building, 501 North West Street, Jackson, MS 39205, on Tuesday, December 11, 2013, at 10:00 a.m., pursuant to a Notice of Hearing and Statement of Charges served on Kim W. Hackett, License #9907006 (Respondent). The Commissioner, by and through the designated Hearing Officer, Mr. Brandon White, having heard and considered all of the testimony and evidence produced by the parties herein, makes the following findings:

AUTHORITY

The hearing was held pursuant to the provisions of Miss. Code Ann. § 83-17-71, *et seq.* (Rev. 2011), providing for the licensing of insurance producers by the Mississippi Insurance Department (MID) and disciplinary actions against producers.

NOTICE AND HEARING

1. The Notice of Hearing and Statement of Charges was personally served upon Ms. Hackett on October 29, 2013 pursuant to Miss. Code Ann. § 83-17-71 (Rev. 2011). (S-1) (S-2)

2. Respondent was advised in the "Notice of Hearing and Statement of Charges" of her right to be accompanied and represented by legal counsel, to cross-examine any witnesses, to present evidence or testimony on his behalf, to have witnesses subpoenaed in order to give testimony and evidence on his behalf and to testify in your own behalf.
3. Pursuant to said notice, a hearing was held at approximately 10:00 a.m. on December 11, 2013.
4. Respondent was present for the hearing, gave testimony and submitted evidence. (R-1)
5. The Respondent was specifically charged with the following violations of law in the Notice of Hearing and Statement of Charges as amended October 29, 2013:
 - a. Miss. Code Ann. § 83-17-71(1) (h) (Rev. 2011), by using fraudulent and/or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state by charging approximately 1,064 insured's random administrative charges outside the premium policy payments based solely on the perceived ability of the insured to pay.
 - b. Miss. Code Ann. § 83-17-73(1) (Rev. 2011), in that an insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed. Respondent employed non-licensed individuals to solicit approximately 1,064 insurance policies, paying these same individuals over \$42,339.45 in administrative charges.
 - c. Miss. Code Ann. § 83-17-7 (Rev. 2011), in approximately 1,064 instances by paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies written on risks in this state to any person, agent, firm or corporation not duly licensed as an insurance agent in this state.

- d. Miss. Code Ann. § 83-17-7 (Rev. 2011), by paying approximately 1,064 random referral fees in varying amounts instead of one-time, nominal, referral fees of a fixed dollar amount to unlicensed employees.

FINDINGS OF FACT

1. Respondent holds Mississippi insurance producer license No. 9907006.
2. On August 21, 2013, Ms. Kayla Armstrong, contacted MID Investigators to inquire if a license was required in order to sell insurance in Mississippi. (S-3)
3. On August 23, 2013, Ms. Kayla Armstrong met with MID Investigators and provided a written statement of her employment at Performance Insurance to wit:
 - a. She was employed from July to August for approximately four weeks.
 - b. She is not a licensed insurance agent.
 - c. Ms. Hackett trained her to write and issue insurance policies during visits to several Jackson area auto dealerships on a Saturday. The following Monday she began writing policies.
 - d. Her job was to assist customers with quotes, issue insurance policies at auto dealerships and assist customers with any other issues.
 - e. She was also to collect an Administrative Fee based on the ability of the customer to pay in addition to the policy premium. Fees were \$30 when collected in the office and \$50 to \$100 in the field as instructed by Ms. Hackett.
 - f. She was to receive a percentage of the Administrative Fee as payment. (S-3) (S-4) and Testimony.

4. Based on Ms. Armstrong's affidavit, MID Investigators conducted an investigation of Performance Insurance and Ms. Hackett. (S-3)
5. On September 18, 2013, MID Investigators gathered approximately 1,064 Administrative Fee Receipts (Receipts) of payments by the insured's showing that:
 - a. Insured's were charged administrative fees of random and varying amounts in addition to the insurance policy premium payments.
 - b. Administrative Fees ranged from \$0.00 to \$100.00.
 - c. The Receipts were compiled at the Performance Insurance office.
 - d. MID Investigators collected 1,064 Receipts showing that administrative fees were collected in the amount of \$42,339.45 from 2007 to 2013. (S-5) (S-6)
 - e. MID Investigators compiled three (3) three ring binders of Receipts that showed collection of the administrative fee. (S-5)
6. MID Investigator Octavius Sample identified a list of 21 Performance Insurance Customer Service Representatives (CSR) who had each collected administrative fees in amounts from \$30 to \$100. (S-7)
7. During her testimony, witness Kayla Armstrong identified and described an Administrative Fee Receipt. She stated that each Receipt contained the same information as follows:
 - a. "Performance Insurance" heading,
 - b. Customer identity,
 - c. Insurance company policy number,
 - d. Name of the CSR who received the funds,
 - e. The Administrative Fee amount in addition to any premium payment received. (S-8)

8. Ms. Armstrong identified Five (5) such Administrative Fee Receipts that were credited to her and six (6) that were credited to Ms. Hackett which were entered into evidence. (S-8)
9. Ms. Armstrong identified the Administrative Fee Disclosure form used by Performance Insurance. The form includes the following information and statements:
 - a. Ms. Hackett's name and contact information
 - b. The statement "The representative that sold you this policy is a representative of Performance Insurance Agency in which they solicit on its behalf"
 - c. The statement "As your representative, there is a non-refundable one time administrative fee ranging from \$0.00-\$100.00. The administrative fee is in addition to the premium and not included in the commission. Performance Insurance has applied this administrative fee for procuring this coverage through our open market facilities. The administrative fee is an additional charge along with your down payment, for the servicing of your policy over the next six months."
 - d. Ms. Armstrong stated that this form was completed for each policy sold, they were kept in the Performance Insurance offices and Ms. Hackett reviewed them. (S-9)
10. Ms. Armstrong identified the Customer Information forms used by Performance Insurance employees to ascertain if a client qualified for an insurance policy. (S-10)
11. Ms. Armstrong identified a spread sheet as a list of insurance companies with contact information that Performance Insurance staff used to access insurance company websites with Ms. Hackett's passwords thereby allowing them to submit data and policies online. (S-11)
12. Ms. Hackett testified she did not know she could not charge administrative fees and was not aware that administrative fees had to be submitted by an insurance company to MID for approval.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to Miss. Code Ann. § 83-17-71, *et seq.* (Rev. 2011), providing for the licensing of insurance producers by the MID and specifically providing for disciplinary actions against producers.
2. MID gave proper notice of the hearing and has fulfilled all relevant substantive and procedural requirements of law or rule.
3. MID Regulation 88-101, Section XV., Para F. states the standard of proof for the hearing as follows; “Irrelevant, immaterial, and unduly repetition evidence shall be excluded. Any other evidence, oral or documentary, not privileged, may be received if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs.”
4. Statutes and regulations must be strictly construed in favor of the licensee. *McFadden V. Miss. State Board of Medical Licensure*, 735 So. 2d 145 (Miss. 1999).
5. Regarding the charge of fraudulent and dishonest practices under this code section Respondent clearly demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state by charging unauthorized administrative charges on 1,064 policies, in random amounts, totaling approximately \$42,339.45, which were outside the premium policy payments and based solely on the perceived ability of the insured to pay. *Ms. Hackett* thereby violated the provisions of Miss. Code Ann. § 83-17-71(1)(h) (Rev. 2011).
6. Regarding the charge that Respondent paid a commission, service fee, brokerage or other valuable consideration to persons for selling, soliciting or negotiating insurance in this state when that person is required to be licensed under this article and is not so licensed, it is found that Respondent employed a non-licensed individual to solicit at least 9 insurance policies. *Ms. Hackett* thereby violated the provisions of Miss. Code Ann. § 83-17-73(1) (Rev. 2011)

7. Regarding the charge that Respondent paid, directly or indirectly, a commission, brokerage or other valuable consideration to persons not duly licensed as insurance agents in this state, in the amount of approximately \$42,339.45 from approximately 1,064 administrative charges, it is found that evidence presented does not rise to the standard of "Substantial". The Witness testimony is the only proof presented for this issue and the Respondent denied it. There is an abundance of documentation to support the first two charges which is lacking on this point. Therefore Ms. Hackett is found not to have violated the provisions of Miss. Code Ann. § 83-17-7 (Rev. 2011).

8. Regarding the charge that Respondent collected approximately 1,064 random referral fees in varying amounts instead of one-time, nominal, referral fees of a fixed dollar amount, at no time in the hearing did either party represent the administrative fees as referral fees. Therefore, Ms. Hackett is found not to have violated the provisions of Miss. Code Ann. § 83-17-7 (Rev. 2011).

9. Miss. Code Ann. § 83-17-71(1) (Rev. 2011) provides that the Commissioner may "place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in an amount not to exceed One Thousand Dollars (\$1,000.00) per violation" for "(h) Using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere", or "(b) Violating any insurance laws...".

10. The aforementioned violations by Respondent constitute sufficient grounds for the imposition of disciplinary action per Miss. Code Ann. § 83-17-71(1) (Rev. 2011).

ORDER

IT IS, THEREFORE, ORDERED:

1. That the license of Respondent, Kim W. Hackett, to act as an insurance producer in the State of Mississippi is hereby revoked.
2. That an administrative fine shall be levied against Kim W. Hackett in the amount of One Thousand Dollars (\$1,000.00) for each of the two charges for a total of Two Thousand Dollars (\$2,000).

SO ORDERED, this the 13th day of Dec., 2013.



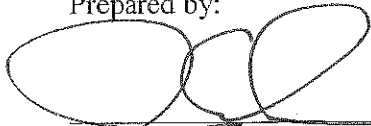
MIKE CHANEY
COMMISSIONER OF INSURANCE
STATE OF MISSISSIPPI

Submitted by:



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