

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 92291
)	
NICHOLAS MENOUGH,)	ORDER ACCEPTING VOLUNTARY
NPN 16261034,)	FORFEITURE AND CONSENT TO
DOB 02/14/XXXX,)	ORDER
)	
Respondent)	

NOW THEREFORE upon motion of the Iowa Insurance Division (“Division”) and pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices, Iowa Code Chapter 522B—Licensing of Insurance Producers, and 191 Iowa Administrative Code Chapter 14—Life Insurance Illustrations Model Regulation, the Commissioner enters the following Consent Order (“Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Doug Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 507B—Insurance Trade Practices, Chapter 522B—Licensing of Insurance Producers, 191 Iowa Administrative Code Chapter 14—Life Insurance Illustrations Model Regulation pursuant to Iowa Code § 505.8.
2. Nicholas Menough, (“Respondent”) is an individual with a last-known residence address of 404 NW Norton Circle, Grimes, Iowa, 50111.
3. Respondent is and has been licensed in the state of Iowa as a resident insurance producer since June 16, 2011. He is licensed under National Producer Number 16261034.
4. Pursuant to Iowa Code § 505.28, Respondent consented to the jurisdiction of the commissioner of insurance by committing acts governed by Chapters 507B and 522B.
5. From on or about January 19, 2015 to present, Respondent engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of his

insurance producer license; cease and desist orders; and civil penalties or other relief under Iowa Code Chapters 507B, 522B, and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

6. Respondent admits as true the findings of fact contained herein.
7. Respondent applied for a resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for Individual Producer License (“Uniform Application”). In submitting the Uniform Application, Respondent designated the Commissioner as an agent for service of process.
8. The Division issued Respondent a license as an insurance producer on June 16, 2011 and assigned to him National Producer Number 16261034.
9. Respondent was appointed as an agent for Farm Bureau Life Insurance Company (“Farm Bureau”) from October 13, 2011 until his appointment was terminated on March 16, 2016.
10. Respondent owes Farm Bureau \$13,285.86 in unearned commissions and bonuses for policies that were cancelled and for which Respondent did not return the commissions and bonuses paid to him.

Allegations Related to Conduct Concerning Consumer SP

11. During or about January 2015, Respondent and one of his existing clients who, at the time resided in Arizona (“Consumer SP”), spoke by telephone and discussed the possibility of Consumer SP purchasing an additional life insurance policy through Respondent.
12. At the time of the telephone conversation, Consumer SP already had a life insurance policy with Farm Bureau (“Prior Policy”), purchased through Respondent.

13. During the telephone conversation, Consumer SP expressed to Respondent that he did not wish to purchase an additional life insurance policy at that time, but that he may be interested in purchasing another policy in the future.

14. On January 19, 2015, despite Consumer SP's statements, Respondent completed an application for a participating whole life insurance policy, called AllLife LP65, with a face value of \$250,000 ("Unauthorized Policy") for Consumer SP, forged Consumer SP's electronic signature to the application, and submitted it to Farm Bureau. Respondent did not have Consumer SP's authorization to sign, nor did he indicate that he was signing on behalf of Consumer SP on the application.

15. In filings with the Division, Farm Bureau certified participating whole life insurance policies as policies to be marketed with illustration Form Number 434-117 and on January 19, 2015, Respondent forged Consumer SP's signature to that same illustration form that accompanied the Unauthorized Policy and submitted it to Farm Bureau. Respondent did not have Consumer SP's authorization to sign, nor did he indicate that he was signing on behalf of Consumer SP on the illustration.

16. On March 1, 2015, Respondent completed and forged Consumer SP's signature to an Age and Daily Living Rider Supplement ("Rider Supplement"), a rider to the Unauthorized Policy, and submitted it to Farm Bureau. Respondent did not have Consumer SP's authorization to sign, nor did he indicate that he was signing on behalf of Consumer SP on the Rider Supplement.

17. Farm Bureau issued the Unauthorized Policy and an associated Age and Daily Living Rider to Consumer SP in reliance upon the misrepresentations made by Respondent in the Unauthorized Policy's application, the Rider Supplement, and the accompanying documents.

18. Respondent neglected to deliver the Unauthorized Policy, its associated rider, or the illustration to Consumer SP.

19. On March 31, 2015, Respondent created an electronic funds transfer (EFT) Authorization Form (“EFT Form”) naming Consumer SP as the insured on the Unauthorized Policy, but containing Respondent’s bank routing and savings account information, and forged Consumer SP’s signature on the form. Respondent did not have Consumer SP’s authorization to sign, nor did he indicate that he was signing on behalf of Consumer SP on the EFT Form.

20. On April 10, 2015, Consumer SP submitted an EFT Form changing his banking information from his account in Iowa to his account in Arizona. At the time, Consumer SP was still unaware of the Unauthorized Policy.

21. On May 28, 2015, after processing the change to Consumer SP’s EFT Form, Farm Bureau drafted \$281.14 for the Unauthorized Policy from Consumer SP’s Arizona bank account.

22. When Consumer SP discovered the Farm Bureau draft from his bank account, he sent Respondent a text message again advising Respondent that he did not want and could not afford the Unauthorized Policy.

23. Respondent, via text message, assured Consumer SP that he would “take care of it” and apologized to Consumer SP.

24. On June 18, 2015, rather than cancelling the policy, respondent completed another EFT Form, again naming Consumer SP as the insured on the Unauthorized Policy, again containing Respondent’s bank routing and savings account information, and again forged Consumer SP’s signature on the form. Respondent completed a similar EFT Form on July 24, 2015 with the same misinformation and forgery, except changing the bank account to Respondent’s new savings account after Respondent’s bank closed his old account. Respondent did not have

Consumer SP's authorization to sign, nor did he indicate that he was signing on behalf of Consumer SP on the June 18, 2015 or the July 24, 2015 EFT Forms.

25. In reliance upon the information submitted by Respondent in the application, the Rider Supplement, and the March 31, 2015 and June 18, 2015 EFT Forms, Farm Bureau drafted \$281.14 on April 9, 2015, April 28, 2015, and June 28, 2015 for the Unauthorized Policy from Respondent's savings account.

26. Between June 22, 2015 and July 2, 2015, Consumer SP received a notification from Farm Bureau indicating the bank account information for the Unauthorized Policy had been changed and that future payments would be withdrawn monthly for the Unauthorized Policy.

27. On July 2, 2015, Consumer SP contacted Farm Bureau and told a customer service representative he wanted to verify that the Unauthorized Policy was cancelled and that he would not be charged future monthly premiums for such policy. He also advised that he had not received a refund of the approximately \$280.00 debited from his account for the Unauthorized Policy. During the call, Consumer SP was emphatic that he did not authorize the Unauthorized Policy and could not afford it.

28. During the July 2, 2015 call, Consumer SP explained that he has lived in Arizona since January 2015, that he did not sit down with Respondent to complete the application, and that he did not complete any of the medical questions on the application for the Unauthorized Policy.

29. On July 7, 2015, Consumer SP spoke with a supervisor at Farm Bureau and again was emphatic that he did not authorize and could not afford the Unauthorized Policy.

30. Between July 2, 2015 and August 7, 2015, Farm Bureau cancelled the Unauthorized Policy.

31. On August 7, 2015, Farm Bureau issued a refund of \$281.14 to Consumer SP for the May 28, 2015 premium for the Unauthorized Policy.

32. On September 30, 2016, Farm Bureau issued a refund of \$843.42 to Respondent for premiums drafted from Respondent for the Unauthorized Policy on April 9, 2015, April 28, 2015, and June 28, 2015. Respondent cashed the check on October 3, 2016.

33. Members of the Farm Bureau special investigative unit (SIU) interviewed Respondent in person on August 13, 2015. During the interview, Respondent admitted the following:

- a. That Consumer SP did not authorize Respondent to issue the Unauthorized Policy and that he completed information on the application for the Unauthorized policy using Consumer SP's answers on the application for the Prior Policy, and assumed that the answers were still accurate;
- b. That the March 31, 2015 and June 18, 2015, EFT Forms were for the Unauthorized Policy for Consumer SP, but contained Respondent's bank account information rather than Consumer SP's bank account information, and that Respondent signed Consumer SP's signature to the forms without Consumer SP's authorization;
- c. That on July 24, 2015, Respondent completed another EFT Form for the Unauthorized Policy for Consumer SP containing Respondent's new bank account information after Respondent's previous bank account was closed, and that Respondent signed Consumer SP's signature to the form;
- d. That Respondent signed the March 1, 2015 Age and Daily Living Rider Supplement in Consumer SP's name;

- e. That Respondent did not follow company policy for obtaining signatures on life insurance applications and EFT Forms; and
- f. That Respondent did not follow company policy when he authorized withdrawals from Respondent's bank account for premiums on Consumer SP's Unauthorized Policy.

34. On October 31, 2016, Respondent was interviewed at the Division's office by the Division's compliance investigator ("Compliance Investigator").

35. During the October 31, 2016 interview, Respondent made the following statements to Compliance Investigator:

- a. That Respondent "accidentally" filled out the EFT Forms with Respondent's bank account information;
- b. That Consumer SP knew about the application for the Unauthorized Policy at the time the application was made;
- c. That Consumer SP answered the questions on the application at the time the application was made;
- d. That Respondent did not sign the March 31, 2015 EFT Form for Consumer SP, but that Consumer SP scribbled his signature on a blank EFT Form on a car in advance to be used for future changes to Consumer SP's existing policies or for adding additional policies for Consumer SP, and Respondent filled out the rest of the EFT Form for the Unauthorized Policy;
- e. That Respondent did not sign the June 18, 2015 EFT Form for Consumer SP and has never signed anyone else's name on an EFT Form;

- f. That sometimes Consumer SP's wife would send Respondent information and Respondent would grab the wrong EFT Form out the of the file; and
 - g. That all the Farm Bureau SIU investigator wanted to do was accuse Respondent of signing the EFT Forms, so finally Respondent said that he signed the forms.
36. During the October 31, 2016 interview, Respondent admitted the following:
- a. That the commission on the sale of the Unauthorized Policy was 50% of the first year premium;
 - b. That the March 31, 2015 EFT Form for Consumer SP was completed by Respondent, contained Respondent's bank account information, and that Respondent was authorizing funds to be drafted from Respondent's account for the Unauthorized Policy;
 - c. That Consumer SP is and was not an authorized signer on Respondent's bank account; and
 - d. That paying premiums for clients is rebating and can have the appearance that Respondent or the consumers are acting fraudulently.
37. During a November 9, 2016 interview of Consumer SP by Compliance Investigator, Consumer SP stated the following:
- a. That he did not want the Unauthorized Policy and told Respondent that he did not want the Unauthorized Policy;
 - b. That he was in Arizona on January 19, 2015, March 1, 2015, March 31, 2015, and June 18, 2015, so he could not have signed the illustration for the Unauthorized Policy, the Age and Daily Living Rider Supplement, the March 31, 2015 EFT Form, or the June 18, 2015 Form;

Allegations Related to Conduct Concerning Consumer DH

38. Respondent also paid life insurance premiums for another consumer (“Consumer DH”).

In Respondent’s October 31, 2016 interview at the Division by Compliance Investigator, Respondent stated that Consumer DH is or was a friend, roommate, and former employee of Respondent’s.

39. During the October 31, 2016 interview, Respondent stated that Consumer DH was an employee of Respondent’s while Respondent was appointed by Farm Bureau, that Consumer DH “got approved,” to be on the pilot program at Farm Bureau as an assistant sales agent or servicer, and that the premiums for Consumer DH’s life insurance policy were only paid by Respondent during the time that Consumer DH was employed by Respondent.

40. During the October 31, 2016 interview, Respondent admitted that Consumer DH signed an EFT Form that contained Respondent’s business’ bank account information.

41. Farm Bureau has no record of Consumer DH ever having been employed by Farm Bureau or Respondent, or having been approved for any Farm Bureau pilot program.

42. Consumer DH’s application for the life insurance policy lists Consumer DH’s employer as iWireless.

43. The Division has no record of Consumer DH ever having been appointed as an insurance producer for Farm Bureau.

44. Respondent has submitted a request for voluntary surrender of his Iowa resident insurance producer license.

45. Respondent does not dispute the conclusions of law that follow.

III. CONCLUSIONS OF LAW

COUNT 1

Misrepresentations in Insurance Applications

46. Under Iowa Code § 507B.4(3)(n) a person is prohibited from “[m]aking false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.”

47. Respondent made numerous false or fraudulent representations in the Farm Bureau application for Consumer SP, including that Consumer SP was applying for the policy, that every assertion in the application was accurate and was being made or authorized by Consumer SP, and that Consumer SP was signing or authorizing signature of the policy. Respondent received commissions and bonuses on the sale of the Unauthorized Policy.

48. Respondent’s acts and practices have been in violation of Iowa Code § 507B.4(3)(n), subjecting Respondent to suspension or revocation of Respondent’s insurance producer license, the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such acts and practices pursuant to Iowa Code §§ 507B.7 and 522B.17, payment of restitution under Iowa Code 505.8, and payment of the costs of the investigation and administrative expenses related to the investigation, such costs and expenses to include reasonable attorney fees, pursuant to Iowa Administrative Code 191—15.14(1)(e).

COUNT 2

Fraudulent or Dishonest Practices or Demonstrating Untrustworthiness

49. Under Iowa Code § 522B.11(1)(h), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for using

fraudulent or dishonest practices or demonstrating untrustworthiness, in the conduct of business in this state or elsewhere.

50. Respondent used fraudulent and dishonest practices, demonstrated untrustworthiness in the conduct of business in this state:

- a. By creating and forging Consumer SP's name to an application for a life insurance policy and a Rider Supplement, knowing that Consumer SP did not want or authorize the Unauthorized Policy or rider, and submitting them to Farm Bureau to represent that Consumer SP signed and authorized the application and Rider Supplement;
- b. By answering all of the application questions and Rider Supplement questions on Consumer SP's behalf without authorization or knowledge of their accuracy;
- c. By forging Consumer SP's name to an illustration without authorization and submitting it to Farm Bureau to represent to Farm Bureau that Consumer SP had received a copy of the illustration and had signed and affirmed his understanding of the information contained therein; and
- d. By forging Consumer SP's name to several EFT Forms without authorization and submitting them to Farm Bureau to represent that Consumer SP was the owner or an authorized signer on the accounts contained therein and that Consumer SP was authorizing drafts from those accounts for premiums on the Unauthorized Policy.

51. Respondent's acts and practices have been in violation of Iowa Code § 522B.11(1)(h), subjecting Respondent to probation, suspension, or revocation of Respondent's insurance producer license, the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such acts and practices pursuant to Iowa Code 522B.11 and 522B.17, and payment of restitution under Iowa Code 505.8.

COUNT 3
Rebating

52. Iowa Code §507B.4(3)(i)(1) prohibits rebating and includes, in relevant part, making a contract for life insurance other than as plainly expressed in the contract issued thereon.

53. Respondent paid the premiums for the life insurance contracts of Consumer SP and Consumer DH from his own personal bank accounts and such payments were not plainly expressed in the contract for the life insurance policies.

54. Respondent's acts and practices have been in violation of Iowa Code § 507B.4(3)(i)(1), subjecting Respondent to suspension or revocation of Respondent's insurance producer license, the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such acts and practices pursuant to Iowa Code § 507B.7, and payment of the costs of the investigation and administrative expenses related to the investigation, such costs and expenses to include reasonable attorney fees, pursuant to Iowa Administrative Code 191—15.14(1)(e).

COUNT 4
Withholding or Converting any Moneys Received in the Course of Doing Insurance Business

55. Under Iowa Code § 522B.11(1)(d), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for improperly withholding, misappropriating, or converting any moneys received in the course of doing business.

56. Respondent improperly withheld or converted commissions and bonuses paid by Farm Bureau in the course of insurance business by failing to return the unearned portion of the

commissions and bonuses, \$13,285.86, to Farm Bureau after the policies were cancelled and Respondent's business relationship with Farm Bureau was terminated.

57. Respondent's acts and practices have been in violation of Iowa Code § 522B.11(1)(d) subjecting Respondent to probation, suspension, or revocation of Respondent's insurance producer license, the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such acts and practices pursuant to Iowa Code §§ 522B.11 and 522B.17, and payment of restitution under Iowa Code 505.8.

COUNT 5

Failing to Cooperate in an Investigation by the Commissioner

58. Under Iowa Code § 522B.11(1)(p), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for failing to cooperate in an investigation by the Commissioner.

59. Respondent failed to cooperate in an investigation by the Commissioner by providing false and misleading statements to the Commissioner's investigator in the course of an investigation.

60. Respondent's acts and practices have been in violation of Iowa Code § 522B.11(1)(p) subjecting Respondent to probation, suspension, or revocation of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging in such acts and practices pursuant to Iowa Code §§ 522B.11 and 522B.17.

COUNT 6

Failure to Obtain a Signature on a Life Insurance Illustration and to Deliver the Illustration to the Insurer and the Applicant

61. Iowa Administrative Code 191—14.5(3) provides, in relevant part, that “[i]f a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with these rules is required...”

62. Under Iowa Administrative Code rule 191—14.9, if an illustration is used in the sale of a life insurance policy and if the policy is applied for as illustrated, the insurance producer must obtain the signature of the applicant on the illustration used, provide a copy of such to the insurer along with the application, and must leave a copy of the illustration with the applicant.

63. Respondent sold Consumer SP a life insurance policy certified by Farm Bureau as one to be marketed with an illustration, but forged Consumer SP’s signature instead of obtaining a signature from Consumer SP on the illustration.

64. Respondent submitted the forged illustration to Farm Bureau. In doing so, Respondent failed to submit to the insurer an illustration signed by Consumer SP.

65. Respondent failed to provide a copy of the illustration to the applicant, Consumer SP.

66. Respondent’s acts and practices have been in violation of Iowa Code § 507B.3 and Iowa Administrative Code rules 191—14.5 and 191—14.9, subjecting Respondent to suspension or revocation of Respondent’s insurance producer license, the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such acts and practices pursuant to Iowa Code § 507B.7, and payment of the costs of the investigation and administrative expenses related to the investigation, such administrative costs to include reasonable attorney fees, pursuant to Iowa Administrative Code 191—15.14(1)(e).

IV. ORDER

WHEREFORE, IT IS ORDERED pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapters 507B and 522B:

- A. The voluntary forfeiture of Respondent's Iowa resident insurance producer license is accepted in accordance with Iowa Administrative Code 191—10.10(5)
- B. Respondent is barred from applying for licensure as insurance producer in this state for a period of ten (10) years from the date of the Order;
- C. Respondent shall within sixty (60) days of this Order pay a ~~civil penalty~~, in the amount of \$1,500.00, payable to order of the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8, 522B.11, 522B.17, and 507B.7; and
- D. The Division may move to vacate this order in its entirety and proceed to hearing if Respondent fails to remit the ~~civil penalty~~ payment of \$1,500.00 to the Division within sixty (60) days of the Order.

as reimbursement for costs of investigation

Dmo


Dmo

SO ORDERED on the 27th day of July, 2017.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



Dustin DeGroot
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Copy to:

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on July 27, 2017.

By: () First Class Mail () Personal Service
() Restricted certified mail, return receipt () Email, by consent
() Certified mail, return receipt () _____

Signature: Tammi L. Green
Tammi L. Green

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that acting as an insurance producer, as defined in Iowa Code Chapter 522B, in violation of this Order, is a felony under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

YOU ARE ALSO NOTIFIED that if you violate this order, you may be subject to administrative and civil penalties pursuant to Iowa Code § 522B.17(3). The commissioner may petition the district court to hold a hearing to enforce the order as certified by the commissioner. The district court may assess a civil penalty against you in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE REGARDING REINSTATEMENT/REISSUANCE

Upon entry of this Order, your insurance producer license will become inactive due to forfeiture/suspension/revocation. While your license is inactive, you are prohibited from conducting the business of insurance. Your license will not be active until the Division reinstates/reissues your insurance producer license by order pursuant to Iowa Administrative Code 191—10.10.

Reinstatement/Reissuance of your insurance producer license will not be granted unless and until you have complied with the terms of this Order, made the appropriate Application for Reinstatement/Reissuance with the Division, and paid all applicable fees. If applicable, you may also be required to apply for licensure through the National Insurance Producer Registry (NIPR) and pay all applicable fees.

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final order of license revocation or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action.

CONSENT TO ORDER AND AGREEMENT

I, Nicholas Menough, Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that I am waiving my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review. I admit to the findings of fact and do not dispute the conclusions of law contained herein.

I further understand that this Order is considered a final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, which will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that this Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against Nicholas Menough.

Dated: July 12-2017

Nicholas Menough
Nicholas Menough, Respondent

404 NW NORTON Circle Grimes, IA 50111
Address of Signatory

Subscribed and sworn before me by Nicholas Menough on this 12 day of July, 2017.

Samantha Smith
Notary Public for the State of Iowa

