

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

**IN THE MATTER OF  
TIMOTHY WALLEY, LICENSE NO. 12541  
TIM WALLEY INSURANCE AGENCY, INC.  
LICENSE NO. # 248733**

**A.I.D. NO. 2010- 058**

**EMERGENCY LICENSE SUSPENSION ORDER**

On this day the emergency matter of Timothy Walley (“Respondent”), came before Jay Bradford, Arkansas Insurance Commissioner (“Commissioner”). The Arkansas Insurance Department (“Department”) was represented by Ashley Fisher, Associate Counsel.

**FINDINGS OF FACT**

From the facts before the Commissioner, it is found:

1. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. § 23-61-103 and the authority to issue emergency license suspensions under Ark. Code Ann. § 23-64-216(e), § 23-64-512(a).

2. Respondent is currently licensed in Arkansas as a resident producer agent. Respondent is licensed as a health and accident, property, casualty, life, marine, and surety agent. Respondent holds Arkansas license number 12541 and has been licensed with the Department since April 23, 1987. Respondent’s address of record at the Department is #3 Darrin Drive, Little Rock, AR 72223.

3. The Department received information from State Farm concerning the circumstances that caused Respondent to resign his appointment. In particular, State Farm

reported that they conducted an audit of Respondent's premium fund account. The audit found the following items of concern: personal checks that were returned for insufficient funds, personal checks used for customer payments, a failure to balance the account in a timely fashion, deposits to the banks that were short funds, deposits not made on a regular basis and policies that were entered with no corresponding deposits.

4. On September 25, 2009, Respondent was given a check in the amount of \$630 in cash by customer Ira Watkins for auto policies. These funds were placed into a personal account rather than depositing it into his premium fund account. This failure to turn over the funds to State Farm caused the consumer's policies to be out of force for one month.

5. Consumer Fannie Burks appeared at the Department as a referral from the Securities Department. Ms. Burks brought information with her that showed the following:

a. That on February 7, 1999, she and her husband gave to Respondent an investment of \$100,000 at an interest rate of 8.5% to be paid monthly for \$708.33.

b. An undated document stating that in consideration of \$160,000, an agreement was made between Theo and Fannie Burks and Tim Walley that the Burks' would receive 9.75% interest payments each month payable on the 13<sup>th</sup> of each month. The agreement was to expire on October 15, 2007 and the principal would be paid within 15 days of the expiration. In the event of Respondent's death, the Burks were to be the beneficiaries of an insurance policy held by Walley.

c. An undated document with Theo and Fannie Burks agreeing that "in consideration of an investment of \$150,000, the interest rate of 9.75%", the Respondent would pay \$1218.75 on the 7<sup>th</sup> of each month beginning November 7, 2000 and ending on October 7,

2001. The interest rate was “guaranteed for that period of one year.” A surrender charge of 5% was to be deducted if the investment was surrendered before October 7, 2001.

d. Undated document that states “[I]n consideration of \$260,000.00 an agreement is made between Theo and Fannie Burks and Tim Walley Insurance Agency, Inc.” that the Burks’ would receive an interest rate of 10.00%; or \$2333.33. The amount was to be paid on the 15<sup>th</sup> of each month. The agreement was set to expire on or about October 15, 2007. The agreement states that “a one time payment of \$260,000 will be paid to Theo and Fannie Burks within 21 days of that date.” The agreement further stated that “In the event of Tim Walley’s death before the above stated date, Theo and Fannie Burks are the beneficiaries of policy 1906-7821 in the amount of \$260,000 . . . .”

e. May 1, 2007 document that states “in consideration of \$360,000 an agreement is made between Fannie Burks and Tim Walley Insurance Agency, Inc.” for Ms. Burks to receive an interest rate of 10.00% or \$2333.33 on the 15<sup>th</sup> of each month and \$825 on the first day of each month. The agreement was to expire on October 30, 2008 wherein a one time payment of \$360,000 would be made to Ms. Burks within 10 days of that date.

f. Ms. Burks issued a statement on September 2, 2009 to Respondent stating that she wished to surrender her investment of \$460,000 on December 31, 2009 without penalty.

g. A December 16, 2009 form stating that Ms. Burks received “from Tim Walley a sum of \$3800.00 which is interest payments for 12/1/09 and 12/15/09”. This document was signed by Ms. Burks and Tim Walley and notarized.

h. A December 15, 2009 form that states “I wish to withdraw “\$100,000.00. I also realize there may be penalties and interest. These amounts will be determined once the

funds and [sic] been withdrawn. This will leave a balance of \$360,000.00 owed to me from Tim Walley.” This document was signed by Fannie Burks and Tim Walley. It was also notarized.

i. A February 7, 2010 letter from Tim Walley stating: “The money that you and Theo entrusted to me has been used for the following since 1998:

1. Used funds to build an insurance business
2. Used funds to build building with a value of \$700,000.00

Options:

1. Continue to receive interest payments for life
2. Liquidate office and discontinue receiving interest payments
3. Office is currently for sale
4. Withdraw \$100,000 that you requested and reduce the interest payment to 5%
5. At your death the \$460,000.00 would be distributed to heirs as previously stated
6. Reinstate life policy on Fannie that premium would be paid by Tim Walley and insure that the funds would be available upon your death

Since 1998, over \$350,000 in interest has been paid to Theo & Fannie Burks.”

This document was signed by Respondent and notarized.

j. One of the “interest” payments issued by Respondent, dated 2/18/10, and in the amount of \$2655.00, was returned as “not sufficient funds”.

k. Respondent has ceased making payments to Ms. Burks.

5. Information from Respondent's appointing insurer, State Farm, indicated the following:

a. Respondent accepted money from consumers Dalton and Betty Beaty on May 15, 2006, May 22, 2007 and October 8, 2007 in the amounts of \$250,000, \$350,000.00 and \$30,000 respectively. The consumers hold a mortgage on Respondent's office building (third in line).

b. Checks were written on the State Farm Bank Benefits Management Account of Rachel Johnson and made payable to Respondent for \$50,000 on August 3, 2005; on the State Farm Bank Benefits Management Account of Chad Johnson for \$50,000.00 on July 28, 2005; and a check written by Mr. Johnson and made payable to Respondent for \$15,000 (this transaction indicated a "CD" notation on the memo line". State Farm investigations revealed that, with regard to Ms. Johnson's check, it was to be placed into a savings account that would pay 7% interest. There was no paperwork provided and many of the "interest checks" paid out by Respondent were returned "non-sufficient funds".

c. State Farm investigators also found evidence that an additional seven checks with a total of \$123,800 were written to Respondent indicating various investment activities by consumer William Don Smith from August 2004-February 2007. Another five checks totaling \$43,000 were deposited into Respondent's account between March and October 2003.

#### **CONCLUSIONS OF LAW**

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

6. The Respondent is in violation of Ark. Code Ann. §23-64-216(a) (1) which provides that a license may be suspended or revoked for violation of any of the causes listed in Ark. Code Ann. § 23-64-512.

7. The Respondent is in violation of Ark. Code Ann. § 23-64-512(a)(2) which provides that a license may be suspended or revoked for violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner.

8. The Respondent is in violation of Ark. Code Ann. § 23-64-512(a)(7) which provides that a license may be suspended or revoked for having admitted or been found to have committed any insurance unfair trade practice or fraud.

9. The Respondent is in violation of Ark. Code Ann. § 23-64-512(a) (8), which provides that a license may be suspended or revoked for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. By taking money from customers, representing them as "investments", using them as personal funds, having checks returned as "non-sufficient funds" and failing to make all payments as agreed, Respondent has shown incompetence, untrustworthiness and financial irresponsibility.

10. The Respondent is in violation of Ark. Code Ann. § 23-66-501(4)(d), which provides that it is a fraudulent insurance practice to embezzle, abstract, purloin, or convert moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance.

11. Ark. Code Ann. §23-64-223, which provides that an agent who collects money in his capacity as a licensee will act in a fiduciary capacity and remit the money to the person entitled thereto.

12. At the upcoming hearing, the Department seeks administrative penalties and sanctions, up to and including revocation of the Arkansas insurance licenses of Respondent based on the above allegations.

**IT IS THEREFORE ORDERED AND ADJUDGED, as follows:**

1. Due to the gravity of the allegations and averments, it is found that a public emergency exists for the immediate suspension of Respondent's licenses.

2. Pursuant to Ark. Code Ann. §§ 23-64-216(e), any and all licenses issued by the Department, whether acquired by Respondent, for being a broker, agent, agency, solicitor, or consultant in this State, are hereby suspended, pending a promptly instituted hearing on the above matter. Respondent's failure to appear at the administrative hearing will prompt a recommendation to the Commissioner and the hearing officer to immediately revoke all insurance licenses issued to Respondent.

3. The Department shall notify Respondent's appointing insurance companies of this action pursuant to Ark. Code Ann. § 23-64-217(a)(3).

4. The Department reserves the right to amend and/or supplement the facts contained in this Order to include additional violations of state law, with notice to Respondent.

5. A Notice of Hearing is enclosed. At the Hearing, the Department will seek to revoke all insurance licenses of Respondent based on the above allegations.

IT IS SO ORDERED THIS 13<sup>th</sup> DAY OF MAY, 2010.

  
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JAY BRADFORD  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS