

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF:

AID ORDER NO. 2015- 102

JOHN CLAYBORN
RESPONDENT NPN 14594507

REVOCATION ORDER

On this day, the matter of the producer's license of John Clayborn ("Respondent") came before Allen Kerr, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held on December 1, 2015, in the First Floor Hearing Room of the Arkansas Insurance Department ("Department") pursuant to the Notice of Hearing dated October 8, 2015. The hearing was held before General Counsel and Deputy Commissioner Russ Galbraith ("Hearing Officer") pursuant to her appointment by the Commissioner in accordance with Ark. Code Ann. § 23-61-103(e)(1). The Department was represented by Gray Allen Turner, Associate Counsel. The Respondent was represented by Gary Jiles and Matthew Brown of Millar Jiles LLP.

FINDINGS OF FACT

1. The Commissioner of Insurance has jurisdiction pursuant to the Arkansas Insurance Code, specifically Ark. Code Ann. §§ 23-60-101, *et seq.*
2. Respondent, John Clayborn, received notice of the hearing and participated in the hearing.
3. Respondent resides in Conway, Arkansas.

4. The following evidence was admitted into the record and considered by the hearing officer: (1) Designation of the hearing officer, (2) Notice of hearing, (3) Transcript of July 7, 2015, Investigative Conference, (4) Email from Lance Nation, (5) Conflict of Interest Disclosures, (6) Original Complain from AFMC, (7) Email from AID Investigator Marjorie Farmer, and (7) Disclosure Statements.

5. Based on the testimony and the evidence presented, the Hearing Officer makes the following findings of fact:

Respondent testified that he was employed by Arkansas Foundation for Medical Care ("AFMC") in February of 2010 as their Human Resources director. Clayborn was a full time employee of AFMC. While employed there, he signed several conflict of interest disclosure forms. The disclosures asked, in part:

- a) Are you aware of any circumstance which create a potential conflict between your personal or business interests and the interests of Arkansas Foundation for Medical Care?
- b) Do you or a Family Member have an interest in or any other relationship or Affiliation with an entity that has an interest in any transaction with AFMC which dose not fall within the definition of a Conflict of Interest under the Policy but which you nevertheless wish to make known in the interest of full disclosure?

Respondent consistently answered no to these questions on each form. Despite having an interest in an insurance agency, Hawkins, Jessen, Clayborn, Respondent failed to disclose his interest in the Hawkins, Jessen, Clayborn on any of his annual disclosure forms that were placed into the record. Respondent knowingly and purposely submitted dishonest information on his conflict of interest disclosure statements while employed by AFMC.

As the Human Resources Director for AFMC, part of Respondent's job duties included finding the most appropriate group health insurance plan for the organization. At the time Respondent was hired as the HR director in 2010, AFMC had a group plan with United Health Care, with the Hatcher Agency serving as the broker. Respondent encouraged AFMC to change health care providers through insurance broker Fox Everett. Respondent did not disclose to AFMC that he would be receiving a share of the payments from AFMC to Fox Everett in the form of commissions.

Prior to AFMC changing health care providers, Respondent discussed his involvement as an insurance producer and broker with AFMC's Chief Compliance Officer, Susie Moore. Respondent was clearly instructed by Moore not to take any commissions from a change of health care providers. (Exhibit 6). Respondent surreptitiously arranged to be paid commissions through his insurance agency partnership Hawkins, Jessen, Clayborn. To prevent the true payee of the commissions from being discovered, Respondent arranged for the payments to be made in the name of his business partner, Steve Jessen. Mr. Jessen did not have any involvement in the sale or negotiations of the health care plan, and although the contract named Mr. Jessen, the Respondent was the true recipient of all payments. Had Respondent not encouraged AFMC to change health care providers, Respondent would not have received any commission. Respondent received commissions from the funds AFMC sent to Fox Everett. According to a spreadsheet

provided by Fox Everett and admitted into evidence, Respondent received \$65,240.19 in commission payments from the AFMC group health care plan deal.

Respondent testified that because of his actions in finding an alternate health care provider, AFMC saved thousands of dollars. Respondent's claim that his actions in obtaining commissions did not cost AFMC any money are self-serving and lack credibility. Respondent testified that the reason he did not make an honest disclosure that he would receive commissions from the change of health care provider was that he believed that AFMC would not have agreed to any contract that allowed Respondent to receive a commission from the payment of premiums.

CONCLUSIONS OF LAW

1. Ark. Code Ann. § 23-64-512(8) requires producer to avoid "using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility." Respondent, while acting as an insurance producer, made dishonest statements concerning his business dealings with Fox Everett to AFMC. Respondent's actions constitute dishonest practices and demonstrate a lack of good business reputation. Respondent's actions are therefore are violation of Ark. Code Ann. § 23-64-512(a)(8).

RECOMMENDATION OF HEARING OFFICER

WHEREFORE, upon consideration of the evidence of record and the foregoing Findings of Fact and Conclusions of Law, the Hearing officer recommends the following:

1. That the Arkansas Insurance Non-Resident Producer license of Respondent John Clayborn be revoked.

2. The Respondent John Clayborn shall, as authorized by Ark. Code Ann. § 23-64-512 and § 23-64-216, pay to the Arkansas Insurance Department an administrative penalty in the amount \$65,240.19, equal to the commissions he received, within ninety days of the entry of this order.



Russ Galbraith
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 Recommendation of the Hearing Officer were made by and under my authority and supervision by Russ Galbraith, Chief Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation in full, as set forth herein.

THEREFORE, it is hereby ORDERED that the Arkansas producer's license of John Clayborn, NPN 14594507, is revoked. The Respondent John Clayborn shall, pay to the Arkansas Insurance Department an administrative penalty in the amount \$65,240.19 within ninety days of the entry of this order.

IT IS SO ORDERED THIS 30th DAY OF DECEMBER, 2015.



ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS