

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

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

A.I.D. NO. 2009-073A

CONSENT REVOCATION ORDER

On this day, Jay Bradford, Arkansas Insurance Commissioner ("Commissioner") and John E. Via ("Respondent") reached an agreement concerning the resident insurance agent's license issued to Respondent by the Arkansas Insurance Department ("Department"). The Commissioner was represented by Nina Samuel Carter, Associate Counsel. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law as set forth below. Respondent was represented by Edward Oglesby, of Oglesby Law Firm, and voluntarily and intelligently waived his right to a hearing and consented to the entry of this Consent Order. From the facts and before the Commissioner, he finds:

FINDINGS OF FACT

1. Respondent's Arkansas Resident Producer License No. 294444 was placed on emergency suspension on September 18, 2009, pursuant to A.I.D. Order No. 2009-073.
2. Respondent was licensed in Arkansas as a resident casualty, marine, property, and surety insurance producer. 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 The premium monies for these unreported policies were withdrawn from Advantage 1's accounts resulting in account shortfalls which had to be covered by the main company.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.

CONCLUSIONS OF LAW

1. That the Commissioner has jurisdiction over the parties and over the subject matter herein pursuant to Ark. Code Ann. § 23-61-103.

2. That pursuant to Ark. Code Ann. § 23-64-512(a) and § 23-64-216(d)(1), if the Commissioner finds that one or more grounds exist for the suspension or revocation of any license under § 23-64-216(a)(1), the Commissioner in his or her discretion may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation or up to five thousand dollars (\$5,000) per violation if willful misconduct on the part of the licensee is found.

3. That Respondent has been made fully aware of his right to a hearing and has voluntarily and intelligently waived said right and consents to the entry of this Consent Order.

THEREFORE, in consideration of these Findings of Fact and Conclusions of Law, it is hereby ordered and agreed that:

A. Respondent's resident Arkansas insurance agent licenses are hereby voluntarily surrendered for immediate revocation by the Department.

B. Pursuant to Ark. Code Ann. § 23-64-218(a)(1), Respondent shall immediately forward to the Insurance Commissioner all insurance producer and agency licenses.

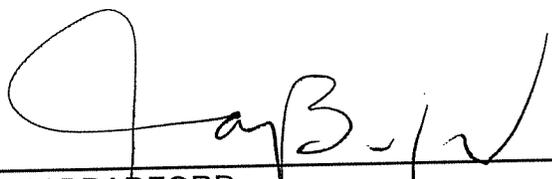
C. Respondent shall pay restitution to the harmed party or parties within 180 days of this Order. Respondent will cooperate with the Department in making a final determination of the restitution owed, the method and timing of payment.

D. The Department reserves the right to adjudicate this matter to determine the precise amount of restitution.

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

F. The Department reserves the right to supplement this Order with subsequent complaints received, most particularly including additional restitution.

IT IS SO ORDERED THIS 26th day of OCTOBER, 2009.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS



JOHN EVERETTE VIA