

BEFORE JAMES A. DODRILL INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

In the Matter of:

EMILY HARRIS

ADMINISTRATIVE NO.: 19-AP-PRLC-02003

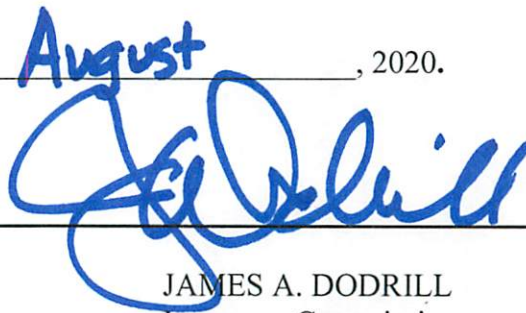
FINAL ORDER 19-AP-PRLC-02003

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. After review thereof, it is **ORDERED** that the said Recommended Decision is adopted as the decision of the Commissioner in this matter and is, by this reference, incorporated herein and made a part hereof.

Inasmuch as Emily Harris has been found to have violated *W.Va. Code § 33-12-24(b)(9)*, *W.Va. Code § 33-12-24(b)(11)*, and *W.Va. Code § 33-11-4(11)*, it is **ORDERED** that the West Virginia resident producer license of Emily Harris is hereby **REVOKED**.

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

ENTERED this 20th day of August, 2020.



JAMES A. DODRILL
Insurance Commissioner
State of West Virginia

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

**IN RE: EMILY HARRIS
ADMINISTRATIVE NO.: 19 -AP-PRLC-02003**

RECOMMENDED DECISION OF THE HEARING EXAMINER

On March 3, 2020, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner in Charleston, West Virginia. There then being present on behalf of the West Virginia Offices of the Insurance Commissioner; Mr. Travis Ellison, Esquire, Associate Counsel, Mr. Robert Grishaber, Director of Agent and Licensing, and Mr. Vincent Chanaki, Investigator. Emily Harris did not appear at the hearing. 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. Emily Harris (hereinafter "Respondent") resides at _____, Canvas, West Virginia 26662. The Respondent holds an active resident producer license in the state of West Virginia, with a National Producer license number of 18514583. (Ex. 3)
2. The Respondent was initially granted a resident producer license for Health Insurance on August 24, 2017. On November 6, 2017, the Respondent obtained a producer license for life insurance and on March 19, 2019, she received a license for property and casualty

insurance. Respondent's resident producer license is scheduled to expire on April 20, 2020.

(Tr. 7; Ex. 1)

3. The Respondent was terminated by Combined Insurance for cause on April 16, 2019. The alleged basis of the discharge was that the Respondent had knowingly submitted fraudulent and/or forged applications for sixteen individuals.¹ In addition, the Respondent was accused of submitting an application for Ms. Debbie Turner with the Respondent paying the premium. It was determined that Ms. Turner was related to the Respondent. The payment for Ms. Turner's premium contributed to the Respondent receiving a bonus from Combined Insurance. (Tr. 5-6; Ex. 5, 6).

4. In addition to the above, the Complainant submitted an application for Catherine Yarmey. When the initial bill was sent to Ms. Yarmey it was returned as undeliverable. Upon further investigation, Combined Insurance determined that the application was for Catherine Yarmey-Legg. Ms. Yarmey-Legg is the mother-in-law of the Respondent. Ms. Yarmey-Legg denied signing an application and was not aware of the policy. (Ex. 6)

5. At some point, the West Virginia Offices of the Insurance Commissioner learned about Combined Insurance's decision to discharge the Respondent.² The Insurance Commissioner assigned Mr. Vincent Chanaki, an investigator for the West Virginia Offices of the Insurance Commissioner, to investigate the allegations against the Respondent. (Tr. 19).

¹According to Combined Insurance the Respondent submitted fraudulent applications for Ellen Hinkle, Sara Murray, Timothy Williams, Catherine Yarmey, Michael Higgins, Jerome Gilles, Rodney Mullens, Douglas Holcomb, Anna Miller, Bill Williams, Allen Morris, Allison Mullens, Christopher Jones, Linda Smith, Melody Krieder and Franklin Krieder.

²It is unclear from the record how the Insurance Commissioner learned about the Respondent's discharge.

6. During his investigation, Mr. Chanaki determined that the Respondent's appointment had been terminated by Combined Insurance for violation of the Company's zero tolerance policy on April 16, 2019. However, there was an email introduced into evidence, dated January 16, 2019, in which the Respondent resigned her position. In that email, the Respondent stated that she was leaving her position due to stress and pressure. She did not admit, in the email, to any wrongdoing while working for Combined Insurance. Evidently, Combined Insurance continued its investigation after the Respondent resigned. (Tr. 10-12; Ex. 5)

7. Mr. Chanaki obtained a copy of the Field Compliance Investigation & Summary Report (hereinafter "Investigation Report") prepared by Combined Insurance on the Respondent. According to the Investigation Report, the Respondent had forged signatures, put fictitious names, addresses, phone numbers and bank accounts on applications. The Respondent was paid commissions of \$7,156.75. At the time of the Investigation Report, the Respondent had total chargebacks³ of \$3,566.12. It was noted in the report that additional chargebacks could occur. In addition, the Respondent was overpaid \$1,050.00 in bonuses and \$800.00 in a monthly bonus. It was Combined Insurance's conclusion that the Respondent performed these fraudulent actions in order to obtain commissions as well as bonuses. (Tr. 13; Ex. 6)

8. At the end of Mr. Chanaki's investigation, he concluded that the Respondent had violated West Virginia Code §§ 33-12-24(b)(9), 33-12-24(b)(11) and 33-11-4(11) (Tr. 15; Ex. 3)

9. On February 5, 2020, the West Virginia Offices of the Insurance Commissioner

³Chargebacks occur when the insurance company is unable to bill the policy. Chargebacks are reductions to a producer's commissions received for those policies.

sent an Administrative packet, by certified mail, to the Respondent's last known address. The Respondent signed for the certified packet on February 13, 2020. The Administrative packet contained a Complaint, Notice of Hearing and a Notice of Rights. (Tr. 10; Ex. 2, 3)

10. The hearing was held as scheduled in the Notice of Hearing, however, the Respondent did not make an appearance. (Tr. 4)

Issue

Whether the Respondent violated West Virginia Code §§ 33-12-24(b)(9), 33-12-24(b)(11) and 33-11-4(11).

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 § 33-2-3.

Analysis

The Complaint filed, by the West Virginia Offices of the Insurance Commissioner, against the Respondent alleges that she violated West Virginia Code §§ 33-12-24(b)(9), 33-12-24(b)(11) and 33-11-4(11) which state as follows:

West Virginia Code §§ 33-12-24(b)(9)

(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: or converting any moneys or properties received in the course of doing insurance business; ...

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

West Virginia Code §33-12-24(b)(11)

(11) Forging another's name to an application for insurance or to any document related to an insurance transaction or fraudulently procured a forged signature to an insurance application or any other document, knowing the signature to be forged;

West Virginia Code §33-11-4(11)

(11) Misrepresentation in insurance applications. -- No person shall make false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

In order to prove a violation of West Virginia Code § 33-12-24(b)(9), the West Virginia Offices of the Insurance Commissioner must prove that the Respondent used fraudulent or dishonest practices while conducting business in West Virginia.

In the instant case, the Respondent was either discharged or resigned from her position at Combined Insurance. The Investigation Report indicated that the Respondent had forged signatures, gave fictitious names, addresses, phone numbers and bank accounts on applications. It was the conclusion of the Investigation Report that the Respondent performed these fraudulent actions in order to obtain commissions, as well as bonuses.

Mr. Vincent Chanaki, an investigator for the Insurance Commissioner was assigned to investigate the Respondent. As part of his investigation, he obtained the Investigation Report

prepared by Combined Insurance. Mr. Chanaki concluded, based on Combined Insurance's Investigation Report, that the Respondent violated West Virginia Code § 33-12-24(b)(9).

The West Virginia Offices of the Insurance Commissioner proved through the introduction into evidence of Combined Insurance's Investigation Report and the fraudulent applications, that the Respondent engaged in fraudulent and dishonest practices. It was proven that the Respondent submitted applications to Combined Insurance with fictitious names, addresses, phone numbers and bank accounts, thus, proving fraud, dishonesty and a violation of West Virginia Code § 33-12-24(b)(9).

The next issue is whether the Respondent violated West Virginia Code § 33-12-24(b)(11). This Code Section requires that the Insurance Commissioner prove that the Respondent forged a person's name on an application for insurance. The evidence shows that an application was submitted for Catherine Yarmey. Combined Insurance's investigator determined that Catherine Yarmey was Catherine Yarmey-Legg, the Respondent's mother-in-law. When Mrs. Yarmey-Legg was contacted, she was unaware of the policy and stated that she did not sign the application.

By proving that the Respondent forged that signature of Catherine Yarmey-Legg, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-24(b)(11).

The final issue raised in the Administrative Complaint is that the Respondent violated West Virginia Code § 33-11-4(11). Under this section of Code it must be proven that the Respondent used a false statement or misrepresented information on an application in order to obtain a fee, commission or a bonus.

In the instant case, the Investigation Report stated that the Respondent had been paid \$7,156.75 in commissions with \$3,566.12 in chargebacks. In addition, the Respondent received \$1,050.00 in normal bonuses and \$800.00 in a monthly bonus all due to the false applications submitted by the Respondent.

The Investigation Report indicated that the Respondent would not have received the commissions or the two bonuses without the falsified applications. By proving that the Respondent received commissions and bonuses due to her fraudulent behavior, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code §33-11-4(11).

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)(9), 33-12-24(b)(11) and 33-12-4(11).
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)(9) by proving that the Respondent committed fraud and engaged in dishonest practices when the Respondent submitted applications with fictitious names, addresses, phone numbers and bank accounts.
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)(11)

by proving that the Respondent forged the signature of Catherine Yarmey-Legg.

4. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code §33-11-4(11) by proving that the Respondent fraudulently received commissions and bonuses.

5. The West Virginia Offices of the Insurance Commissioner can suspend or revoke a producer's license and/ or issue a civil penalty under West Virginia Code §§ 33-12-24(b) and 33-12-24(e).

Recommended Decision

It is recommended that the charge against Emily Harris dealing with West Virginia Code §§ 33-12-24(b)(9), 33-12-24(b)(11) and 33-11-4(11) be upheld; that Emily Harris' West Virginia resident producer's license be revoked; that the Respondent pay a fine of \$5,000.00 and taxable costs of this proceeding.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: May 4, 2020