

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

**IN THE MATTER OF
DIANA K. PENSE, LICENSE NO. 361996
AND PENSE INSURANCE AGENCY,
LICENSE NO. 365140**

A.I.D. No. 2012- 026

CONSENT REVOCATION ORDER

On this day, Jay Bradford, Arkansas Insurance Commissioner (“Commissioner”), and Diana K. Pense (“Respondent”) reached an agreement concerning the resident insurance agent license issued to Respondent by the Arkansas Insurance Department (hereinafter referred to as the “Department”). The Commissioner was represented by Nina Samuel Carter, Associate Counsel. Respondent was represented by Sherri Latimer and H.C. Jay Martin of James R. Wallace & Associates, PLLC, and voluntarily and intelligently waived her right to a hearing and consented to the entry of this Consent Order. From the facts and law before the Commissioner, he finds:

FINDINGS OF FACTS

1. Respondent is licensed in Arkansas as a resident accident, health and sickness, casualty, life, property, and surety insurance producer. Respondent also holds a resident limited lines crop adjuster license. Respondent’s last address of record at the Department is 21226 Mount Gaylor Drive, Winslow, AR 72959. Respondent currently holds Arkansas Resident Agent License Number 361996 and owns Pense Insurance Agency (“Agency”) which is licensed as a Resident Agency, License number 365140.

2. On or about February 8, 2011, a complaint was filed with the Department by Stan Tague of Sterling Group Insurance ("Sterling") stating that Respondent had been terminated from Sterling for violating the non-compete clause in the agent agreement signed by Respondent on March 8, 2010. Mr. Tague alleged that Respondent opened her own agency (Pense Insurance Agency) in Farmington, Arkansas, while still employed at Sterling. Tague further alleged that Respondent used agent of record change forms to moved insureds from Sterling to Respondent's own agency.

3. The non-compete clause stated that it would become effective at the time of Respondent's termination and end one year after termination. The clause also provided that Respondent could not directly or indirectly solicit, sell, or service insurance of any kind of another company agent or broker.

4. The complaint also included forms signed by several consumers stating that they had not signed the request or Agent of Record change form submitted for their policy to be moved from Sterling.

5. Metlife's Special Investigation Unit ("SIU) conducted an investigation of Respondent based on the accusation of Mr. Tague, of Sterling, that Respondent and her daughter-in-law Brianna France were forging documents to transfer Sterling customers to the Pense Agency.

6. Metlife's SIU report states that seven customers who originally had policies with Sterling and then transferred to Pense were contacted. All customers are currently transferred back to Sterling. The report also states that it was confirmed that one transfer document from Sterling to Pense is a forgery. The customers were all new business written by Respondent during her tenure with Sterling and not long-standing clients of Sterling.

7. Respondent and her agency were terminated by Metlife Auto & Home ("Metlife") as of February 17, 2011.

8. Liberty Mutual/Safeco conducted their own investigation by looking at twenty five (25) customers and found two customers claiming that the signatures on the agent of record form were forged. Safeco reversed the agent of record changes and terminated the access that Respondent had with them.

9. Respondent's daughter-in-law, Brianna Pense, provided a statement to the Department, signed April 6, 2011:

I: Brianna Pense (formerly Brianna France): Am an agent for Pense Insurance Agency. I've been working for Pense Insurance since last year; from around July 2010. Diana K. Pense from Pense Insurance Agency book rolled the clients she and I had written to me. I didn't have a contract with Sterling Group Insurance Agency, and didn't work for Stan Taugue.

10. Respondent could not provide any documentation as requested by the Department because she disposed of all client files when the clients were moved back to Sterling despite Department maintenance of records requirements.

11. For the above actions, the Department alleges that Respondent is in violation of the Insurance Code for: Failing to maintain the usual and customary records pertaining to transactions under her license for at least five (5) years from the date the record was created, in violation of Ark. Code Ann. § 23-64-220(c); Violating any insurance laws or violating any regulation that calls into question the insurance producer's fitness to hold a license, in violation of Ark. Code Ann. § 23-64-512(a)(2); 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); Forging another's name to an application for insurance or to any document related to an insurance transaction, in violation of Ark. Code Ann. § 23-64-512(a)(10); Refusing to produce any records or files for examination, in violation of Ark. Code Ann. § 23-64-512(a)(16); and Engaging in an unfair method of competition or deceptive act or practice in the business of insurance, in violation of Ark. Code Ann. § 23-66-205.

12. Respondent desires to voluntarily submit her Arkansas Resident Producer licenses for revocation by the Department. In so doing, Respondent neither admits nor denies the Findings of Fact as set forth herein.

CONCLUSIONS OF LAW

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

14. That pursuant to Ark. Code Ann. § 23-64-216, the Commissioner may revoke any license issued by him if it is found that any one (1) or more violations of the causes listed under § 23-64-512 exist.

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

ORDER

NOW THEREFORE, on the basis of the foregoing and the waiver of the Respondent of the right to a hearing and appeal under the Arkansas Uniform Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201, *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has consented to the entry of this Order and that the following Order is appropriate and in the public interest.

IT IS HEREBY ORDERED that:

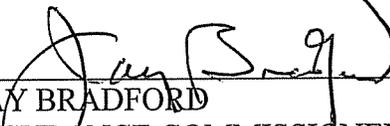
A. Respondent's resident Arkansas producer license and the resident Arkansas agency license of Pense Insurance Agency are hereby REVOKED;

B. Pursuant to Ark. Code Ann. § 23-64-218(a)(1) and (2), Respondent shall immediately forward to the Commissioner all insurance agent and agency licenses issued to Respondent by the Department;

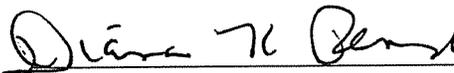
C. The Commissioner will not consider any application for licensure from the Respondent until the expiration of three (3) years from the date of this Order. The Commissioner may consider this Order and the facts set forth herein in determining whether to grant any future application; and

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

IT IS SO ORDERED THIS 15 day of ~~NOVEMBER~~, 2011.
17th January 2012



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS



Diana K. Pense
Pense Insurance Agency