

BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

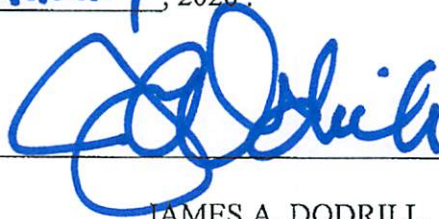
IN RE: MICHAEL DAVID DEAN

ADMINISTRATIVE NO.: 19 -AP-PRLC-02008

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, having found that it violated West Virginia Code §§ 33-12-24(b)(4) and 33-12-24(b)(9) Michael David Dean's West Virginia producer license be, and the same is hereby, revoked. It is further ORDERED that Michael David Dean receive an administrative penalty of \$5,000.00, and to pay the costs associated with the hearing.

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

ENTERED this 31st day of January, 2020.



JAMES A. DODRILL
Insurance Commissioner
State of West Virginia

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INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

**IN RE: MICHAEL DAVID DEAN
 ADMINISTRATIVE NO.: 19 -AP-PRLC-02008**

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On December 19, 2019, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner. There then being present on behalf of the West Virginia Offices of the Insurance Commissioner; Travis Ellison, Esquire, Associate Counsel. Robert Grishaber, Director of Agent Licensing and Education, and Francie Shaffer, Investigator III. Michael Dean did not make an appearance. Following the hearing, the matter was deemed submitted for recommended decision.

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.

Findings of Fact

1. Mr. Michael Dean, (hereinafter “Respondent”) resides at 205 10th Street, Glen Dale West Virginia, 26155. The Respondent has a West Virginia Resident Producer license with a National Producer license number 17749121. (Ex. 1, 2)

2. Mr. Robert Grishaber, Director of Agent Licensing and Education, testified that the Respondent’s license was suspended in 2018 due to non compliance with continuing education requirements. The Respondent had twelve months to obtain the required education credits and pay a fine. The Respondent failed to complete the requirements, so his license was suspended and placed on inactive status in 2019. (Tr. 6-7; Ex, 1)

3. Ms. Francie Shaffer, an investigator for the West Virginia Offices of the Insurance Commissioner, testified that Mr. Larry Rosen, a former investigator for the Commissioner, was contacted by someone requesting information about any administrative proceedings against the Respondent. Mr. Rosen sent a letter to State Farm Insurance Company requesting information on the termination of the Respondent. (Tr. 8-10; Ex. 2)

4. As a result of the letter from Mr. Rosen, State Farm Insurance contacted Mr. Taylor Shepherd¹ to inquire as to the status of the Respondent. Mr. Taylor, in an email, stated that the Respondent had been terminated on July 6, 2017. (Tr. 10; Ex. 3)

5. The basis of the termination of the Respondent, according to Mr. Shepherd's email, was that, the Respondent had deleted cash premium payments from the computer system and then took the money. Initially, the Respondent denied that he had stolen any money but eventually admitted to the theft of approximately \$2,000.00. (Tr. 10-12; Ex. 3)

6. The West Virginia Offices of the Insurance Commissioner sent the Respondent, by certified mail, an Administrative Packet containing an Administrative Complaint, a Notice of Hearing, a Notice of Rights and a Consent Order. The Respondent signed for the certified letter containing the Administrative Packet on December 3, 2019. (Tr. 12; Ex. 4, 5)

7. The Administrative Complaint alleged that the Respondent violated West Virginia Code §§ 33-12-24(b)(4) and 33-12-24(b)(9). The West Virginia Offices of the Insurance Commissioner was seeking a suspension or revocation for the Respondent's resident Producer license and/or a civil penalty. (Ex. 4)

8. The hearing was held in accordance with the Notice of Hearing on December 10,

Mr. Taylor was the Respondent's supervisor when he was employed by State Farm.

2019. No one made an appearance on behalf of the Respondent.

Issue

Whether the Respondent violated West Virginia Code §§ 33-12-24(b)(4) and 33-12-24(b)(9), and, if so, what would 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 the insurance laws of the State of West Virginia.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over matters arising under the issuance of a resident producer license pursuant to West Virginia Code Chapter 33.

Analysis

According to the Administrative Complaint, the Respondent was charged with theft of premiums. In addition the Respondent's resident producer license had been suspended for failing to comply with the Commissioner's requirements of continuing education.

The first charge against the Respondent contained in the Administrative Complaint is a violation of West Virginia Code § 33-12-24(b)(4) which states:

b) The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, solicitor's license or excess line broker's license, or may levy a civil penalty or any combination of actions, for any one or more of the following causes:

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

In order to prove a violation of this Code section, the West Virginia Offices of the Insurance

Commissioner must prove that the Respondent misappropriated money received during the course of doing insurance business.

The evidence presented by the West Virginia Office of the Insurance Commissioner was that the Respondent deleted cash premium payments from the agency's computer system and then stole the money.

By proving that the Respondent embezzled money that was meant for premium payments, the Commissioner proved that the Respondent violated West Virginia Code § 33-12-24(b)(4).

The next allegation is that the Respondent violated West Virginia Code § 33-12-24(b)(9) which states:

(b) The Insurance Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, solicitor's license or excess line broker's license, or may levy a civil penalty or any combination of actions, for any one or more of the following causes:

(9) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

In order to prove a violation of this Code section, the West Virginia Offices of the Insurance Commissioner must prove that the Respondent demonstrated fraudulent or dishonest practices while conducting business. The West Virginia Offices of the Insurance Commissioner proved that the Respondent was discharged by State Farm for embezzling money that was intended to be used for premiums. The embezzlement occurred while the Respondent was conducting business for State Farm. Embezzlement is, by its definition, a dishonest practice.

By proving that the Respondent engaged in dishonest practices, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-24(b)(9).

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 West Virginia Code §§ 33-12-24(b)(4) and 33-12-24(b)(9).
2. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code §33-12-24(b)(4) by proving that the Respondent stole money intended to be used for premiums.
3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code §33-12-24(b)(9) engaged in dishonest business practices.
4. When there is a violation, the West Virginia Offices of the Insurance Commissioner is empowered to revoke a producer license and/or impose a civil penalty under West Virginia Code § 33-12-24(b).
5. West Virginia Code § 33-2-13 authorizes the Insurance Commissioner to assess all hearing costs against the Respondent if the Respondent does not prevail.

Recommended Decision

It is recommended that the complaint of the West Virginia Offices of the Insurance Commissioner against Michael David Dean be upheld, his license be revoked, assessed an administrative penalty of \$5,000.00, and the costs associated with the hearing.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: January 28, 2019