

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

PROFESSIONAL PAYROLL CONCEPTS, INC., doing business as Personnel Management of WV, **KRISTA G. CHITWOOD**, in her individual capacity and in her capacity as president and owner of Professional Payroll Concepts, Inc., and **ANDREW RUDE**, in his individual capacity and as treasurer of Professional Payroll Concepts, Inc.

Administrative Proceeding No. 19-AP-CO-02002

AGREED ORDER

The West Virginia Offices of the Insurance Commissioner (“WVOIC”, “Insurance Commissioner” or “Commissioner”) alleged that Professional Payroll Concepts, Inc., dba Personnel Management of WV (“PMWV” or “Company”), Krista G. Chitwood and Andrew Rude (“Respondents”) violated provisions of Chapter 33, Article 46A and Chapter 33, Article 44 of the *West Virginia Code*, as amended. The Respondents now wish to resolve this matter without proceeding further herein and, to do so, agree to the entry of this AGREED ORDER.

FINDINGS OF FACT

1. PMWV is a Professional Employer Organization (PEO) domiciled in the State of West Virginia.
2. The Company was originally licensed in December, 2011, as a PEO in the State of West Virginia, with West Virginia License #099.
3. Krista G. Chitwood is both the president and owner of PMWV.
4. Andrew Rude is the treasurer of PMWV.
5. The Company’s PEO license was revoked by the Insurance Commissioner by order entered July 26, 2018. The Order was never stayed and has always been in effect, but Respondents appealed the order to the Circuit Court of Kanawha County, West Virginia.

6. The appeal was unsuccessful, the Insurance Commissioner's order of July 26, 2018 was upheld by the Circuit Court of Kanawha County, West Virginia, and Respondents' appeal was dismissed by order of the Circuit Court entered December 18, 2018. No appeal of the Circuit Court's order was taken and, therefore, the order is a final, enforceable order.

7. After their PEO license was revoked by the Insurance Commissioner's order of July 26, 2018, the Respondents applied for and obtained an insurance policy as a PEO. The policy had an effective date of October 12, 2018, covered a period of one year, and covered multiple clients of the Respondents. PWMV obtained the above-referenced insurance policy at a time when PMWV was in the process of appealing the Insurance Commissioner's revocation order to the Circuit Court of Kanawha County, West Virginia. During this period, Respondents also continued to submit client employee information to the West Virginia Unemployment Compensation Division under PMWV's unemployment account as the PEO for the clients.

8. The WVOIC initiated the instant proceeding and served an Administrative Complaint on the Respondents (Administrative Proceeding No. 19-AP-CO-02002), alleging that the Respondents continued to operate as a PEO in West Virginia after their license had been revoked and, thereby, violated the Unauthorized Insurers Act and the PEO statute. The relief requested in the Administrative Complaint consisted of a cease and desist order and a penalty of up to Twenty-Thousand Dollars (\$20,000.00) for each unauthorized act or transaction of unauthorized insurance.

9. To resolve this matter the Respondents have agreed to the terms and entry of this AGREED ORDER.

CONCLUSIONS OF LAW

1. The WVOIC has jurisdiction over the subject matter of this action and over Respondents pursuant to Chapter 33, Article 46A and Chapter 33, Article 44 of the *West Virginia Code*, as amended.

2. W. Va. Code §33-46A-4a(a) states “[a]ny person who operates a PEO without a license issued in accordance with this article is subject to the *[sic]* all of the injunctive, criminal, civil and administrative relief and criminal penalties as provided in article forty-four [§§33-44-1 et seq] of this chapter for the unauthorized transaction of insurance”.

3. The *Unauthorized Insurers Act*, Article 44, Chapter 33 of the West Virginia Code, as amended, is incorporated into the PEO statutes referenced above. The *Unauthorized Insurers Act* gives the Insurance Commissioner the authority to commence an administrative action against any person who violates the *Act*. In particular, W.Va. Code §33-44-7(a) states:

Any person engaged in any act which constitutes the unauthorized transaction of insurance as set forth in this article may, after notice and hearing pursuant to section thirteen [§33-2-13], article two of this chapter, be fined by the commissioner a sum not to exceed twenty thousand dollars for each unauthorized act or transaction of unauthorized insurance.

4. Respondents’ conduct, as set forth above, violates the provisions of W.Va. Code §33-46A-4a(a) and the *Unauthorized Insurers Act* because Respondents continued to operate as a PEO after the Commissioner entered an order revoking their PEO license.

5. Respondents have admitted and consented to the jurisdiction of the WVOIC, to the foregoing Findings of Fact and these Conclusions of Law and agree to the entry of this AGREED ORDER.

6. Respondents are aware of their right to notice and a hearing at which they may be represented by counsel, present evidence, and examine witnesses. Respondents understand and stipulate that by agreeing to entry of this AGREED ORDER the Respondents irrevocably waive any and all rights to such notice and hearing and to any court appeals relating to this AGREED ORDER.

7. Nothing in this AGREED ORDER shall prevent the WVOIC from taking additional action against the Respondents if the WVOIC determines that Respondents continue to violate West Virginia law, this AGREED ORDER or prior orders regarding the Respondents. This AGREED ORDER shall conclude and resolve Administrative Proceeding Number 19-AP-CO-02002.

8. Respondents acknowledge that this AGREED ORDER is the result of an administrative action and that the WVOIC will report the proceedings and the AGREED ORDER to the National Association of Insurance Commissioners (“NAIC”). Respondents further acknowledge that they may be required to report this action to regulatory authorities in other jurisdictions where Respondents may be licensed or conduct their business, and that fulfilling such requirements is solely the responsibility of the Respondents.

ORDER

The Respondents agree and stipulate that they will refrain from contesting the allegations in this proceeding that Respondents continued to operate as a PEO in West Virginia without being licensed to do so, and Respondents further consent to the following in consideration of their desire to resolve this matter without further administrative or judicial proceedings.

It is, therefore, **ORDERED** that Respondent Professional Payroll Concepts, Inc. shall immediately cease and desist from operating as a PEO in the State of West Virginia, and that they shall, within ten (10) days of the entry of this AGREED ORDER, pay to the WVOIC a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00).

ENTERED this the 10th day of February, 2020.



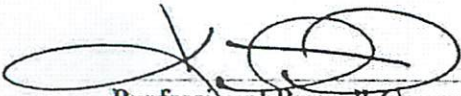
JAMES A. DODRILL
Insurance Commissioner

Prepared by:



Jeffrey C. Black (WVSB 8188)
Associate Counsel/Attorney Supervisor
Regulatory Compliance
West Virginia Offices of the Insurance Commissioner

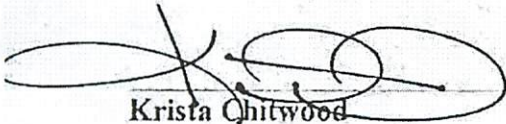
Reviewed and agreed to by:



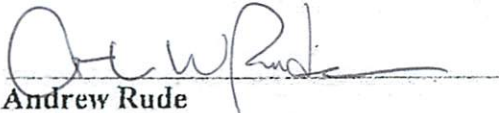
Professional Payroll Concepts, Inc.

KRISTA G. CHITWOOD
Printed Name

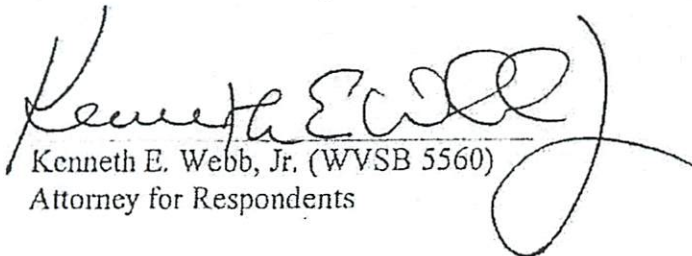
PRESIDENT
Title



Krista Chitwood



Andrew Rude



Kenneth E. Webb, Jr. (WVSB 5560)
Attorney for Respondents