

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

In the Matter of:

NICHOLAS NULL

ADMINISTRATIVE PROCEEDING NO. 19-PLTER-02014

FINAL ORDER

On a prior day, to-wit, June 17, 2021, the Hearing Examiner in this matter submitted his Recommended Decision, appended hereto, containing findings of fact, analysis, and conclusions of law. After review, thereof, it is **ORDERED** that the said Recommended Decision, except as to the administrative penalty to be imposed pursuant to *W. Va. Code* § 33-12-24(e), is adopted as the decision of the Commissioner in this matter and is, by this reference, incorporated herein and made a part hereof.


It is further **ORDERED** that, inasmuch as it has been determined that Nicholas Null committed multiple violations of *W. Va. Code* §§ 33-11-4(11), 33-12-24(b)(2), 33-12-24(b)(8), and 33-12-24(b)(9), plus single violations of *W. Va. Code* §§ 33-12-6A and 33-12-34(b), Nicholas Null's West Virginia Resident Producer License Number 17471218 is hereby **REVOKED**.

It is further **ORDERED** that, pursuant to *W. Va. Code* §33-12-24(e), in addition to the revocation of his resident producer license, Nicholas Null shall, pay a penalty to the State of West Virginia in the amount of One Thousand Five-Hundred Dollars (\$1,500.00) for each violation of the *West Virginia Code* as set forth in the Recommended Decision. The evidence proved thirteen (13) policyholders did not authorize applications submitted by Mr. Null and five (5) policies were written for non-existent individuals. The aforementioned eighteen (18) application violations along with the violations of *W. Va. Code* §§ 33-12-6A and 33-12-34(b), total twenty (20) violations. Due to the significance of these numerous violations, all of which adversely impacted persons

other than himself, and, particularly, the respondent's complete absence of veracity under oath in this matter and unwillingness to take responsibility for his actions, it is **ORDERED** that Nicholas Null pay a total penalty in the amount of Thirty Thousand Dollars (\$30,000.00) (\$1,500 x 20 violations) plus the costs of this proceeding.

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

ENTERED this 22ND day of June, 2021.



JAMES A. DODRILL
Insurance Commissioner

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

**IN RE: NICHOLAS NULL
ADMINISTRATIVE NO.: 19-PLTER-02014**

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On March 3, 2021, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. There then being present in the hearing room on behalf of the West Virginia Offices of the Insurance Commissioner: Jeffrey Black, Esquire, Associate Counsel, Peggy Short, Paralegal, and Scott Pauley, Investigator. Appearing by telephone on behalf of the West Virginia Offices of the Insurance Commissioner were Robert Grishaber, Director of Licensing and Education and Mary O'Brien, Director of Field Compliance for Combined Insurance Company. Mr. Null appeared *pro se*, also by telephone.¹

Statement of the Case

This matter is about the Administrative Complaint filed against Nicholas Null concerning the allegations that he had made misrepresentations on insurance applications, forged an insured's name on an insurance application, failed to notify the West Virginia Offices of the Insurance Commissioner of criminal prosecution, and/or maintained his West Virginia resident producer license while being a resident of another state.

¹Due to the Covid 19 Pandemic, this hearing, which was scheduled to be in person, was held telephonically. Mr. Null was sent a Notice of Hearing.

Findings of Fact

1. Nicholas Null (hereinafter "Respondent") resides, according to the records of the West Virginia Insurance Commissioner, at 16 Marina Park, Hurricane, West Virginia, 25526. His business address is P.O. Box 2315, North Myrtle Beach, South Carolina 29598. The Respondent holds an active West Virginia Resident Producer license, license number 17471218. (Tr. 87)
2. The Respondent was previously employed as a District Manager by Combined Insurance Company (hereinafter "Combined") Combined is licensed to engage in the insurance business in the State of West Virginia. (Tr. 129)
3. Mr. Robert Grishaber, Director of Licensing and Education for the West Virginia Offices of the Insurance Commissioner, testified that the Respondent obtained his resident producer license on January 9, 2015. The Respondent was authorized to sell Health and Life Insurance. The Respondent also had non resident producer licenses in Mississippi, North Carolina, South Carolina and Louisiana. (Tr. 86-87)
4. The Respondent claimed that his residence is located at 16 Marina Park, Hurricane, West Virginia. The West Virginia Offices of the Insurance Commissioner alleged that the Respondent's actual residence was in South Carolina. (Tr. 14)
5. The Respondent testified, while under oath, that his residence was located at 16 Marina Park. He stated that he had a key to the house, personal items such as clothes in the closet, as well as other personal items at that location. (Tr.116 - 117)
6. The Respondent's mother-in-law, Lawanda Porter, testified that she and her husband owned the home located 16 Marina Park, Hurricane, West Virginia, since June 2019. She further testified that the Respondent had never lived at that address and had never even been inside the home. (Tr. 124)

7. Ms. Porter also stated that it was her understanding that the reason the Respondent used the Hurricane, West Virginia, address is that in order to have a West Virginia insurance license he had to have a West Virginia residence. She claimed that the Respondent currently lives in North Myrtle Beach, South Carolina. (Tr. 125)

8. On August 8, 2019, Ms. Kayca Washington sent a letter to Combined filing a complaint against the Respondent. There was an application for an insurance policy for Ms. Washington prepared by the Respondent in Charleston, South Carolina, and allegedly signed by Ms. Washington. In her complaint, Ms. Washington stated that she had not seen the Respondent in Charleston, South Carolina, on the date the application was completed. Ms. Washington denied that the address on the application was her address, her birth date on the application was wrong, and she claimed it was not her signature on the application. She went on to state that the policy written by the Respondent was made without her permission and he was not authorized to debit her bank account to pay the premiums. (Tr. 28 - 29; Ex. C)

9. Also on August 8, 2019, Ms. Josephine Bonsu sent Combined a letter complaining that she had received two policies in the mail that neither she nor her husband had signed. Ms. Bonsu requested that the policies be cancelled and she be refunded the premium that was paid out of her bank account. The applications for Mr. and Mrs. Bonsu were completed by the Respondent. (Tr. 33; Ex. H)

10. On September 13, 2019, Combined received a complaint from Ms. Linda Watts claiming that she had not authorized an application prepared by the Respondent. Ms. Watts requested a refund. (Tr. 32; Ex. G)

11. On September 16, 2019, Mr. Daniel Caro, sent a letter to Combined requesting that

a life insurance policy and an accidental death policy in his name be cancelled. He stated that he did not apply for, or sign, an application for either of these policies. He also wanted the name of the preparer of the application, the Respondent, so he could forward the matter to his local district attorney. (Tr. 30-31; Ex. D)

12. On September 21, 2019, Ms. Janie Booth sent a complaint to Combined. Ms. Booth stated that there were two policies that were issued in her name and had not been authorized by her. Both policy premiums were being taken out of her bank account without her permission. She requested that the policies be cancelled and that she be refunded her premium payments. Again, the Respondent prepared this application. (Tr. 31-32; Ex. F)

13. After receiving several complaints, Combined conducted an investigation into the matter. Mary O'Brien, Director of Field Compliance for Combined, testified that the investigation began on September 9, 2019.² The investigation was overseen by Ms. O'Brien and conducted by Combined's Field Compliance and Investigation Department. Ms. O'Brien testified that these investigations are regularly conducted by Combined. She went on to testify that preparing an investigation report is a regular practice of the investigation committee. (Tr. 24-25, 54-55; Ex. B)

14. On September 20, 2019, Ms. O'Brien, with others being present on the phone, interviewed the Respondent in order to discuss the complaints that had been filed against him. Each complaint, as well as other suspicious transactions, were discussed with the Respondent. (Tr. 50-52; Ex. B)

15. It appeared that almost all of the complaints were from individuals that had previously

²The Respondent alleged that the investigation was completed on September 9, 2020. Ms. O'Brien explained that the date found on the first page of the investigation report indicated the date the investigation began and not the date it ended.

bought a policy from Combined and this would have allowed the Respondent to access their personal information. While some of the policy holders did not have any problem with the original policy that they purchased, others had cancelled their earlier policies. All of the individuals claimed that they did not authorize the later made policies. During the investigation several of the individuals that complained about the Respondent were interviewed were recorded.³ (Tr. 30; Ex. B)

16. During the Respondent's interview with Combined personnel, the Respondent stated that part of the problems at work originated from one of the salesman that worked on his team, George Magana-Babich. The Respondent alleged that Mr. Magana-Babich was out to get him. He stated that Mr. Magana-Babich was seeking revenge because the Respondent's wife had filed a complaint against Mr. Magana-Babich. The Respondent implied that all the complaints discussed above were caused by the actions of Mr. Magana-Babich. (Ex. B)

17. According to the Investigation Report, several of the suspicious applications did not even involve Mr. Magana-Babich, but were completed by the Respondent and other members of the Respondent's team. (Ex. B)

18. During the Respondent's testimony, he stated that Mr. Magana-Babich was a friend. The Respondent went on to testify that he hired Mr. Magana-Babich to work for his new agency when Mr. Magana-Babich was allegedly unjustly fired by Combined. (Tr. 157)

19. For nearly every policy application contained in the investigation report, the Respondent could provide personal information about the insured or described in detail where he had met the insured. However, each of the insureds, according to the investigation report, stated that they

³Following the hearing, Ms. O'Brien forwarded two audio recordings of the conversations that were held with individuals to the West Virginia Offices of the Insurance Commissioner who then forwarded them to the Respondent and Hearing Examiner.

did not meet the Respondent on the day that the application was allegedly signed. The Respondent denied that he had done anything wrong and the date that was on the application was the date that it was completed, even if the insured stated that he was incorrect. (Tr. 34 ; Ex. B)

20. The Investigation Report listed thirteen policyholders that had existing policies but denied purchasing any additional policies from the Respondent, even though there were applications on file. Combined's investigators talked to each of the policyholders to verify that the Respondent had not met with them on the dates alleged and had not agreed to purchase new policies. (Tr. 30; Ex. B)

21. The Investigation Report indicated that Combined could confirm one signature that was forged and there were at least four additional applications that may have had their signatures forged. There were five additional applications that had been identified as potentially bogus. Ms. O'Brien admitted that she is not an expert in handwriting analysis. (Tr. 48; Ex. B).

22. The Investigation Report identified ten additional applications that, based on the time stamps of the applications may have been identity theft or fraud when the applications were signed.⁴ (Tr. 44 - 45 and 47 - 48; Ex. B)

23. The Investigation Report indicated that the answers provided by the Respondent were not seen as credible by the individuals conducting the interview. Combined concluded that the Respondent should be terminated based on Combined's zero tolerance for fraud, forgery and theft. (Tr. 52 - 52; Ex. B)

24. Combined's investigation of the Respondent was concluded on September 30, 2020,

⁴ For instance two applications were signed nine minutes apart, but the addresses were one hour and forty-five minutes apart. (Tr. 44-45)

and the Respondent was discharged on October 1, 2020. (Tr. 56 - 57)

25. The Respondent objected to the admission of the individual complaints and the Investigation Report. This objection was based on the Respondent's belief that the complaints and the Investigation Report were hearsay. (Tr. 28, 34 - 35, 92)

26. The Respondent testified that, in his position as Regional Manager, he and his team were expected to complete a certain number of applications. If he failed to meet this standard, it would affect his bonus. He was told by Marketing Director Ben Hastings⁵ to get out and aggressively get policies signed. (Tr. 132 - 133)

27. On June 28, 2018, the Respondent was charged with a felony in Putnam County, West Virginia. He was charged under West Virginia Code § 61-8D-3, for child abuse creating the possibility of serious harm. On March 21, 2019, the Respondent pled no contest to a reduced charge of the misdemeanor of domestic battery. There was also a criminal charge in St. Johns County, Florida. The charge in Florida was dismissed a week later. (Tr. 106 - 09; Ex. I)

28. The Respondent claimed that he had sent the West Virginia Offices of the Insurance Commissioner notice of all the paperwork associated with being charged with a crime in Putnam County. He did not follow up with the West Virginia Offices of the Insurance Commissioner to make sure that the documents were received and did not address the notice to Mr. Grishaber. (Tr. 137 - 138)

29. The Respondent claimed that his attorney, Shawn Bayliss, and the Putnam County Prosecutor, Mark Sorsaia, contacted the West Virginia Offices of the Insurance Commissioner to

⁵According to the Investigation Report, Mr. Hastings requested that Respondent participate in the interview by telephone because Mr. Hastings believes the Respondent had anger issues.

determine how the no contest plea would affect his resident producer license. Mr. Bayliss told the Respondent that the plea would not affect his license since it did not involve financial issues. (Tr. 139 - 140)

30. The Respondent claimed that he contacted the West Virginia Offices of the Insurance Commissioner about surrendering his West Virginia resident producer license and was told the procedure. Following his call to the West Virginia Insurance Commissioner, he contacted South Carolina Insurance Commission and was allegedly told that since his West Virginia license expired at the end of year, he should just let his West Virginia resident producer license expire and to change his South Carolina non resident producer license to a South Carolina resident producer license. (Tr. 140 - 141)

31. On October 4, 2019, Combined sent the West Virginia Offices of the Insurance Commissioner a letter indicating the Respondent was discharged for cause. The basis of the termination was for fraud, forgery, theft and obstruction. (Tr. 9; Ex. A)

32. On or about January 21, 2021, the West Virginia Offices of the Insurance Commissioner issued a Complaint against the Respondent.

Issue

Whether the Respondent made misrepresentations on insurance applications, forged another's name on insurance applications, failed to notify the West Virginia Offices of the Insurance Commissioner of criminal prosecution, and for maintaining his resident producer license while being a resident of another state. West Virginia Code §§ 33-11-3(11), 33-12-6a, 33-12-24(b)(2), 33-12-24(b)(8), 33-12-24(b)(9) and 33-12-34(b).

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 §§ 33-11-3(11), 33-12-6a, 33-12-24(b)(2), 33-12-24(b)(8), 33-12-24(b)(9) and 33-12-34(b).

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this Complaint under West Virginia Code § 33-2-3.

Analysis

At approximately 9:00 p.m., the night before the hearing, the Respondent sent an email asking for a continuance of the hearing scheduled the next day. Prior the start of the hearing, a discussion was held before the Hearing Examiner concerning the Motion for a Continuance. One of the issues raised by the Respondent at the hearing, was that he was entitled to a continuance because he had only received the West Virginia Insurance Commissioner's proposed forty pages of exhibits on the morning of the hearing. The Respondent had not requested copies of these exhibits before the hearing and they were sent to the Respondent as a courtesy. Once he informed the Hearing Examiner that he needed more time to review the exhibits, the hearing was delayed for one hour. After the one-hour delay, the Motion for a Continuance was denied.

A preliminary issue to address is the Respondent's objection to the admission of the investigation report and complaints filed by individuals against the Respondent. While the Respondent is not a lawyer, it appears that his objection is that these documents are hearsay. Rule 801 of the West Virginia Rules of Evidence defines hearsay as follows:

Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

The following definitions apply under this article:

Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

Declarant. "Declarant" means the person who made the statement.

Hearsay. "Hearsay" means a statement that:

the declarant does not make while testifying at the current trial or hearing; and a party offers in evidence to prove the truth of the matter asserted in the statement.

Rule 803 lists the exceptions to the Hearsay Rule. The most applicable exception is Rule 803(f), which states as follows:

Rule 803 - Exceptions to the Rule Against Hearsay

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(f) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(1) the record was made at or near the time by - or from information transmitted by - someone with knowledge;

(2) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(3) making the record was a regular practice of that activity;

(4) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(5) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

The West Virginia Offices of the Insurance Commissioner argued at the hearing that the

Investigation Report and the individuals' complaints fall under the exception of the Hearsay Rule 803(f). The testimony of Ms. O'Brien indicated that the Investigation Report and the individuals' complaints were made at, or near the time of the events; these documents were kept during the course of regularly conducted business of Combined; making of these documents was in the regular practice of Combined; Ms. O'Brien was the custodian of those records; and there was no indication of untrustworthiness of the documents.

Therefore, based on Rule 803(f) of the West Virginia Rules of Evidence the Investigation Report and the individuals' complaints fall under an exception to the Rule Against Hearsay therefore, are admitted.

The Complaint filed against the Respondent first cites a potential violation of West Virginia Code § 33-11-4(11), which states as follows:

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.

It goes without saying that the Respondent would expect a fee from any insurance policy that he sold and, in addition, there were certain standards that the Respondent was expected to meet in order to obtain a bonus from Combined. Since the Respondent would have received a fee for all of the policies written, by falsifying the applications cited in the investigation report the Respondent violated West Virginia Code § 33-11-4(11).

There was sufficient testimony and evidence to prove that several of the policy applications submitted by the Respondent were not authorized by the individuals. For instance, Ms. Washington's complaint stated that she had not completed an application, was not in the city in

which the application was allegedly completed, that personal information contained on the application was incorrect and that she had never signed the application. While there were other similar complaints, Ms. Washington's complaint alone was sufficient to prove that the Respondent falsified an application and violated West Virginia Code § 33-11-4(11).

The next alleged violation was of West Virginia Code § 33-12-6A, which states as follows:

§33-12-6a. Residency—Individuals—Agencies.

The commissioner may qualify an applicant as a resident of this state and shall issue an insurance producer license to any qualified resident person of this state in accordance with the following:

- (1) An individual applicant may qualify as a resident only if he or she resides in this state. Any license issued pursuant to any application claiming residency for licensing purposes shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or jurisdiction, or if the licensee ceases to be a resident of this state.
- (2) An insurance agency or business entity may qualify as a resident if the agency has its principal office in this state;
- (3) The resident person is in compliance with the requirements of section six of this article.

During the hearing the Respondent initially stated that he was a resident of West Virginia. He testified that he resided at 16 Marina Park, in Hurricane, West Virginia. He went on to state that he kept clothes there, as well as other personal items. The Respondent's mother-in-law, Lawanda Porter, was called to testify. Ms. Porter stated that she owned the home at 16 Marina Park. Ms. Porter testified that the Respondent did not live with her and, in fact, had never been inside her home. She went on to say that the Respondent used her home's address because he needed to establish residency in West Virginia for his insurance license.

Later in the hearing, the Respondent admitted that he did not live in West Virginia and was a resident of South Carolina. He stated that he was told by the South Carolina Insurance Commission that since his West Virginia license was going to expire, and there was no reason to change his West Virginia resident producer license. The Respondent was allegedly told to change his South Carolina non resident producer license to a resident producer license after his current West Virginia license expired. It does not matter whether it is true that the Insurance Office in South Carolina did actually give the Respondent that advice, because the only entity that can interpret West Virginia insurance laws is the West Virginia Insurance Commissioner and the West Virginia courts. South Carolina's Insurance Commissioner cannot.

Since West Virginia Code § 33-12-6A requires that a producer live in West Virginia in order to have a resident producer license and it was proven that the Respondent did not live in West Virginia, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-6A.

The next violations are of West Virginia Code § 33-12-24(b)(2), (b)(8) and (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:

....

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

....

(8) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

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

The Respondent has been accused of violating all three of these sections. The first one to address is West Virginia Code § 33-12-24(b)(9). In order to prove a violation of this section, the West Virginia Offices of the Insurance Commissioner must provide evidence that the Respondent engaged in fraudulent or dishonest practices while conducting business.

The evidence was clear that the Respondent committed fraud and was dishonest. There were many examples of fraud and dishonesty presented, namely when the Respondent, or one of the individuals that worked for him, created false applications for various individuals. There were several individuals that were interviewed by Combined that claimed that they had never met with the Respondent on the day that the applications were allegedly signed and that they had never agreed to purchase the policy in question. It is fraud and dishonest to complete an application for an insurance policy for someone who did not agree to purchase that policy, or worse, that person did not have any knowledge of the application. In addition to completing a policy application without having permission to do so, the Respondent was also accused of forging several signatures. This is not only fraud and dishonesty, it may also be criminal.

By presenting evidence that the Respondent fraudulently and dishonestly completed applications for insurance policies, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-24(b)(9).

Since West Virginia Code § 33-12-24(b)(8) also requires that the Respondent engaged in fraudulent behavior in order for there to be a violation and the West Virginia Office of the Insurance Commissioner proved that fraud occurred, then it also proved that the Respondent violated West

Virginia Code § 33-12-24(b)(8).

The next potential violation is whether the Respondent violated West Virginia Code § 33-12-24(b)(2). In order to prove a violation of this code section, the West Virginia Offices of the Insurance Commissioner must prove that the Respondent violated an insurance law in West Virginia or some other jurisdiction. As discussed above, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code §§ 33-12-24(b)(8) and (b)(9). By proving these violations of West Virginia insurance law, the West Virginia Offices of the Insurance Commissioner also proved that the Respondent violated West Virginia Code § 33-12-24(b)(2).

The final potential violation contained in the Complaint against the Respondent is West Virginia Code § 33-12-34(b) which states as follows:

§33-12-34. Reporting of actions.

(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.

In the hearing the West Virginia Offices of the insurance Commissioner presented evidence that the Respondent was charged with a felony under West Virginia Code § 61-8D-3, which is child abuse creating a risk of injury. This charge was made in Putnam County, West Virginia, on June 28, 2018. The Respondent pled no contest to a reduced charge of a misdemeanor of domestic battery.

The Respondent was also charged with a crime in Florida. This charge was dismissed a week later. The Respondent did not report either one of these charges to the West Virginia Offices of the Insurance Commissioner. The Respondent testified that he had sent the paperwork reporting the

West Virginia criminal charge to the West Virginia Insurance Commissioner's Office. In addition, he claimed that his attorney, Shawn Bayliss, and the Putnam County Prosecutor, Mark Sorsaia, contacted the West Virginia Insurance Commissioner's Office and were told that the criminal charges would not affect the status of the Respondent's resident producer's license. There is no way to verify whether the original charge would have affected the Respondent's license since there was no proof that the Respondent had submitted the information concerning the criminal charge to the West Virginia Insurance Commissioner.

The testimony of Mr. Pauley, an investigator for the West Virginia Offices of the Insurance Commissioner, was that the West Virginia Offices of the Insurance Commissioner had not received the documents from the Respondent concerning the Putnam County charge. The Respondent, in his testimony, implied that it was possible that reports had been received, but not sent to the correct person at the West Virginia Commissioner's office.

The credibility of the Respondent was sorely tested during the hearing. The Respondent first testified that he was a resident of West Virginia, but after his mother-in-law testified that he did not live in West Virginia, he changed his story and said that he lived in South Carolina. At all times during the hearing, the Respondent was under oath. He violated that oath when he lied about his residency, therefore, brought his veracity into question for all the other matters he testified to during the hearing.

It was the testimony of Mr. Grishaber that the West Virginia Offices of the Commissioner did not receive any notices that the Respondent had been charged and decided to plead no contest to a crime. In addition, Mr. Pauley testified that when he determined that the Respondent had been charged with a crime, he contacted Mr. Grishaber to confirm that he had not received any

information about the Respondent's charges. Therefore, 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.

The Respondent, according to the Investigation Report, attempted to blame Mr. Magana-Babich for the complaints that were filed against him by the individuals accusing him of falsifying applications. The Respondent asserted that Mr. Magana-Babich had been upset because the Respondent's wife had filed a complaint against Mr. Magana-Babich.

The problem with this explanation is two-fold. The first is that Mr. Magana-Babich's name only appeared in a handful of the alleged falsified applications. So it would be impossible to blame him for all of the remaining complaints.

The second problem is that the Respondent later testified that Mr. Magana-Babich was a friend of his and that the Respondent hired Mr. Magana-Babich to work for him after they both had been discharged by Combined. It is hard to believe that anyone would hire someone who they believed caused them to be fired by encouraging individuals to file complaints against them. It is more likely, since Mr. Magana-Babich was also fired by Combined, to blame him for all of the complaints instead of taking personal responsibility.

Finally, the Respondent argued that he had no reason to falsify any applications. However, during his own testimony, he indicated that Mr. Hastings was putting pressure on him to go out and get more applications. The Respondent also admitted that his bonuses were directly tied to the number of applications he was able to obtain. Therefore, by his own admission, he had reasons that could have motivated him to complete false applications.

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 the insurance laws of West Virginia.
2. Respondent's objection to the admission of the individual statements and Investigation Report, based on hearsay, was denied because it fell into an exception to the hearsay rule, West Virginia Rules of Evidence, Rule 803(f).
3. The Respondent's Motion for a Continuance was denied because the Respondent had not requested copies of the West Virginia Offices of the Insurance Commissioner's exhibits, therefore, he was not prejudiced when he did receive the documents before the hearing and was given an opportunity to review them.
4. The West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-11-4(11), by proving that the Respondent fraudulently completed an application.
5. It was proven that the Respondent violated West Virginia Code § 33-12-6A, when the West Virginia Offices of the Insurance Commissioner proved that the Respondent lived in South Carolina while possessing a West Virginia resident producer license.
6. The West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-12-24(b)(9), when it proved that the Respondent engaged in dishonest business practices.
7. It was proven by the West Virginia Offices of the Insurance Commissioner that the Respondent violated West Virginia Code § 33-12-24(b)(8), by proving that the Respondent engaged

in fraudulent behavior.

8. The West Virginia Offices of the Insurance Commission proved that the Respondent violated West Virginia Code § 33-12-24(b)(2), by proving that the Respondent violated the insurance laws of West Virginia.

9. It was proven by the West Virginia Offices of the Insurance Commissioner that the Respondent violated West Virginia Code § 33-12-34(b), by proving that Respondent failed to notify the Commissioner of his felony criminal charge.

Recommended Decision

It is recommended that 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), 33-12-6a, 33-12-24(b)(2), 33-12-24(b)(8), 33-12-24(b)(9) and 33-12-34(b). That the Respondent's resident producer license be revoked and he be fined \$500.00 for each violation, plus costs of this proceeding.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: June 17, 2021