

**BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA**

IN RE: Linda Mellin

ADMINISTRATIVE NO.: 23-IC-02206

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. It is consequently ORDERED that Respondent, Linda Mellin, violated West Virginia Code § 33-12-24(b)(2), West Virginia Code § 33-12-9(f) and West Virginia Code of State Rules § 114-14-5.2.

and it is ORDERED that Respondent, Linda Mellin be fined \$4,000.00.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted are preserved.

ENTERED this 7th day of November, 2023.



ALLAN L. MCVEY CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

**BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

IN RE: Linda Mellin

ADMINISTRATIVE NO.: 23-IC-02206

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On October 3, 2023, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire. There then being present on behalf of the West Virginia Offices of the Insurance Commissioner: Andrew Ryan, Esq., Robert Grishaber, Director of Licensing and Education, Reena Napier, Senior Investigator with the Special Investigations Unit at Humana, Megan Zmick, Counsel for Humana (via Zoom). No one on behalf of Linda Mellin (hereinafter “Respondent”) made an appearance at the hearing.

Statement of the Case

This matter arises out of the Administrative Complaint filed against Respondent after being terminated for cause by Humana Insurance Company.

Findings of Fact

1. The Respondent has a resident producer license in West Virginia, Number 20008864. The address on file with the West Virginia Offices of the Insurance Commissioner is

14 Sincere Drive, West Hamlin, West Virginia 25571. The email address for the Respondent on file is ljmellin1972@gmail.com. (Tr. P. 11; Ex. 2)

2. According to the Complaint, the Respondent was terminated for cause by Humana Insurance Company for submitting an insurance application without proper licensing in the state of Minnesota. (Complaint PP. 2-3; Ex. 8) ¹

3. On June 2, 2023, Humana Insurance Company sent a letter to the West Virginia Offices of the Insurance Commissioner informing it that the Respondent had been terminated for cause.

4. On or about March 3, 2023, an application for insurance was submitted by the Respondent to Humana Insurance Company for an insured residing in the state of Minnesota. (Tr. PP. 6-7; Ex.1)

5. The Respondent, at the time of the application, was not licensed in the state of Minnesota.

6. On July 13, 2023, upon receiving the information from Humana, the West Virginia Offices of the Insurance Commissioner sent a certified letter to the Respondent. The purpose of this letter was to have the Respondent explain and provide information about the decision of Humana Insurance Company to discharge her. (Tr. P. 12; Ex. 4)

7. The certified letter was returned to the West Virginia Offices of the Insurance Commissioner marked "Return To Sender Unclaimed Unable To Forward". (Tr. P. 12; Ex. 4)

¹ At the hearing the Complaint was not entered into evidence, however, the hearing examiner sua sponte assigns the Complaint as Exhibit 8 and admits it into the record.

8. On July 7, 2023, Mr. Andrew Ryan sent an email to the Respondent, at the email address on file with the West Virginia Offices of the Insurance Commissioner. This email again asked the Respondent to respond to the allegation by Humana that she had completed an application for a resident of Minnesota at the time she was not licensed in that state. There was no response from the Respondent. (Tr. PP. 11-12; Ex. 5)

9. The National Producer Database, created by the NAIC, indicated that the Respondent was, at one time, licensed in Minnesota. The Respondent was also licensed in possibly twenty other states. The Respondent's Minnesota license expired on March 31, 2023. The Respondent failed to renew her Minnesota license. (Tr. PP. 15-17 ; Ex. 6)

10. The Respondent completed the application for the Minnesota resident on April 3, 2023, four days after her license expired. (Tr. P. 16; Ex, 1 and 6)

11. At some point the Respondent was sent a Notice of Hearing and a copy of the Complaint. (Ex. 8)

12. At the conclusion of the hearing, neither the Respondent nor anyone on her behalf made an appearance. (Tr. P. 19)

Issue

Whether the Respondent violated West Virginia Code § 33-12-24(b)(2), West Virginia Code § 33-12-9(f) and West Virginia Code of State Rules § 114-14-5.2, and if so, what should be the remedy?

Burden of Proof

The West Virginia Offices of the Insurance Commissioner has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b).

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this matter pursuant to Article 12, Chapter 33 of the West Virginia Code.

Analysis

The Respondent accepted an application from a resident of Minnesota on April 3, 2023. The Respondent's Minnesota license expired on March 31, 2023, four days earlier. At the time of the hearing the Respondent may have been licensed in twenty states.

The Administrative Complaint, filed by the West Virginia Offices of the Insurance Commissioner against the Respondent, alleged that the Respondent violated West Virginia Code § 33-12-24(b) by transacting insurance business in the State of Minnesota without being authorized to do so.

West Virginia Code § 33-12-24(b) allows the Insurance Commissioner to suspend, revoke or refuse to renew a license of a producer and can levy a civil penalty for any violations of this Code subsections.

The first subsection in which the Complaint alleges that the Respondent violated was West Virginia Code § 33-12-24(b)(2) which is as follows:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the Insurance Commissioner or of another states Insurance Commissioner[.]

It was clear from the evidence that the Respondent was not licensed in the State of Minnesota when she submitted an application for a resident of that state. The State of Minnesota's rules do not allow a non-licensed producer to submit applications for a resident of Minnesota. Therefore, the Respondent violated West Virginia Code § 33-12-24(b)(2).

The next two charges contained in the Complaint is that it is alleged that the Respondent failed to maintain a current mailing address and a current email address with the West Virginia Offices of the Insurance Commissioner. This would be a violation of West Virginia Code § 33-12-9(f). This Code section states as follows:

(f) At the time of application for licensure, the applicant shall inform the Insurance Commissioner of the applicants full name, physical and mailing address, if different, and electronic mail address. Each agent, insurance agency, solicitor, or service representative that is licensed on July 1, 2021, shall provide the Insurance Commissioner with the licensees electronic mail address in connection with the next license renewal application of the respective licensee. If a change occurs to the licensees name, physical address, mailing address, or electronic mail address after licensure, the licensee shall inform the Insurance Commissioner by any means acceptable to the Insurance Commissioner of the updated contact information within 30 days of the change. Failure to timely inform the Insurance Commissioner of a change in legal name, residency, mailing address, or electronic mail address may result in a penalty pursuant to §33-12-24 of this code. The commissioner shall maintain the information provided pursuant to this subsection for each agent, insurance agency, solicitor, and service representative on file.

The evidence at the hearing was that the West Virginia Offices of the Insurance Commissioner sent a certified letter to the Respondent to the address on file. The letter, when returned, was marked "Return to Sender Unclaimed Unable to Forward." This would prove that

the address on file with the West Virginia Offices of the Insurance Commissioner was not correct and had not been updated by the Respondent, which is required under West Virginia Code § 33-12-9(f).

The West Virginia Offices of the Insurance Commissioner also sent an email to the Respondent's email address on record. There was no response, therefore it is plausible that the Respondent did not update her email address, thus proving a violation of West Virginia Code § 33-12-9(f).

The next allegation in the Complaint alleged that the Respondent failed to respond to an inquiry by the West Virginia Offices of the Insurance Commissioner within fifteen working days as required by West Virginia Code of State Rules § 114-14-5.2, which states as follows:

5.2. Answer of inquiries from Insurance Commissioner. -- Every insurer, producer or other licensee, upon receipt of any inquiry other than a notice of third-party administrative complaint from the Insurance Commissioner shall, within fifteen (15) working days of the date appearing on the inquiry, furnish the Commissioner with a complete written response to the inquiry. A "complete written response" addresses all issues raised by the claimant or the Commissioner and includes copies of any documentation requested. This subsection is not intended to permit delay in responding to inquiries by the Commissioner or his or her staff in conjunction with a scheduled examination on the insurer's premises.

The evidence was that the Respondent did not respond to the allegations made by Humana, the certified letter sent by the Insurance Commissioner, or the email sent to the Respondent by the Commissioner.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commissioner have jurisdiction over non-resident producers by virtue of West Virginia Code § 33-12-24(a).

2. The West Virginia Offices of the Insurance Commissioner has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b)(2).

3. In order to prove that the Respondent violated West Virginia Code § 33-12-24(b)(2), it must be proven that the Respondent violated an insurance law.

4. The West Virginia Offices of the Insurance Commissioner proved that the Respondent violated the insurance laws of the State of Minnesota, thus proving, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b)(2).

5. In order to prove that the Respondent violated West Virginia Code § 33-12-9(f), it must be proven that the Respondent failed to update her mailing address and email address.

6. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the mailing address and email address on file were no longer valid and thus, proving, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-9(f).

7. The West Virginia Offices of the Insurance Commissioner must prove that the Respondent failed to respond in writing within fifteen working days to a request for a response in order to prove a violation of West Virginia Code of State Rules § 114-14-5.2.

8. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent failed to respond in writing within fifteen working days, thus proving that the Respondent violated West Virginia Code of State Rules § 114-14-5.2.

The Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b)(2), West Virginia Code § 33-12-9(f) and West Virginia Code of State Rules § 114-14-5.2.

Recommended Decision

It is recommended that Linda Mellin be found to have violated West Virginia Code § 33-12-24(b)(2), West Virginia Code § 33-12-9(f) and West Virginia Code of State Rules § 114-14-5.2. The Respondent, Linda Mellin, should be fined \$1,000.00 for each violation.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: Oct 31, 2023