

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

*In the Matter of:*

**CINDY SANTOS**

Administrative Proceeding No. 19-PRLC-02004

FINAL ORDER

On a prior day, to wit, December 10, 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 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.

It is **ORDERED** that, inasmuch as it has been determined that the Respondent violated *W.Va. Code* §§ 33-12-24(b)(2), 33-12-24(b)(4), and 33-12-24(b)(9), that her resident producer license be **REVOKED** and she pay a penalty of \$1,000.00 plus the costs of this proceeding.

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

Entered this 5<sup>th</sup> day of August, 2021.

  
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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: CINDY SANTOS  
ADMINISTRATIVE NO.: 19-PRLC-02004**

**RECOMMENDED DECISION  
OF THE HEARING EXAMINER**

On October 28, 2020, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, by telephone. There then being present in the hearing room on behalf of the West Virginia Offices of the Insurance Commissioner: Jeffrey Black, Esquire, Associate Counsel, and Peggy Short, paralegal. Those appearing by telephone were Robert Grishaber, Director of Licensing and Education, Ronald Rubin, and Steve Baxter, Investigator. Cindy Santos did not make an appearance<sup>1</sup>

Statement of the Case

This matter is about the Administrative Complaint filed against Cindy Santos concerning the allegations that she had committed fraud and theft while as an active resident producer in West Virginia.

Findings of Fact

1. Cindy Santos (hereinafter "Respondent") resides at 108 Karla Court, Martinsburg, West Virginia, 25404. The Respondent holds an active Resident Producer license, license number 3016922.

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<sup>1</sup>Due to the Covid 19 pandemic, this hearing, which was scheduled to be in person, was held telephonically. Ms. Santos was sent a Notice of Hearing.

2. The Respondent was previously employed as a resident licensed sales producer by Mr. Ronald Rubin who worked for Allstate Insurance Company (hereinafter "Allstate"), in the Eastern Panhandle of West Virginia. Mr. Rubin testified that the Respondent worked for him for approximately four or five months. While the Respondent worked for Mr. Rubin she would, on occasion, take payments from customers. (Tr. 7)

3. After the Respondent left employment with Mr. Rubin, she began working for an agency owned by Mr. Jason Sengphiel in Leesburg, Virginia. She was working for Mr. Sengphiel in December of 2018. (Tr. 9)

4. In December, 2018, Mr. Rubin was contacted by Ronald and Rose Ferraro concerning a charge on their American Express Credit Card, which they believed was incorrect. According to the report from the Ferraros, there was a charge on their credit card for an insurance premium with Allstate. Mr. Rubin checked his records and determined that there was no premium due on the Ferraro's policy. (Tr. 7-8)

5. The information, that Mr. Rubin gathered concerning the credit card charge was given to Allstate in order for them to conduct an investigation. Allstate's investigation found that the charge on the Ferraro's credit card was used to pay the premium for a policy owned by the Respondent. (Tr. 8)

6. While Allstate was investigating this matter, the Respondent cancelled the policy and she was refunded the premium that had been paid using the Ferraro's credit card. (Tr. 9-10)

7. During the Allstate investigation of the allegations against the Respondent, the Respondent allegedly told the Allstate's investigator that the use of the credit card was the action of her son and a friend. She alleged that the two of them broke into the Ferraro's home and stole the

Ferraro's credit card number. Mr. Rubin testified that he believed that the son of the Respondent was nine years old, however, Steve Baxter, an Investigator for the West Virginia Offices of the Insurance Commissioner, testified that the son was nineteen. (Tr. 10, 29; Ex. 2)

8. After completing its investigation, Allstate decided to terminate the Respondent's appointment with all four companies under the Allstate umbrella.<sup>2</sup> (Tr. 13)

9. Mr. Robert Grishaber, Director of Agent Licensing and Education, testified that the Respondent obtained her Resident Producer License on May 7, 2018. (Tr.12)

10. On or about December 18, 2018, Mr. Grishaber received a letter from Allstate informing the West Virginia Offices of the Insurance Commissioner that they had terminated the Respondent. Allstate is required under West Virginia law to report any termination. (Tr. 12-13; Ex. No. 1)

11. Upon receipt of the Allstate letter, Mr. Grishaber referred the matter to be investigated further by the West Virginia Offices of the Insurance Commissioner. As part of that investigation, the Investigator, Mr. Baxter, obtained the Investigation Report prepared by Allstate. (Tr.14; Ex. 1)

12. During Mr. Baxter's investigation, he interviewed Mr. Rubin and the Respondent. Mr. Baxter testified that initially the Respondent denied any culpability and blamed her son and a friend of his. This is the same information she had given to the Allstate investigator. She stated that her son and his friend had broken into Ferraro's house and stole the card. When Mr. Baxter asked to interview her son, the Respondent changed her story and took all responsibility for the use of the credit card. (Tr. 26-27)

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<sup>2</sup>Allstate Indemnity, Allstate Insurance, Allstate Property and Casualty, and Allstate Vehicle and Property Insurance Company.

13. It was the recommendation of Mr. Baxter that the Resident Producer license of the Respondent be revoked. (Tr. 28)

14. On September 4, 2019, Mr. Travis Ellison, Esq., an attorney in the Legal Division of the Offices of the Insurance Commissioner, sent a proposed Consent Order to the Respondent. The Consent Order contained the allegations against the Respondent that she violated West Virginia Code §§ 33-12-24(b)(9), 33-11-4(11), and 33-11-4(8)(a). The Respondent signed the Consent Order and returned it to Mr. Ellison. By signing the Consent Order, the Respondent admitted that all of the charges against her were true and accurate. (Tr. 19; Ex. 3).

15. On the top of the letter returned along with the signed Consent Order, the Respondent hand wrote a new address. This address was different than the address on file with the Commissioner. Ms. Peggy Short, Paralegal with the West Virginia Offices of the Insurance Commissioner, testified that the writing on the letter was present when it was received in the office. (Tr. 19; Ex. 3)

16. It was determined, however, that the signed Consent Order did not contain a fine to be paid by the Respondent. A new Consent Order was sent to the Respondent at her new address. The new Consent Order contained a fine of \$1,000.00. The Respondent did not respond to the Insurance Commissioner's Office after the second Consent Order was sent. (Tr. P. 22-23)

17. On February 24, 2020, the West Virginia Offices of the Insurance Commissioner sent the Respondent, by certified letter, an Administrative Packet. The Administrative Packet contained a Complaint, a Consent Order, a Notice of Rights and a Notice of Hearing. The Administrative Packet was returned to the Offices of the Insurance Commissioner as unclaimed. (Tr. 22-23; Ex. 4, 5)

18. A hearing was held on October 28, 2020. The Respondent did not make an appearance.

#### Issue

Whether the Respondent violated West Virginia Code §§ 33-12-24(b)(2), 33-12-24(b)(4), and 33-12-24(b)(9), 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 West Virginia Code § § 33-2-3.

#### Analysis

The West Virginia Offices of the Insurance Commissioner had brought an Administrative Complaint against the Respondent alleging that she violated West Virginia Code §§ 33-12-24(b)(9), 33-11-4(8)(a) and 33-11-4(11). Upon review of the facts ascertained during the hearing, it appears that the most relevant West Virginia Code Sections to be discussed below are West Virginia Code §§ 33-12-24(b)(2), 33-12-24(b)(4), and 33-12-24(b)(9).

West Virginia Code §§ 33-12-24(b)(2), 33-12-24(b)(4), and 33-12-24(b)(9) state as follows:

#### **§33-12-24. Revocation, suspension or refusal to renew license; penalty.**

(a) The commissioner may examine and investigate the business affairs and conduct of every person applying for or holding an insurance producer license, solicitor's license or excess line broker's license to determine whether such person has been or is engaged in any violation of the insurance laws or rules of this state or has engaged

in unfair or deceptive acts or practices in any state.

(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;

...

(4) Improperly withholding, misappropriating 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.

Under West Virginia Code § 33-12-24(b)(2) a producer must not violate any regulation, or order of the Insurance Commissioner. A violation of this Code section may result in a producer losing her license. In this case the Respondent

The first point of discussion is going to be West Virginia Code § 33-12-24(b)(9). Under this Code Section, a producer may have her license revoked or suspended if the producer acts in a fraudulent or a dishonest manner or shows financial irresponsibility.

In this matter, the Respondent was accused of using the Ferraro's American Express credit card to pay a premium on a policy owned by the Respondent. Initially the Respondent denied using the credit card and blamed her son. Eventually, according to the testimony of Mr. Baxter, the Respondent admitted that she had used the card.

The evidence is clear that the Respondent had access to the Ferraro's credit while working for Mr. Rubin. The Ferraros had used the credit card only one time, in order to make their premium

payment. This payment occurred while the Respondent worked for Mr. Rubin. It was also proven, that the Ferraros noticed that the card had been used and reported this improper use to Mr. Rubin. Mr. Rubin referred the matter to Allstate. Allstate investigated the matter and determined that the credit card was used to pay the premium of the Respondent. These facts, along with the Respondent's admission to Mr. Baxter, is sufficient to prove that the Respondent committed fraud, acted dishonestly and was financially irresponsible. By proving that the Respondent engaged in fraud, 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).

The next issue to discuss is whether the Complainant violated West Virginia Code § 33-12-24(b)(4). In order to prove a violation of this Code Section, the West Virginia Offices of the Insurance Commissioner must prove that the Complainant misappropriated money while engaged in the business of insurance.

As was discussed above, the Respondent used the credit card of the Ferraros to pay for her own policy premium. She obtained the credit card information while she was working for Mr. Rubin as an insurance agent. Not only did the Respondent misappropriate the credit card information, she next cancelled her policy. As a result of the cancellation of her policy, the insurance company refunded the premium payment to the Respondent, which had been misappropriated from the Ferraros. The refund was kept by the Complainant and not given to the Ferraros

The Office of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent misappropriated money while she was working in the insurance business, thus, proving that she violated West Virginia Code § 33-12-24(b)(4).

Finally, it must be determined whether the Respondent violated West Virginia Code § 33-12-



24(b)(2). In order to show a violation of this Code Section, it must be proven that the Respondent violated the insurance laws of West Virginia or some other jurisdiction. As was discussed above, the Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-12-24(b)(4) and 33-12-24(b)(9). By proving, by a preponderance of the evidence, that the Respondent violated both of these Code Sections, it proved that the Complainant violated West Virginia Code § 33-12-24(b)(2).

Even further in support of the West Virginia Offices of the Insurance Commissioner's position, is that the Respondent signed and returned the first Consent Order. By signing that Order the Respondent admitted that she had violated West Virginia Code § 33-12-24(b)(9).

Even without all the evidence produced by the Offices of the Insurance Commissioner, the fact that the Respondent signed the original Consent Order, is sufficient to prove that the Respondent violated West Virginia Code §§ 33-12- 24(b)(9), 33-12-24(b)(4) and 33-12-24(b)(2).

#### 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)(2), 33-12-24(b)(4), and 33-12-24(b)(9).

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 was dishonest when she misappropriated the Ferraro's credit card to pay the premium on her own policy.

3. The West Virginia Offices of the Insurance Commissioner proved, by a

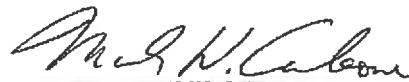
preponderance of the evidence, that the Respondent violated West Virginia Code § 33-12-24(b)(4) by proving that the Respondent misappropriated money from the Ferraros.

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)(2) by proving that the Respondent violated West Virginia Code §§ 33-12-24(b)(4), and 33-12-24(b)(9), West Virginia Insurance Laws.

Recommended Decision

It is recommended that Cindy Santos be found to have violated West Virginia Code §§ 33-12-24(b)(2), 33-12-24(b)(4), and 33-12-24(b)(9), that her resident producer 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: Dec 10, 2020