

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF
DAVID MURRY WIDENER
and WIDENER INSURANCE AGENCY, INC.

A.I.D. NO. 2005-027A

REVOCATION ORDER

On July 26, 2005, a hearing was held at the Arkansas Insurance Department ("Department") regarding the Emergency License Suspension Order issued by Julie Benafield Bowman, Arkansas Insurance Commissioner ("Commissioner") with respect to the Arkansas resident insurance producer license of David Murry Widener and Widener Insurance Agency, Inc. ("Respondents"). The Department was represented by Nina Samuel Carter, Associate Counsel. Respondent, David Murry Widener, failed to appear in person or through counsel. The Hearing Officer in this matter was Julie Benafield Bowman, Commissioner. Based on the facts and law, the exhibits submitted on behalf of the Department, the testimony of witnesses and arguments of counsel, the Commissioner finds as follows:

FINDINGS OF FACT

1. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann §23-61-103 and the authority to suspend or

revoke an insurance producer's license under Ark. Code Ann §23-64-512(a).

2. Pursuant to said authority, on May 3, 2005, by A.I.D. Order No. 2005-027, the Commissioner summarily suspended all licenses issued by the Department to Respondents and scheduled a promptly instituted hearing for June 6, 2005, later rescheduled by Amended Notice of Hearing for July 26, 2005. A copy of said Emergency License Suspension Order issued by the Commissioner is attached hereto and incorporated herein by reference.
3. The Notice of Hearing, Amended Notice of Hearing, and Emergency License Suspension Order were mailed to Respondent's last known home address, as provided by Respondent to the Department, by both certified mail, return receipt requested, and regular U.S. mail. The certified mail receipt was returned to the Department, signed by David Widener, evidencing delivery of the Amended Notice of Hearing on June 4.
4. Based upon the foregoing, the Commissioner finds that due notice of the Emergency License Suspension Order and of the Hearing on July 26, 2005, was provided to Respondent in compliance with applicable Arkansas law.
5. Respondent was not present at the Hearing despite being properly notified of the same.

6. The Department exhibits and testimony were admitted into evidence without objection. The documents and testimony indicate that Respondent has improperly withheld insurance premium funds in several instances.
7. According to evidence from Roy Marple of Marple Auto Sales, Inc., on September 16, 2003, a check was tendered to Respondents for \$3,309.00 in premium payable to the order of "Widener Insurance" for "Garage Liab. Ins" and Mr. Marple received an Insurance Identification Card from the Respondents stating that Marple Auto Sales, Inc. was insured with National Indemnity Company. The policy effective date was September 8, 2003. According to documents in evidence, the premium money was never received by National Indemnity Company's general agent, Risk Placement Services and Marple Auto Sales, Inc.'s policy was cancelled for non-payment effective November 22, 2003.
8. According to evidence from Fisher Rentals, a check was tendered to Respondents on September 17, 2003, for \$2,158.00 in premium payable to the order of "Widener Insurance" for "101 Windwood liability package". According to Mr. Fisher, Mr. Widener had agreed to bring the policy to Fisher Rentals' office at a later time, but failed to do so; later, Fisher Rentals became concerned about their other policies that were coming due and tried to contact Mr. Widener, but was unable to locate him. According to documents in evidence, the premium money was never received by Risk Placement Services and Fisher Rentals' policy was cancelled for non-payment.

9. Respondent failed to attend the scheduled conference on July 26, and has not contacted the Department concerning the above matter.

CONCLUSIONS OF LAW

1. Any and all of the Respondents' resident agent insurance licenses should be revoked on the basis of the foregoing findings of fact and the following statutory grounds: a) Respondent is in violation of Ark. Code Ann. §23-64-223(a) in that he failed to maintain his fiduciary duty that all funds, fees, moneys, premiums, or return premiums received by a licensee in the capacity as a licensee shall be trust funds so received by the licensee in a fiduciary capacity; b) and that Respondent is in violation of Ark. Code Ann. §§23-64-512(a)(2)(4)(8)(13)(D) in that he violated insurance law or regulation of the Commissioner; misappropriated or converted money received in the course of doing insurance business and used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.

THEREFORE, in consideration of the documents in evidence before the hearing record was closed, and other facts, matters, and things before the Commissioner, it is ordered:

1. That the Department has met its burden of proof with respect to revoking any and all of Respondents' resident insurance licenses;

2. That the Department's Emergency License Suspension Order is upheld and that any and all of Respondents' resident insurance licenses are hereby permanently revoked on the grounds stated above, and all companies appointing Respondent as agent shall be notified of this Order.
3. Pursuant to Ark. Code Ann. §23-64-218(a)(1) and (2), Respondents shall immediately forward to the Insurance Commissioner all insurance producer licenses issued to Respondent by the Department.

Dated this 15th day of August, 2005.


JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER