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

In Re: Emily Payne **Administrative Proceeding: 22-IC-02403**
NPN: 18929883

ORDER DENYING PRODUCER'S MOTION TO APPEAL

On November 3, 2023, the West Virginia Insurance Commissioner ("Commissioner") entered a final order against Emily Payne ("Ms. Payne") that revoked her non-resident producer license in West Virginia and fined her $10,000.00. On November 29, 2023, Ms. Payne filed an appeal of that order with the Commissioner, arguing that she did not receive notice of the hearing and, therefore, was unable to present her case or defend herself. Upon review of Ms. Payne's petition for appeal, the attachments she provided, the November 3, 2023, order, and related transcripts and exhibits, the Commissioner makes the following findings of fact:

1. On August 30, 2023, the Commissioner held a hearing on Ms. Payne's administrative complaint.
2. Ms. Payne did not appear at this hearing.
3. At the hearing, the Commissioner presented as evidence a licensee history report for Ms. Payne, which was generated on August 29, 2023.
4. This report includes the contact information for the producer, including the mailing address, relevant phone numbers, relevant email addresses, and other pertinent information, such as the appointment history of the producer.
5. The report also lists the date each information field was last updated.
6. Ms. Payne's licensee history report provides that her residence, business, and mailing addresses were last updated on October 8, 2018.

7. The report shows that Ms. Payne's residence and mailing addresses on August 29, 2023, were identical: "[redacted]"
8. The Commissioner also presented evidence of certified mail that was mailed to Ms. Payne on July 21, 2023, which contained an introductory letter, the administrative complaint, the notice of hearing, and the notice of rights.
9. The certified mail was addressed to "Emily Payne, [redacted]"
10. This certified mail was returned to the Commissioner on August 8, 2023, as "not deliverable as addressed" and "unable to forward."
11. In support of her appeal, Ms. Payne states that she was not notified of the hearing.
12. Notably, Ms. Payne included a different address in her motion to appeal, which is "[redacted]"
13. She states that she "made an effort to update [her] contact information" with the Commissioner.
14. She states that she "confirmed with the [Commissioner] that [her] address change had been received" in February of 2022.
15. Ms. Payne admits that she "does not recall the specific method by which the address change was communicated," but she asserts that she followed the steps to update her contact information.
16. Ms. Payne provided two relevant attachments with her appeal.
17. The first attachment is an email from Ms. Kimberly Sutler, an investigator for the Commissioner, that Ms. Payne received at her email address on record [redacted]

18. The second attachment is an email Ms. Payne sent to Angela D. DaSilveira, a Consumer Services Specialist at the Offices of the Insurance Commissioner, in response to a complaint. In the email, Ms. Payne apologizes for filing a late response to the complaint, stating that "the paperwork originally got sent to an old address so I had to call in and email in paperwork to update my address." This email is dated February 22, 2022.

19. While Ms. Payne's second attachment states that she "email[ed] in paperwork to update [her] address," Ms. Payne did not provide a copy of the email that she allegedly sent to update her address with the Commissioner.

20. It is peculiar that Ms. Payne was able to recover the email sent to Ms. DaSilveira but unable to provide a copy of the email, purportedly sent near in time to the email to Ms. DaSilveira, that shows she updated her address with the Commissioner.

21. Ms. Payne also states that she updated her information with the Commissioner again on September 5, 2023, and was able to provide a confirmation ID number for this update. Notably, Ms. Payne's current licensee history report reflects this change and lists a different address from the address on record as of August 29, 2023.

Pursuant to W.Va. Code § 33-2-12,

> Whenever under the provisions of this chapter the commissioner is required to give notice to any person *the service of such notice shall be deemed proper and effective* with regard to any licensee of the commissioner (including insurers, agents, brokers and solicitors) or any employee of such licensee *when such notice directed to such person to be notified shall have been deposited in the United States mail*, postage prepaid, *addressed to the principal place of business or residence of such licensee as last of record in the commissioner's office.* The verified return of the person depositing such notice in the mails as to the fact of such mailing shall be proof of service.

(Emphasis added.)

The Commissioner has the power to revoke and fine an insurance producer if, after notice and hearing, the Commissioner finds the producer violated any insurance laws. *See* W.Va. Code § 33-12-24(b)(2). W.Va. Code § 33-12-29(a) requires that the Commissioner "give notice of the hearing and the matters to be determined therein to the insurance producer . . . by certified mail, return receipt requested, sent to the last address filed by the person or entity pursuant to [W.Va. Code § 33-12-9(e)]." W.Va. Code § 33-12-9(e) sets forth that the producer license must "contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the Insurance Commissioner considers necessary." Furthermore, W.Va. Code § 33-12-9(f) requires the licensee to inform the Commissioner within thirty (30) days of any change in the licensee's "name, physical address, mailing address, or electronic mail address after licensure" and provides that failure to report such changes may result in a penalty pursuant to W.Va. Code § 33-12-24.

In this case, the Commissioner sent certified mail containing the notice of the August 30, 2023, hearing to Ms. Payne's address that was on record in July of 2023. This same address was on record when the administrative hearing was held against Ms. Payne on August 30, 2023. The evidence presented at the hearing shows that the notice was returned to Commissioner on August 8, 2023, because it could not be delivered to Ms. Payne at the address that she provided to the Commissioner. **The Commissioner hereby concludes that Ms. Payne's statutory right to notice was satisfied.**

Pursuant to W.Va. Code § 33-12-29(c), "[a]n insurance producer . . . who fails to appear at a hearing of which notice has been provided pursuant to [W.Va. Code §33-12-29(a)], and who has had an adverse order entered by the commissioner against them as a result of their failure to appear,

may, within thirty calendar days of the entry of an adverse order, file with the commissioner a written verified appeal with any relevant documents attached thereto, which demonstrates good and reasonable cause for the person's failure to appear." The Commissioner may, in his discretion, issue an order that rescinds a final administrative order and sets the matter for a subsequent administrative hearing when the Commissioner finds that the insurance producer "has shown good and reasonable cause for his or her failure to appear."

Upon a review of all information available, the Commissioner does not find that Ms. Payne has shown "good and reasonable cause" for her failure to appear. Ms. Payne alleged that she updated her mailing address in February of 2022. However, the Commissioner's records do not reflect any such change. The evidence presented at the hearing shows that Ms. Payne's residential, business, and mailing addresses had not been changed or altered since October of 2018. Notably, Ms. Payne's mailing address was updated *after the August 30, 2023, hearing* on September 5, 2023, which is consistent with her assertions. Clearly, Ms. Payne has the capacity to update her address with this office but there is no evidence that she did so between October of 2018 and September of 2023. Further, Ms. Payne failed to present any evidence that she updated her information with the Commissioner in February of 2022. Ms. Payne provided two different emails from 2022, and, although she asserts that she emailed the Commissioner to update her address in February of 2022, she failed to provide a copy of the email showing that she updated her address with this office. As set forth in West Virginia law, it is the producer's burden to update the Commissioner within thirty (30) days when a change of address is made. There is no reasonable explanation for Ms. Payne's failure to appear other than that she failed to update her address with this office. **The Commissioner hereby concludes that Ms. Payne has failed to show good and reasonable cause for her failure to appear at the August 30, 2023, hearing because she failed**

to appear even though notice was properly sent to her address of record.

Therefore, it is **ORDERED** that Ms. Payne's appeal is **DENIED**. The Commissioner's November 3, 2023, order against Ms. Payne remains in full force and effect.

Inasmuch as orders entered by the Commissioner are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code § 51-11-4(b)(4), any person aggrieved by this Order may, within 30 days of the entry of the judgment being appealed, file an appeal as set forth in W.Va. Code § 33-2-14 and Rule 5(b) of the West Virginia Rules of Appellate Procedure.

ENTERED this 24th day of January, 2024.

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

DocuSign Envelope ID: 2D3F13C6-A3E6-49ED-A232-138A6359E3B3

Motion for Reconsideration of the Final Order Entered November 3, 2023

From: Emily Maher

[redacted]

To: West Virginia Department of Insurance

Re: Request for Appeal - Revocation of Insurance License and Fine

To Whom It May Concern,

I am writing to formally request an appeal regarding the recent revocation of my non-resident insurance license (18929883) and the associated fine issued by the West Virginia Department of Insurance (DOI). I was deeply concerned to receive notice of these actions as I was not served with any paperwork pertaining to the hearing, which led to my inability to present my case and address any concerns that may have arisen.

I would like to emphasize that I made an effort to update my contact information with the West Virginia DOI in a timely manner. In February of 2022, I confirmed with the department that my address change had been received. While I do not recall the specific method by which the address change was communicated, the steps were verbally relayed to me over the phone, and I took steps to ensure that my new contact information was on record with the DOI. I also updated my address when I moved again and name via Sircon for the state of West Virginia on 09/05/2023, confirmation ID 303307826.

Additionally, I want to highlight my willingness to cooperate with the West Virginia DOI throughout this process. Whenever I received communication from the department via email, I promptly responded by calling in and responding via email as requested. I had several conversations with multiple contacts within the DOI to ascertain if there were any additional requirements or actions needed on my part as an agent. In these discussions with Mark Carbone and Kimberly Sutler, it was repeatedly confirmed that only Salvasen was expected to attend the hearing. I am one of thousands of agents that sold Salvasen Health through a TPA AOBG. I had no direct contact with Salvasen as per my contract with AOBG, they were responsible for ensuring that all products on the platform were fully insured. When I was made aware of the issue with Salvasen, I immediately requested AOBG refund the customer all premiums made which was completed. I am attaching multiple attachments to confirm my statements in this letter.

Please consider this letter as my formal appeal request, and I look forward to the opportunity to present my case and demonstrate my commitment to complying with all regulatory requirements as a non-resident insurance agent in the state of West Virginia.

Sincerely,

Emily Maher (formerly Emily Payne)

[redacted]

DocuSigned by:
Emily Maher
6BD3EDA54C3A425...

West Virginia Offices of the Insurance Commissioner 145160/22-IC-02403

From: Sutler, Kimberly A (kimberly.a.sutler@wv.gov)

To: [redacted]

Date: Monday, October 24, 2022 at 12:18 PM EDT

Ms. Payne,
I am an investigator with the West Virginia Offices of the Insurance Commissioner. I would like to speak to you about a complaint we received from Melody Pourfarhadi - Consumer Complaint 145160/Legal Referral Number 22-IC-02403. Please call me at your earliest convenience at 304.414.8030.
Thanking you in advance for your assistance in this matter.

--

Kimberly A. Sutler, Investigator

Legal/Regulatory Compliance

West Virginia Offices of the Insurance Commissioner

900 Pennsylvania Avenue

Charleston, WV 25302

Direct Dial: 304.414.8030

Cell Phone: 304.561.7641

Gmail **Emily Maher** [redacted]

File # 145160

2 messages

[redacted] Tue, Feb 22, 2022 at 2:26 PM
To: angela.d.dasilveira@wv.gov

Good afternoon,

I am responding to a complaint I received for file # 145160. My response is attached, please let me know if I can be of any further assistance. I do apologize for the delay, the paperwork originally got sent to an old address so I had to call in and email in paperwork to update my address.

Emily Payne
[redacted]

file number 145160 02 21 22.pdf
80K

DaSilveira, Angela D <angela.d.dasilveira@wv.gov> Wed, Feb 23, 2022 at 7:56 AM
To: [redacted]

Thank you for your response.

Angela DaSilveira

Consumer Services

West Virginia Offices of the Insurance Commissioner

900 Pennsylvania Ave., 7th Floor

Charleston, WV 25302

Phone: 304-558-3386

Fax: 1-888-879-9842

[Quoted text hidden]