

BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

IN RE: RUCKER, BILLUPS & FOWLER, INC.
ADMINISTRATIVE NO.: 19 -AP-PRLC-02011

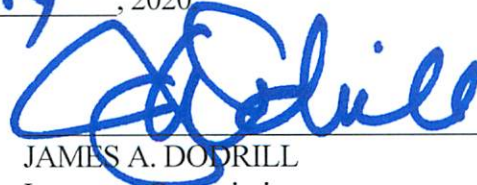
The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve, in part, and reject and modify, in part, as set forth hereinbelow, the Recommended Decision of the Hearing Examiner, appended hereto, and adopts and approves the findings of fact and conclusions of law therein contained. It is consequently ORDERED as follows:

1. Having found and concluded that it violated §§ 33-12-34(b), 33-12-24(b)(2), 33-12-24(b)(4), 33-12-24(b)(6), 33-12-24(b)(9), and 33-12-24(d) of the *West Virginia Code*, as amended, the West Virginia producer license of Rucker, Billups & Fowler, Inc. is, hereby, REVOKED.

2. While the Hearing Examiner recommended imposition of an administrative penalty of \$20,000.00, presumably equating to \$5,000.00 per violation found, a reduced administrative penalty of \$6,000.00, equating to \$1,500.00 per violation found, is, hereby, imposed against Rucker, Billups & Fowler, Inc., as are the costs associated with the hearing in this matter.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted in part, and rejected and modified in part, are preserved.

ENTERED this 31st day of January, 2020



JAMES A. DODRILL
Insurance Commissioner
State of West Virginia

**BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

**IN RE: RUCKER, BILLUPS & FOWLER, INC.
ADMINISTRATIVE NO.: 19 -AP-PRLC-02011**

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On December 6, 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, and Robert Grishaber, Director of Agent and Licensing. W. Michael Frazier, Esq. of Frazier, Oxley and Proctor, Inc., appeared on behalf of Rucker, Billups & Fowler, Inc. 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. Rucker, Billups & Fowler, Inc. (hereinafter "Respondent") is located at 314 9th Street, Huntington, West Virginia, 25701. The Respondent is a business entity acting as an insurance agency, and, as such, is required to have a West Virginia resident producer license under West Virginia Codes § 33-12-6(b). The Respondent's National Producer Number is 4586922. (Ex. 1, 6)
2. Mr. Russell Rucker is the sole owner of the Respondent. Mr. Rucker was also the designated and responsible producer for the Respondent.¹ The Respondent has been in business

¹At the time of this hearing Ms. Pamela Rucker, Russell Rucker's sister, was the designated and responsible producer.

since 1924. (Tr. 6, 8; Ex. 1, 2)

3. On January 9, 2019, Mr. Russell Rucker and his wife² were indicted on twenty-three counts of violating federal tax laws. Among the allegations were alleged violations dealing with Mr. Rucker's involvement with the Respondent. After his appearance, Mr. Rucker continued to operate the Respondent's day to day affairs. Mr. Russell did not report the indictment to the West Virginia Offices of the Insurance Commissioner. (Tr. 9-10; Ex. 3)

4. On October 21, 2019, Mr. Rucker pled guilty to the first count contained in the indictment. That count alleged that Mr. Rucker conspired to defraud the United States by impeding the Internal Revenue Service, *inter alia*, the collection of employment taxes and income taxes. Mr. Rucker did not report his guilty plea to the West Virginia Offices of the Insurance Commissioner. (Tr. 10-12; Ex. 4)

5. Mr. Rucker was required to report his criminal prosecution within thirty days. The West Virginia Offices of the Insurance Commissioner only learned about the indictment and guilty plea through the media and reports from other insurance producers. (Tr. 12; Ex. 5)

6. On November 1, 2019, the West Virginia Offices of the Insurance Commissioner suspended the Mr. Rucker's producer license. (Tr. 12; Ex. 5)

7. The West Virginia Offices of the Insurance Commissioner sent the Respondent a Notice of Hearing and an Administrative Complaint. The hearing was originally scheduled for November 18, 2019. The hearing was continued until December 6, 2019 at 9:30 a.m. (Ex. 6)

8. The Administrative Complaint contained four different charges. The Respondent was charged with violating West Virginia Code § 33-12-34(b), West Virginia Code § 33-12-24(b)(4),

²Mrs. Rucker, while charged with her husband, does not hold a resident producer license.

West Virginia Code § 33-12-24(b)(6), and West Virginia Code § 33-12-24(b)(9). (Tr. 13; Ex. 6)

9. In the Administrative Complaint the West Virginia Offices of the Insurance Commissioner are seeking revocation of the Respondent's resident producer license, a \$5,000.00 penalty for each violation, and the costs associated with the hearing. (Tr. 21; Ex. 6)

10. Counsel for the Respondent did not deny any of the charges filed against the Respondent.

Issue

Whether the Respondent violated West Virginia Code § 33-12-34(b), West Virginia Code § 33-12-24(b)(4), West Virginia Code § 33-12-24(b)(6), and West Virginia Code § 33-12-24(b)(9) 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 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 producer license pursuant to West Virginia Code Chapter 33.

Analysis

The Respondent is an insurance agency owned entirely by Mr. Russell Rucker. West Virginia Code § 33-12-6b(a) states as follows:

Licensing of agencies. (a) For the purposes set forth in section twenty-three of this

article, an insurance agency shall be licensed as an insurance producer.

Under this Code section, the Respondent must maintain an insurance producer license, the same as agents.

Mr. Rucker, formerly a licensed West Virginia Resident Insurance Producer, was indicted in federal court on twenty-three counts and admitted guilt to the first count of indictment which was for federal tax violations. Neither the indictment nor the guilty plea were timely reported to the West Virginia Offices of the Insurance Commissioner. Upon conducting an investigation, the West Virginia Offices of the Insurance Commissioner issued an Administrative Complaint.

If it is proven that Mr. Rucker, as sole owner of the Respondent, violated any insurance laws, then the violation would be applicable to the Respondent under West Virginia Code § 33-12-24(d) which states:

(d) The producer's license of a business entity may be placed on probation, suspended, revoked, refused or have civil penalty or any combination of actions, if the Insurance Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership, corporation, limited liability company or other business entity and the violation was neither reported to the Insurance Commissioner nor corrective action taken.

As the owner of the Respondent, the violations of Mr. Rucker must be imputed to the Respondent.

The first charge in the Administrative Complaint was an alleged violation of West Virginia Code § 33-12-34(b) which states as follows:

(b) Within thirty days of the initial pretrial hearing date, a producer shall report to the Insurance Commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

The West Virginia Offices of the Insurance Commissioner also alleges that the Respondent also violated West Virginia Code § 33-12-24(b)(2), which states as follows:

(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:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance Commissioner;

West Virginia Code § 33-12-34(b) requires that the Respondent report to the Insurance Commissioner within thirty days of being indicted for any criminal action. The Respondent failed to report its sole owner's indictment within thirty days of January 9, 2019. While it is true that the Respondent was not indicted, the owner of the Respondent was indicted and, as such, should not only have reported himself but also the Respondent.³ In other words, since Mr. Rucker is the sole owner of the Respondent, his activities are directly connected and are the same as the Respondent, under West Virginia Code § 33-12-24(d).

By proving that Mr. Russell Rucker failed to report the indictment within thirty days, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-34(b). Since the Commissioner proved the violation of West Virginia Code § 33-12-34(b), it proved that the Respondent violated an insurance law of the State of West Virginia. The proof of a violation allows the West Virginia Offices of the Insurance Commissioner to revoke or suspend the Respondent's resident producer license under West Virginia Code § 33-12-24(b)(2).

The second charge contained in the Administrative Complaint was an alleged violation of

³Mr. Russell Rucker signed a consent order giving up his resident producer license prior to this hearing.

West Virginia Code § 33-12-24(b)(4) which states as follows:

(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;

The West Virginia Offices of the Insurance Commissioner put into evidence the indictment and the plea agreement on the part of Mr. Rucker. Mr. Rucker had pled guilty to the first count of the indictment. The first count contained allegations of conspiracy to defraud the United States. In this count, Mr. Rucker was charged, among other items, with failure to submit payroll taxes to the government, even though the taxes had been withheld from the Respondent's employees. By pleading guilty, Mr. Rucker, in effect, admitted that he misappropriated money, thus admitting that he violated West Virginia Code § 33-12-24(b)(4). Mr. Rucker was the sole owner of the Respondent and, thus, an officer of the organization. Mr. Rucker's violation is imputed to the Respondent under West Virginia Code § 33-12-24(d), therefore, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-24(b)(4).

The third violation alleged in the Administrative Complaint is that the Respondent violated West Virginia Code § 33-12-24(b)(6) 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:

(6) Having been convicted of or pleaded nolo contendere to any felony;

If Mr. Rucker violated West Virginia Code § 33-12-24(b)(6), then the violation can be

imputed to the Respondent under West Virginia Code § 33-12-24(d).

The West Virginia Offices of the Insurance Commissioner, by submitting Mr. Rucker's plea agreement into evidence proved that Mr. Rucker had been convicted of the felony associated with federal withholding and federal income tax. Since the plea involved a felony, the West Virginia Offices of the Insurance Commissioner proved that Mr. Rucker violated West Virginia Code § 33-12-24(b)(6). By proving this violation and the fact that Mr. Rucker was an officer of the Respondent, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-24(b)(6).

The fourth and final charge contained in the Administrative Complaint, is that Mr. Rucker violated West Virginia Code § 33-12-24(b)(9), which states as follows:

(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;

If the West Virginia Offices of the Insurance Commissioner proves that Mr. Rucker violated West Virginia Code § 33-12-24(b)(9), then his violation can be imputed to the Respondent through West Virginia Code § 33-12-24(d).

The first count in the indictment, which Mr. Rucker pled guilty, involved the failure of Mr. Rucker to properly pay withholding taxes and failure to pay income taxes. Mr. Rucker pled guilty to one count in the indictment, thus, admitting that he engaged in fraudulent and dishonest practices. By introducing the plea agreement of Mr. Rucker, the West Virginia Offices of the Insurance

Commissioner proved that Mr. Rucker violated. West Virginia Code § 33-12-24(b)(9).

By proving that Mr. Rucker violated West Virginia Code § 33-12-24(b)(9), the West Virginia Offices of the Insurance Commissioner has proven that violation of Mr. Rucker can be applied to the Respondent under West Virginia Code § 33-12-24(d), thus, proving that the Respondent violated West Virginia Code § 33-12-24(b)(9).

The West Virginia Offices of the Insurance Commissioner has proven, by a preponderance of the evidence, that Mr. Rucker violated West Virginia Code §§ 33-12-34(b), (2) West Virginia Code § 33-12-24(b), West Virginia Code § 33-12-24(b)(4), West Virginia Code § 33-12-24(b)(6), and West Virginia Code 33-12-24(b)(9). By proving these violations, the West Virginia Offices of the Insurance Commissioner has proven that the Respondent, under West Virginia Code § 33-12-24(d), that the Respondent also violated those code sections.

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 §§ 33-12-34(b), 33-12-24(b)(2), 33-12-24(b)(4), 33-12-24(b)(6), 33-12-24(b)(9), and 33-12-24(d).
2. Under West Virginia Code § 33-12-6(b), the West Virginia Offices of the Insurance Commissioner proved that the Respondent was an insurance agency and was required to have a producer license.
3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-34(b) when it proved that the Respondent failed to timely report Mr. Rucker's indictment and guilty plea.

4. 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) when it proved that Mr. Rucker misappropriated money which can be imputed as a violation by the Respondent.

5. 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)(6) by proving that Mr. Rucker had committed a felony which can be imputed as a violation by the Respondent.

6. 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) by proving that Mr. Rucker used fraudulent and dishonest practices in his insurance business which can be imputed to the Respondent

7. Under West Virginia Code § 33-12-24(d), the actions of the Mr. Rucker, as sole owner of the Respondent, is imputed to the Respondent, therefore, the West Virginia Office of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-12-34(b), 33-12-24(b)(2), 33-12-24(b)(4), 33-12-24(b)(6), and 33-12-24(b)(9).

8. 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).

Recommended Decision

It is recommended that the complaint of the West Virginia Offices of the Insurance

Commissioner against Rucker, Billups & Fowler be upheld, its license be revoked, receive an administrative penalty of \$20,000.00, and to pay the costs associated with the hearing.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: January 23, 2020