

BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS

IN THE MATTER OF
Michael Wayne Pate d/b/a
PATE INSURANCE AGENCY and
PATE INSURANCE AGENCY

A.I.D. NO. 2005 - 038

CONSENT ORDER

On this day Julie Benafield Bowman, Arkansas Insurance Commissioner ("Commissioner"), and Michael Wayne Pate ("Respondent"), reached an agreement concerning the resident insurance producer's license issued to Respondent by the Arkansas Insurance Department ("Department"). The Commissioner was represented by Nina Samuel, Associate Counsel. The Respondent voluntarily and intelligently waived his right to a hearing and consented to the entry of this Consent Order. The parties agreed 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 issue summary license suspensions under Ark. Code Ann. § 23-64-216(e). Additionally, pursuant to Ark. Code Ann. §23-66-209, the Commissioner may require the Respondent licensee to show cause why a cease and desist order should not be entered to prohibit his/its insurance transactions or business in this State.
2. Respondent holds an inactive resident Arkansas insurance producer's license granted by the Department, and at all times relevant herein, Respondent was a licensed

agent and owner of Pate Insurance Agency. The most recent addresses of Respondent and his agency, as provided by Respondent to the Department, are as follows:

Michael Wayne Pate, 1804 Cherry Creek Circle, Bryant, AR 72022; Pate Insurance Agency, 3411 Main Street, Suite 1, Bryant, AR 72022.

3. According to the Arkansas Insurance Department Legal Division ("Legal Division"), a number of serious complaints against Respondent have been received concerning allegations of misappropriation of insurance premiums. According to Legal Division's files and investigation, the Legal Division avers that pursuant to Ark. Code Ann. §§ 23-64-216 and 23-64-512, the following causes exist for the immediate suspension of all licenses: Improperly withholding, misappropriating, or converting any moneys or properties, received in the course of doing insurance business, in violation of A.C.A. 23-64-512(a)(4); Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation or financial irresponsibility, in violation of A.C.A. 23-64-512(a)(8). For conduct which occurred prior to July 1, 2002, the causes existing for the immediate suspension of Respondent's license(s) are codified in Ark. Code Ann. §§ 23-64-216(a)(4) and (6).

4. Specifically, the Legal Division alleges the following misconduct by Respondent and his agency:

a) On or about 4-10-02, consumer Cathie Nolan paid Respondent and his agency the sum of \$466.58 as premiums for homeowners and automobile insurance coverage with Hanover. Respondent failed to remit said funds to

Hanover or the general agent until 3-18-03, a period of 11 months after consumer paid Respondent;

b) In August 2003, Respondent wrote insurance coverage for Vinson Auto, 812 Military Road, Benton, AR, through Risk Placement. The insurance policy was financed through Premium Payment Plan on or about 8-18-03 and the draft for the premium financing, in the amount of \$7134.00 was sent to Respondent on or about 8-28-03. Respondent misappropriated the funds, held them for his own use and benefit and failed to pay Risk Placement the amount owed on said policy until 12-31-03.

c) On or about December 17, 2001, an insurance policy sold by Respondent to Dennis Castleberry, insurance policy AGL550592, was cancelled due to nonpayment of premiums. The policy was financed through UPAC on or about 10-19-01. Respondent received the funds for the premium financing, misappropriated and held said funds for his own use and benefit and failed to pay the funds to the insurer or general agent. As a result, the policy was canceled and a return premium in the amount of \$499.20 was sent to the general agent, Harbor Excess & Surplus. This return premium was credited to Respondent's agency account, because at the time the general agent was unaware that the policy was financed. Respondent failed and refused to forward the return premium onto UPAC and Harbor Excess & Surplus paid said return premium and has attempted to collect it from Respondent. Respondent has failed and refused to pay Harbor Excess & Surplus said funds.

d) On or about January 29, 2002, an insurance policy sold by Respondent to Bart Bennett, policy # BA6102575, was cancelled due to non-payment of premiums. The policy was financed through UPAC on 3-30-01 and Respondent received the funds for the premium financing. Respondent misappropriated and held said funds for his own use and benefit, and failed to pay the funds to the insurer or general agent. As a result, the policy was cancelled and a return premium in the amount of \$196.00 was sent to the general agent, Harbor Excess & Surplus. This return premium was credited to the Respondent's agency account, because at the time the general agent was unaware that the premium had been financed. Respondent failed and refused to send forward the return premium to UPAC, and Harbor Excess & Surplus paid said return premium and has attempted to collect it from Respondent, but Respondent has failed and refused to pay it.

5. For the above actions which occurred prior to July 1, 2002, the Department alleges that Respondent is in violation of Ark. Code Ann. §§ 23-64-216(a)(4) and (6). For that conduct which occurred on or after July 1, 2002, the Department alleges that Respondent is in violation of the following insurance code provisions: A) Ark. Code Ann. §23-64-506(e), in that he is deemed not to be "competent, trustworthy, financially responsible and of good personal and business reputation; B) Ark. Code Ann. §23-64-512(a)(4), for improperly withholding, misappropriating, or converting any moneys received in the course of doing insurance business in that checks and drafts on Respondent's business account were returned for insufficient funds; C) Ark. Code Ann. §23-64-512(a)(8), in that he demonstrated untrustworthiness and financial

irresponsibility by abandoning his business and failing to turn over premiums to the insurer; and D) Ark. Code Ann. § 23-64-223 in that Respondent failed to account for premiums received and failed to pay these premiums to the insured, in breach of his fiduciary duty as a licensee to treat these moneys as trust funds.

6. Respondent desires to voluntarily submit his license for revocation by the Department and to pay restitution to affected persons. In so doing, Respondent neither admits any allegations contained herein, nor makes any admissions related to the allegations or complaints filed herein.

CONCLUSIONS OF LAW

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

2. That pursuant to Ark. Code Ann. § 23-64-512(a) and § 23-64-216(d)(1), if the Commissioner finds that one or more grounds exist for the suspension or revocation of any license under § 23-64-216(a)(1), the Commissioner in his or her discretion may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation.

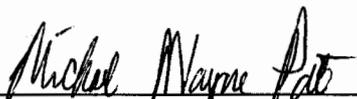
3. That pursuant to Ark. Code Ann. § 23-64-216(d)(3), the Commissioner may also order restitution of actual losses to affected persons. Respondent currently owes a sum of \$695.20 to Harbor Excess & Surplus and must pay restitution.

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

THEREFORE, in consideration of these Findings of Fact and Conclusions of Law, it is hereby ordered and agreed that Respondent's resident Arkansas Insurance producer's license(s) is hereby voluntarily surrendered for revocation by the Arkansas Insurance Commissioner. Pursuant to Ark. Code Ann. §23-64-218(a)(1), Respondent shall immediately forward to the Insurance Commissioner all insurance agent licenses. Pursuant to Ark. Code Ann. § 23-64-216, Respondent shall also pay restitution of \$695.20 to Harbor Excess & Surplus and an administrative penalty of \$1,000.00. The restitution shall be paid within 30 from entry of this order and the administrative penalty shall be paid within 90 days from entry this Order.

DATED this 15th day of July, 2005


JULIE BENAFELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS


Michael Wayne Pate