

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

ARKANSAS INSURANCE DEPARTMENT,)
Petitioner)
)
vs.)
)
RACHEAL A. HENLEY, LICENSE NO.)
381936,)
Respondent)

A.I.D. NO. 2012- 692

REVOCATION ORDER

On this day, the matter of Racheal A. Henley ("Respondent") came before Jay Bradford, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held August 16 - 17, 2012, in the Administrative Conference Room of the Arkansas Insurance Department ("Department") pursuant to a Notice of Hearing dated July 25, 2012. The hearing was held before Chief Deputy Commissioner Lenita Blasingame ("Hearing Officer") pursuant to her appointment by the Commissioner in accordance with Arkansas Code Annotated § 23-61-103. The Department was represented by Amanda J. Andrews, Associate Counsel, and Respondent was represented by Ray Hodnett. From the facts and law before the Commissioner, he finds as follows:

FINDINGS OF FACT

1. Respondent is an Arkansas Resident Title Insurance Agent, license number 381936, and is employed by Edwards Title, LLC ("Edwards"), an Arkansas Resident Title Insurance Agency, number 325319, located at 1304 Cherry Street, Van Buren, Arkansas.
2. Respondent is the Operations Manager of Edwards and is authorized to write title insurance through Edwards' appointment(s). In her capacity as Operations Manager,

Respondent oversees Edwards' employees, handles closing transactions, disbursements and deposits, and signs title commitments and policies. Respondent has also assisted with reconciling the agency's escrow account.

3. On September 26, 2011, Stewart Title Guaranty Company ("Stewart") notified the Department that it terminated Edwards' appointment for cause. Specifically, in the Agency Appointment Termination Request, Stewart stated that an employee of Edwards stole money from the escrow account, but neither Respondent nor Charles B. Dyer ("Dyer"), the owner of the agency, reported the theft to Stewart or the Department as required by Arkansas Code Annotated § 23-66-505. Further, Stewart discovered in an audit of Edwards' escrow account, shortages in the account and delays in reconciliation of the account.

4. During the course of its investigation, the Department reviewed a number of audits that Stewart conducted of Edwards pursuant to Arkansas Code Annotated § 23-103-411, and discovered consistent problems, including delinquency in escrow account reconciliations, shortages in closing files and excessive delay in paying off mortgages. The Department also discovered that Edwards did not report two (2) escrow accounts and an interest-bearing sweep account to Stewart and, thus, were not subject to the audit.

5. On November 17, 2011, the Department sent a notice of Investigative Conference to Respondent, which was held on December 20, 2011, and Respondent appeared with counsel. Due to Dyer's and Respondent's inability to explain at the conference the details of the escrow account theft and manipulation, the Department retrieved files from Edwards for closings performed by Susan Hudson, Edwards' former employee who is alleged to have stolen the escrow funds, as well as reconciliations and bank statements for all escrow accounts January 1, 2009, through February 15, 2011.

6. A Notice of Hearing was mailed to Respondent by certified mail on May 31, 2012, advising that a hearing was scheduled for July 3, 2012. Due to several scheduling conflicts, the hearing was rescheduled for August 16 – 17, 2012, and Respondent was served with an Amended Notice of Hearing via electronic mail to her counsel on July 25, 2012.

7. Respondent appeared at the hearing with her counsel, Ray Hodnett, and her testimony is summarized as follows:

- a) On or about February 15, 2011, BancorpSouth notified Edwards that a mortgage payoff from a closing performed at Edwards had not been made, and shortly thereafter, Susan Hudson admitted that she had not paid off the loan at issue.
- b) Hudson worked as a closing agent for Edwards and did not hold a title agent license, nor was she required to hold a title agent license.
- c) Dyer investigated the escrow account manipulation and theft, and Respondent assisted him when asked to explain certain documents or procedures from a closing transaction.
- d) It was also discovered that Hudson previously stole funds from the escrow account several years prior and was not terminated or removed from her capacity as a closing agent or an authorized signor on checks.
- e) Following Hudson's first theft, the agency put in place the following controls: a second signature on checks from the escrow account was required and the escrow account was reconciled weekly. There were no requirements for the second signor to make sure the disbursement was proper.
- f) Sometime in 2010, the agency implemented a system called "Green Binder Documents" and a dual calendar system to ensure that closing and post-closing

procedures were properly handled. Respondent testified that she oversees closings, ensures that disbursements and deposits are timely made and supervises the above-noted procedures. Also, after Dyer was involved in a car accident in late 2010, Respondent assisted Dyer with escrow account reconciliations to prepare for an audit in December 2010, and she issued final title insurance policies by signing Dyer's name on the policy.

- g) Respondent admitted that she did not report the escrow theft to the Department or Edwards' underwriters, and at the Investigative Conference, she and Dyer were not able to provide a full explanation of and documentation to support their theft allegation against Hudson or assurances that all consumers' loans were paid off.

8. At the hearing, the Department established through witness testimony, Edwards' closing files, bank statements from Edwards' current and old escrow accounts, and the summary of Dyer's internal investigation into the alleged escrow account theft and manipulation a number of violations of Arkansas law. The violations are as follows:

- a) Respondent diverted and/or misappropriated escrow funds and premiums received in her fiduciary capacity as a title agent, and failed to account for and pay these funds and premiums or return the money to the person entitled to it. The evidence established that Respondent knew or should have known of escrow account manipulation, in which for a period of three (3) years, funds from one closing were used to payoff a mortgage from a previous closing, and the subsequent theft by Hudson.
 - i. Respondent was the second signor on several of the disbursement checks involved in the escrow manipulation;

- ii. The bank sent emails to Respondent confirming receipt of deposits for the closings that were involved in the manipulation;
 - iii. Respondent was responsible for all supervision, monitoring of accounts, and reconciliations during the time that Dyer was out due to an injury, and nearly one quarter of the escrow manipulation occurred during the time of Dyer's medical leave;
 - iv. After Hudson's escrow account manipulation and theft were discovered, Respondent participated in "balancing" several of the closing files that contained overages by writing a check for the overage back to the escrow account. Respondent did not account for and/or return funds to the persons so entitled;
 - v. After discovering that a payoff had not been made, Respondent made said payoff using funds from another closing, and this activity of floating escrow account funds continued for six (6) weeks until Dyer replaced the funds in the account;
 - vi. Respondent transferred funds from one, old "dying" escrow account to other escrow accounts in order to cover shortages in those accounts.
- b) Respondent admittedly knew but did not report the alleged theft from the escrow account to the Department.
- c) Title policies were not properly reported to the underwriter, and, therefore, premiums were not remitted to the insurer within the timeframe specified in the contract with their insurer. Respondent handled reporting of policies for the

agency. Respondent was also responsible for remitting the premium payments to the underwriter.

- d) Respondent issued title insurance policies prior to payoff of the mortgage which encumbered the property as described in the title commitment.
- e) After issuing a title insurance policy, Respondent did not deliver the policy to the consumer in a timely manner.

- i. In the records provided by Dyer for January 2009 through February 2011, 293 files contained original title policies and warranty deeds with original cover letters signed by Respondent, showing that this was her responsibility.
- ii. On February 27, 2012, David Sanders filed a formal complaint with the Department against Edwards on the grounds that Edwards did not timely issue the title insurance policy and original deed for property purchased in September 2011. Specifically, Mr. Sanders' closing took place at Edwards' office on September 26, 2011, and he received the title insurance policy from Stewart on February 25, 2012. After the closing, the original deed was mailed to the wrong address and listed the seller's name on the envelope, not the buyer's name. When the envelope was returned to Edwards, no additional action was taken to deliver the original deed to the buyer, and the original deed was simply left in the closing file. Mr. Sanders' closing took place well after the remedial measures by Edwards were implemented, including the green binder docs, dual

calendar system and green envelope in which post-closing documents, such as the policy and warranty deed, were mailed to the consumer.

iii. Four (4) separate financial institutions confirmed that they did not receive final title insurance policies and/or original loan documents from Edwards.

One of the banks terminated its relationship with Edwards for the cited reasons of poor service, lack of urgency on closings, failure to respond to questions in a timely manner, and failure to provide original recorded documents.

- f) Respondent' license number was not printed or written beneath her signature on all title commitments and policies issued.
- g) The printed names and license numbers of the title insurance agency and the affiliated title insurance agent authorized to issue the title commitment or policy on behalf of the title insurer was not properly listed on Edwards' title commitments or policies. Respondent is the operations manager of the agency and responsible for this oversight.
- h) The company name listed on the title insurance policies, closing protection letters, and the Underwriting Agreement with Stewart was "Charles B. Dyer, Jr. DBA," which is not the name licensed by the Department nor was it filed with the Department as an assumed business name. Respondent is the operations manager of the agency and responsible for this oversight.
- i) Title insurance policies issued by Edwards did not include proper contact information of the producer or agency soliciting the policy and the Arkansas

Insurance Department. Respondent is the operations manager of the agency and responsible for this oversight.

- j) The title insurance commitment which Respondent furnished to purchasers and mortgagors did not incorporate the statutory language required by Arkansas Code Annotated § 23-103-413(2) on the first page in bold type. Respondent is the operations manager of the agency and responsible for this oversight.
- k) The closing files provided by Dyer did not contain sufficient records, including evidence of underwriting title, determination of insurability, and records of their escrow operations and escrow accounts. Respondent is the operations manager of the agency and responsible for this oversight. Respondent is also responsible for supervision of the closing process and closing agents.

CONCLUSIONS OF LAW

9. The Commissioner has jurisdiction over the parties and subject matter pursuant to Arkansas Code Annotated § 23-61-103, *et seq.*

10. Arkansas Code Annotated § 23-64-512(a) provides, in pertinent part, that the Commissioner may place on probation, suspend, revoke, or refuse to renew an insurance producer's license upon finding that an insurance producer has violated one or more of the grounds enumerated therein, including violating a law or regulation of the Commissioner; improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business; using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility; and forging another's name to an application for insurance or to any

document related to an insurance transaction. Ark. Code Ann. § 23-64-512(a)(2)(A), (2)(B), (4), (8), (10).

11. The witness testimony and supporting documentation entered into evidence at the hearing are sufficient to make a finding that Respondent is not competent, trustworthy, financially responsible and of good business and personal reputation and no longer meets the qualifications for a title agent license. See Ark. Code Ann. §§ 23-64-506(c); 23-64-506(e)(2); 23-64-512(a).

12. Respondent violated Arkansas Code Annotated § 23-64-223 by diverting and/or misappropriating escrow funds and premiums received as a licensee in her fiduciary capacity as a title agent, and failed to account for and pay these funds and premiums or return the money to the person entitled to it. Respondent provided insufficient proof to refute these allegations, other than the fact that the Respondent was not licensed until March 18, 2011, after the events surrounding the escrow manipulation. While this point is true, there was sufficient evidence and testimony to show further manipulation after the date of licensure by balancing the files and putting overages from a file into the escrow account, instead of returning the funds to the proper party. Further, Respondent's actions prior to her licensure are pertinent in determining whether Respondent continues to meet qualifications for licensure. In the course of the hearing, Respondent admitted to conducting the business of insurance prior to her licensure, which is a violation of Arkansas Code Annotated § 23-64-503. Therefore, Respondent's violations of Arkansas Code Annotated §§ 23-64-223 and 23-64-503 are a basis for license revocation under Arkansas Code Annotated § 23-64-512(a)(2).

13. Respondent admitted that she knew and failed to report to the Department that an employee of the agency stole money from the agency's escrow account in violation of Arkansas

Code Annotated § 23-66-505, which is a basis for license revocation under Arkansas Code Annotated § 23-64-512(a)(2).

14. Respondent failed to timely report policies to the underwriter, and, therefore, premiums were not remitted timely, in violation of Arkansas Code Annotated § 23-64-223(a). Respondent was responsible for reporting the policies and remitting premiums to the underwriter, and Respondent asserted as a defense that she encountered electronic problems during the reporting process. While Respondent did show difficulty in this regard, which is taken into consideration, it was established that there were other available avenues of reporting policies. Respondent is found in violation of Arkansas Code Annotated § 23-64-223(a), which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

15. Respondent issued final title insurance policies prior to payoff, consequently, prior to making a determination of insurability of title in accordance with the title insurer's underwriting practices, in violation of Arkansas Code Annotated § 23-103-408(c). Per the closing instructions and title commitment, a condition to issue a final title insurance policy is to pay off the prior mortgage because the seller keeps legal title to the property until the final payment is made. Thus, a final title insurance policy issued prior to payoff does not actually ensure lien priority as the buyer does not yet have a properly insurable interest. It also has the effect of putting the title insurer on the risk even though the insurable risk is not perfected. Respondent maintains she was not licensed during this time; however, Respondent testified that while Dyer was incapacitated due to a car accident, she issued final title policies and signed Dyer's name to the policies, thereby engaging in the business of insurance without a license. During this time, a number of files were paid off late and after policies were issued, as discovered in Dyer's internal investigation of the alleged escrow account theft. Therefore,

Respondent is found in violation of Arkansas Code Annotated § 23-103-408(c), which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

16. The Department alleged violation of Arkansas Code Annotated § 23-79-121 and provided sufficient evidence that Respondent failed to deliver policies. Respondent's counsel argued that this statute does not apply to title insurance. The Department concedes that the statute is not applicable. However, failure to deliver policies to consumers is a great concern to the Department because the failure to deliver policies and deeds to consumers is fatal to a title insurance agent's ability to hold a license. There are consequences and repercussions to the consumer when he or she does not receive a policy.

- a) Without the policy, the consumer does not have contact information for the title insurer should a claim need to be filed or for the Department, as statutorily required, should a complaint arise.
- b) A title insurance policy requires an underlying search to cover a minimum of the preceding thirty years. A previously issued title insurance policy may be used as a starting point for the search, and a reissue credit is typically offered if the consumer can produce a copy of the policy in advance of the search. Without the policy, the consumer could be denied future discounts on the purchase of title insurance through reissue rate credits based on having a prior policy.
- c) It is a trade practice violation to engage in an unfair or deceptive act or practice in the business of insurance. *See* Ark. Code Ann. § 23-66-205. Depriving the consumer of the title insurance policy for claims information and reissue rate credits, including using the policy to obtain a lower rate from a competitor in the event of a sale or refinance, are indeed unfair practices as the consumer cannot

avail themselves of all advantages of purchasing a title insurance policy. The uninformed or unsophisticated consumer would not have the benefit of knowing where to turn in the case of something going wrong. The failure to deliver a title insurance policy also is deceptive as it essentially conceals the title insurance agent's involvement in the closing.

- d) Failure to deliver final title insurance policies exhibits poor business practices and lack of responsibility on the part of the agent, which are required to find a person fit to obtain and maintain a license.
- e) Failure to deliver policies deprives the consumer of property for which he or she paid, and the agent is improperly withholding, misappropriating, or converting properties received in the course of doing insurance business, in violation of Arkansas Code Annotated § 23-64-512(a)(4).
- f) Failure to deliver the policies is failure to provide the consumer with the statutory notice required by Arkansas Code Annotated § 23-103-413(2).

The foregoing acts are grounds for revocation, pursuant to Arkansas Code Annotated § 23-64-512(a).

17. Respondent failed to put her license number as the countersigning agent on title commitments and policies as required by Rule 87 § 10(D), and she admitted to this violation at the hearing, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

18. Respondent violated of Rule 87 § 10(E), by failing to print names and license numbers of the agency and agent on commitments and policies. It is permissible under our law for an agent to handwrite this information on the commitment and policy. Respondent is in

violation of this Rule, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

19. Respondent violated Arkansas Code Annotated § 23-64-510 by failing to use the licensed name of the agency on policies, commitments, closing protection letters and the underwriting agreement with Stewart. The name that appeared on these documents was not filed with the Department as an assumed business name, and, therefore, could not be used. Respondent provided correspondence with Stewart evidencing difficulties in resolving the incorrect name listed. However, the issue involved more than a simple request for a change of name. Dyer created a new business entity, and a new application, approval from Stewart and new contract was required in order to change the information, and these documents were never submitted to Stewart. Although a violation, this matter is not found to be completely in the Respondent's control. Dyer, as the agency's owner, would have been responsible to complete the application for a new contract with Stewart. While the Department does not find Respondent in violation of Arkansas Code Annotated § 23-64-510, Respondent should understand that she has a duty to be aware of the insurance laws and rules and to make all efforts to comply.

20. Respondent violated Arkansas Code Annotated § 23-79-138(a) by failing to include the contact information of the agency and the Department on its final policies. Respondent failed to provide proof of compliance to refute allegations and is found in violation of this statute, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

21. Respondent violated Arkansas Code Annotated § 23-103-413(2) by failing to provide statutory notice on title commitments. Although Respondent produced a bulletin from Stewart instructing their agents to incorporate the required language in an alternative place, it is

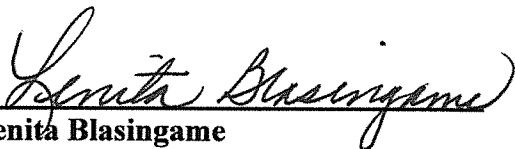
the licensee's responsibility to ensure compliance with Arkansas laws. The failure to properly comply with this statute is a basis for license revocation under Arkansas Code Annotated § 23-64-512(a)(2).

22. Respondent did not maintain adequate records in the closing files, in violation of Arkansas Code Annotated § 23-103-414. As the operations manager and the person who monitors closers and post-closing activities, Respondent was responsible for this oversight, and she did not provide sufficient proof to refute this allegation. Respondent is in violation of Arkansas Code Annotated § 23-103-414, which is grounds for revocation under Arkansas Code Annotated § 23-64-512(a)(2).

RECOMMENDATION OF HEARING OFFICER

WHEREFORE, based upon consideration of the evidence of record, the foregoing Findings of Fact, Conclusions of Law, and other matters before her, the Hearing Officer recommends that:

The Department has met its burden of proof with respect to revoking Respondent's resident title insurance agent license. Respondent no longer no longer meets the qualifications to hold a title insurance license, and I recommend that pursuant to Arkansas Code Annotated § 23-64-512(a), the Respondent's Arkansas Resident Title Insurance Agent License No. 381936 be revoked.


Lenita Blasingame
Chief Deputy Commissioner and
Hearing Officer

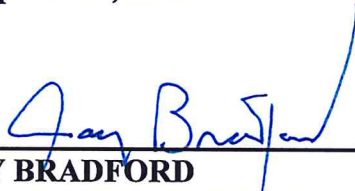
CERTIFICATION

I, Jay Bradford, Insurance Commissioner for the State of Arkansas, do hereby certify that the above and foregoing matter was conducted by Lenita Blasingame, Chief Deputy Commissioner and Hearing Officer, by and under my authority and supervision. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation in full, as set forth herein.

IT IS HEREBY ORDERED that:

Racheal A. Henley's Arkansas Resident Title Insurance Agent License No. 381936 is hereby **REVOKED**. Respondent shall not engage in the business of title insurance in the State of Arkansas.

IT IS SO ORDERED THIS 17th **day of September, 2012.**



**JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS**