

the sale of insurance products, as required by the Insurance Code. Appellant was ordered to pay restitution in the amount of \$33,897.64 to Stewart Title Guaranty Company (“Stewart Title”) within eighteen (18) months of the date of the revocation order.

2. On September 8, 2014, Appellant submitted an application to the Department for an Arkansas Title Agent’s License, and on September 12, 2014, the Department denied Appellant’s application for a permit to sit for the title agent’s exam. The Department’s denial was based on the 2008 order revoking Appellant’s previous Title Agent’s License and the restitution requirement of the order.

3. On October 13, 2014, Appellant requested a hearing to appeal the license denial, and an administrative hearing was held at the Department on November 24, 2014. Appellant appeared at the hearing and with counsel.¹

4. Sarah Harper Gray, the Department’s Title Insurance Coordinator, testified as to the basis of the revocation of Appellant’s previous license and the Department’s denial of Appellant’s current license application. Mrs. Gray’s testimony is summarized as follows:

a) Appellant was terminated by Stewart Title for failing to pay premium. After discovering the outstanding premium and performing an audit of Appellant’s agency’s accounts, Stewart Title found that Appellant owed \$38,897.64 in premium to Stewart Title, and Appellant agreed to a voluntary termination by Stewart Title.

b) The Department immediately suspended Appellant’s license, and after the hearing on the Emergency Suspension Order, Appellant tendered payment in the amount of \$5,000 to Stewart Title. In the 2008 Revocation Order, A.I.D. NO.

¹ After the hearing, the parties introduced additional evidence into the record and agreed to toll the time in which the Commissioner had to complete his findings and Order.

2008-065A, Appellant was ordered to pay as restitution the remainder of the premium she owed to Stewart Title, which was \$33,897.64.

c) When Appellant applied for a license in September 2014, Mrs. Gray contacted Stewart Title to confirm that Appellant paid the restitution as ordered. Mrs. Gray discovered that Appellant's former husband, Kenny Forbs, was ordered in the couple's Divorce Decree in 2010 to pay the outstanding restitution to Stewart Title. Stewart Title informed Mrs. Gray that on August 11, 2014, Mr. Forbs paid an agreed-upon amount of \$20,000 as settlement of the unpaid premium owed by Appellant.

5. Appellant testified at the hearing regarding the prior license revocation and order of restitution, her divorce from Kenny Forbs and subsequent bankruptcy, and her current employment. Appellant's testimony is summarized as follows:

a) When Appellant and Mr. Forbs divorced, Mr. Forbs agreed to pay the restitution owed to Stewart Title, and in exchange, Appellant would not receive any portion of the couple's tire store or marital assets. Per the Divorce Decree entered on January 7, 2010, Mr. Forbs had six (6) months to pay the restitution to Stewart Title, and when Appellant discovered that Mr. Forbs had not paid the restitution, she filed a contempt action against him. At the contempt hearing in or about August 2010, Appellant discovered that despite the terms of the Divorce Decree, Mr. Forbs and Stewart Title entered into an agreement wherein he would make monthly payments to Stewart Title for a period of time established by Stewart Title. Appellant testified that on numerous occasions, she requested documentation about the agreement by Mr. Forbs to pay the Department-ordered

restitution, and both Stewart Title and Mr. Forbs refused to provide the requested information. Appellant admitted that during this time, she did not notify the Department that Mr. Forbs was ordered in the Divorce Decree to pay the outstanding restitution to Stewart Title, that Mr. Forbs and Stewart Title entered into an agreement about the re-payment of the restitution, or that Mr. Forbs did not pay the restitution by the deadline set by the Department's order and the Divorce Decree.

b) After her divorce, Appellant made numerous attempts to be removed from the mortgage on the couple's marital residence, and during this time, Mr. Forbs failed to make payments on the residence. Appellant's credit report suffered significant harm, and in order to be removed from the mortgage, Appellant filed bankruptcy. In addition to the mortgage on the marital residence, the bankruptcy also included several credit cards and outstanding medical debt from a surgery. Appellant testified that she has since repaired her credit and has consistently made timely payments on all of her bills.

c) In August 2011, Appellant began working as a closing agent for Professional Title Services in Jonesboro, Arkansas. Appellant testified that if she were granted a license, she will still remain in her current position as a closing agent, but she could also be an asset to her company because of her knowledge of title insurance. Appellant stated that as a closing agent she has more control over customers' funds than a title agent does, and she believes her job is to protect consumers. Appellant further testified that she believes her current company has

in place checks and balances to ensure that no single person becomes overwhelmed, as she was in 2008.

6. Tara Pierce, the office manager for Professional Title Services, testified that she has not had any customer complaints about Appellant, Appellant is hard-working, and since joining the agency, Appellant's evaluations have all been very good. Appellant does not have check-signing authority or management duties, and if she were to get a license, Appellant will only act as the backup title agent. The agency did not have plans to add Appellant to its underwriter appointment(s), and Appellant would remain in her current position as a closing agent.

CONCLUSIONS OF LAW

7. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Arkansas Code Annotated § 23-61-103.

8. Pursuant to Arkansas Code Annotated § 23-64-506, in order to obtain a license, an applicant must demonstrate that he is competent, trustworthy, financially responsible, and of good personal and business reputation.² However, the Commissioner may deny a license application or order probation if he finds that the applicant violated an order of the Commissioner. Ark. Code Ann. § 23-64-512(a)(2)(B).

9. Appellant admitted at the hearing that she did not pay the restitution that was ordered in the Revocation Order, A.I.D. NO. 2008-065A. Instead, during her divorce from Mr. Forbs, Greene County Circuit Court ordered Mr. Forbs to pay the restitution debt to Stewart Title within the time set forth in the Department's Revocation Order. Mr. Forbs failed to pay the restitution as ordered, and Appellant made numerous attempts to force Mr. Forbs to pay the

² Arkansas Code Annotated § 23-64-101, *et. seq.*, applies to title insurance agents and agencies pursuant to Arkansas Code Annotated § 23-103-403.

outstanding restitution and to gather information about Mr. Forbs' agreement with Stewart Title as to payment of the restitution. Mr. Forbs finally paid an agreed-upon amount of restitution to Stewart Title in August 2014.

10. In her current position, Appellant does not have managerial duties or check signing authority, and in the future, Appellant's employer intends for Appellant to continue in her current role as a closing agent. Appellant's employer does not foresee Appellant receiving any managerial duties or oversight.

11. Based upon the evidence before the Hearing Officer and the safeguards, terms and conditions set forth below, Appellant fulfilled her burden of showing that the Department should reverse its decision and grant her application to sit for the Title Insurance Agent's License Examination.

RECOMMENDATIONS OF THE HEARING OFFICER

WHEREFORE, based upon the foregoing Findings of Fact, Conclusions of Law, and other matters before her, the Hearing Officer recommends:

12. That the Department's denial of the Appellant's Application for an Arkansas Title Agent's License be reversed, and Appellant be promptly issued a permit to sit for the Arkansas Title Agent's Examination.

13. That Appellant be placed on probation for a period of three (3) years, and during the probation period:

- (a) Appellant is not permitted to have the authority to sign any check from the agency's escrow account or to otherwise make or authorize transactions out of the agency's escrow account;

- (b) Appellant is not permitted to manage or otherwise oversee the duties or activities of the agency or any employee of the agency;
- (c) Appellant will notify the Department if she is named as a licensed agent on the agency's underwriter appointment(s); and
- (d) Appellant will be subject to random audits by the Department to ensure that the terms of this Order and requirements of Arkansas law are upheld.


LENITA BLASINGAME
CHIEF DEPUTY COMMISSIONER
and HEARING OFFICER

CERTIFICATION

I, Allen Kerr, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer were made by and under my authority and supervision by Lenita Blasingame, Chief Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations in full and enter this Order.

THEREFORE, it is hereby ORDERED that the Appellant's Application for an Arkansas Title Agent's License and permit to sit for the Arkansas Title Agent's Examination is granted. Appellant will be placed on probation for three (3) full years of licensure per the terms set forth in this Order.

IT IS SO ORDERED THIS 4th DAY OF February, 2015.



ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS