

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

IN THE MATTER OF) Docket No. 10DOCID023
)
ALVEN NGUYEN)
NATIONAL PRODUCER NO. 8639112) **PROPOSED DECISION**
)
Respondent.)

A contested case hearing was held on September 20, 2010. Attorney Steve Balk appeared on behalf of Respondent Alven Nguyen. Alven Nguyen appeared and testified. Attorney John Leonhart appeared on behalf of the Insurance Division. Terra Mason and Matthew Carr appeared and testified on behalf of the Insurance Division. Exhibits A, B, B-1, B-2, C-1, C, D, E, F, F-1, G, G-1, G-2, H, I, I-1, and J were admitted into the record.

ISSUES

Whether Nguyen engaged in unfair or deceptive practices in violation of Iowa Code section 507B.4 by: (1) misrepresenting the benefits, advantages, conditions or terms of any insurance policy; (2) making misleading statements as to the financial condition of any person; (3) entering into an insurance contract for which there was an inducement or rebate of premiums made; (4) making false or fraudulent statements or representatives on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, or money, or other benefit from any insurer; and (5) failing or refusing to furnish any policyholder or applicant information to which the individual is entitled, supporting revocation of Nguyen's license and imposition of a civil penalty.

Whether Nguyen engaged in prohibited acts and improper sales tactics by: (1) executing a transaction for an insurance consumer without authorization by the customer; (2) committing an act which shows that he exerted undue influence over a person; (3) failing to furnish an individual information to which that individual was entitled or respond to a complaint from the individual; and (4) soliciting or accepting being named as a beneficiary in an insurance policy, supporting revocation of Nguyen's license and imposition of a civil penalty.

Whether Nguyen violated Iowa Code section 522B.11 by: (1) violating the insurance laws; (2) improperly withholding, misappropriating or converting moneys received in the course of doing business; (3) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; (4) admitting or having been found to have committed an unfair insurance trade practice or fraud; (5) using fraudulent, coercive or dishonest practices, or demonstrating incompetence,

untrustworthiness, or financial irresponsibility in the conduct of business; and (6) using an insurance producer's license for the principal purpose of procuring, receiving or forwarding application for placing insurance directly upon or in connection with the property of a relative, supporting revocation of Nguyen's license and imposition of a civil penalty.

FINDINGS OF FACT

Nguyen is licensed by the Insurance Division as an insurance producer. Nguyen's license has an effective date of April 1, 2008 and is scheduled to expire on March 31, 2011.

In June 2009, Trong Ngo submitted a complaint to the Insurance Division, alleging:

Recent I filed an accident report for my sister, Tonya, and found that my wife was on the same policy as my sister was. Along with 10 other people that we don't even know. The claim took over two months to get it resolve. Now that my sister received check from the insurance company, but she can't deposit the check into here bank because the Primary holder name is on the check. We don't even know who that person is. When we try to call the agent to get the issue resolve. all we got was his answer machine, or he is not in the office.

If you need a copy of all the people listed on this policy, i am happy to email it to you.

(Exhibit B). The Insurance Division commenced an investigation.

Tonya Ngo was in a car accident. Trong Ngo reported Tonya Ngo received a check from Farmers Insurance, but the primary holder was also listed on the check, so she could not deposit it. According to Trong Ngo, Ben Nguyen, the older brother of Alven Nguyen, was the primary policy holder. Trong Ngo reported Tonya Ngo received a check that only listed Tonya Ngo about a month later. Trong Ngo reported Tonya Ngo was living at 1409 Calvin Street in Davenport.

Exhibit B-1 contains e-mail correspondence between Insurance Division Attorney Leonhart and Trong Ngo. Exhibit B-2 lists a number of people listed on the same policy as Trong Ngo's wife, Thao Ngo, and his sister, Tonya Ngo. Tonya Ngo, Ben Ngo, and Alven Ngo are listed on ten separate policies as follows:

Policy Number	Inception	Insured Vehicle
175928570	2/8/2008	99 Isuzu
183727041	6/27/2008	03 Audi
175674519	5/5/2006	94 Mitsubishi
175899708	5/5/2006	04 Mazda
183590743	7/22/2008	03 Honda
175746669	11/13/2007	99 Volkswagen

178293281	5/5/2006	99 Toyota
183794339	11/4/2008	03 Acura
175977531	2/28/2008	07 Nissan
183791506	7/25/2008	00 Honda

(Exhibit B-2). Ben Nguyen is listed as the primary policyholder on all of the policies. Thao Nguyen, Xuan Nhien Nguyen, Tonya Ngo, Van Nguyen, Lam Tran, Hoa Nguyen, Mhisho Vuong, Edin Nguyen, Anh Nguyen, and Alven Nguyen are listed on all of the policies. Thuy Bui is listed on all of the policies except policies 183794339 and 183791506. All of the policies were with Farmers Insurance.

In March 2009, Trong Ngo contacted Farmers Insurance and stated that his sister's vehicle had been struck while it was parked and unoccupied. Trong Ngo worked on the settlement of the claim for his sister because she spoke limited English.

Farmers Insurance sent Alven Nguyen a letter on April 16, 2009, advising him that Ben Nguyen had recently reported a claim for the damage to a 2003 Honda, policy number 0183590743.

Farmers Insurance issued a joint check to Tonya Ngo and Ben Nguyen for \$11,876.07 in May 2009. The check was sent to 1942 West 7th Street in Davenport.

In June 2009, Alven Nguyen contacted Total Loss Supervisor Frank Wittman with Farmers Insurance and asked whether Ben Nguyen's name could be removed from the check. Wittman reviewed the policy and left a message for Alven Nguyen, advising that Ben Nguyen was the primary insured on the policy and that he needed to be included on the settlement check.

Ben Nguyen later sent a note by facsimile to the claims office asking the claim check be reissued only in Tonya Ngo's name. Ben Nguyen stated, "[e]ven though I am listed in the household, but I do not own the vehicle so please take my name off of the check and send Tonya Ngo her check with her name on it." (Exhibit F). Farmers Insurance stopped payment on the original check and reissued a check in Tonya Ngo's name. The reissued check was sent to 1409 Calvin Street in Davenport.

Alven Nguyen prepared a statement that he later sent Farmers Insurance stating:

Conflict: Tonya used to live at that address of 1942 west 7th St. with Ben Nguyen. A few months later she moved to her new residence, and at that time she had go in an accident. After the accident, a check was made out to her and Ben Nguyen's name on it as being the owner of the vehicle. Which was a mistake, but after Tonya received the check, she held on to the check for 2 week, and not cashing it. By the time it got to my hand, it was too late. I had called the claim's adjuster, Frank Whitman and had him reissue the check just to Tonya Ngo's name. Hope this helps.

(Exhibits C, C-1).

In July 2009, Farmers Insurance sent a letter to the Insurance Division regarding Policy 183590743, stating Tonya Ngo was no longer a member of the household. Farmers Insurance reported that Alven Nguyen and Ben Nguyen were brothers. Farmers Insurance noted Alven Nguyen reported that Ben Nguyen was not the owner of the vehicle, but rather the primary insured for the household.

In August 2009, Farmers Insurance sent a letter to the Insurance Division regarding Policy 183590743, reporting that Tonya Ngo was named under a household listing Ben Nguyen as the primary insured. Farmers Insurance reported over time eleven drivers had been listed under the household, although there were only five active drivers listed. The policy was cancelled effective June 11, 2009. Farmers Insurance stated Alven Nguyen was the agent of record and noted “[i]t is not a common practice of Farmers Insurance to write several unrelated persons in the same household, however, it can be done, at the request of the insured.” (Exhibit G). Farmers Insurance further reported:

Agent Alven Nguyen provided a statement to his district manager, Dave Richards, on August 6, 2009. Mr. Nguyen advised that Tonya Ngo is related to Ben Nguyen. He advised that Ms. Ngo moved during the policy period to 1409 Calvin Street. We are able to write vehicles within separate garaging addresses in the same household, however, we do not reflect that her address was changed to 1409 Calvin Street at any point. Agent Nguyen further advised that the 2003 Accord (183590743) which was involved in claim number 1013765833-1 was registered to Ben Nguyen, and a check for the claim was issued to Ben Nguyen because the vehicle was registered in his name. The agent also said that Trong Ngo is not rated in the household. In summary, Mr. Nguyen advised that Tonya Ngo is related to Ben Nguyen and did live in the household but Trong Ngo did not.

(Exhibit G). The Certificate of Title for the 2003 Honda provided the previous owner was Tonya Ngo, and listed her address as 1409 Calvin Street in Davenport.

The Insurance Division received a Memorandum of Automobile Insurance for Policy 183590743, with an effective date of July 22, 2008. The Memorandum of Automobile Insurance states that Tonya Ngo was the primary insured for the policy and that her address was 1409 Calvin Street in Davenport.

Carr works for Farmers Insurance as part of the Internal Audit Team. Carr conducted an audit of Alven Nguyen’s business and completed an Executive Summary. During his investigation, Carr interviewed Alven Nguyen. Carr concluded Alven Nguyen collected approximately \$375 in cash premium payments he failed to remit to Farmers Insurance. Carr further found Alven Nguyen

Earned premium due on his personal policies. Between January 2008 and February 2010, Agent Nguyen created 13 policies for five different autos and one home policy. These policies were being billed on three different accounts. During that time, Agent Nguyen allowed several of the accounts to cancel with premium due. Then he would create new policies/accounts

in order to maintain insurance coverage. Of the three accounts being billed, Agent Nguyen allowed the earned premium on two of them to be sent to collections. The total amount of earned premium sent to collect is over \$475.

Carr also reported Alven Nguyen admitted he placed insured in his brother's household because of his brother's FACET score to obtain more favorable rates.

Carr noted that Alven Nguyen reported he collected the premiums, but was uncertain why the premiums were not remitted to Farmers Insurance. With respect to the Trong Ngo complaint, Carr noted:

When asked about the Iowa DOI complaint and his general practice with placing insureds in his brother's household, Agent Nguyen indicated that his brother allowed multiple families to live in his home from time to time, so Alven would place these individuals under Ben's insurance household. When pressed that this was not proper underwriting practices, as he should be writing the insured in their own household, he admitted he would do this to obtain a better rate for the insured. Thirty-four active and inactive policies were found in the Ben Nguyen household. There were 12 individuals, other than the primary insured, listed in the household. This included both Agent Nguyen and the insured who filed the DOI Complaint.

(Exhibit I-1). Carr further reported Alven Nguyen denied using his advantage as an agent to create multiple policies and accounts to avoid paying premiums on his own policies.

Farmers Insurance sent the Insurance Division a letter in April 2010, reporting the results of an internal audit, as follows:

During our review, we found a shortage of monies of approximately \$375 in unremitted customer premium and approximately \$475 in unpaid earned premium for Alven Nguyen's own policies. We also obtained confirmation from the agent that in some cases, he used his brother's insurance score to provide lower premiums to his customers. In other cases, the agent indicated the customer actually lived with his brother at one time. Overall, the operations in this agency were found to be unsatisfactory.

(Exhibit I).

Farmers Insurance terminated Alven Nguyen's appointment effective February 18, 2010. Farmers Insurance sent a letter to the Insurance Division stating "[a]n audit after the termination revealed that Mr. Nguyen mishandled premiums belonging to the company." (Exhibit J).

The Insurance Division never spoke with Alven Nguyen, Ben Nguyen, Tonya Ngo, or Trong Ngo, as part of its investigation. At hearing the Insurance Division did not present any evidence of prior complaints involving Alven Nguyen.

The Insurance Division filed a Statement of Charges, identifying fifteen separate issues it contends supports revocation of Nguyen's license. The Insurance Division transmitted the file to the Iowa Department of Inspections and Appeals, Division of Administrative Hearings to schedule a contested case hearing.

Mason testified that in her experience she does not often see allegations that an agent has failed to pass along premiums or to benefit personally under a policy.

Carr testified that Farmers Insurance recovered the \$375 in unpaid premiums and \$475 in earned premiums from Alven Nguyen.

Carr reported that all Farmers Insurance agents attend training at the University of Farmers regarding proper underwriting. Carr testified that it is proper to use the higher FACET score for people living together who are unmarried. Carr reported that using the higher FACET score of cousins living together was a grey area.

Carr testified that Alven Nguyen told him that he was not related to Tonya Ngo. He stated that Ben Nguyen had a practice of allowing Vietnamese families who were new to the area live in his home until they were able to get established. During the hearing, Alven Nguyen denied making this statement to Carr.

Alven Nguyen lives at 2614 West 36th Street in Davenport. He reported he bought a home approximately one year ago and prior to that he lived with Ben Nguyen at 1942 West 7th in Davenport.

Alven Nguyen testified he investigated the \$375 in unremitted premiums. He reported he could not explain the shortage. He also denied rewriting policies to collect the \$475.

Alven Nguyen stated that Farmers Insurance provided him with limited training. He reported the district manager was new to the industry as well. Alven Nguyen acknowledged he made errors and was sorry for the errors, but stated his conduct was not intentional.

Alven Nguyen testified Ben Nguyen's house is 1,000 square feet and has six bedrooms. He insisted Tonya Ngo and Trong Ngo's wife, Thao Ngo lived at Ben Nguyen's home for more than a year. He stated that when Tonya Ngo moved out, he notified Farmers Insurance of her new address. Alven Nguyen reported that Tonya Ngo was Ben Nguyen's cousin. Alven Nguyen stated that Thao Ngo knows him.

Alven Nguyen could not explain why Tonya Ngo reported she was living at 1409 Calvin Street in Davenport on the Memorandum of Automobile Insurance when she applied for insurance, when she actually lived at 1942 West 7th Street in Davenport with Ben Nguyen.

CONCLUSIONS OF LAW

The Iowa Legislature created the Insurance Division to regulate and supervise the conducting of the business of insurance in the state of Iowa.¹ The Insurance Commissioner is the chief executive officer of the Insurance Division.²

I. Unfair or Deceptive Acts and Practices

The Insurance Division alleges Alven Nguyen engaged in unfair insurance trade practices in his dealings with Tonya Ngo, other insureds, and Farmers Insurance. Iowa Code chapter 507B governs insurance trade practices of producers, adjusters and businesses. Iowa Code section 507B.3 precludes a producer from engaging in any trade practice defined to be an unfair method of competition or unfair or deceptive act or practice in the business of insurance. Unfair competition or methods of competition and unfair and deceptive acts or practices include: (1) misrepresenting the benefits, advantages, conditions or terms of any insurance policy; (2) making misleading statements as to the financial condition of any person; (3) entering into an insurance contract for which there was an inducement or rebate of premiums made; (4) making false or fraudulent statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, or money, or other benefit from any insurer; and (5) failing or refusing to furnish any policyholder or applicant information to which the individual is entitled.³

The Insurance Division presented no evidence at hearing that Alven Nguyen misrepresented the benefits, advantages, conditions or terms of any insurance policy, provided an inducement or rebate of premiums made to a third party, or failed to refused to furnish any policyholder or applicant information to which the individual is entitled. Therefore, it has failed to prove Alven Nguyen violated Iowa Code sections 507B.4(1)(a),(8), and (18).

The Insurance Division alleges Alven Nguyen made misleading statements as to the financial condition of a person, and made false or fraudulent statements or representatives on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, or money, or other benefit from any insurer, in violation of Iowa Code sections 507B.4(1)(d) and (13). The evidence revealed that Alven Nguyen listed his brother, Ben Nguyen, on eleven different insurance policies as the primary policyholder, so that Farmers Insurance would use Ben Nguyen's FACET score, to obtain more favorable rates for the insureds. Alven Nguyen alleged that his conduct was proper given all the people resided in his brother's home and were related. Alven Nguyen further testified that all twelve people listed on the policy, lived in Ben Nguyen's 1,000 square foot home, which has six bedrooms. This raises an issue of credibility. There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

¹ Iowa Code § 505.1 (2009).

² *Id.*

³ *Id.* § 507B.4(1)(a), (1)(d), (8), (13), (18).

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness' appearance, conduct, age, intelligence, memory and knowledge of facts.
4. The witness' interest in the trial, their motive, candor, bias and prejudice.⁴

Alven Nguyen's testimony is not reasonable and consistent with the other evidence I believe. When Trong Ngo filed his complaint with the Insurance Division, he alleged his sister, Tonya Ngo, and wife, Thao Ngo, did not know the other people listed on the policy, including Ben Nguyen. The Memorandum of Automobile Insurance that was prepared when Tonya Ngo applied for insurance lists 1409 Calvin Street in Davenport as her address, not 1942 West 7th Street in Davenport. Farmers Insurance sent the reissued settlement check in Tonya Ngo's name only to the 1409 Calvin Street address. Alven Nguyen did not call any witnesses at hearing to support his contention that Ben Nguyen is related to and lived with Tonya Ngo and Thao Ngo. I do not find his testimony credible.

The evidence at hearing supports a finding that Alven Nguyen listed his brother, Ben Nguyen, on eleven different insurance policies as the primary policyholder, so that Farmers Insurance would use his FACET score, to obtain more favorable rates. This information was false and misleading to Farmers Insurance. Alven Nguyen received commissions from the premiums. I conclude the Insurance Division has proven Alven Nguyen engaged in unfair or deceptive acts or practices in violation of Iowa Code sections 507B.4(1)(d) and (13).

II. Prohibited Acts and Improper Sales Tactics

The Insurance Division alleges Alven Nguyen engaged in prohibited acts and improper sales tactics in violation of 191 IAC 15.8(2)b(1), (2)b(2), (2)c(1), and (5)b(3). Improper sales tactics include: (1) executing a transaction for an insurance consumer without authorization from the consumer to do so; (2) committing any act which shows the producer exercised undue influence over a person; and (3) failing or refusing to furnish any individual, upon reasonable request, information to which the individual is entitled or to respond to a formal written request or complaint.⁵ The Insurance Division did not present any evidence at hearing that Alven Nguyen failed to furnish information to a person when requested, or exercised undue influence over a person. Therefore, the Insurance Division has failed to prove Nguyen violated 191 IAC 15.8(2)b(2) and (2)c(1).

Trong Ngo filed a complaint with the Insurance Division on behalf of his sister, Tonya Ngo. He alleged Tonya Ngo did not know the other people listed on the policy. Tonya Ngo did not testify at hearing. However, from the limited evidence presented, it appears Tonya Ngo wanted insurance on her vehicle. The evidence does not support a finding

⁴ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996).

⁵ 191 IAC 15.8(2)b(1), (2)b(2), (2)c(1).

that Alven Nguyen executed a transaction for an insurance consumer without authorization from the consumer to do so in violation of 191 IAC 15.8(2)b(1).

Under 191 IAC 15.8(5)b(3), an insurance producer is prohibited from soliciting, or being named as a beneficiary in an insurance policy. While Alven Nguyen is listed on the policies set forth in Exhibit B-2, the Insurance Division did not present evidence he was named as the beneficiary in any policy. Therefore, the Insurance Division has failed to prove Alven Nguyen violated 191 IAC 15.8(5)b(3).

III. Alleged Violations of Iowa Code Section 522B.11

Iowa Code chapter 522B governs the licensing of insurance producers. The Insurance Commissioner may suspend, revoke or place on probation an insurance producer's license or levy a civil penalty if an insurance producer: (1) violates any insurance laws; (2) improperly withholds, misappropriates, or converts any moneys received in the course of doing insurance business; (3) intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance; (4) admits or is found to have committed any unfair insurance trade practice or fraud; (5) uses fraudulent, coercive, or dishonest practices or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the state of Iowa; or (6) uses an insurance producer's license for the principal purpose of procuring, receiving or forwarding application for insurance directly upon or in connection with the property of a relative.⁶

The Insurance Division presented no evidence Alven Nguyen intentionally misrepresented the terms of an actual or proposed insurance contract or application of insurance, or used an insurance producer's license for the principal purpose of procuring, receiving or forwarding application for insurance directly upon or in connection with the property of a relative. Therefore, the Insurance Division has failed to prove Alven Nguyen violated Iowa Code sections 522B.11(1)e, and r.

Farmers Insurance reported Alven Nguyen received \$375 in premiums which he failed to remit to Farmers Insurance. There was no evidence presented at hearing when Alven Nguyen received the premiums, or whether the premiums were converted to a personal account. While Alven Nguyen had \$375 in premiums which had not been paid to Farmers Insurance, the evidence does not support a finding that he violated Iowa Code section 522.B.11(1)d.

The Insurance Division alleges Alven Nguyen used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Iowa. The Insurance Division did not call an expert or other witness to testify regarding competency. The administrative file does not contain any reports addressing the issue of competency. There is no evidence of any coercive conduct on the part of Alven Nguyen. As analyzed in Division I, the Insurance Division has proven Alven Nguyen engaged in unfair or deceptive acts or practices in

⁶ *Id.* §§ 522B.11(1)b, d, e, g, h, r.

violation of Iowa Code sections 507B.4(1)(d) and (13). Alven Nguyen's actions support a finding that he engaged in dishonest practices and untrustworthiness, in violation of Iowa Code section 522.B.11(1)h and that he violated the insurance laws in Iowa.

Trong Ngo's complaint contains serious allegations concerning Alven Nguyen's practice as an Iowa insurance producer. At the start of the hearing, the Insurance Division intended to rely on the documents alone without any testimony to support its claim that Alven Nguyen has engaged in unfair or deceptive acts or practices, has violated the insurance laws, and has engaged in prohibited acts and improper sales tactics. With objections from Alven Nguyen's counsel to its exhibits, the Insurance Division produced limited testimony from two witnesses. It would have been helpful if the Insurance Division had interviewed Trong Ngo, his sister, Tonya Ngo, and/or his wife, Thao Ngo as part of its investigation. It would have also been helpful if these individuals would have testified at hearing.

I have definite concerns about Alven Nguyen's practice as an insurance producer, however, the Insurance Division presented no expert testimony from a professional in the insurance field as to the standard of care or practice of an insurance producer.

I also have concerns about the fact that Alven Nguyen is listed on the ten policies presented hearing. Again, the Insurance Division presented scant evidence regarding Alven Nguyen's placement on the ten policies and alleged problems with the earned premium on his personal auto and homeowners policies.

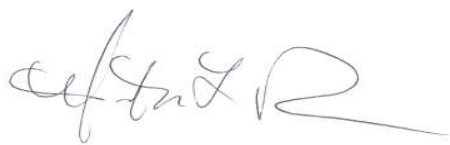
The record reflects a pattern where Alven Nguyen used Ben Nguyen's high FACET score to procure insurance at lower rates. The Insurance Division seeks revocation of Alven Nguyen's license. Revocation is a very serious sanction. There is no evidence the Insurance Division received a prior complaint involving Alven Nguyen. Based on the limited evidence presented at hearing, and the lack of a prior complaint, I cannot conclude Alven Nguyen's conduct supports revocation of his license.

Iowa Code sections 522B.17 and 507B.7 allow for the imposition of civil penalties of \$1,000 per violation, not to exceed an aggregate of \$10,000. I conclude Alven Nguyen should be assessed a \$1,000 civil penalty. Given the serious nature of his conduct, his license should be suspended for 30 days, and his license should be placed on probation for a period of one year. Alven Nguyen shall immediately cease and desist from violating any of insurance laws and rules in Iowa.

ORDER

Alven Nguyen is hereby assessed a \$1,000 civil penalty, his insurance producer's license is suspended for 30 days, effective 20 days from the date of this order, and his license shall be placed on probation for a period of one year following the suspension. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 14th day of October, 2010.

A handwritten signature in black ink, appearing to read "Heather L. Palmer". The signature is fluid and cursive, with a large, stylized "R" at the end.

Heather L. Palmer
Administrative Law Judge
515-281-7183

cc: Alven Nguyen
Steven Balk
Christina Hazelbaker and John Leonhart

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.⁷ The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 330 Maple Street, Des Moines, Iowa 50319. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.

⁷ 191 IAC 3.27.

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)

ALVEN NGUYEN)

National Producer License Number:)
8639112)

**ORDER REINSTATING LICENSE
AFTER SUSPENSION**

Division Docket No.: 68399

Pursuant to Iowa Code chapter 17A and IAC 191-10.10, this matter comes before the Commissioner of Insurance upon an application by Alven Nguyen for the reinstatement of his Iowa insurance producer's license.

PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Susan E. Voss, administers and enforces the Iowa Licensing of Insurance Producers Act, Chapter 522B, pursuant to Iowa Code § 505.8 (2009).

2. Alven Nguyen ("Nguyen") is an individual with a last known mailing address of 1942 W 7th Street, Davenport, IA 52802

3. Nguyen has filed an application with the Iowa Insurance Division ("Division") for reinstatement of his suspended license and the Division is authorized to issue this Order pursuant to Iowa Administrative Code rule 191-10.10.

FINDINGS OF FACT

4. Nguyen is licensed as a resident insurance producer in the State of Iowa.

5. Only October 14, 2010, a proposed decision was issued by Administrative Law Judge Heather L. Palmer that stated that Nguyen's "insurance producer's license is suspended for 30 days, effective 20 days from the date of this order."

6. Based on the language of the proposed decision, Nguyen's license was suspended on November 3, 2010 which was prior to the proposed decision becoming a final decision.

7. This proposed decision was appealed by the Division on November 10, 2010 to the commissioner as provided for in IAC 191-3.27 so the proposed decision is not final and the specific findings or conclusions of the proposed decision will be subject to further review.

8. Nguyen's 30 day suspension provided for in the proposed decision has been served and Nguyen has filed an application for reinstatement after suspension as required by IAC 191-10.10.

9. As Nguyen has complied with the suspension requirement found in the proposed decision and filed the necessary reinstatement application, an order of reinstatement of his Iowa insurance producer's license will be issued.

CONCLUSIONS OF LAW

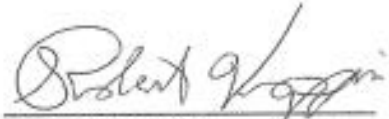
10. Nguyen is in compliance with the terms of his suspension found in the proposed decision issued by Administrative Law Judge Heather Palmer dated October 14, 2010 and has filed the required application of reinstatement so an order of reinstatement should be issued pursuant to IAC 191-10.10.

THEREFORE, IT IS ORDERED THAT:

1. The Iowa resident insurance producer license of Nguyen is no longer suspended;
2. Nguyen shall immediately be able to transact and participate in the business of insurance in Iowa and

3. Nguyen's future licensing status will be determined by the commissioner based on the Division's appeal of the proposed decision.

For the Iowa Insurance Division,



Robert Koppin
Enforcement Bureau Chief

Dec. 3, 2010

Date

SENT BY FIRST CLASS MAIL TO:

Alven Nguyen
1942 W 7th Street
Davenport, IA 52802

BEFORE THE IOWA INSURANCE COMMISSIONER
330 Maple Des Moines, IA 50319

IN THE MATTER OF)	APPEAL DECISION
)	DIA NO: 10DOCID023
ALVEN NGUYEN)	DIVISION FILE NO: 68399

An appeal hearing was scheduled for the above captioned matter on January 13, 2011, before presiding officer, First Deputy Commissioner, James Mumford. This appeal is governed by Iowa Code section 17A.12 (2009) and 191 Administrative Code Chapter 3 and promulgated thereunder. The parties to this proceeding are the Iowa Insurance Division ("Division") and Respondent Alven Nguyen ("Nguyen"). Neither Nguyen nor an attorney for Nguyen appeared at the hearing even though Nguyen accepted the certified mail notifying him of the hearing time and date. Attorney John Leonhart and Terra Mason appeared on behalf of the Division. No witnesses were called by either side. Exhibits were admitted into the record.

ISSUES

Whether the administrative law judge erred in finding no substantive evidence exists for some of the alleged violations advanced by the Division at the original hearing.

Whether the administrative law judge erred in finding that revocation was not supported by the evidence produced at the original hearing and whether the Proposed Order is an insufficient sanction given the evidence submitted and the Findings of Fact and Conclusions of Law.

FACTUAL BASIS

The Commissioner's review of the file indicates that the administrative law judge erred in finding no substantive evidence exists for some of the alleged violations made by the Division against Nguyen. For example, Nguyen's actions in listing his brother, Ben Nguyen, on eleven different policies as the primary policyholder so that Farmers Insurance would use Ben's FACET score to obtain better or more favorable rates, a finding of fact made the administrative law judge, is a violation of Iowa Code sections 507B.4(1)(a) and (8). Additionally, Nguyen's receiving \$375 in premiums which he failed to remit to Farmers Insurance, another finding of fact by the administrative law judge, and the \$475 in unpaid earned premium for Nguyen's own policies would violate Iowa Code section 522B.11(1)(d).

Even without these additional violations that were proven by the Division, the Commissioner only needs to look at the actual violations found by the administrative law judge in her Conclusions of Law to find that the sanctions imposed in the Proposed Decision are insufficient given the Findings of Fact. In the Conclusions of Law, the administrative law judge found that "Alven Nguyen's testimony is not reasonable and consistent with the other evidence." The administrative law judge goes on to find that "the Insurance Division has proven Alven Nguyen engaged in unfair or deceptive acts or practices in violation of Iowa Code sections 507B.4(1)(d) and (13)." The administrative law judge continues with the conclusion that "Alven Nguyen's

engaged in unfair or deceptive acts or practices in violation of Iowa Code sections 507B.4(1)(d) and (13)." The administrative law judge continues with the conclusion that "Alven Nguyen's actions support a finding that he engaged in dishonest practices and untrustworthiness, in violation of Iowa Code sections 522B.11(1)h and that he violated the insurance laws in law." Finally, the administrative law judge mentioned in the Conclusions of Law that she had "definite concerns about Alven Nguyen's practice as an insurance producer."

SANCTION

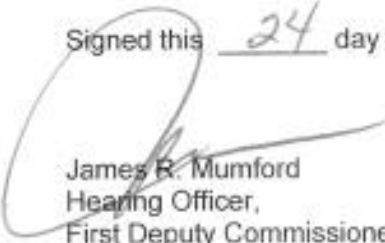
As mentioned in the Factual Basis, the administrative law judge found that Nguyen's testimony was not reasonable, that he engaged in deceptive acts and practices and that he engaged in dishonest practices and was untrustworthy. The evidence at the original and appeal hearings also show that Nguyen misrepresented the benefits, advantages, conditions or terms of an insurance policy; improperly rebated premiums and misappropriated and converted moneys received in the course of doing insurance business.

It should be clear that a person who is not credible and who is deceptive, dishonest and untrustworthy should not be an insurance producer. It is even clearer that if this person misrepresents the conditions of an insurance policy, rebates premiums and misappropriates moneys, they should not be allowed to continue to engage in the business of insurance in the state of Iowa. Nguyen has been found to have done all of these. The appropriate sanction for these violations of Iowa insurance law is revocation of the producer's license.

ORDER

The proposed Order of the administrative law judge is overturned. Nguyen's Iowa insurance producer's license is revoked. The revocation is effective the date of this appeal decision. Nguyen is also assessed a civil penalty of \$1,000. The Division shall take any necessary steps to implement this decision.

Signed this 24 day of January 2011.



James R. Mumford
Hearing Officer,
First Deputy Commissioner
Insurance Division, State of Iowa

Copies sent by Certified and First Class mail:

Alven Nguyen
1942 W 7th Street
Davenport, IA 52802

Steven E. Balk, Esq.
McGehee, Olson, Pepping and Balk
105-7th Street
Silvis, IL 61282