

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

*In the Matter of:*

**ZELENE GOMEZ (NP #18168385)**

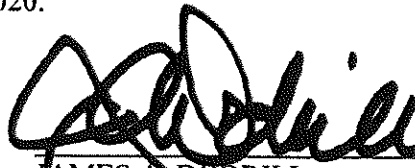
Administrative Proceeding No. 20-PLTER-02012

FINAL ORDER

On a prior day, to-wit, November 11, 2020, the Hearing Examiner in this matter submitted his Recommended Decision, appended hereto, containing findings of fact, discussion, analysis and conclusions of law. After review and consideration thereof, it is **ORDERED** as follows:

1. 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;
2. Inasmuch as Zelene Gomez has been found to have violated *W. Va. Code* § 33-12C-7(f), the West Virginia non-resident surplus lines producer license of Zelene Gomez is hereby **REVOKED**;
3. Zelene Gomez is assessed and shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00); and
4. Zelene Gomez shall also pay the costs of this proceeding in the amount of eight hundred seventy-three dollars and seventy-five cents (\$873.75).

**ENTERED** this 19<sup>th</sup> day of November, 2020.

  
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JAMES A. DODRILL  
Insurance Commissioner  
State of West Virginia

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

**IN RE:           ZELENE GOMEZ  
                  ADMINISTRATIVE NO.: 20-PLTER-02012**

**RECOMMENDED DECISION  
OF THE HEARING EXAMINER**

On October 14, 2020, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, by telephone. There then being present on behalf of the West Virginia Offices of the Insurance Commissioner: Gregory Elam, Esquire, Associate Counsel, Robert Grishaber, Director of Licensing and Education and Drema Goolsby, Tax Unit Supervisor. Zelene Gomez did not make an appearance.<sup>1</sup>

Statement of the Case

This matter arises out of the Administrative Complaint filed against Zelene Gomez concerning her failure to file tax forms for the second and third quarters of 2019, as required for a surplus lines producer in the State of West Virginia.

Findings of Fact

1.       Zelene Gomez (hereinafter "Respondent") held an active non resident surplus lines license in West Virginia during 2019, License #18168385.<sup>2</sup> The Respondent's address on file with the West Virginia Offices of the Insurance Commissioner is 555 Kiley Road, Chula Vista, CA

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<sup>1</sup>Due to the Covid 19 Pandemic, the hearing was held via telephone. Zelene Gomez had been sent a letter requesting that she provide a telephone number at which she could be reached for the hearing. Ms. Gomez did not respond to the letter.

<sup>2</sup>The Respondent's surplus lines producer license expired May 31, 2020. The Respondent did not renew his license.

91910-7598.<sup>3</sup>

2. West Virginia Code § 33-12C-7(f) requires that all producers holding a surplus lines license file quarterly tax forms with the West Virginia Offices of the Insurance Commission.

3. Robert Grishaber, as Director of Licensing and Education, is the custodian of records for agent licensing. (Tr. P. 6) Mr. Grishaber testified that the Respondent held a non resident producer license for surplus lines in 2019. (Tr. 6; Ex. 1)

4. Drema Goolsby, Tax Unit Supervisor, testified that the Tax Unit had no record of the Respondent ever filing a tax form. (Tr. P. 8) Ms. Goolsby went on to testify that on several occasions the West Virginia Offices of the Insurance Commissioner notified the Respondent that she had failed to timely file the quarterly reports.

5. The Respondent failed to respond to any of the letters or emails sent by the Tax Unit. (Tr. P. 8).

6. On March 11, 2020, the West Virginia Offices of the Insurance Commissioner sent the Respondent, via certified mail, an Administrative packet to the address on file.<sup>4</sup> The Administrative packet contained a Consent Order, an Administrative Complaint, a Notice of Hearing and a Notice of Rights. (See Administrative packet)<sup>5</sup>

7. The Administrative Complaint alleged that the Respondent failed to file her quarterly

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<sup>3</sup>On May 28, 2020, a letter was sent to the Respondent at this address. The letter was returned to sender, not deliverable as addressed, unable to forward.

<sup>4</sup>Producers are required to maintain a current address with the West Virginia Offices of the Insurance Commissioner.

<sup>5</sup>The Administrative Packet is automatically incorporated as an Exhibit in this proceeding.

tax forms for the second and third quarters of 2019. The Complaint stated that the Respondent's failure to file these forms is a violation of West Virginia Code § 33-12C-7(f). (See Administrative Packet)

#### Issue

Whether the Respondent violated West Virginia Code § 33-12C-7(f), 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 West Virginia Code § 33-12C-7(f).

#### Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over matters arising under West Virginia Code § 33-12C-7(f) pursuant to West Virginia Code Chapter 33-12C-9.

#### Analysis

The Administrative Complainant, filed by the West Virginia Offices of the Insurance Commissioner against the Respondent, alleged that the Respondent violated West Virginia Code § 33-12C-7(f) when she failed to file tax forms for the second and third quarters of 2019.

West Virginia Code § 33-12C-7(f) states as follows:

(f)(1) This tax is imposed for the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and additional revenue for volunteer and part-volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made

on or before March 1 of the succeeding year. Provisions of this chapter relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this tax to the extent that the provisions are not in conflict with this section.

If it is determined that the Respondent violated W.Va. Code § 33-12C-7(f), then W.Va. Code § 33-12C-9 would determine the possible penalties. This Code section states as follows:

33-12C-9. Suspension, revocation or nonrenewal of surplus lines licensee's license.

- (a) The commissioner may examine and investigate the business affairs of every individual applying for or holding a surplus lines insurance license to determine whether such individual has been or is engaged in unfair or deceptive practices in any state.
- (b) The commissioner may place on probation, suspend, revoke or refuse to issue or renew the license of a surplus lines licensee or may levy a civil penalty in a sum not to exceed \$5,000 or any combination of actions after notice and hearing pursuant to section thirteen, article two of this chapter upon one or more of the following grounds:
  - (1) Removal of the resident surplus lines licensee's office from this state;
  - (2) Removal of the resident surplus lines licensee's office accounts and records from this state during the period during which the accounts and records are required to be maintained under section sixteen of this article;
  - (3) Closing of the surplus lines licensee's office for a period of more than thirty business days, unless permission is granted by the commissioner;
  - (4) Failure to make and file required reports;
  - (5) Failure to transmit required tax on surplus lines premiums to this state or a reciprocal state to which a tax is owing;
  - (6) Violation of any provision of this article; or
  - (7) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused pursuant to section twenty-four, article twelve of this chapter.

According to the testimony of Robert Grishaber, the Respondent held a non resident surplus lines producer license for the relevant period of the second and third quarter of 2019. As stated in West Virginia Code § 33-12C-7(f), a producer with a surplus lines license must file quarterly tax reports with the West Virginia Offices of the Insurance Commissioner.

Ms. Drema Goolsby, of the Tax Unit, provided evidence that the Respondent failed to file any tax forms for 2019, including the second and third quarters.

Since the West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent was required to file and failed to file the required tax forms for the second and third quarters of 2019, it proved that the Respondent violated West Virginia Code § 33-12C-7(f).

By presenting evidence that the Respondent was a non resident surplus lines producer in 2019, that she was required to file quarterly tax forms for that year, and that she did not file tax forms for the second and third quarters, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12C-7(f).

Once a producer has been found to have violated West Virginia Code § 33-12C-7(f), the Commissioner can apply the sanctions contained in West Virginia Code § 33-12C-9 and suspend, place on probation or revoke the license of a surplus line's producer and may impose civil penalties.

#### Conclusions of Law

1. The West Virginia Offices of the Insurance Commissioner has jurisdiction over non resident producers by virtue of West Virginia Code Chapter 33.
2. 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 West Virginia Code §

33-12C-7(f).

3. West Virginia Code § 33-12C-7(f) requires that a producer with a surplus lines license file quarterly tax form with the West Virginia Offices of the Insurance Commissioner.


4. By proving that the Respondent failed to file tax forms for the second and third quarters of 2019, the West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12C-7(f).

5. West Virginia Code § 33-12C-9 allows the West Virginia Offices of the Insurance Commissioner to examine the business affairs of every producer holding a surplus lines license. This statute allows the Commissioner to suspend or revoke a producer's license or levy a civil penalty.

Recommended Decision

It is recommended that Zelene Gomez be found to have violated West Virginia Code § 33-12C-7(f), that her non resident surplus lines license be revoked and she be fined \$1,000.00 and the taxable costs of this proceeding.

Respectfully recommended,

  
MARK W. CARBONE  
HEARING EXAMINER

Date: Nov. 5, 2020