

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF
JOHN EVERETTE VIA,
LICENSE NO. 294444

A.I.D. NO. 2009- 073

EMERGENCY LICENSE SUSPENSION ORDER

On this day the emergency matter of John E. Via, ("Respondent") came before Jay Bradford, Arkansas Insurance Commissioner ("Commissioner"). The Arkansas Insurance Department ("Department") was represented by Nina Samuel Carter, Associate Counsel. From the facts before the Commissioner, it is found:

1. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. § 23-61-103 and the authority to issue emergency license suspensions under Ark. Code Ann. § 23-64-216(e) and § 23-64-512(a).

2. Respondent is currently licensed in Arkansas as a resident casualty, marine, property, and surety insurance producer. Respondent holds Arkansas resident insurance agent license number 294444. Respondent's address of record at the Department is 1908 Osceola Drive, North Little Rock, AR 72116.

3. Respondent was employed as an insurance producer with Advantage 1 Insurance of North Little Rock in 2007 and worked as the sole employee at the North Little Rock office until he resigned on May 7, 2008. Respondent's responsibilities at Advantage 1 Insurance included receiving and depositing customer payments.

4. Upon Respondent's resignation, Advantage 1 Insurance conducted an audit of the accounts of the North Little Rock office. The audit report showed that numerous insurance policies were sold by Respondent and were not reported to Advantage 1. The

premium monies for these unreported policies were withdrawn from Advantage 1's accounts resulting in account shortfalls which had to be covered by the main company.

5. During interviews by the Department's Criminal Investigation Division, Respondent admitted to the Department investigators that he did not report certain business to Advantage 1 and used the money to cover fees that he waived for other customers.

6. The audit showed that Respondent misappropriated a total of \$6,552.66.

7. According to a second complaint received against Respondent in May 2009, consumer Phillip Ellis had an existing auto policy with Respondent at Advantage 1 and wanted to add his daughter and her vehicle to the policy. Mr. Ellis avers that he paid cash for the change in policy and received a sheet of paper that listed both his and his daughter's names as the insureds.

8. Advantage 1 states that they only have paperwork showing that an additional vehicle was added, but that Mr. Ellis' daughter was not added to the policy. There is also no paperwork showing that any money was received for the policy change.

9. About nine months after making this policy change, Mr. Ellis' daughter was involved in an at fault vehicle accident and coverage was denied stating that she was not a named driver.

10. According to a third complaint received against Respondent in July 2009, consumer Sarah Whatley purchased auto coverage from Respondent. At the time of the initial coverage, Ms. Whatley was not married nor living with her fiancé, so he was not a household member. Ms. Whatley specified that her fiancé Justin Whatley was to be a listed driver and covered on her policy. Before signing the policy, Ms. Whatley reviewed the paperwork and saw that page 2 of the application was clear under the excluded driver section. After Ms. Whatley received her policy, she noticed that Justin Lawrence was listed as an excluded driver. Lawrence is Ms. Whatley's maiden name, and there is no Justin

Lawrence to her knowledge. Ms. Whatley immediately took the policy to Respondent and asked him to fix the policy to make sure that her fiancé Justin Whatley would be covered in the event of an accident. Ms. Whatley stated that she had to go back to Respondent's office at least once a week for at least a month to make sure that he fixed the problem as she kept receiving the same paperwork in the mail stating that Justin Lawrence was an excluded driver. Respondent promised and swore that the problem had been resolved.

11. When Justin Whatley subsequently purchased a truck, the truck was added to Ms. Whatley's policy in his name. The car dealership had Respondent fax proof of insurance before they would let him drive the truck off the lot. The information faxed indicated that Justin Whatley was covered.

12. After the Whatleys were married, Ms. Whatley asked Respondent to change her last name on the policy within the first week of the marriage. Ms. Whatley alleges that Respondent has a problem with procrastinating so she stayed with him to make sure it was changed and Respondent swore that it was. Respondent told Ms. Whatley that he was sure everything was correct on the policy and that if there were any problems he would cover it with his own personal insurance.

13. Subsequently, an accident occurred and the claim was denied on the basis that Justin Whatley was an unlisted household member. The paperwork shows that Respondent did not make any of the requested changes until the day after the accident.

14. The actions of Respondent, as described in the preceding paragraphs, are in violation of the Insurance Code for: Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business, in violation of Ark. Code Ann. § 23-64-512(a)(4); Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, in violation of Ark. Code Ann. § 23-64-512(a)(5); Using fraudulent, coercive, or dishonest practices or demonstrating

incompetence, untrustworthiness, lack of good personal or business reputation or financial irresponsibility, in violation of Ark. Code Ann. § 23-64-512(a)(8); Engaging in a trade practice which is an unfair method of competition or unfair or deceptive act or practice in the business of insurance, in violation of Ark. Code Ann. § 23-66-205; Misrepresenting the benefits, advantages, conditions, or terms of any insurance policy is an unfair method of competition and unfair or deceptive act or practice in the business of insurance, in violation of Ark. Code Ann. § 23-66-206(8)(A); Failing to pay premiums to the insurer, in breach of her fiduciary duty as a licensee to treat these moneys as trust funds, in violation of Ark. Code Ann. § 23-64-223; and Making false or fraudulent statements or representations in, or relative to, an application for insurance, in violation of Ark. Code Ann. § 23-66-305

15. At the upcoming hearing, the Department seeks administrative penalties and sanctions, up to and including revocation of the Arkansas insurance licenses of Respondent and Respondent's Agency based on the above allegations.

IT IS THEREFORE ORDERED AND ADJUDGED, as follows:

1. Due to the gravity of the allegations and averments, it is found that a public emergency exists for the immediate suspension of Respondent's and the Agency's title insurance licenses.

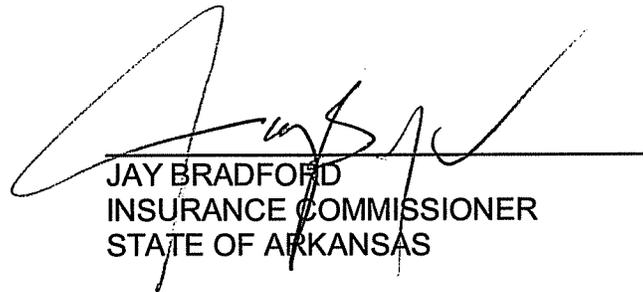
2. Pursuant to Ark. Code Ann. §§ 23-64-216(e), any and all licenses issued by the Department to Respondent John Via for being a broker, agent, agency, solicitor, or consultant in this State, are hereby suspended, pending a promptly instituted hearing on the above matter. Respondent's failure to appear at the administrative hearing will prompt a recommendation to the Commissioner and the hearing officer to immediately revoke all insurance licenses issued to Respondent.

3. The Department shall notify Respondent's appointing insurance companies of this action pursuant to Ark. Code Ann. § 23-64-217(a)(3).

4. The Department reserves the right to amend and/or supplement the facts contained in this Order to include additional violations of state law, with notice to Respondent.

5. A Notice of Hearing is enclosed. At the Hearing, the Department will seek to revoke all insurance licenses of Respondent based on the above allegations.

IT IS SO ORDERED THIS 18th day of SEPTEMBER, 2009.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS