

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

ARKANSAS INSURANCE DEPARTMENT,)
Petitioner)
)
vs.)
)
STEVEN A. COTRONEO,)
Respondent)
)

A.I.D. NO. 2015- 002

REVOCATION ORDER

On this day, the matter of Steven Cotroneo (“Respondent”) came before Jay Bradford, Arkansas Insurance Commissioner (“Commissioner”). The Arkansas Insurance Department (“Department”) was represented by Ashley Fisher, Associate Counsel, in this matter. From the facts and law before the Commissioner, he finds as follows:

PRELIMINARY FINDINGS

Before resolving the merits of the case there are preliminary matters raised by the Respondent in need of resolution. Respondent, throughout the hearing and in his briefs, accused the Hearing Officer, William R. Lacy, of bias. As stated on the record, the Hearing Officer had no prior knowledge of Respondent’s dealings with the Department prior to being designated Hearing Officer. Respondent provided no proof of any communication or other evidence that would indicate any improper conduct in this regard. Under the Administrative Procedures Act it is not error for a hearing officer to be familiar with the subject matter nor the law involved. Respondent’s attorney admitted to met with the Commissioner during the pendency of this case and stated that meeting resulted in the Department modifying its approach. Undersigned never interfered with how the Hearing Officer presided over the case nor is there any evidence of interference with Department staff regarding the presentation of its case. (September 11, 2014 Tr. 296-297). See below:

MR. PICKENS: Your Honor, just for the record, all I wanted to say is, I know this has been a contentious hearing on both sides. I apologize for any part that my contentions -- on my part, any contentious activity. I think you know I'm pretty compassionate about some things. And I consider all of y'all friends. This was all business, certainly not personal. And I'm sorry you took my FOI request as --

HEARING OFFICER: I appreciate your --

MR. PICKENS: -- it was certainly not intended that way. It was just to cover my bases from a professional standpoint, based on some strategy changes I had seen since I had my talk with -- brief discussion with the Commissioner. But again, this is business, it's not personal, and I apologize if anybody has taken it any other way.

Next, Respondent makes allegations respecting a lack of due process. The Insurance code provisions and the applicable Administrative Procedures Act requirements were adhered to. All evidence accumulated by the Department relating to this matter was made available to the Respondent. The Department provided subpoenas when requested by Respondent where relevant to the issues involved. Respondent was given an opportunity to confront witnesses and did so, including the one witness where the subpoena was not allowed for an irrelevant purpose. Several days of hearings were held and the Respondent was given great latitude in what he presented. The transcript, in fact is comprised of 670 pages of testimony and argument independent of the voluminous exhibits tendered and admitted, all admitted without objection by either the Respondent or the Department. The hearing was the due process Respondent was entitled to and he took full advantage thereof.

An emergency suspension order was previously entered in this matter and conformed to the Commissioner's statutory authority.

A.C.A. §23-64-206(e)(1): If the commissioner determines that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in his or her order, pending an administrative hearing, the commissioner may:

- (A) Issue a summary suspension of any license issued by him or her; or*
- (B) Issue an emergency cease and desist order.*

Issues regarding standard of review by an appellant court are not relevant to application of the code at the administrative hearing level. That said, it is obvious that a complete record and decision are necessary at the hearing level that will allow an appellant court a complete record to review according to the standard of review are set forth in the Insurance Code regarding appeals of the Commissioner's decisions.

A.C.A. §23-61-307(g): Any appeal shall be upon the basis of the record so presented.

(2) In any review the findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

(3) If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceedings before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper.

(4) The commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence taken pursuant to subdivision (g)(3) of this section. The commissioner shall file the modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his or her recommendation, if any, for the modification or setting aside of his or her original order with the return of the additional evidence.

And,

A.C.A. §25-15-212(g) and (h): The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the agency's statutory authority;

(3) Made upon unlawful procedure;

(4) Affected by other error or law;

(5) Not supported by substantial evidence of record; or

(6) Arbitrary, capricious, or characterized by abuse of discretion.

After review of the exhibits and testimony of the witnesses, I find the Department has met its burden of proof by a preponderance of the evidence by establishing with substantial evidence violations of the insurance code.

FINDINGS OF FACT

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

2. Respondent held Arkansas Resident Producer License No. 45419 and resides in Cabot, Arkansas. Respondent's producer license is currently suspended pursuant to A.I.D. Order No. 2012-301.

3. On or about December 11, 2011 a Complaint from Ms. Debbie Lemay was received in the Consumer Services Division of the Department. Because of the allegations involved, it was immediately forwarded to the Legal Division for review. An investigation was commenced.

4. An Emergency Suspension Order was issued on April 16, 2012 based upon voluminous information provided by the Complainant and the companies involved. (The Emergency Suspension Order was erroneously dated April 16, 2011, but the Department admitted on the record to this scrivener's error.)

5. The Department was approached by Respondent's then-attorney, Tim Blair, to hold off any administrative proceedings until the criminal investigations into the matter were concluded. Mr. Blair withdrew from the case on April 10, 2014 and the hearing was scheduled on May 7, 2014. The Department was notified on April 18, 2014 that Respondent was represented by current counsel, Mr. Mike Pickens, who asked, and was granted an extension of time to prepare for the hearing. The hearing was subsequently held over a period of three days, June 24, 2014, July 30, 2014 and September 11, 2014.

6. Respondent was a life and health agent advising Mr. and Mrs. LeMay on financial insurance products. Upon Mr. LeMay's retirement he facilitated the LeMay's movement of existing annuities with little or no surrender charges and within a couple of years of maturity to new annuities bearing significantly more in the way of surrender charges and many years to maturity. Testimony and evidence was presented concerning the fact that Mr. LeMay was ultimately diagnosed with dementia in 2009.

7. Respondent and the LeMays entered into a partnership named LECO. It was a general partnership requiring each to bear the profits and losses equally, one-half to Respondent and one-half to the LeMays. The partnership borrowed money and the LeMays contributed cash proceeds from a home equity line of credit and making withdrawals from several annuities which Respondent had placed them into and were subject to significant surrender penalties. The funds were used to purchase a property in Northwest Arkansas to be updated and resold. Respondent, in LECO's name established credit, including a credit card, the proceeds of which he used for personal expenses unrelated to LECO's business. He ultimately entered into a consent judgment to that effect. Respondent also used LECO funds for his personal and family's support. Additionally, his son lived there for a period of time rent free and his son's girlfriend lived there and paid rent money directly to Respondent, not LECO.

8. Finally, the house was sold at a loss. Respondent has not paid his share of that loss to Ms. LeMay. Mr. LeMay is deceased and could not testify.

9. It is also undisputed that Respondent has failed to file or pay Federal and State income taxes for several years prior to the complaint filed against him.

CONCLUSIONS OF LAW

Provisions of code violated include:

§ 23-64-216: (a) *The Insurance Commissioner may suspend for up to thirty-six (36) months, may revoke or refuse to continue, or may place in probationary status any license issued by him or her if after notice to the licensee and after hearing he or she finds any one (1) or more of the following causes exist:*

(1) In the case of an insurance producer or broker licensed as an insurance producer, for any of the causes under § 23-64-512; or

And,

23-64-512: (a) *The Insurance Commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with § 23-64-216 or any combination of actions for any one (1) or more of the following causes:*

...

(8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility;

...

(15) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax;

...

(d)(1) Be ordered to pay restitution under § 23-61-110; and

10. A source of money used to fund LECO was insurance policy proceeds, particularly annuities sold by Respondent and cash withdrawals with substantial surrender penalties. Those annuities had been recent replacements of other annuities with significantly lower surrender penalties and were within four years of maturity which would have avoided penalties.

11. Even with the withdrawals from the annuities to fund the LECO partnership, the home purchased for remodeling was encumbered by a mortgage for almost its entire purchase price. LECO also applied for and received credit cards with which Respondent made further charges. The only need for the annuity proceeds was to fund the remodeling which was significantly less than the amounts withdrawn. Much of the funds were used by Respondent to pay for personal expenses. The Respondent and his wife testified to this and the Department presented compelling evidence of those personal expenses. Further, Respondent consented to a personal judgment to a creditor for those funds charged to LECO

credit cards. LECO (as the partnership and, by implication the Lemays) was dismissed from the lawsuit.

12. Ark. Code Ann. §23-64-512(a)(8) sets forth the test, generally, that a producer must avoid. Here Respondent may or may not have intended to use fraudulent, coercive, or dishonest practices, but he did demonstrate, by using the complainant's funds up and above what was required to purchase and remodel the property, incompetence in his business dealings with an insurance client as well as his own financial irresponsibility. Additionally, by incurring personal expenses and using his clients' insurance proceeds to satisfy those expenses, he demonstrated untrustworthiness.

13. No evidence was presented regarding a failure of good personal or business reputation. In fact, it may be presumed, Respondent possessed such characteristics which made his ability to convert the funds to his personal use easier to accomplish.

14. Ark. Code Ann. § 23-64-512(a)(15) was also violated. Respondent did not pay federal or state income taxes for six years. Although he testified he has now filed the returns, those returns, by his own admission reflected tax due for that six year period. The statute is clear, it is "failing" to pay the tax that is the violation. There is no proof in the record regarding whether those taxes have been satisfied by payment or arrangement to pay prior to the date each tax year's obligation became due. There is an affidavit which was unsigned but notarized which was tendered as an exhibit by Respondent, and admitted. Subsequent to the conclusion of the hearing, the Respondent tendered an identical affidavit where the purported affiant executed it after the date of the notary acknowledged the affiant's signature. Even if the affidavit was proper, it does not address allege satisfaction of taxes due by payment nor that an agreement to pay taxes was entered into for each year prior to the taxes becoming due that has been honored by the Respondent. In fact, the Respondent only attempted to work out the tax problems when they became an issue. It can be inferred

he would have avoided addressing the tax issue for as long as possible. That indicates financial irresponsibility under Ark. Code Ann. § 23-64-512 (a)(8). Although, after the commencement of the hearing, Respondent did make arrangements to pay delinquent state taxes, the affidavit, in fact, does not address State income tax liability and Respondent put on no proof that his State tax obligations are current.

15. The Department alleged violations concerning suitability regarding the surrender of annuities with resulting surrender charges and moving the proceeds into new annuities with more surrender charges and longer terms until maturity. The movement of the annuities is a close issue and the Department would have prevailed if there had been proof Respondent had been preparing to propose the LECO business arrangement prior to the movement. Still, the effect is basically the same: Annuities funds were used to fund LECO and never returned to Mrs. LeMay minus her share of the \$10,000 loss on the sale of the property and her one-half share of the legitimate improvement and operating expenses. There was additional testimony regarding suitability and from the insurers involved. It cannot be determined by a preponderance of the evidence that sufficient proof exists regarding suitability violations, but it is abundantly clear this amounted to a violation of §23-64-512(a)(8) and could be inferred as “coerce” in that Respondent requested the LeMays to surrender the annuities to fund the on going LECO operations or risk default on the loan used to buy LECO’s only asset, the Northwest Arkansas property.

16. The final issue to be resolved is the Department’s request for restitution. It is without question that the Commissioner has the statutory authority to consider and order restitution.

A.C.A. §23-61-110(a)(3): If the commissioner finds that any person has violated any provision of the Arkansas Insurance Code, he or she may order restitution of actual losses to affected persons in addition to the denial, suspension, or revocation of any license or certificate or the imposition of any administrative or civil penalty.

§ 23-64-216(d)(3): *The commissioner may also order restitution of actual losses to affected persons.*

And,

23-64-512(d)(1): *Be ordered to pay restitution under § 23-61-110.*

Since restitution is allowed, it is necessary to determine the proper amount which will be limited to the purchase, investment and ultimate sale in the Northwest Arkansas property.

17. According to the exhibits, the LeMays put in to LECO \$30,445.67 cash and borrowed an additional \$53,991.18 from a home equity line of credit and other sources including annuity proceeds for a total investment of \$84,326.85. At the ultimate sale of the property \$13,636.77 was realized in net proceeds. According to the testimony, exhibits and briefs, Mr. Cotroneo stipulated or otherwise admitted to receiving \$2,900.00 in rent and deposit which was not shared with the LeMays. The LeMays received net of the mortgage against the property during this time, \$428.18 per month for 9 months totally \$3,853.62 (from Sept. 2011 until the sale of the property in June 2012). There was also testimony that approximately \$112.28 (September 11, 2014 TR. 242) was left in LECO's account as of the hearing. There is no evidence that one-half of the final account balance has been tendered to the LeMays.

18. The LECO agreement was to share the profits or losses equally between the LeMays as to one-half and Mr. Cotroneo as to the other. Computing the losses, we can determine that the transaction lost \$70,690.08 (\$84,326.85 less \$13,636.77) which was to be shared equally. Therefore Respondent owes Mrs. Lemay \$35,345.04 from the sale of the property to cover Respondent's half of the loss.

19. Total net rental proceeds were \$6,753.62 (\$2,900 plus \$3,853.62). Each party was to share equally in that income. Mrs. LeMay is thus due \$3,376.81 but was actually paid \$3,853.62. Respondent's should therefore be credited with that difference of

\$476.81. Finally, the ending bank balance must be split which testimony indicates Respondent has not yet accounted to Mrs. LeMay for, or \$56.14. Restitution is therefore computed as loss from property sale, including improvements made \$35,345.04, plus one-half of the ending bank balance of \$56.14. for a total of \$35,401.18. From this we must deduct the overpayment of rent to Mrs. LeMay of \$476.81. Restitution is therefore set at \$34,661.55.

RECOMMENDATIONS OF THE HEARING OFFICER

WHEREFORE, based upon the foregoing Findings of Fact, Conclusions of Law, and other matters before him, the Hearing Officer recommends:

20. Based upon the nature of the Respondent's actions and violations of the Arkansas Insurance Code, I recommend immediate revocation of his Arkansas Resident Producer License No. 45419.



WILLIAM R. LACY
GENERAL COUNSEL and
HEARING OFFICER

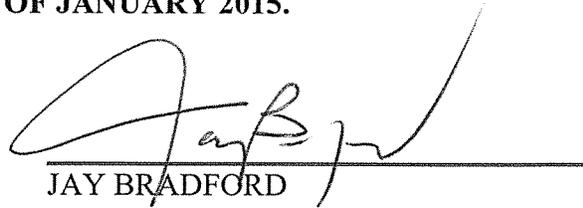
CERTIFICATION

I, Jay Bradford, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer were made by and under my authority and supervision by William R. Lacy, General Counsel and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations in full and enter this Order.

THEREFORE, it is hereby ORDERED that the Respondent's Arkansas Non-Resident Producer License No. 45419 is revoked. Respondent shall not conduct the business of insurance in

the State of Arkansas unless and until he obtains a producer license at a future date consistent with the provisions of the Arkansas Insurance Code and has paid restitution in the amount stated above.

IT IS SO ORDERED THIS 6th DAY OF JANUARY 2015.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS