

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

ARKANSAS INSURANCE DEPARTMENT,)
Petitioner)
)
vs.)
)
CHARLES BRYAN DYER and)
EDWARDS TITLE, LLC,)
Respondent)

A.I.D. NO. 2012- 704

REVOCATION ORDER

On this day, the matter of Charles Bryan Dyer and Edwards Title, LLC (collectively referred to as “Respondent”) came before Jay Bradford, Arkansas Insurance Commissioner (“Commissioner”). A hearing was held on July 17 – 23, 2012, in the Administrative Conference Room of the Arkansas Insurance Department (“Department”) pursuant to a Notice of Hearing dated July 2, 2012. The hearing was held before Chief Deputy Commissioner Lenita Blasingame (“Hearing Officer”) pursuant to her appointment by the Commissioner in accordance with Arkansas Code Annotated § 23-61-103. The Department was represented by Amanda J. Andrews, Associate Counsel, and Respondent was represented by Todd L. Newton and John K. Harriman of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. From the facts and law before the Commissioner, he finds as follows:

FINDINGS OF FACT

1. Charles Bryan Dyer holds an Arkansas Resident Title Insurance Agent License, number 14836, and owns Edwards Title, LLC (“Edwards”), a licensed title agency, number 325319, located at 1304 Cherry Street, Van Buren, Arkansas. Edwards was appointed with

Stewart Title Guaranty Company (“Stewart”), and through his association with the agency, Dyer was also authorized to write business for Stewart.

2. On September 26, 2011, Stewart notified the Department that it terminated Respondent’s appointment for cause. Specifically, in the Agency Appointment Termination Request, Stewart stated that one of Respondent’s employees stole money from the escrow account, but Respondent did not report the theft to Stewart or the Department as required by law. Further, Stewart discovered in an audit of Respondent’s escrow account, shortages in the account and delays in reconciliation of the account.

3. During the course of its investigation, the Department reviewed a number of audits that Stewart conducted of the agency pursuant to Arkansas Code Annotated § 23-103-411, and discovered consistent problems, including delinquency in escrow account reconciliations, shortages in closing files and excessive delay in paying off mortgages. The Department also discovered that Respondent did not report two (2) escrow accounts and an interest-bearing sweep account to Stewart and, thus, these accounts were not subject to the audit.

4. On December 1, 2011, the Department sent a notice of Investigative Conference to Respondent, and Respondent appeared at the conference on December 20, 2011 with counsel. Dyer was not able to adequately explain the details of the escrow account theft and manipulation or list the files that were affected. At the conclusion of the conference, he was requested to prepare a timeline of the events leading to the account shortage, including a list of all files affected by the employee’s alleged theft and subsequent manipulation of the escrow account and closing files.

5. Due to Respondent’s inability to explain the details of the escrow account theft and manipulation, the Department retrieved files from the agency for closings performed by Susan Hudson, Edwards’ former employee who is alleged to have stolen the escrow funds, as

well as reconciliations and bank statements for all escrow accounts January 1, 2009, through February 15, 2011. During the review of the closing files, the Department found original title insurance policies and warranty deeds in the files that were not sent to the customer.

6. On January 25, 2012, Respondent submitted copies of various closing files involved in the alleged theft and escrow account manipulation, a summary of the paper trail Respondent discovered during his investigation of the alleged theft and account shortage, bank statements for old escrow accounts, and office policies and procedures implemented after discovery of the alleged theft and account shortage.

7. A Notice of Hearing was mailed to Respondent by certified mail on May 31, 2012, advising that a hearing was scheduled for July 2, 2012. Due to several scheduling conflicts, the hearing was rescheduled for July 17 – 18, 2012, and Respondent was served with an Amended Notice of Hearing on July 2, 2012.

8. Respondent appeared at the hearing with counsel, and his testimony is summarized as follows:

Education and background

- a) Respondent has held an Arkansas Title Insurance Agent and Agency licenses since 2008, when title insurance agent licensure came under the Department's regulation, and as a member of the Arkansas Land Title Association Legislative Committee, he was involved in title insurance legislation.
- b) Respondent has more than twenty (20) years of experience in the title industry, he is a licensed attorney and passed the Certified Public Accountant (CPA) examination, and he spoke at various continuing education seminars for title insurance agents.

Employee theft and investigation

- c) On or about February 15, 2011, BancorpSouth notified Respondent that a mortgage payoff from a closing performed at the agency on November 20, 2010 had not been made, and shortly thereafter, Susan Hudson, an employee of Respondent who performed closings, admitted that she had not paid off the loan at issue. Instead, Hudson used the loan proceeds to pay off a mortgage from another, previous closing, a scheme she had been doing for a number of years.
- d) Respondent paid the outstanding loan with a check out of the agency's escrow account dated January 18, 2011, and the check cleared on February 18, 2011. At the end of March 2011, Respondent replaced the missing funds in the escrow account with proceeds from a personal loan.
- e) During this six (6) week period, Respondent continued to perform closings at the agency using funds from other closings, and on three (3) occasions, the escrow account was charged fees for insufficient funds, which were paid from the escrow account and not the operating account.
- f) As Respondent investigated the theft and escrow account manipulation, he discovered that a number of his customer's mortgages were paid off late, and he identified twenty-two (22) files that were affected by Hudson's escrow account manipulation and theft, which were listed in the Summary of Internal Investigation. Essentially, Hudson used loan proceeds from one closing to make a mortgage payoff from a prior closing.
- g) Respondent did not notify the consumers their mortgages were paid off late or assist the consumers in resolving any harm the late payoffs caused to their credit,

and he did not report the escrow theft to the Department or Respondent's underwriters.

Previous employee theft and remedial measures

- h) Prior to February 2011, Respondent experienced two (2) previous employee thefts from the escrow account. Hudson previously stole approximately \$5,000 – 7,000, and Missy Heffner, a former employee of Respondent who reconciled the escrow account until 2008, discovered the theft while reconciling the escrow account. Hudson was not terminated or removed from her capacity as a closing agent or an authorized signor on checks. The second employee who stole money from the escrow account was immediately terminated.
- i) Following Hudson's first theft, Respondent put in place the following controls: a second signature on checks from the escrow account was required and the escrow account was reconciled weekly. There were no requirements for the second signor to make sure the disbursement was proper.
- j) According to Respondent, the main focus after discovering Hudson's theft was reconciling "more carefully and more often." Heffner reconciled the escrow account weekly until 2005 when she left the agency, but she continued doing monthly reconciliations until the end of 2008. Hefner was the only employee reconciling the escrow accounts, and Respondent did not review the reconciliations, until his underwriters expressed concern and disapproval of the situation. Respondent took over reconciling the escrow account at the beginning of 2009.
- k) In October 2010, Respondent was involved in a car accident, and during his absence from the agency, Racheal Henley, the agency's office manager,

performed the escrow account reconciliations at Respondent's direction. Henley reconciled three (3) months of bank account records at one time in December 2010, prior to Stewart's annual audit of the agency.

- l) Sometime in 2010, Respondent implemented a system called "Green Binder Documents" and a dual calendar system in an effort to ensure that closing and post-closing procedures were properly handled. In or about 2011, Respondent began using a green envelope to mail closing documents to the consumer after closing.
- m) After discovering Hudson's second theft in February 2011, Respondent requested LandTech, the agency's closing software, to implement security controls.

Erroneous payment of \$31,154.52 for James Young

- n) On August 19, 2005, James Young had a closing with Respondent for the sale of a piece of his property, and after the closing, Respondent's employee mistakenly sent a check in the amount of \$31,154.52 to US Bank to pay one of Young's loans.
- o) Respondent discovered the error in October 2005, but he did not replace the missing funds in the escrow account. Instead, he asked Young to make payments to the agency.
- p) Young paid a portion of the money back to Respondent, and when he stopped making payments, Respondent filed a lawsuit against Young on April 25, 2007 under the theory that Young was unjustly enriched by Respondent's employee's mistake.
- q) Three (3) days prior to a hearing in the civil lawsuit, Respondent borrowed \$30,000.00 from his mother and deposited the funds into escrow account 3706,

out of which the check was mistakenly written for Young. Approximately two (2) weeks after the hearing, Respondent moved \$30,000.00 from the escrow account to his personal account and wrote his mother a check for that amount.

- r) In April 2010, Respondent was awarded a judgment against Young and US Bank in the amount of \$37,000.00, and after paying his attorney, he put the funds into his personal account.
- s) According to Respondent, because title insurance was not regulated during this time, he did not have a duty to immediately make the account whole. However, he admitted that the funds sent to US Bank for Young's loan were actually other people's money.

Unaccounted for funds in "old, dying" escrow accounts

- t) In January 2009, Respondent changed the agency from Edwards Abstract to Edwards Title, LLC, and he opened a new escrow account (8019). The two (2) old escrow accounts, 3006 and 3706, were not to be used and were left to "die."
- u) Respondent's bank, Citizen's Bank, kept deposit slips for the old account, and there were several instances when a loan officer would deposit loan proceeds for a closing into one of the old accounts. Respondent's employees moved money between accounts to correct the erroneous deposits.
- v) To date, account 3006 has a balance of \$17,049.91, and Respondent cannot explain to whom the money belongs. Respondent claims that the funds belong to him.

9. At the hearing, the Department established through witness testimony, Respondent's closing files, bank statements from Respondent's current and old escrow accounts,

and the summary of Respondent's internal investigation into the alleged escrow account theft and manipulation a number of violations of Arkansas law. The violations are as follows:

- a) Respondent diverted and/or misappropriated escrow funds and premiums received in his fiduciary capacity as a title agent, and failed to account for and pay these funds and premiums or return the money to the person entitled thereto.
 - i. Respondent was responsible for all supervision, monitoring of accounts, and escrow account reconciliation, and the evidence at the hearing established that Respondent knew or should have known of the escrow account manipulation, in which for a period of three (3) years, funds from one closing were used to payoff a mortgage from a previous closing, and the subsequent theft by Hudson. Respondent was even the second signature on a number of the checks involved in the escrow account manipulation scheme.
 - ii. After Hudson's escrow account manipulation and theft were discovered, Respondent conducted an internal investigation and provided the Department with a summary of his findings. During the Department's investigation into the escrow account manipulation, including a thorough review of the closing files and bank statements, the Department discovered that Respondent's version of the scheme was not accurate, and there were numerous opportunities for Respondent to have discovered the scheme.
 1. On several occasions, the bank made erroneous deposits into the old, "dying" escrow account, and Respondent did not catch the mistake because he did not monitor the "dying" account;

2. On a number of occasions, checks and deposits were written into and out of the same escrow account, which indicates fake or “dummy” checks and deposits;
3. Respondent questioned Hudson about a check that was outstanding for approximately two (2) months, and she stated that the check was a non-mortgage payoff. Respondent did not independently confirm the information by reviewing the closing file or HUD-1 Settlement Statement, and as a result, the payment, which was part of a consumer’s mortgage payoff, was made late;
4. In five (5) separate closing files, there were checks written and cleared prior to the closing or receipt of funds:
 - Respondent stated that in the Darling closing, the payoff check was issued on December 8, 2009 from the Treece file, which closed on December 8, 2009. This payoff check was actually issued on November 10, 2009 and cleared on November 12, 2009, nearly one month before the Treece file was funded, and referenced a file that was not listed in Respondent’s summary.
 - Respondent stated that in the Osburn closing, the payoff check was issued on January 27, 2010 from the Jones file, which closed on January 22, 2010. This payoff check was actually issued on January 15, 2010 and cleared on January 19, 2010, two weeks before the Jones file was funded, and referenced a file that was not listed in Respondent’s summary.

- Respondent stated that in the Jones closing, the payoff check was issued on March 1, 2010 from the Blaylock file, which closed on February 26, 2010. This payoff check cleared on March 1, 2010, two days before the Blaylock file was funded.
- Respondent stated that Hudson stole the proceeds from the Key closing and issued a check to the Keys from the Rollins file, which closed on January 31, 2011. This check cleared on January 3, 2011. Hudson also issued a check in the amount of \$13,417.17, which cleared on January 21, 2011, and referenced a file that was not listed in Respondent's summary. Respondent alleged that Hudson also stole these funds.

5. A number of closing files contained voided checks, as well as "phantom" or "dummy" checks that were written but never cleared, and the original payoff check for one transaction in the scheme was discovered in the file and was not voided. These checks would have been discovered through a review of the closing files.

- iii. After discovering that the BancorpSouth payoff had not been made, Respondent made the payoff using funds from another closing, and this activity of floating escrow account funds continued for six (6) weeks until Dyer replaced the funds in the account;
- iv. Respondent discovered a number of closing files with an overage, which was caused by "phantom" or "dummy" checks being written out of the file but not disbursed. Prior to the September 2011 audit of the agency,

Respondent “balanced” the files by writing a check for the amount of the overage back to the escrow account. Respondent did not account for and/or return funds to the persons entitled thereto;

- v. In 2005, when Respondent’s employee mistakenly paid off a customer’s loan (James Young), Respondent did not immediately put the missing funds back into the escrow account, but continued to perform closings knowing the account was short. Although Respondent knew of the shortage, he did not put the funds into the account until four and one-half (4 ½) years after discovering the mistake and only for two (2) weeks in order to testify in a hearing in the civil lawsuit that he made the escrow account whole. Respondent borrowed \$30,000 from his mother on November 27, 2009, and after the hearing on November 30, 2009, he returned the money to his mother by transferring the funds from the escrow account to his personal account, once again leaving the escrow account short. After Respondent was awarded a judgment in the civil lawsuit in April 2010, he put the funds into his personal account;
- vi. Respondent did not monitor the old “dying” escrow accounts and did not report their existence to his underwriter in the audits. There is currently \$17,049.91 in one of the old accounts, and Respondent does not know to whom the funds belong and did not produce any evidence that he made an attempt to determine to whom the funds belong;
- vii. Funds from the escrow account were used to pay insufficient fees and cover overdrawn accounts, and there is no evidence that Respondent replaced these funds with funds from the operating account.

- b) Respondent admittedly knew but did not report the alleged theft from the escrow account to the Department.
- c) Title policies were not properly reported to the underwriter, and, therefore, premiums were not remitted to the insurer within the timeframe specified in the contract with their insurer. As the agency owner, Respondent is responsible for properly reporting policies and remitting the premium payments to the underwriter.
- d) Respondent issued title insurance policies prior to payoff of the mortgage which encumbered the property as described in the title commitment.
- e) After issuing a title insurance policy, Respondent did not deliver the policy to the consumer in a timely manner.
 - i. In the records provided by Respondent for January 2009 through February 2011, two hundred and ninety-three (293) files contained original title policies and warranty deeds with original cover letters signed by Henley.
 - ii. On February 27, 2012, David Sanders filed a formal complaint with the Department against Respondent on the grounds that Respondent did not timely issue the title insurance policy and original deed for property purchased in September 2011. Specifically, Mr. Sanders' closing took place at Respondent' office on September 26, 2011, and he received the title insurance policy from Stewart on February 25, 2012. After the closing, the original deed was mailed to the wrong address and listed the seller's name on the envelope, not the buyer's name. When the envelope was returned to Respondent, no additional action was taken to deliver the original deed to the buyer, and the original deed was simply left in the

closing file. Mr. Sanders' closing took place well after the remedial measures by Respondent were implemented, including the green binder docs, dual calendar system and green envelope in which post-closing documents, such as the policy and warranty deed, were mailed to the consumer.

- iii. Four (4) separate financial institutions confirmed that they did not receive final title insurance policies and/or original loan documents from Respondent. One of the banks terminated its relationship with Respondent for the cited reasons of poor service, lack of urgency on closings, failure to respond to questions in a timely manner, and failure to provide original recorded documents.
- f) Respondent's license number was not printed or written beneath his signature on all title commitments and policies issued.
- g) The printed names and license numbers of the title insurance agency and the affiliated title insurance agent authorized to issue the title commitment or policy on behalf of the title insurer were not properly listed on the title commitments or policies. As the agency owner, Respondent is responsible for this oversight.
- h) The company name listed on the title insurance policies, closing protection letters, and the Underwriting Agreement with Stewart was "Charles B. Dyer, Jr. DBA," which is not the name licensed by the Department nor was it filed with the Department as an assumed business name. As the agency owner, Respondent is responsible for this oversight.
- i) Title insurance policies issued by Respondent did not include proper contact information of the producer or agency soliciting the policy and the Arkansas

Insurance Department. As the agency owner, Respondent is responsible for this oversight.

- j) The title insurance commitment which Respondent furnished to purchasers and mortgagors did not incorporate the statutory language required by Arkansas Code Annotated § 23-103-413(2) on the first page in bold type. As the agency owner, Respondent is responsible for this oversight.
- k) The closing files provided by Respondent did not contain sufficient records, including evidence of underwriting title, determination of insurability, and records of their escrow operations and escrow accounts. As the agency owner, Respondent is responsible for this oversight.

CONCLUSIONS OF LAW

From the Findings of Fact contained herein, the Commissioner concludes as follows:

10. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Arkansas Code Annotated § 23-61-103, *et. seq.*

11. The Commissioner may suspend or revoke a producer's license for any one (1) or more of the following causes: violating a law or regulation of the Commissioner; improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business; using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility. Ark. Code Ann. § 23-64-512(a)(2)(A), (2)(B), (4), (8).

12. During the hearing, the parties made a number of arguments seeking to exclude certain evidence from the record. The presiding hearing officer has the authority to render decisions on evidentiary issues and questions raised at the hearing. *See* Ark. Code Ann. § 25-15-23.

- a) The Department presented twenty-nine (29) exhibits, and Respondent presented fourteen (14) exhibits for admission into the record. Respondent objected to nine (9) of the Department's exhibits (agency audits performed by Stewart Title Guaranty Company and Chicago Title Insurance Company, a spreadsheet of final, original title insurance policies discovered in Edwards' closing files, and two (2) complaints against Edwards) on the grounds that the persons who prepared all or part of the documents were not present to testify, which violates Respondent's due process right to cross-examination.
- b) The Department objected to two (2) of Respondent's exhibits (Respondent's Interrogatories and Requests for Production of Documents to the Department and corresponding e-mail communication between counsel for the parties and Respondent's request for an emergency conference and the Department's response) on the grounds that the exhibits are not relevant because formal rules of civil procedure do not apply to administrative proceedings and the Department fulfilled its obligation under the Administrative Procedures Act to supply Respondent with its evidence and access to its files.
- c) All evidence submitted by the parties will be admitted into the record. Respondent's due process rights were not violated by the absence of certain individuals he believed should testify. Respondent had substantial notice of the witnesses the Department intended to call at the hearing and the evidence it intended to introduce, and the Department provided Respondent with supplemental information as to witnesses and exhibits in a timely manner. *See Arkansas Department of Human Services v. A.B.*, 374 Ark. 193, 286 S.W.3d 712 (2008) (Arkansas Supreme Court held that appellant had the opportunity to

subpoena and call adverse witnesses, and because he failed to do so, he waived the right to confront and cross-examine his accuser and, thus, his due process argument). Further, Respondent's exhibits are relevant and will be admitted.

- d) Respondent submitted additional exhibits with his Reply to the Department's closing brief. The record was closed prior to submission of the parties' reply briefs, and the exhibits will not be included in the record.

13. Respondent argued in the Post-hearing Brief that a number of statutes in the Arkansas Insurance Code are unconstitutional. Respondent failed to meet his burden of proof to establish that the statutes are unconstitutional.

14. The witness testimony and supporting documentation entered into evidence at the hearing are sufficient to make a finding that Respondent violated a number of laws and rules of the Commissioner, is not competent, trustworthy, financially responsible and of good business and personal reputation, and no longer meets the qualifications for a title agent license. See Ark. Code Ann. §§ 23-64-506(c); 23-64-506(e)(2); 23-64-512(a).

15. Respondent violated Arkansas Code Annotated § 23-64-223 by diverting and/or misappropriating escrow funds and premiums received as a licensee in his fiduciary capacity as a title agent, and failed to account for and pay these funds and premiums or return the money to the person entitled thereto. Specifically, the Department presented evidence that Respondent diverted and/or misappropriated funds as follows:

- a) More than \$30,000 that was recovered in a civil lawsuit (concerning an erroneous payment by Respondent's employee after a closing) and put into Respondent's personal account, instead of the escrow account from which the error was made;
- b) Multiple instances in which funds from one escrow account were moved to cover shortages in another escrow account;

- c) Holding unaccounted for funds in excess of \$17,000 in an old escrow account and not investigating and identifying to whom the funds belong;
- d) Use of escrow funds for unauthorized wire fees;
- e) Holding premium funds for extended periods of time before remitting to the underwriter;
- f) Depositing overages from closing files into the escrow account, instead of determining to whom the funds belong. Respondent only seemed pressured to reconcile accounts and fix files with overages when an audit was approaching.
- g) Funds being erroneously deposited in the wrong account and then swept into a non-escrow, interest-bearing account, interest from which was deposited into Respondent's operating account. It is negligence to allow the bank to have deposit slips for an account that is not to be used and is "dying." The bank's erroneous deposits caused numerous problems with the escrow accounts and should have been prevented by destroying the deposit slips. Respondent benefited from these erroneous deposits by earning interest on funds that were swept from the escrow account into the high-yield interest-bearing sweep account;
- h) Conducting closings and issuing payoff checks for a transaction prior to receipt of the funds for the transaction or with the knowledge that those funds were not in the escrow account. Respondent admitted in the Reply Brief to the Department's Closing Brief that there is always a "float" in the escrow account. It is misappropriation to use the funds in an escrow account for a purpose other than that for which it was intended as set out in the HUD-1 Settlement Statement, such as disbursing payoff checks prior to receipt of funds or with the knowledge that the funds are not in the escrow account. Therefore, the concept of "floating" is

misappropriation of funds held in the licensee's fiduciary capacity and a violation of Arkansas Code Annotated § 23-64-223.

Respondent's violations of Arkansas Code Annotated § 23-64-223 are a basis for license revocation under Arkansas Code Annotated § 23-64-512(a)(2).

16. Respondent admitted that he knew and failed to report to the Department that an employee of the agency stole money from the agency's escrow account in violation of Arkansas Code Annotated § 23-66-505. During the Department's investigation of the escrow account manipulation and theft by Respondent's employee, Respondent provided additional, and often differing, information to his underwriter, Old Republic National Title Insurance Company, but did not provide the same information to the Department. Only Respondent knew of the information he discovered in his internal investigation, and the duty is on Respondent to cooperate and produce relevant information to the Department, including additional information discovered during Respondent's investigation. Respondent's violation of Arkansas Code Annotated § 23-66-505 is a basis for license revocation under Arkansas Code Annotated § 23-64-512(a)(2).

17. Respondent failed to timely report policies to the underwriter, and, therefore, premiums were not remitted timely, in violation of Arkansas Code Annotated § 23-64-223(a). As the agency owner, Respondent was responsible for reporting the policies and remitting premiums to the underwriter, and Respondent asserted as a defense that the agency's employees encountered electronic problems during the reporting process. While Respondent did show difficulty in this regard, which is taken into consideration, it was established that there were other available avenues of reporting policies. Respondent is found in violation of Arkansas Code Annotated § 23-64-223(a), which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

18. Respondent issued final title insurance policies prior to payoff, consequently, prior to making a determination of insurability of title in accordance with the title insurer's underwriting practices, in violation of Arkansas Code Annotated § 23-103-408(c).

- a) Per the closing instructions and title commitment, a condition to issue a final title insurance policy is to pay off the prior mortgage because the seller keeps legal title to the property until the final payment is made. Thus, a final title insurance policy issued prior to payoff does not actually ensure lien priority as the buyer does not yet have a properly insurable interest.
- b) Issuing the final policy prior to payoff also has the effect of putting the title insurer on the risk even though the insurable risk is not perfected.
- c) As listed in Respondent's summary of internal investigation and testified to in the hearing, a number of files were paid off late and after policies were issued. Respondent did not have in place proper controls to prevent this from occurring, and the controls that he did implement beginning in 2010 (i.e. "Green Binder Docs" and the dual calendar system) were inadequate because Hudson's escrow account manipulation and theft continued during this time period and was not discovered until spring of 2011.

Therefore, Respondent is found in violation of Arkansas Code Annotated § 23-103-408(c), which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

19. The Department alleged violation of Arkansas Code Annotated § 23-79-121 and provided sufficient evidence that Respondent failed to deliver policies. Respondent's counsel argued that this statute does not apply to title insurance. The Department concedes that the statute is not applicable. However, failure to deliver policies to consumers is a great concern to

the Department, and there are consequences and repercussions to the consumer when he or she does not receive a policy.

- a) Without the policy, the consumer does not have contact information for the title insurer should a claim need to be filed, or for the Department, as statutorily required, should a complaint arise.
- b) A title insurance policy requires an underlying search to cover a minimum of the preceding thirty years. A previously issued title insurance policy may be used as a starting point for the search, and a reissue credit is typically offered if the consumer can produce a copy of the policy in advance of the search. Without the policy, the consumer could be denied future discounts on the purchase of title insurance through reissue rate credits based on having a prior policy.
- c) It is a trade practice violation to engage in an unfair or deceptive act or practice in the business of insurance. *See* Ark. Code Ann. § 23-66-205. Depriving the consumer of the title insurance policy for claims information and reissue rate credits, including using the policy to obtain a lower rate from a competitor in the event of a sale or refinance, are indeed unfair practices as the consumer cannot avail themselves of all advantages of purchasing a title insurance policy. The uninformed or unsophisticated consumer would not have the benefit of knowing where to turn in the event of a claim. The failure to deliver a title insurance policy also is deceptive as it essentially conceals the title insurance agent's involvement in the closing.
- d) Failure to deliver final title insurance policies exhibits poor business practices and lack of responsibility on the part of the agent, which are required to find a person fit to obtain and maintain a license.

- e) Failure to deliver policies deprives the consumer of property for which he or she paid, and the agent is improperly withholding, misappropriating, or converting properties received in the course of doing insurance business, in violation of Arkansas Code Annotated § 23-64-512(a)(4).
- f) Failure to deliver the policies is failure to provide the consumer with the statutory notice of the Department's contact information as required by Arkansas Code Annotated § 23-79-138(a).

The foregoing acts are grounds for revocation, pursuant to Arkansas Code Annotated § 23-64-512(a).

20. Respondent failed to put his license number as the countersigning agent on title commitments and policies as required by Rule 87 § 10(D), and he admitted to this violation at the hearing, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

21. Respondent violated of Rule 87 § 10(E), by failing to print names and license numbers of the agency and agent on commitments and policies. It is permissible under our law for an agent to handwrite this information on the commitment and policy, and Respondent admitted to this violation. Respondent is in violation of this Rule, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

22. Respondent violated Arkansas Code Annotated § 23-64-510 by failing to use the licensed name of the agency on policies, commitments, closing protection letters and the underwriting agreement with Stewart. The name that appeared on these documents was not filed with the Department as an assumed business name, and, therefore, could not be used. Respondent provided correspondence with Stewart evidencing difficulties in resolving the incorrect name listed. However, the issue involved more than a simple request for a change of name. Respondent created a new business entity, and a new application, approval from Stewart

and new contract was required in order to change the information. Respondent was responsible for completing the application for a new contract with Stewart, but these documents were never submitted to Stewart. Respondent is in violation of Arkansas Code Annotated § 23-64-510, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

23. Respondent violated Arkansas Code Annotated § 23-79-138(a) by failing to include the contact information of the agency and the Department on its final policies. Respondent failed to provide proof of compliance to refute allegations and is found in violation of this statute, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

24. Respondent violated Arkansas Code Annotated § 23-103-413(2) by failing to provide statutory notice on title commitments. Although Respondent produced a bulletin from Stewart instructing their agents to incorporate the required language in an alternative place, it is the licensee's responsibility to ensure compliance with Arkansas laws. The failure to properly comply with this statute is a basis for license revocation under Arkansas Code Annotated § 23-64-512(a)(2).

25. Respondent did not maintain adequate records in the closing files, in violation of Arkansas Code Annotated § 23-103-414. Documents, such as the correct HUD-1 Settlement Statement and disbursement sheets, are obtained for the closing file and encompass escrow operations and records. The Department discovered that in a number of the closing files listed in Respondent's summary of internal investigation, this information was not in the closing file, and in a number of files, the Department discovered HUD-1 Settlement Statements that were incorrect or had been manipulated. Respondent was responsible for this oversight, and he did not provide sufficient proof to refute this allegation. Respondent is in violation of Arkansas Code

Annotated § 23-103-414, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

26. Respondent demonstrated incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility through the following:

- a) After Respondent discovered Hudson's first theft, he did not terminate Hudson and did not put in place any substantive controls to prevent employee theft. Hudson was permitted to issue and sign checks from the escrow account, and Respondent did not monitor Hudson. Respondent only required a second signature and more frequent reconciliations. However, the second signor was not required to review the HUD-1 Settlement Statement, disbursement sheet or closing file prior to signing the check.
- b) Respondent did not disclose all of the agency's open accounts to the underwriters prior to the audit, and the certification he provided to the underwriters listing the agency's accounts was incomplete and misleading. As a result, not all of the agency's accounts were subject to the audit, including the high-yield interest-bearing sweep account.
- c) After Respondent discovered Hudson's escrow account manipulation and theft, his investigation revealed that a number of his customer's mortgages were paid off late. One couple was subject to foreclosure action because their mortgage was not paid off for more than five (5) months. Respondent did not contact the consumers to notify them of the late payoff or assist them in resolving problems in their credit. In fact, Respondent refused to acknowledge and accept responsibility for the late payoffs and consumers' property going into foreclosure. The actions of Respondent's employees caused harm to consumers' credit, and

Respondent took no action to resolve or assist consumers with that harm. A derogatory public comment, such as a foreclosure or late payment, affects a consumer's insurance score, which in part determines the premium for home owners and automobile insurance, and could even cause the consumer to be ineligible for coverage from one or more insurers.

RECOMMENDATION OF HEARING OFFICER

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

The Department has met its burden of proof with respect to revoking Respondent's resident title insurance agent license. Respondent no longer meets the qualifications to hold a title insurance license, and I recommend that pursuant to Arkansas Code Annotated § 23-64-512(a), Charles Bryan Dyer's Arkansas Resident Title Insurance Agent License, number 14836, and Edwards Title, LLC's Arkansas Resident Title Insurance Agency License, number 325319, be revoked.



Lenita Blasingame
Chief Deputy Commissioner and
Hearing Officer

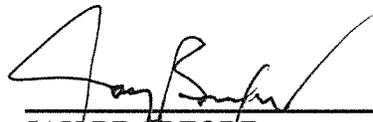
CERTIFICATION

I, Jay Bradford, Insurance Commissioner for the State of Arkansas, do hereby certify that the above and foregoing matter was conducted by Lenita Blasingame, Chief Deputy Commissioner and Hearing Officer, by and under my authority and supervision. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation in full, as set forth herein.

IT IS HEREBY ORDERED that:

Charles Bryan Dyer's Arkansas Resident Title Insurance Agent License, number 14836, and Edwards Title, LLC's Arkansas Resident Title Insurance Agency License, number 325319, are hereby **REVOKED**. Respondent shall not conduct the business of insurance in the State of Arkansas.

IT IS SO ORDERED THIS 4th **day of October, 2012.**



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS