BEFORE THE HEARING OFFICER PANEL
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of	)	**Case No: INS 01-06-045**
	)	
ROSA REYES	)	**PROPOSED ORDER**
	)	
	)	

HISTORY OF CASE

Administrative Law Judge Ella D. Johnson conducted a hearing on October 2, 2001 in Salem, Oregon. Assistant Attorney General Kathleen Dahlin represented the Oregon Department of Consumer and Business Services, Insurance Division (the department). Respondent Rosa Reyes (Reyes) was represented by Attorney Carla French. Reyes's attorney informed the department prior to the hearing that neither she nor her client would appear and were not present at the at the hearing.[1]

Pursuant to OAR 137-003-0670, if a party who was notified of the time and place of the hearing fails to appear at hearing not due to circumstances beyond her reasonable control, the Administrative Law Judge may issue a default order only upon a showing of a *prima facie* case made on the record. Reyes failed to appear at hearing and notified the department that she would not appear. Under these circumstances, I find that a default order is appropriate.

At hearing, the department called Bridget Mendoza (Mendoza), Francisco Sanchez Hernandez (Sanchez) and Oregon Insurance Division Investigator Ruth Johnson (Johnson) as witnesses. Interpreter services for Sanchez's testimony were provided by Raquel Soto, a

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[1] This case was originally consolidated for hearing with the Genie M. Wolfer (Wolfer) case, Case No. INS 01-05-015. However, prior to the hearing, Wolfer entered into a stipulated Final Order, which resolved the allegations against her.

qualified interpreter. Reyes appeals the department's June 18, 2001 Notice of Proposed Action (Notice). The department amended its Notice at hearing to delete a portion of the first full sentence on the second page to read that "Reyes gave Mendoza an identification card." The department also deleted the allegation numbered as "2" in its entirety.

NOTICE

On June 18, 2001, the director of the department issued a Notice, which alleged that Reyes, who has never been licensed in Oregon as an insurance agent, violated ORS 744.051(1)(a) in three instances by soliciting and receiving insurance applications and submitting them to insurance companies. The department proposes to assess Reyes a civil penalty in the amount of $3,000.00 pursuant to ORS 731.988.

ISSUE

Whether Reyes violated ORS 744.051 by soliciting and receiving insurance applications from Jose Rogelio Cruz Osornio (Cruz), Mendoza, Sanchez and submitting the applications to the insurance companies warranting assessment of a civil penalty in the amount of $3,000.

EVIDENTIARY RULINGS

The department's Exhibits 1 through 43 were received into the record without objection.

FINDINGS OF FACT

Reyes worked as a customer service representative for Cornerstone Insurance NW, Inc. (Cornerstone) for approximately two and a half years. Cornerstone is owned by insurance agent Genie M. Wolfer (Wolfer). Reyes is bilingual and speaks both Spanish and English. She is not licensed to sell insurance. (Ex. 36-3).

On June 5, 1999, Cruz who wanted to purchase automobile insurance came to Cornerstone. He spoke only Spanish and talked only to Reyes. Wolfer was not present. Reyes prepared and gave Cruz an application to sign for automobile insurance with Clarendon National

Insurance Company (Clarendon) and a receipt for $119 for his down payment on the premium. She also provided Cruz with a temporary insurance identification card. Wolfer later signed the application as the producer although she indicated that she signed on the same date and time that Cruz signed the application. Clarendon thereafter issued a policy for coverage. (Exs. 1-7).

Mendoza was involved in an automobile accident on September 30, 1999. Because she was seven and a half months pregnant at the time, she went to the hospital to be examined. On October 1, 1999, Mendoza went to Cornerstone to get advice and pay for insurance because her insurance had lapsed before the accident. Reyes was alone in the office. Mendoza had only $75, which was not enough money to pay for insurance. Reyes prepared and gave Mendoza an insurance application for coverage with Wasatch Crest Mutual Insurance Company (Wasatch). Mendoza signed the application and dated it October 1, 1999. Reyes issued Mendoza an insurance card with a coverage time and date of 8:45 a.m. on September 30, 1999, which was just a few hours before her accident. Reyes gave Mendoza a receipt for $174.75 for a down payment on the policy although she had not made a down payment. Reyes did not indicate on the application that Mendoza had been involved in an accident or that she had received medical care following the accident. Wolfer subsequently signed the application as the agent even though she was not present for the transaction, and Wasatch issued the policy. Mendoza was subsequently employed by Cornerstone and witnessed Reyes selling insurance without Wolfer being present. (Exs. 9- 14 and testimony of Mendoza).

On November 11, 1999, Sanchez went to Cornerstone to purchase automobile insurance for three of his cars: a Ford, Pontiac, and Chevrolet. He spoke only Spanish, and although there was someone else in the office, he talked only to Reyes. She did everything. Wolfer was not present during the transaction. Reyes asked him questions and they discussed what was covered

and the $500 deductible. Reyes selected the amounts of coverage. She prepared and gave Sanchez an application for automobile insurance to be written through Deerbrook Insurance Company (Deerbrook). The copy of the application given to Sanchez had no agent producer signature and used the subcode "GEN," which is the subcode for Wolfer indicating that she sold the policy. (Ex. 17 and testimony of Sanchez and Johnson).

Reyes gave Sanchez a receipt, number 7725, for his cash down payment of $236.22 on the automobile insurance and an identification card. Thereafter, Sanchez paid in person and in cash. (Exs. 18, 20, 21 and Sanchez's testimony). The application was subsequently signed by Wolfer as the producer. (Exs. 28, 29). Deerbrook never received Sanchez's application or the deposit to bind the policy. (Ex. 22). Reyes was Sanchez's primary contact at Cornerstone. (Ex. 30).

In December 1999, Sanchez was involved in an automobile accident with his neighbor. (Ex. 24). He reported the accident to Reyes. Reyes told him to get an estimate to repair his car. He also reported the accident to the Division of Motor Vehicles (DMV) and DMV requested that Cornerstone provide proof of insurance. On December 13, 1999, Sanchez contacted Reyes at Cornerstone, indicating that he wanted to avoid filing a claim and would try to settle it with his neighbor. Sanchez paid for the repairs himself and was never reimbursed by Deerbrook. (Ex. 32 and Sanchez's testimony).

On February 19, 2000, Sanchez discovered that he was not insured through Deerbrook. Reyes used Sanchez's $236.22 down payment for the Deerbrook policy to obtain coverage through another insurer, OMNI. (Ex. 32). On February 21, 2000, Sanchez signed the application for OMNI but did not make any additional payment. Wolfer signed off on the application as the producing agent that same day. (Ex. 33). The down payment for the OMNI coverage was

$372.25 with an estimated four-month premium of $1,489. (Ex. 33). Because Sanchez was very upset about his insurance coverage, Cornerstone advanced the difference between Sanchez's previous down payment and the amount required by OMNI. (Ex. 35). Sanchez subsequently became angry about the amount of the premium on the OMNI coverage. (Exs. 21, 22). On May 30, 2000, Sanchez filed a complaint against Cornerstone with the Insurance Division.

In her interviews with the Insurance Division's investigators, Reyes admitted that she had handled the entire policy application process for at least five customers, including Sanchez, without Wolfer being present. (Exs. 37-19, 37-20, 37-21, 39-21, 40-46 and 40-47).

ULTIMATE FINDINGS OF FACT

In handling the entire insurance transaction involving Cruz, Mendoza, and Sanchez without a licensed agent present, Reyes exceeded her authority as a customer service representative and transacted insurance without a license.

CONCLUSIONS OF LAW

The issue to be resolved in this sanction case is whether Reyes' violated ORS 744.051(1)(a) in three instances. In this regard, the department bears the burden of proving the allegations by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Harris v. SAIF,* 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.,* 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence).

ORS 731.062 defines "agent" as "a person authorized by an insurer to solicit applications for insurance or to negotiate insurance on its behalf, and, if authorized so to do by the insurer, to effect and countersign insurance policies." Additionally, ORS 744.051(1)(a) provides:

"(1) Except as otherwise provided in this section, a person shall not act as an agent in this state with respect to a domestic risk unless the person:

"(2) Holds a valid license or a temporary license issued by the Director of the Department of Consumer and Business Services that authorizes the person to act as an agent."

Finally, OAR 836-071-280 delineates what services someone who is a customer service representative in an insurance agency and not licensed as an insurance agent may provide. OAR 836-071-280 states in relevant part:

"(1) An unlicensed person who performs administrative, clerical or technical duties and is employed by an agent may engage in any activity described in this section, subject to review by the agent or an agent employed by the agent if review is required under this section, if the unlicensed person engages in the activity under the supervision of the agent and on the premises of the agent's business. The unlicensed person may:

"* * * * *;

"(b) Fill out an application for insurance if the application is reviewed by the agent prior to submission to the insurer;

"(c) Accept or receive an insurance premium;

"* * * * *

"(i) Transmit insurance policies to insureds.

"* * * * *

"(3) An unlicensed person who performs administrative, clerical or technical duties and is employed by an agent may not:

"(a) Solicit insurance. For purposes of this subsection, solicitation of insurance includes, by way of example only, selling or attempting to sell insurance, evaluation and recommendation of coverages, analyzing exposures and inquiring about additional coverages;

"(b) Bind coverage; or

"(c) Interpret policy coverages."

There is no question on this record that Reyes is not licensed by the department or authorized by an insurer to solicit applications for insurance or to negotiate insurance on its behalf. There is also no question that she performed these actions outside the presence of, and without supervision from, Wolfer or any other licensed agent.

The unrebutted evidence establishes that Reyes violated ORS 744.051(1)(a) by soliciting automobile insurance policy applications from Cruz, Mendoza, and Sanchez and performing duties she was not authorized to do as a customer service representative without a licensed agent present, including evaluating the customers' needs, selecting the carrier, explaining the coverage and making recommendations for levels of coverage.

The evidence establishes that in Cruz's case, Reyes prepared the application, selected Clarendon as the insurer and processed Cruz's application and down payment without Wolfer's oversight. In Mendoza's case, Reyes selected Wasatch as the insurer and back-dated the coverage to 8:45 a.m. on September 30, 1999, which was a few hours before her accident. Reyes also gave Mendoza a receipt for a down payment on a policy for which she made no payment and failed to note on the application that Mendoza had been involved in an accident and had received medical care after the accident. In Sanchez's case, Reyes performed every aspect of the transaction. Reyes asked Sanchez questions regarding the insurance and filled out the application without Wolfer's oversight. Reyes selected the amount of coverage and discussed the $500 deductible with Sanchez. Additionally, Mendoza who was subsequently employed by Cornerstone, credibly testified that she witnessed Reyes selling insurance to customers on several occasions without Wolfer being present.

Under the circumstances, I conclude that the department established a *prima facie* case on the record supporting the allegations contained in the notice and that a civil penalty in the amount of $3,000 proposed by the department is warranted.

ORDER

Reyes shall be assessed a civil penalty in the amount of $3,000 for violations of ORS 744.051.

IT IS SO ORDERED.

Dated this 20th day of November 2001.

/s/ Ella D. Johnson,
Ella D. Johnson, Administrative Law Judge
Hearing Officer Panel

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this Proposed Order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this Proposed Order. Mail exceptions to:

Department of Consumer and Business Services
Insurance Division
c/o Cindy Jones
350 Winter Street NE
Salem, OR 97301-3883

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