

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. 13IID004
)
KRYSTAL ADKINS,) **PROPOSED DECISION**
National Producer No. 13606354)

A contested case hearing was held on June 24, 2013. Attorney John Walker represented Krystal Adkins. Adkins appeared and testified. Attorney Bob Koppin represented the Insurance Division. Wayne Lacher, Gary Marquett and Garrett Black appeared and testified on behalf of the Division. Exhibits 1 through 14 were admitted into the record. Adkins requested the opportunity to submit a post-hearing brief. The record was left open until July 15, 2013 to allow the parties to submit post-hearing briefs.

FINDINGS OF FACT

In January 2012, the Division received a complaint that an individual named David Beane, the acting Sales Manager and Business Manager for Community Motors of Mason City, was selling credit life and disability insurance without an insurance producer license. The complainant alleged another licensed insurance producer at Community Motors Mason City Ford signed the application documents for Beane.

Lacher, a Compliance Officer with the Division, contacted Todd Meyer, a Sales Manager with Community Motors of Mason City, and asked him to verify whether or not Beane was an employee of the dealership and to provide his job duties. Jim Skarlis, Executive Manager for Community Motors of Mason City, responded Beane worked as an independent contractor for Community Motors of Mason City for a period of time. Skarlis noted Beane spent half of his time working with the sales associates and half of his time working directly with clients in the business office. Skarlis reported Beane was not licensed to sell credit life or accident insurance in Iowa and “when these products are sold or requested by our clients, the insurance policy is reviewed and signed by Ms. Krystal Adkins.” (Exhibit 4).

Community Motors of Mason City operates three different dealerships under common ownership at different locations, Community Motors Buick, GMC and Cadillac, Community Motors Jeep, Nissan and Dodge, and Mason City Ford Lincoln.

Adkins has been a licensed insurance producer in Iowa since April 13, 2009. Adkins works at the Mason City Ford Lincoln dealership.

The Division received a second complaint on February 23, 2012, identifying Adkins as the licensed insurance producer who was signing the customers’ applications after the customers purchased insurance.

The Division conducted an investigation. On June 6, 2013, Marquett sent Adkins a series of questions on behalf of the Division, as follows:

1. Do you meet with each applicant for credit life insurance? If not, why not? If not, who does?
2. Do you witness the applicant sign the application? If not, how do you ascertain the application information is complete and correct?
3. Do you track which individual, other than yourself, meets the applicants and assists them with form completion?
4. Do you sign each application? Are you attesting to the accuracy of the application information?
5. Do you process all credit life/accident policies through Protective Life Insurance Company? If not, identify the three insurance companies that account for the largest number of credit life insurance applications.

(Exhibit 8). The Division requested Adkins provide her response by June 21, 2012.

On July 18, 2012, Marquett sent Adkins a letter stating he had sent her a letter on June 6, 2012, asking her to provide a response by June 21, 2012. Marquett attached the June 6, 2012 letter and asked Adkins to provide a response by July 25, 2012.

Adkins submitted the following response, which the Division received on July 26, 2012:

1. I do meet with every applicant that buys credit life insurance at Mason City Ford. I do not meet with every applicant that buys at the Community Motors Buick GMC Cadillac store. The reason I don't meet with each applicant I can only be one place at a time. The former business manager David Beane (who was employed here from April of 2011 until March 2012) met with each applicant and would bring the insurance form for me to review and sign. David was familiar with the credit life insurance. I have probably signed less than 10 insurance contracts for David. The Community Buick GMC store does have there own licensed agent now.
2. I do witness all the applications at Mason City Ford because I am the only business manager at our location. I did not witness the Buick GMC Cadillac store but David would bring the application to my office and I would review and sign. I believed David to be credible in offering the credit life insurance. To my knowledge I have never known a customer to complain about the insurance they brought from the Buick GMC Cadillac store. Also, they do have a 15 day free look at the policy.
3. I can only remember signing the insurance contract for one business manager and that was during April of 2011 and March of 2012. The business manager prior to April of 2011 came to the Community Auto Group with his own insurance license. Initially the business manager that I signed the application for was a contracted employee on a straight salary sometime

during his employment he switched to a regular employee and would have been put on commission.

4. I did sign each application for both stores until recently when the Buick GMC Cadillac store got their own licensed insurance representative. So I will only be signing for the Mason City Ford Lincoln location. I did believe all the application information to be accurate. The application is also reviewed by Protective Insurance company and the customer has 15 days to review the policy.

5. I process all application thru Protective Life Insurance.

(Exhibit 13).

The Division confirmed Beane was never licensed as an insurance producer in Iowa.

Lacher and Marquett testified an individual must pass a test to become licensed as an insurance producer in Iowa. Marquett expressed concern that an unlicensed person who is soliciting insurance sales may mislead potential insureds regarding products. Marquett reported the purpose of licensing is to ensure the person offering and selling insurance products understands the coverage, exclusions, and payouts of each product.

The Division filed a Statement of Charges against Adkins alleging she knowingly accepted insurance business from an unlicensed person in violation of Iowa Code section 522B.11(1)*l*, and failed or refused to respond to the Division's investigation in violation of Iowa Code sections 507B.4A and 522B.11(1)*p*. The Division requests suspension of Adkins' license for three months and imposition of a \$2,500 civil penalty.

Adkins testified Beane met with customers and offered customers a menu of items on the computer, including service contracts, maintenance contracts, and credit, life and disability insurance. Beane printed out each application from the system after the customer self-selected the products and the customer signed the application. Each application was then delivered to Adkins for her review and signature. Adkins reported the menu explained all the products to the customers and was self-explanatory. The insurance products were only sold to customers and not to other members of the public. None of the customers filed a complaint with the Division.

Adkins reported that during her employment she confirmed with Tim Behm and Car Co. that it was appropriate to accept a printed application form from a customer who had purchased and was financing a car at another Community Motors location. Adkins did not contact the Division for information concerning the practice. After the Division commenced its investigation, Community Motors hired a licensed individual to work at the Buick GMC Cadillac location.

CONCLUSIONS OF LAW

The Iowa Legislature created the Division to regulate and supervise the business of insurance in the state of Iowa.¹ The Insurance Commissioner is the chief executive officer of the Division.² A person must obtain an insurance producer license from the Insurance Commissioner to sell, solicit and negotiate insurance in Iowa.³

I. Accepting Insurance Business from an Unlicensed Person

The Division alleges Adkins violated Iowa Code section 522B.11(1)*l* by accepting insurance business from an unlicensed person, Beane. The Division may place on probation, suspend or revoke an insurance producer's license and impose a civil penalty for "knowingly accepting insurance business from an individual who is not licensed."⁴ The statute does not define the term "knowingly." "When a statute or rule is plain and its meaning is clear, the rules of statutory construction do not permit courts to search for meaning beyond its express terms."⁵ The courts generally presume words in statutes and agency rules "are used in their ordinary and usual sense with the meaning commonly attributed to them."⁶ Webster's Dictionary, a source of the ordinary meaning of words, defines the term "knowing" as deliberate, having or reflecting knowledge or information.⁷

Adkins argues it is not uncommon for agents, secretaries and administrative employees to participate in ministerial portions of the application process regarding the issuance of insurance or binding an item under a policy. She asserts Beane provided nothing more than ministerial support as an employee of Community Auto Group and he did not engage in the sale of insurance or receive any commission on a referral basis. Adkins did not meet with any of the insureds from Beane's location. Rather, their applications were forwarded to her for her review and signature. Beane's actions were more than ministerial.

In her July 26, 2012 response to the Division, Adkins acknowledged she accepted business from Beane, an unlicensed individual, without personally meeting with the insureds. The Division has proven Adkins violated Iowa Code section 522B.11(1)*l*.⁸

II. Failing or Refusing to Respond to the Division's Investigation

The Division next contends Adkins failed to cooperate with the Division's investigation, in violation of Iowa Code sections 507B.4A and 522B.11(1)*p*. The Division may place on probation, suspend or revoke a producer's license and impose a civil penalty for "failing or refusing to cooperate in an investigation by the commissioner."⁹ The evidence revealed

¹ Iowa Code § 505.1 (2011).

² *Id.*

³ *Id.* §§ 522B.2., .5.

⁴ *Id.* § 522B.11(1)*l*.

⁵ *Office of Consumer Advocate v. Iowa Utilities Bd.*, 744 N.W.2d 640, 643 (Iowa 2008) (citing *State v. Snyder*, 634 N.W.2d 613, 615 (Iowa 2001).

⁶ *Id.* (citing *Am. Home Prods. Corp. v. Iowa State Bd. of Tax Rev.*, 302 N.W.2d 140, 142-43 (Iowa 1981)).

⁷ *Merriam-Webster's Collegiate Dictionary* (10th Ed. 1998).

⁸ In her Brief Adkins raises several constitutional issues that are preserved for further appeal.

⁹ Iowa Code § 522B.11(1)*p*.

Adkins responded to the Division. While the Division received her response one day after Marquett's second deadline, she responded to in the inquiry. Adkins did conceal any facts from the Division and was forthcoming regarding her practices with Beane. The Division has not proven Adkins violated Iowa Code sections 507B.4A or 522B.11(1)p.

III. Penalty

The Division seeks suspension of Adkins' insurance producer license for three months and imposition of a \$2,500 civil penalty. If an insurance producer is found to have violated Iowa Code chapter 522B, the producer may be assessed a civil penalty pursuant to Iowa Code chapter 507B.¹⁰ Iowa Code section 507B.8 allows for assessment of a civil penalty of not more than \$1,000 for each act or violation, not to exceed an aggregate of \$10,000, unless the person knew or reasonably should have known the person was violating the insurance laws, in which the penalty shall not exceed \$5,000 for each violation, or exceed and aggregate of \$50,000 in a six-month period. Adkins knowingly accepted business from an unlicensed individual working for her employer. The process has been discontinued. The Division has not proven Adkins failed to cooperate with its investigation. Adkins' license should be placed on probation for a period of one year and she should pay a \$1,000 civil penalty

ORDER

Adkins is assessed a \$1,000 civil penalty and her insurance producer's license is placed on probation for one year. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 24th day of July, 2013.



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

cc: Bob Koppin and Irene Vega
John Walker Jr.

¹⁰ *Id.* § 522B.17.

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.¹¹ 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.

¹¹ 191 IAC 3.27.