

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

IN THE MATTER OF) Case No. 13IID027
)
KATHERINE A. KRIEG,) **PROPOSED DECISION**
)
Respondent.)

A contested case hearing was held before Administrative Law Judge Carol J. Greta on November 1, 2013. Attorney Robert Koppin appeared on behalf of the Insurance Division. Rhonda Smith appeared and testified on behalf of the Insurance Division. The Respondent, Katherine A. Krieg, appeared and testified on her own behalf. Exhibits 1 through 5 were admitted into the record without objection.

ISSUE

The issue presented is whether Ms. Krieg failed to timely file with the Insurance Division the mandatory annual report of sales.

FINDINGS OF FACT

The Insurance Division licensed Ms. Krieg as a pre-need sales agent on January 12, 2012. (Statement of Charges) On January 2, 2013, Ms. Smith sent via email a notice to all pre-need sales agents to remind them that the Annual Report of sales for calendar year 2012 was due to be filed electronically with the Insurance Division by April 1, 2013. The notice stated that agents did not have to pay any filing fee for timely filed Reports, but that Reports received after April 1, 2013 were subject to penalty fees of up to \$500, as well as immediate suspension of license. (Exhibit 1)

Ms. Smith testified that Ms. Krieg did not file her Annual Report by April 1, 2013. (Smith Testimony) Accordingly, Ms. Smith sent a follow-up email to Ms. Krieg on April 16, 2013, to file her Annual Report and to submit a late filing fee penalty of \$50 if she filed by April 30, 2013. The reminder email informed Ms. Krieg that “for any submissions *received on or after 5/1/2013 the late filing penalty fee increases to \$100.00, up to \$500.00.*” (Exhibit 1; emphases in original)

Not having received any response to the April 16 email, Ms. Smith referred the matter to the Insurance Division’s Enforcement Bureau. On June 12, the Enforcement Bureau sent a letter to Ms. Krieg once again informing her of her obligation to submit an Annual Report for 2012 and to remit payment for late filing penalty fees (\$150 if submitted by June 30; \$500 thereafter). (Exhibit 2)

Because the Insurance Division heard nothing from Ms. Krieg in response to the June 12 letter, it transferred the matter to the Division of Administrative Hearings to schedule a contested case hearing. The Insurance Division issued a Statement of Charges alleging Ms. Krieg violated the Iowa Cemetery and Funeral Merchandise and Funeral Services Act by failing to file her Annual

Report. After the notice of this hearing and Statement of Charges were served on Ms. Krieg, she filed her Annual Report for 2012.

The Insurance Division seeks revocation of Ms. Krieg's license and imposition of a \$500 civil penalty.

At hearing, Ms. Krieg did not deny having received any of the communications from the Insurance Division. She did not deny that she failed to respond until October 29, 2013. Ms. Krieg testified that she worked for roughly 30 days for Brooks Funeral Care ("Brooks"), from mid-January to mid-February of 2012. She stated that she was provided no guidance from Brooks, and she quit her job after a month. (Krieg Testimony) The Annual Report she eventually filed shows that she made pre-need sales to 14 individuals in the period from January 20, 2012 through February 17, 2012. (Exhibit 5)

Ms. Krieg testified that she did not know what to do. (Krieg Testimony) Ms. Smith testified that all new agents receive a copy of the pertinent law and regulations when licensed. (Smith Testimony) Ms. Krieg added that she no longer desires to work as a pre-need sales agent. (Krieg Testimony)

CONCLUSIONS OF LAW

Iowa Code chapter 523A governs Cemetery and Funeral Merchandise and Funeral Services in Iowa. This case involves a license revocation for a Sales Agent License under the Iowa Cemetery and Funeral Merchandise and Funeral Services Act. A sales agent is a person doing business in Iowa, "who is authorized by a seller to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, on behalf of a seller." Iowa Code § 523A.102(26) (2013). A person may not sell or offer for sale any cemetery merchandise, funeral merchandise, funeral services, or any combination thereof, in Iowa, unless the person holds an active preneed seller license or sales agent license. Iowa Code § 523A.502(1); 191—Iowa Administrative Code (IAC) 103.1(1).

The Division may revoke the license of a pre-need sales agent when the sales agent has failed to file an annual report with the commissioner. See Iowa Code § 523A.502A(1); 191—IAC 105.4 and 105.6(8). In addition, the "commissioner shall levy an administrative penalty in the amount of up to five hundred dollars against a sales agent who fails to file an annual report when due." Iowa Code § 523A.502A(3).

Even if it is true that Brooks Funeral Care provided little or no training to Ms. Krieg, she exacerbated the issue by failing to act immediately. She eventually called Brooks to get the information she needed to file her Annual Report, but should have done so months before she called. Becoming a licensed professional carries with it reasonable obligations.

Ms. Krieg violated the Insurance Division's rules by failing to file a timely Annual Report. She failed to respond to three reminders from the Insurance Division. Her inaction supports revocation of her license.

The Insurance Division also seeks imposition of a \$500 civil penalty. The evidence presented does not justify imposition of such a harsh penalty. Ms. Krieg was a new agent who had not filed an Annual Report; she was not aware of what steps to take. Her choice to ignore the notices was lacking in maturity and supports revocation of her license, but supports only the

imposition of a \$100 penalty. Nothing more is needed to impress upon Ms. Krieg the importance of responding to notices.

ORDER

Ms. Krieg violated the governing statute and the Insurance Division's rules by failing to file her Annual Report for 2012. Ms. Krieg's license as a pre-need sales agent is hereby revoked, and she is ordered to pay a \$100 civil penalty. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 4th day of November, 2013.



Carol J. Greta
Administrative Law Judge

cc: Katherine A. Krieg
Robert Koppin and Irene Vega

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision. 191—IAC 3.27. 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.

This proposed decision shall become final without further proceedings unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 3.27(17A).