

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. 11IID012
)
PAMELA ARMSTRONG.) **PROPOSED DECISION**

The parties to this proceeding are the Iowa Insurance Division (“Division”) and Pamela Armstrong. A contested case hearing was held on September 12, 2011. Attorney John Leonhart represented the Division. Ryan Feeck, Steven Krier, and Rosanne Mead appeared and testified on behalf of the Division. Attorney Roberta Anderson represented Armstrong. Armstrong appeared and testified. Julie Bernhardt and David Bernhardt testified on Armstrong’s behalf. Exhibits A through M and 1 through 16 were admitted into the record. The parties requested the opportunity to submit written closing arguments, which were received into the record.

ISSUES¹

Whether Armstrong engaged in unfair or deceptive practices in violation of Iowa Code sections 507B.3, 507B.4, 522B.11, and 191 IAC 15(8)(1) by: (1) making false or fraudulent statements or representations on an application for an insurance policy for the purpose of obtaining a commission; (2) failing to designate on an insurance policy application the licensee who had solicited and wrote the policy; and (3) failing to make the required disclosures to the prospective purchasers, supporting revocation of Armstrong’s license and imposition of a civil penalty.

Whether Armstrong violated Iowa Code section 522B.11 by intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance and using fraudulent or dishonest practices and by demonstrating incompetence and untrustworthiness, supporting revocation of Armstrong’s license and imposition of a civil penalty.

Whether Armstrong violated Iowa Code section 507B.4A(1) and 522B.11 by failing to promptly respond to inquiries from the commissioner, supporting revocation of Armstrong’s license and imposition of a civil penalty.

FINDINGS OF FACT

Armstrong was convicted for drug conspiracy and money laundering in 1992. The United States District Court for the Northern District of Iowa sentenced Armstrong to

¹ The Statement of Charges contained three counts. At hearing the Division moved to dismiss Count III, Consent for Prohibited Persons to Engage in the Business of Insurance. The Motion was granted.

sixty months and ninety months, to run concurrently. Following her release from custody Armstrong was to be placed on supervised release for five years.

In 1996 Armstrong was living with her aunt and uncle and working for a factory. Her aunt introduced her to Jerry Millard, who needed help in his insurance office. Millard met Armstrong and believed it would be beneficial if she obtained an insurance producer's license. Given Armstrong's criminal background, Millard and Armstrong contacted the Division to see if she could be licensed.

Mead testified Armstrong was not eligible for an insurance producer's license in 1996 without a waiver. Millard and Armstrong requested a waiver. Mead responded to the inquiry on behalf of the Division, stating,

I have informed you that I will consider granting Ms. Armstrong an Iowa insurance license if she passes the exam and on the following conditions:

1. Mr. Millard will impose special supervision.
2. Ms. Armstrong will work only through the Johnson Millard agency and will not work in a stand-alone office.
3. Ms. Armstrong will not handle insurance premiums or process customer payments.
4. Ms. Armstrong's license, if issued, will be considered a probationary license for at least as long as she remains on probation for the criminal charges. Any misconduct that reflects on her insurance license shall be grounds for revocation of her insurance license.

If you both agree to these terms, Ms. Armstrong may proceed to apply for an Iowa insurance license.

(Exhibits M, 7). In 1997, the Division granted Armstrong an insurance producer's license.

Mead testified she insisted Millard supervise Armstrong's work because of her criminal history. Mead reported Armstrong could only work for the Johnson Millard agency to make Millard accountable for Armstrong's work. Mead did not want Armstrong handling money because of her criminal history and need to protect the public.

Armstrong worked for Millard from 1997 through January 2001.

In November 2001, the United States District Court for the Northern District of Iowa discharged Armstrong from supervised release. Armstrong testified that after the federal court discharged her from supervised release, she believed she no longer needed to comply with the conditions on her license. Armstrong did not contact the Division after the federal court discharged her from supervised release to inquire whether she needed to continue to follow the conditions on her license. Mead testified that when the federal court discharged Armstrong from supervised release Armstrong's license was no

longer probationary, but the Division intended the conditions placed on her license would remain indefinitely.

After her employment with Millard ended, Armstrong obtained work in the upholstery industry. Armstrong wanted to continue to work insurance and submitted resumes to insurance companies in the area.

David Bernhardt is the principal of Mason City All-Risk Insurance (“Mason City All-Risk”). Bernhardt is only licensed to sell crop insurance. He hired Armstrong in May 2002 to expand his business to include property and casualty insurance. Armstrong did not seek permission from the Division to work for Mason City All-Risk. Bernhardt was aware of Armstrong’s criminal past when he hired her.

Bernhardt hired Armstrong to work as an assistant to Tammy Erickson, a licensed insurance producer. Armstrong prepared necessary paperwork for Erickson and Erickson signed all of the insurance applications. When Erickson left Mason City All-Risk in 2006, Armstrong assumed her duties, including the handling of customer premiums.

Armstrong renewed her insurance producer’s license several times. Mason City All-Risk completed the renewal paperwork for Armstrong and paid her licensure fees. Armstrong was listed as being employed by Mason City All-Risk on the renewal paperwork. Armstrong is paid on an hourly basis and does not earn commissions.

Bernhardt testified Armstrong is a good producer and is detail-oriented. He opined insureds and insurance companies benefit from her thoroughness and completeness.

Feeck has been an independent insurance agent for the past four years and owns his own agency Integrated Risk Management. Feeck is only licensed to sell crop insurance. In 2009, Feeck hired Krier to expand his business into property and casualty insurance. Krier is a licensed insurance producer. Feeck and Krier had a difficult time obtaining appointments with insurance companies. A friend suggested Feeck associate with a larger firm to develop a book of business and provided Feeck with Bernhardt’s name.

Feeck contacted Bernhardt in 2009 and told him he wanted to expand into property and casualty insurance, but he could not obtain any appointments with insurance companies. Bernhardt told him he had the same experience when he was becoming involved in the insurance business. Bernhardt does not conduct business in the area of the state where Feeck and Krier are located. Bernhardt told Feeck he had a field person who would be able to work with him.

Bernhardt met with Feeck and Krier in October or November 2009. Bernhardt told Feeck he was not surprised he was having a difficult time getting appointments. Bernhardt told Feeck he would be willing to help him develop a small book of business through Mason City All-Risk of ten to twelve policies. The parties agreed to a commission split.

Bernhardt brought Armstrong into the meeting and introduced her to Feeck and Krier. Bernhardt told Armstrong he wanted her to educate Krier on what needed to be done to write an insurance policy. Feeck did not wish to write any property and casualty policies.

Armstrong instructed Krier regarding the research and investigation needed before submitting an application to an insurance company. Armstrong told Krier how to submit the information to the insurance companies and what forms to use. If Krier had any questions, he would call or e-mail Armstrong. Armstrong communicated by e-mail and telephone with Krier. Bernhardt was not involved in processing the applications. Armstrong would not obtain a quote until Krier provided Armstrong with all the information she needed.

After Armstrong obtained a quote from an insurance company, Krier and Armstrong would look through the information to make sure everything was accurate. Krier would then meet with the client to go through the quote. The client could accept or reject the quote, or choose to increase deductibles or values of the policies. If a client wanted to make a change, Krier provided the new information to Armstrong and she would make the necessary adjustments. Armstrong completed all of the paperwork to bind the coverage. Krier obtained the signatures from the clients and either sent the signed paperwork to Armstrong by e-mail or facsimile. Armstrong signed the paperwork on behalf of Mason City All-Risk to bind the coverage. Krier did not sign any of the paperwork. The insurance company would issue the policy, send it to Armstrong, and Armstrong would forward it to Krier. Krier would then make a copy of the policy and give the insured the original.

Krier did not sign the applications he worked on with Armstrong. Armstrong signed all of the applications. The policies Krier worked on with Armstrong did not identify Krier as the soliciting agent.

Bernhardt believed Feeck and Krier would work on obtaining policies for family members to obtain experience. After commencing the relationship, Bernhardt learned Integrated Risk Management's operation was bigger than he realized. Integrated Risk Management sent its customers a flyer soliciting new business.

The Division received a complaint. The Division did not produce the complaint at hearing, discuss the complaint, or have the complainant testify. Armstrong testified she was unaware there was anything wrong with the arrangement between Feeck and Krier and Mason City All-Risk. Following the complaint Bernhardt notified the companies his agency had appointments with. The companies reported the Division had contacted them. The companies did not impose a penalty on Mason City All-Risk, but did not issue renewals for the policies.

Feeck and Krier testified the policies that Krier and Armstrong worked on were good policies for the insureds and insurance companies. Krier reported the policies were well-researched and investigated. Feeck and Krier testified all of the insureds understood Krier was working through Mason City All-Risk.

Krier is now associated with Scribner Insurance Agency in Nebraska. Krier is listed as an agent of record for Scribner Insurance Agency. Krier was never listed as an agent of record for Mason City All-Risk.

CONCLUSIONS OF LAW

The Iowa Legislature created the Division to regulate and supervise the conducting of the business of insurance in the state of Iowa.²

I. Unfair or Deceptive Acts and Practices

Iowa Code chapter 507B governs insurance trade practices of producers, adjusters and businesses. Insurance producers are precluded from engaging in any trade practice defined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.³ The Division may suspend, revoke, or place on probation an insurance producer's license if the producer commits an unfair insurance trade practice.⁴ Iowa Code section 507B.4 defines unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

A. False or Fraudulent Statements or Representations

The Division alleges Armstrong violated Iowa Code section 507B.4(14) by making false or fraudulent statements or representations on an application for an insurance policy for the purpose of obtaining a commission. 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 other benefit from an insurer, agent, broker, or individual is deemed to be an unfair or deceptive practice in the business of insurance.⁵

Armstrong has not and does not receive commissions. She is an employee of Mason City All-Risk. Exhibits E through K list Armstrong as the agent or producer of record. Exhibits E through K do not list Krier as an agent or subagent of record. The issue is whether Armstrong made a false or fraudulent statement or representation on an application for an insurance policy by listing herself as the agent and by failing to list Krier as an agent or subagent. The evidence at hearing revealed Armstrong reviewed all of the information for each policy and regularly communicated with Krier. The Division did not submit any testimony or other evidence showing Armstrong made any false representations to insureds or insurance companies. The Division has not proven Armstrong made false or fraudulent statements or representations to receive a fee or commission.

² Iowa Code § 505.1 (2011).

³ Iowa Code § 507B.3

⁴ *Id.* §§ 522B.11(1)g. The Division did not present any evidence Armstrong engaged in a separate, independent unfair insurance trade practice from the alleged violations of Iowa Code sections 507B.4(14) and(15), and 191 IAC 15.8(1).

⁵ *Id.* § 507B.4(14).

B. Failure to Designate the Licensee who Solicited and Wrote the Policy

The Division avers Armstrong engaged in unfair and deceptive practices by failing to designate Krier as the agent who solicited and wrote the insurance policies at issue. Failing to designate on an insurance policy application the licensee who has solicited and written the policy is considered an unfair or deceptive practice in the business of insurance.⁶

At all times material hereto Krier was a licensed insurance producer. Krier solicited insurance policies for Steve Bohnenkamp, Korry Bowman, Carel Connor, Melissa Crawford, Justin Frericks, Jerry Krier, Jim Krier, Ron Krier, Thomas Krier, Jeffrey Kuchel, Joseph Loutsch, Michael Loutsch, Richard Ricke, Ryan Schnoes, Charles Wurth, and Doug Wurth. Krier testified he advised all of his customers that he was working with Mason City All-Risk. There is no evidence Krier or Armstrong advised the insurance companies that Krier was soliciting the policies. The evidence reveals Armstrong prepared the paperwork for the policies. Krier testified he had “Pam do the paperwork to bind the coverage,” and then he submitted the paperwork to his clients, the insureds, to sign.

The Division sent communications to the insurance companies involved. Exhibits E through K contain communications the Division received from IMT Insurance, Buckeye State Mutual Insurance Company, Le Mars Insurance Company, Berkley Risk Administrators Company, LLC, Progressive Group of Insurance Companies, Continental Western Insurance Company, and Travelers. Armstrong is listed as the agent of record for the policies. The applications in Exhibits F, J and K contain Armstrong’s signature as the agent. None of the Exhibits state Krier solicited the policies.

Armstrong alleges no violation occurred because the insured and insurance companies were not harmed by her actions. Iowa Code section 507B.4(15) does not require a finding that an insured or insurance company has been harmed. Failure to designate on an insurance policy application the licensee who has solicited and written the policy is deemed to be an unfair or deceptive practice.⁷ The Division has proven Armstrong violated Iowa Code section 507B.4(15) by failing to list Krier as having solicited the policies.

C. Failure to Make Required Disclosures to Purchasers

The Division contends Armstrong violated 191 IAC 15.8(1) by failing to make the required disclosures to the prospective purchasers. 191 IAC 15.8(1) provides:

A producer shall inform the prospective purchaser, prior to commencing an insurance sales presentation, that the producer is acting as an insurance producer and inform the prospective purchaser of the

⁶ *Id.* § 507B.4(15).

⁷ *Id.*

producer's full name and the full name of the insurance company which the producer will represent in the insurance sales presentation. . . .

Krier testified the prospective purchasers were informed about Mason City All-State's involvement. There is no evidence Armstrong failed to make a required disclosure under 191 IAC 15.8(1).

III. Intentional Misrepresentation of the Terms of an Actual or Proposed Insurance Contract or Application for Insurance

The Division asserts Armstrong intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance in violation of Iowa Code section 522B.11(1)e. The Division may suspend, revoke or place on probation an insurance producer's license or levy a civil penalty if an insurance producer intentionally misrepresents the terms of an actual or proposed insurance contract or application for insurance.⁸ The Division did not present any witness testimony, affidavits, or other evidence showing Armstrong made intentional misrepresentation of the terms of an actual or proposed insurance contract or application for insurance. Krier testified the customers were all informed of the relationship between his agency and Mason City All-Risk. The Division has failed to prove Armstrong violated Iowa Code section 522B.11(1)e.

IV. Fraudulent or Dishonest Practices and Incompetence and Untrustworthiness

The Division alleges Armstrong used fraudulent or dishonest practices and demonstrated incompetence and untrustworthiness in the conduct of the business of insurance in Iowa. The Division may suspend, revoke or place on probation an insurance producer's license or levy a civil penalty if an insurance producer uses fraudulent or dishonest practices and demonstrates incompetence and untrustworthiness, supporting revocation of Armstrong's license and imposition of a civil penalty.⁹

No witnesses testified at hearing regarding the standard of care for insurance producers. The Division has failed to prove Armstrong demonstrated incompetence.

Armstrong sought information from Krier that she believed she needed during the underwriting process. The Division did not call any witnesses, submit any affidavits, or submit other evidence showing Armstrong engaged in any fraudulent or dishonest practices. The Division has failed to prove Armstrong engaged in any fraudulent or dishonest practices in the conduct of the business of insurance.

⁸ *Id.* § 522B.11(1)e.

⁹ *Id.* § 522B.11(1)h.

V. Failure to Respond to Inquiries from the Commissioner

The Division contends Armstrong failed to promptly respond to inquiries from the Commissioner in violation of Iowa Code section 507B.4(A)(1) and 522B.11(1)*p*. Iowa Code section 507B.4(A)(1) requires a producer “promptly respond to inquiries from the Commissioner.” Under Iowa Code section 522B.11(1)*p* the Division may suspend, revoke, or place on probation an insurance producer’s license for failing or refusing to cooperate in an investigation by the Division.

The Division sent Armstrong a letter on December 15, 2010 informing her it was investigating her. The letter was sent by Leonhart, the attorney representing the Division in this contested case. No one testified on behalf of the Division that Armstrong had failed to promptly respond to inquiries from the Commissioner. When asked about the December 15, 2010 letter, Armstrong denied receiving it. The Division has failed to prove Armstrong failed to respond to inquiries from the Commissioner.

VI. Penalty and Sanction

The Division has proven Armstrong engaged in unfair and deceptive practices by failing to designate Krier as the agent who solicited and the insurance policies at issue in violation of Iowa Code section 507B.4(15).¹⁰ The Division has not proven Armstrong violated: (1) Iowa Code sections 507B.3, 507B.4, 522B.11, and 191 IAC 15(8)(1) by making false or fraudulent statements or representations on an application for an insurance policy for the purpose of obtaining a commission and by failing to make the required disclosures to the prospective purchasers; (2) Iowa Code section 522B.11 by intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance and using fraudulent or dishonest practices and by demonstrating incompetence and untrustworthiness; or (3) Iowa Code sections 507B.4A(1) and 522B.11 by failing to promptly respond to inquiries from the commissioner.

The Division seeks revocation of Armstrong’s license and imposition of a \$25,000 civil penalty. The Division may suspend, revoke or place on probation an insurance producer’s license or levy a civil penalty if the producer violates the insurance laws.¹¹ The Commissioner may impose a civil penalty of \$1,000 per violation, not to exceed an aggregate of \$10,000, unless the person knew or reasonably should have known the person was in violation of the insurance laws, in which the penalty may not exceed \$5,000 for each violation, or exceed an aggregate of \$50,000.¹²

I conclude Armstrong should be assessed a \$1,000 civil penalty. Given the serious nature of her conduct, Armstrong’s license should be suspended for 14 days, and her license should be placed on probation for a period of one year. Armstrong shall immediately cease and desist from violating any of insurance laws and rules in Iowa.

¹⁰ The Division presented evidence suggesting Armstrong has failed to follow the conditions on her license. The Division did not assert a separate violation of the conditions of her license at hearing.

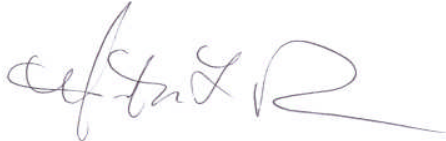
¹¹ Iowa Code § 522B.11(1)*b*.

¹² *Id.* § 507B.7(1)*a*.

ORDER

The Division has proven Armstrong engaged in unfair and deceptive practices by failing to designate Krier as the agent who solicited several insurance policies. Armstrong is assessed a \$1,000 civil penalty. Her license shall be suspended for fourteen days. Following the suspension, Armstrong's license shall be placed on probation for one year. The Division shall take any steps necessary to implement this decision.

Dated this 14th day of October, 2011.



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

cc: Pamela Armstrong (First Class Mail)
Roberta Johnson (First Class Mail)
John Leonhart and Christina Hazelbaker (Electronic Mail)

NOTICE

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.¹³ 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.

¹³ 191 IAC 3.27.