

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

In the Matter of

RAMPART INSURANCE COMPANY, (NAIC #38152)

Administrative Proceeding No.: 22-1C-02047

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 the Administrative Complaint against Rampart Insurance Company, Inc., be upheld and that the Certificate of Authority of Rampart Insurance Company be **REVOKED**.

Rampart Insurance Company, Inc. is further assessed and **ORDERED** to pay the costs of the hearing in the amount of five hundred seventy-eight and 25/100 dollars (\$578.25).

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

ENTERED this 2nd day of June 2022.



Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

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**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On April 25, 2022, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner. Rampart Insurance Company (hereinafter, Respondent) did not make an appearance. Gregory A. Elam, Esquire, and Michael Crum, Chief Financial Analyst appeared on behalf of West Virginia Offices of the Insurance Commissioner (hereinafter “WVOIC”).

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

Statement of the Case

A Complaint, to revoke the Respondent’s Certificate of Authority, was filed by the WVOIC alleging that the Respondent failed to maintain minimum capital requirements as required under West Virginia Code § 33-34-3a. The WVOIC alleged that the Respondent no longer meets the requirements for the license originally granted, because of deficiency of assets or otherwise. West Virginia Code § 33-3-10(b).

Findings of Fact

1. The Respondent is a foreign insurer that is domiciled in the state of New York and was issued a Certificate of Authority by the West Virginia Offices of the Insurance Commissioner on June 1, 2021. (Ex. B, C)

2. The Respondent's statutory mailing address is Rampart Insurance Company, Attn. Bryan Enos, 1880 JFK Boulevard, Suite 801, Philadelphia, Pennsylvania 19103-7443. (Ex. C)

3. A notice of hearing was sent to the Respondent at the above address via certified mail, return receipt requested. The hearing was set for April 25, 2020, at 11:00 a.m. The certified letter was signed as received by an unknown individual on March 8, 2022. (Ex. A)

4. The Notice of Hearing stated that the hearing would be conducted telephonically, and the Respondent was asked to provide a telephone number so that the Respondent could be called so it could participate in the hearing. No one on behalf of the Respondent provided a telephone number to the WVOIC. (Ex. A)

5. The hearing began at the scheduled time and no one from the Respondent made an appearance. (Tr. P. 4)

6. As the Insurance Financial Specialist Supervisor for the WVOIC, Michael Crum, is one of the individuals that determines whether an insurance company's overall financial condition meets the licensing requirements of the State of West Virginia. Mr. Crum testified that, based on the information available to him, the Respondent's financial condition no longer met the minimum requirements for a licensed insurance company in the state of West Virginia. (Tr. P. 5; Ex. C, D)

7. Mr. Crum testified that the Respondent's surplus level was deteriorating to a hazardous level. He stated that the on the fourth quarter statement of 2021, the surplus level was \$3,400,000, which is below the \$1,000,000 positive surplus required under West Virginia state law. (Tr. P. 7; Ex. C)

8. It was Mr. Crum's opinion that the surplus of the Respondent would continue to fall. (Tr. P. 8)

9. The hearing was concluded at 11:12 a.m. and there was no appearance of anyone on behalf of the Respondent. (Tr. P. 9)

Issue

Whether the Respondent meets West Virginia licensing requirements and if not, should the Respondent's Certificate of Authority be suspended or revoked.

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 the insurance laws of the State of West Virginia.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this Complaint under West Virginia Code § 33-2-3.

Analysis

The WVOIC filed a complaint alleging that the Respondent no longer meets the minimum requirements for licensing due to a deficiency of minimum surplus levels and that the continued operation of the Respondent will be hazardous to the policyholders, creditors and/or the general public.

Mr. Crum, Insurance Financial Specialist Supervisor for the WVOIC, stated that the Respondent fell below the minimum requirements for the amount of surplus for insurance companies licensed in the State of West Virginia. Once an insurance company falls below the

minimum requirements, the WVOIC has the right under West Virginia Code § 33-34-3a to determine whether the Respondent can continue to operate in West Virginia. West Virginia Code § 33-34-3a states as follows:

§ 33-34-3a. Standards to determine hazardous condition; commissioner's authority.

(a) Standards. -- In making a determination pursuant to subdivision (1), subsection (a), section three of this chapter as to whether the continued operation of an insurer transacting an insurance business in this state might be deemed to be hazardous to the public, to its insureds or to its creditors, the commissioner may consider the following standards either singly or in combination:

(1) Adverse findings reported in financial condition and market conduct examination reports, audit reports and actuarial opinions, reports or summaries;

(2) The National Association of Insurance Commissioners' insurance regulatory information system and its other financial analysis solvency tools and reports;

(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets and the considerations anticipated to be received and retained under such policies and contracts;

(4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(5) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

(6) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations and which in the opinion of the commissioner

may affect the solvency of the insurer;

(8) Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;

(14) Whether management of an insurer has filed any false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, or made a false or misleading entry or omitted an entry of material amount in the books of the insurer;

(15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(17) Whether management has established reserves that do not comply with minimum standards established by this chapter or the rules promulgated thereunder, statutory accounting standards, sound actuarial principles and standards of practice;

(18) Whether management persistently engages in material under-reserving those results in adverse development;

(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; and

(20) Any other finding determined by the commissioner to be hazardous to the insurer's insureds, creditors or the general public.

After reviewing the statute and the evidence produced at the hearing, it appears that the Respondent had at least violated sections 1, and 17 of the statute. The statute only requires one of these sections to be violated to prove that the Respondent's continuing operation is a danger to the public.

The evidence was that the Respondent's financial condition no longer met the minimum requirements for a licensed insurance company in the state of West Virginia. The Respondent's financial statement dated September 30, 2021, indicated that the Respondent had failed to maintain minimum surplus amount as required under West Virginia law. This is an adverse finding of the financial condition of the Respondent. By proving the adverse financial condition, the WVOIC proved that the Respondent violated West Virginia Code § 33-34-3a(a)(1).

The evidence provided by Mr. Crum was that the Respondent did not maintain the minimum requirement of surplus. The failure to maintain sufficient surplus proves that the Respondent is in violation of West Virginia Code § 33-34-3a(a)(17).

Under West Virginia Code § 33-3-11(a) the Insurance Commissioner, after notifying an insurer, may revoke or suspend the license of the insurer if it is found to be in an unsound condition or in such a condition that any further transactions of insurance are hazardous to its policyholders or the people of West Virginia.

However, once it has been proven that the Respondent has violated one or more sections of West Virginia Code § 33-34-3a(a), one must then look at West Virginia Code § 33-3-10(b), which states as follows:

§ 33-3-10. Mandatory refusal, revocation or suspension.

(20) Any other finding determined by the commissioner to be hazardous to the insurer's insureds, creditors or the general public.

After reviewing the statute and the evidence produced at the hearing, it appears that the Respondent had at least violated sections 1 and 17 of the statute. The statute only requires one of these sections to be violated to prove that the Respondent's continuing operation is a danger to the public.

The evidence was that the Respondent's financial condition no longer met the minimum requirements for a licensed insurance company in the state of West Virginia. The Respondent's financial statement dated September 30, 2021, indicated that the Respondent had failed to maintain minimum surplus amount as required under West Virginia law. This is an adverse finding of the financial condition of the Respondent. By proving the adverse financial condition, the WVOIC proved that the Respondent violated West Virginia Code § 33-34-3a(a)(1).

The evidence provided by Mr. Crum was that the Respondent did not maintain the minimum requirement of surplus. The failure to maintain sufficient surplus proves that the Respondent is in violation of West Virginia Code § 33-34-3a(a)(17).

Under West Virginia Code § 33-3-11(a) the Insurance Commissioner, after notifying an insurer, may revoke or suspend the license of the insurer if it is found to be in an unsound condition or in such a condition that any further transactions of insurance are hazardous to its policyholders or the people of West Virginia.

However, once it has been proven that the Respondent has violated one or more sections of West Virginia Code § 33-34-3a(a), one must then look at West Virginia Code § 33-3-10(b), which states as follows:

§ 33-3-10. Mandatory refusal, revocation or suspension.

The commissioner after notice and hearing shall refuse to renew or shall revoke or suspend the license of any insurer:

(b) If the insurer no longer meets the requirements for the license originally granted, because of deficiency of assets or otherwise.

The West Virginia Offices of the Insurance Commissioner proved that the Respondent violated at least two sections of West Virginia Code § 33-34-3a(a). By proving these violations, the WVOIC proved that the Respondent no longer meets the licensing requirements for the state of West Virginia. Therefore, under West Virginia Code § 33-3-10, the Insurance Commissioner is authorized to revoke the Respondent's West Virginia Certificate of Authority.

Conclusions of Law

The following are made as conclusions of law:

1. The West Virginia Offices of the Insurance Commissioner has the burden to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of West Virginia.
2. West Virginia Code § 33-34-3a sets out the standards to determine whether an insurance company is in a hazardous financial condition.
3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent was in a financially adverse condition under West Virginia Code § 33-34-3a(a)(1) by proving that the Respondent's own audited financial statement had a negative surplus budget balance.
4. Under West Virginia Code § 33-34-3a(a)(17), the West Virginia Insurance Commissioner proved that the Respondents financial condition is hazardous by proving, by a preponderance of the evidence, that the Respondent was ordered into liquidation, thus, proving


that it did not have sufficient reserves.

5. The West Virginia Insurance Commissioner is authorized under West Virginia Code § 33-3-10(b) to revoke the Respondent's Certificate of Authority when the Respondent violated West Virginia Code § 33-34-3a(a)(1), (16) and (17).

Recommended Decision

It is recommended that the West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent fell below the standards as outlined in West Virginia Code § 33-34-3a. Due to falling below the standards contained in West Virginia Code § 33-34-3a, the Insurance Commissioner is authorized to revoke the Respondent's Certificate of Authority. Therefore, under West Virginia Code § 33-3-10, the Respondent's Certificate of Authority should be revoked, and the Respondent be assessed the costs of this proceeding.

Respectfully recommended,


MARK W. CARBONE
HEARING EXAMINER

Date: May 31, 2022