

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO. 9901-AG10-1122-161

IN THE MATTER OF:)

Carrie Fay,)
Respondent.)

3109 Cumberland Drive)
Lawrenceburg, IN 47025)

Type of Agency Action: Enforcement

Insurance License No. 708391

FILED

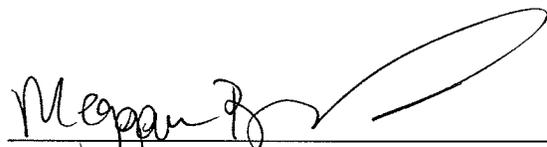
MAY 09 2011

STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF FILING OF RECOMMENDED ORDER

The parties of this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order are deemed filed as of this date.

To preserve an objection to this order for judicial review, you must object to the order in a writing that: 1) identifies the basis for your objection with reasonable particularity; and 2) is filed with the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.



Meggan Brumbaugh
Administrative Law Judge

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER**

Administrative Law Judge, Meggan Brumbaugh, having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent Carrie Fay ("Respondent"), which came to be heard on February 8, 2011, at approximately 1:06 p.m. at the Indiana Department of Insurance, 311 West Washington St., Indianapolis, Indiana 46204.

The Indiana Department of Insurance was represented by counsel, Nick Mann. Respondent was not present and was not represented by counsel. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the Administrative Law Judge now makes the following Findings of Fact and Conclusions of Law, and issues her Recommended Order as follows:

FINDINGS OF FACT

1. Carrie Fay ("Respondent") is a licensed non-resident insurance producer, holding license number 708391.

2. Respondent was properly notified of the above hearing date and time by certified U.S. Mail #7004 1160 0000 3839 6031 sent to her home address.

3. On November 12, 2010, the Department received a complaint ("the Complaint") from Michael Barrick ("Mr. Barrick") alleging that Respondent had fraudulently applied for and signed an application ("the Application") for life insurance on behalf of Mr. Barrick. Mr. Barrick received the policy in the mail on November 8, 2010. (*Exhibit A*).

4. Respondent had made several calls to Mr. Barrick's home regarding life and disability insurance, but Mr. Barrick never applied for a life insurance policy through the Respondent. Mr. Barrick and his wife told Respondent repeatedly that they were not interested in purchasing a life insurance policy. (*Transcript pg. 14*).

5. Mr. Barrick testified that the Application contained a Social Security number that was not his, and that the age and income listed were incorrect. In addition, the doctor listed on the Application was not his doctor, the bank information was not his, and the signature on the bottom of the Application was not his signature. The only items on the application that were Mr. Barrick's were the name, address, telephone number, and birth date. (*Transcript pg. 11. 12; Exhibit A*).

6. Mr. Barrick and his wife never had a face-to-face meeting with Respondent, but only communicated with her through telephone conversations. After

receiving the life insurance policy in the mail, Mr. Barrick tried to call Respondent, but could not reach her. (*Transcript pgs. 8 – 16*).

7. Mr. Barrick indicated his concern that he would be billed for a product that he did not want or authorize, or that because the bank account information was not his, that someone else would be billed instead. To Mr. Barrick's knowledge, he and his wife have not lost money as a result of this incident. (*Transcript pg. 14*).

8. David Rose ("Mr. Rose"), an investigator with the Department, made multiple attempts by telephone for several weeks to get a response to the Complaint from the Respondent. (*Transcript pgs. 17 & 18*).

9. On November 28, 2010, the Respondent sent an e-mail response to Mr. Rose regarding the Complaint. Respondent stated that she was shocked and wanted to speak to Mr. Rose regarding the Complaint. (*Exhibit B*).

10. When Mr. Rose spoke to Respondent over the phone, Respondent told Mr. Rose that she intended to review her records and hoped she could find an explanation for the allegations in the Complaint. Respondent stated that she had been training an employee, and they had engaged in a role-playing exercise in which the employee completed an application. Respondent suggested that maybe the Application was accidentally submitted along with genuine applications. (*Transcript pg. 19, 20*).

11. On November 30, 2010, Mr. Rose sent Respondent's managing agent, Michael Owens ("Mr. Owens"), an e-mail requesting to speak to him regarding the Complaint. Respondent was required to submit all applications for new business to Mr. Owens. Mr. Rose sought to request a copy of the application Respondent submitted to Mr. Owens to compare it to the Application. (*Transcript pg. 21, 22*).

12. Mr. Owens forwarded his copy of the application to Mr. Rose. Mr. Rose compared the two applications, and there were no differences between the two applications. (*Transcript pgs. 21 - 23*).

13. On December 6, 2010, Mr. Rose sent an e-mail to Amanda Law of the National Agents Alliance (“NAA”), the managing general agent of both the Respondent and Mr. Owens. Mr. Rose again sought to verify that the application that Mr. Owens had submitted to NAA was identical to the application originally submitted from Respondent to Mr. Owens. The applications were identical. (*Exhibits C, D; Transcript pgs. 23 - 25*).

14. On December 7, 2010, Mr. Rose sent an e-mail to Respondent asking if she was able to gather any additional information regarding the Complaint. Respondent replied to Mr. Rose’s e-mail on December 29, 2010, stating that she did not have an answer for what took place regarding allegations in the Complaint. (*Exhibit B*).

15. On December 10, 2010, Mr. Rose received an e-mail from Angela Ballard of the Indiana Bureau of Motor Vehicles responding to a request to verify whether the Indiana driver’s license number listed by Respondent on the Application was a valid driver’s license number. While the numbers were properly formatted for an Indiana driver’s license, the number listed on the application was not a valid Indiana driver’s license number. (*Exhibit F*).

16. On December 23, 2010, the Department received a letter from JPMorgan Chase, responding to a request to verify the owner of the bank account number Respondent listed on the Application. The bank account number was valid, and belonged to residents of San Diego, California, until it was closed on March 30, 2010. The routing

number on the bank account was specific to Indiana Chase checking accounts. (Transcript pgs. 25, 26; Exhibit E).

17. On January 4, 2011, Mr. Owens sent an e-mail to Mr. Rose regarding whether Respondent had received commission on Mr. Barrick's life insurance policy. Mr. Owens confirmed that Respondent received a commission, and forwarded Respondent's commission statement for October and November of 2010. (Exhibit G).

18. Respondent's commission statement showed that she wrote an application for Mr. Barrick and received a commission of \$444.45. (Exhibit G).

19. Conclusions of Law that can be adopted as a Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code and all procedures and rules set forth by such Act have been followed in this matter.

3. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.

4. Merriam-Webster defines "forge" in the following manner: "to make or imitate falsely especially with intent to defraud." <http://www.merriam-webster.com/dictionary/forge>. Respondent presented no logical explanation to Mr. Rose leading to a conclusion other than that she forged the Application, nor did she participate in the hearing to submit evidence on her behalf.

5. Forging a person's signature and submitting an incorrect application for a policy which was not requested or authorized is a violation of Indiana insurance law.

6. The Department has met its burden of proof and shown by a preponderance of the evidence that Respondent's conduct is cause for discipline under Indiana Code §27-1-15.6-12(b)(8) and Indiana Code §27-1-15.6-12(b)(10).

7. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

RECOMMENDED ORDER

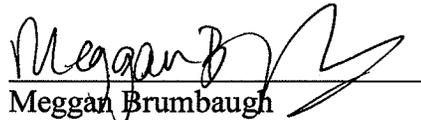
With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. Respondent's non-resident insurance producer license number 708391 should be permanently revoked.

2. Respondent should be required to pay a civil penalty to the Department in the amount of **five thousand dollars (\$5000.00)**, due in full within ninety (90) days after the date of the Commissioner's Final Order.

3. Respondent should be required to repay the commission of four hundred forty-four dollars and forty-five cents (\$444.45) received from the Application to NAA within thirty (30) days after the date of the Commissioner's Final Order, unless Respondent can provide proof to the Department of prior payment.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 9th day of May, 2011.


Meggan Brumbaugh
Administrative Law Judge

Distribution:

Nick Mann
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

Carrie Fay
3109 Cumberland Drive
Lawrenceburg, IN 47025

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FINAL ORDER

On May 9, 2011, the Administrative Law Judge, filed her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended order and Notice of Filing Recommended Order on Respondent by mailing the same to her home address.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Respondent has not filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than eighteen (18) days have elapsed.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Respondent's non-resident insurance producer license number 708391 shall be permanently revoked.
2. Respondent shall pay a civil penalty to the Department in the amount of **five thousand dollars (\$5000.00)**, due in full within ninety (90) days.
3. Respondent shall pay the commission of four hundred forty-four dollars and forty-five cents (\$444.45) received from the Application to NAA within thirty (30) days, unless Respondent can provide proof to the Department of payment.

ALL OF WHICH IS ORDERED by the Commissioner this 5th day of July, 2011.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

Nick Mann, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

Carrie Fay
3109 Cumberland Drive
Lawrenceburg, IN 47025