



BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF	)	Division Case No. 95615
	)	
TOMMY MCCELLAN-BEY,	)	<b>FINDINGS OF FACT,</b>
NPN 8945829,	)	<b>CONCLUSIONS OF LAW,</b>
DOB 05/25/XXXX,	)	<b>AND FINAL ORDERS</b>
	)	
Respondent	)	

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**DECISION**

Respondent Tommy McCellan-Bey’s (“McClellan-Bey”) resident insurance producer license is suspended for 90 days beginning on November 12, 2018, and McClellan-Bey is prohibited from writing or posting surety bonds during his suspension and until February 15, 2019. McClellan-Bey is ordered to pay \$2,000.00 in costs of the investigation and prosecution for demonstrating untrustworthiness on February 17, 2017, when McClellan-Bey sought to assist and encouraged another insurance producer to write a surety bond on behalf of Continental Heritage Insurance Company when this other producer did not possess an appointment with Continental Heritage; and demonstrating untrustworthiness again on March 22, 2017, when McClellan-Bey knowingly and deliberately disregarded the Black Hawk County Sheriff’s 90 day suspension of McClellan-Bey’s professional visitation privileges imposed on January 17, 2016.

On June 8, 2018, the Iowa Insurance Division (“Division”) filed a statement of charges against McClellan-Bey for using dishonest practices and demonstrating untrustworthiness, subjecting his producer license to discipline under Iowa Code Chapters 522B and Iowa Administrative Code Chapter 15. A notice of hearing was issued by the Commissioner on June 27, 2018 setting this matter for a prehearing conference on August 2, 2018 and for a hearing on August 29, 2018.

Attorney Maurice Spencer entered an appearance on behalf of McClellan-Bey and filed an answer to the statement of charges on July 30, 2018. During prehearing proceedings the hearing was continued to September 5, 2018.

The hearing was held on September 5, 2018 at 2:00 p.m. before Commissioner Douglas Ommen at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4<sup>th</sup> Floor, Des Moines, Iowa. McClellan-Bey appeared in person and by counsel. The Division was represented by Compliance Attorney John Leonhart.

At hearing, the following witnesses appeared on behalf of the Division and were examined: Captain Mark Herbst of the Black Hawk County Sheriff's Office; Sergeant Jason Terrones of the Black Hawk County Sheriff's Office; and Karla Niedermann of the Black Hawk County Judicial Court; and Craig Hayden, Compliance Investigator of the Iowa Insurance Division.

At the hearing, the following exhibits were offered by the Division and received as evidence into the record:

1. Black Hawk County Sheriff's arrest report, booking report and book out for person identified "Tommy Rishaun McClellan," dated 12/18/2016 and Sheriff's suspension of professional visitation privileges, dated 01/17/2016;
2. Not offered;
3. Black Hawk County Judicial Court records with surety bond, dismissing charges against "Tommy Rishaun McClellan" and initiating charges against "Chrystopher Riccardo McClellan;"
4. Undated memorandum from Captain Mark Herbst to Sheriff Tony Thompson concerning events on March 22, 2017;
5. Not offered (Incident report of Black Hawk Sheriff's office, dated 02/17/2017 was offered by Respondent and received);
6. Investigative notes of Investigator Craig Hayden's interview with Deputy Sheriff, Lt. Lance Teisinger;
7. Sheriff's suspension of professional visitation privileges, dated 03/27/2017;
8. Letter dated 04/03/2017 of Continental Heritage Insurance Company;
9. Insurance producer Anthony Fitz' ("Fitz") application for appointment with Continental Heritage Insurance Company, dated 02/17/2017;
10. Division's appointments record for Anthony Fitz;

11. Subagent contract for Fitz, dated 02/17/2017;
12. Black Hawk County Jail's authorization for release of person identified as "Tommy Rishaun McClellan," dated 12/08/2016.

McClellan-Bey testified on his own behalf. Division's exhibit 5 was offered by Respondent and received into evidence.

By order, the Commissioner reopened the record and required the submission of supplementary exhibits. The following supplementary exhibits by order of the Commissioner are received as evidence into the record:

1. McClellan-Bey's Uniform Application for Individual Insurance Producer License, dated as received on 07/17/2006;
2. Division's 18 U.S.C. §1033 file documents pertaining to McClellan-Bey;
3. McClellan-Bey's last 4 triennial license renewal applications dated 04/13/2009, 05/21/2012, 05/05/2015 and 04/12/2018

**NOW THEREFORE**, after reviewing the pleadings submitted in this case and the evidence received, the Commissioner of Insurance issues the following findings of fact, conclusions of law, and orders:

#### **I. FINDINGS OF FACT**

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 522B—Licensing of Insurance Producers.
2. Tommy McClellan-Bey ("McClellan-Bey") is an individual with a residence address of 1400 N. Barclay St., Waterloo, IA 50703-2676.
3. McClellan-Bey applied for a resident insurance producer license in Iowa by filing a Uniform Application for Individual Insurance Producer License ("Uniform Application") on July

17, 2006 with the Division. In submitting the Uniform Application, McClellan-Bey designated the Commissioner as an agent for service of process.

4. The Division issued McClellan-Bey a license as an insurance producer on October 17, 2006 under National Producer Number 8945829. McClellan-Bey has applied for and received triennial renewals of his license since his initial licensure in 2006.

5. McClellan-Bey is and has been licensed in the state of Iowa as a resident insurance producer continuously since October 17, 2006.

6. The Division offered no evidence of other disciplinary cause during McClellan-Bey's 12 years of licensure.

7. Pursuant to Iowa Code § 505.28, McClellan-Bey has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code Chapter 522B.

8. On December 18, 2016, one of McClellan-Bey's son, Chrystopher Riccardo McClellan, was arrested for operating a motor vehicle while intoxicated. Upon arrest, Chrystopher McClellan, in possession of a false identification, identified himself to arresting officers as "Tommy Rishaun McClellan," the name of another of McClellan-Bey's adult children, who is nine years younger than Chrystopher McClellan.

9. On the morning of December 18, 2017, Chrystopher McClellan called McClellan-Bey to bail him out of jail.

10. McClellan-Bey met in jail with Chrystopher McClellan, on the morning of December 18, 2016 and then posted a surety bond to the prisoner's benefit and secured Chrystopher McClellan's release from jail under false identification as "Tommy Rishaun McClellan."

11. Upon obtaining Chrystopher McClellan's release, McClellan-Bey drove Chrystopher McClellan from the jail.

12. McClellan-Bey testified at the hearing that he did not recognize the identity of Chrystopher McClellan while at the jail obtaining his release or while driving him from the jail on December 18, 2016, and had the mistaken belief that the person was Tommy Rishaun McClellan. The Division did not discredit this testimony on cross-examination and McClellan-Bey's testimony on this issue was received as uncontroverted.

13. From August 1988 through 2001, McClellan-Bey was imprisoned for substance use related offenses.

14. Upon release from custody, McClellan-Bey demonstrated his rehabilitation and fitness for license as a surety bond agent, which led to his licensure by the Division in 2006.

15. McClellan-Bey testified at the hearing that he has had very limited contact with either Chrystopher McClellan or Tommy Rishaun McClellan over the course of their lifetimes, and had actually seen them only a very few times. The Division did not discredit this testimony on cross-examination and McClellan-Bey's testimony on this issue was received as uncontroverted.

16. McClellan-Bey testified that he has suffered from an anxiety disorder that may impact his memory.

17. On or about December 19, 2016, the Black Hawk County Sheriff's Office was made aware of the falsification of Chrystopher McClellan's identity.

18. On January 17, 2017, the Black Hawk County Sheriff after reviewing the circumstances suspended McClellan-Bey's professional visitation privileges for 90 days and notified McClellan-Bey of his decision.

19. The Black Hawk County Sheriff's suspension McClellan-Bey was effective through April 17, 2017.

20. On February 17, 2017, McClellan-Bey accompanied Anthony Fitz (“Fitz”), another insurance producer who intended to write surety bonds, to the Black Hawk County Jail to bail out an inmate.

21. Fitz was contracting with McClellan-Bey as a sub-agent of McClellan-Bey doing business as “A-1 Flynn Bail,” sharing 30% of commissions.

22. On February 17, 2017, Fitz attempted to write a surety bond for Continental Heritage Insurance Company (“Continental Heritage”) on behalf an inmate, when, at that time, Fitz was not appointed by Continental Heritage to do so.

23. After the Black Hawk County Sheriff’s Office independently determined Fitz had not been appointed by Continental Heritage and refused to permit Fitz to write a surety bond, McClellan-Bey and Fitz went back to McClellan-Bey’s office and wrote up an application to be appointed as an agent of Continental Heritage.

24. The conduct of McClellan-Bey in encouraging and assisting a sub-agent to write a surety bond when that sub-agent does not have the authority of an appointment to write that bond is conduct unworthy of the trust owed by McClellan-Bey to the state of Iowa and the public under his insurance producer license.

25. On March 22, 2017, McClellan-Bey represented to Black Hawk County Jail staff that he was at the jail to make a professional visitation, and his request for a professional visitation was granted by jail staff, even though McClellan-Bey’s professional visitation privileges remained suspended.

26. When confronted with this improper conduct, McClellan-Bey claimed to Captain Mark Herbst that McClellan-Bey believed that the suspension had begun on December 18, 2016, the date Christopher Riccardo McClellan was released on bond using the falsified identification.

27. We do find McClellan-Bey's claim to the sheriff and his subsequent testimony at the hearing in this matter to be disingenuous. The false identification was unknown to the Black Hawk County Sheriff in December. McClellan-Bey's claimed belief is neither reasonable, nor was his testimony at the hearing on this issue credible.

28. During examination at the hearing, McClellan-Bey admitted that he made no effort to validate this professed belief with the Black Hawk County Sheriff before his visitation. His demeanor and testimony on this matter revealed defiance of the sheriff's suspension, not a mistaken belief as to its duration.

29. McClellan-Bey's disregard of the Black Hawk County Sheriff's authority on March 22, 2017, and his testimony on this issue at the hearing exhibit conduct unworthy of the trust owed by McClellan-Bey to the state of Iowa and the public under his insurance producer license.

30. On February 17, 2017 and again on March 22, 2017, McClellan-Bey demonstrated untrustworthiness within the state of Iowa constituting cause for probation, suspension, or revocation of his insurance producer license; civil penalties; or other relief under Iowa Code Chapter 522B and rules adopted pursuant to these chapters.

## **II. CONCLUSIONS OF LAW**

### **COUNT ONE**

#### **Demonstrating Untrustworthiness**

31. 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, coercive, or dishonest practices or demonstrating incompetence or untrustworthiness.

32. Professional licensing statutes, although granting broad discretion to the state licensing authorities, are constitutional. *Miller v. Iowa Real Estate Commission*, 274 N.W.2d 288, (Iowa 1979).

33. The text of Iowa Code § 522B.11(1)(h) makes clear that lack of trustworthiness in itself, authorizes revocation, suspension, or refusal of an insurance producer's license. The term "untrustworthiness" as used in applicable professional licensing statutes is not defined.

Therefore, in interpreting the meaning of "trustworthiness" we must employ the plain and ordinary meaning of the word as used in the statute. "Trust," as a noun, is defined as "assured reliance on the character, ability, strength, or truth of someone or something." Dictionary by Merriam-Webster, <https://www.merriam-webster.com/>. As a verb, "trust" is defined as "to place confidence in." *Id.* "Worthy" is defined as "having sufficient worth or importance." *Id.* The definition of "trustworthy" is "worthy of confidence" or "dependable." *Id.*

Therefore, trustworthiness in the context of an insurance producer license is the confidence worthy of a trust relied upon by the public when dealing with a licensed individual, who is acting under the imprimatur of a state of Iowa insurance professional license. In the case of an insurance professional writing surety bond, it is a very significant trust owed by the licensed individual to our courts, to law enforcement, to the victims of crime, to our laws and regulations, and to the regulatory authorities given charge over insurance producer conduct.

34. Iowa Code § 522B.13 requires that "[a]n individual insurance producer who acts as an agent of an insurer must be appointed by that insurer."

35. "Statutes which regulate the insurance business are remedial in character, enacted under the state's police power upon the theory the business is impressed with a public interest and the public is entitled to protection against illegal practices. Such statutes are liberally construed in



order to carry out the legislative purpose ... [Citations omitted]. The business of insurance is one peculiarly subject to supervision and control... [Citations omitted]. Statutes intended for public benefit are to be taken most favorably to the public.” *Bankers Life & Casualty Co. v. Alexander*, 242 Iowa 364, 373; 45 N.W.2d 258, 263 (Iowa 1950).

36. Actions to deprive an individual of a license for a lawful profession under Iowa licensing regulations require due process of law. *Gilchrist v. Bierring*, 234 Iowa 899, 916-917; 14 N.W.2d 724, 732-733 (Iowa 1940). Due Process is required whether the sanction sought is revocation, suspension, or civil penalty. The Division has the burden of proof in this matter under Iowa Code § 522B.11 and we conclude the standard of proof is a preponderance of the evidence standard. *Eaves v. Board of Medical Examiners*, 467 N.W.2d 234, 237(Iowa 1991)

37. The Division has failed to prove the allegations in paragraph 21 in its statement of charges to be more likely than not. While a reasonable person might assume that a parent would recognize his adult child, an assumption is not proof. McClellan-Bey denied being able to recognize that the person whom had identified himself to authorities to be Tommy Rishaun McClellan was actually Chrystopher McClellan. The Division did not make any effort to discredit this testimony during cross-examination and failed to offer any evidence or testimony that would refute McClellan-Bey’s assertion.

38. The Division did prevail on its charges in paragraphs 22 and 23 involving Fitz’ attempt to write a surety bond without an appointment and McClellan-Bey’s disregard of his 90 day suspension by the Black Hawk County Sheriff, irrespective of whether McClellan-Bey believed the suspension was justified.

39. McClellan-Bey’s conduct in encouraging and assisting a sub-agent on February 17, 2017, to write a surety bond when that sub-agent did not have the authority of an appointment to write

that bond as required by Iowa Code § 522B.13 demonstrated a lack of the trustworthiness that we expect of a licensed insurance producer, subjecting McClellan-Bey to discipline under Iowa Code § 522B.11(1)(h).

40. McClellan-Bey's disregard of the Black Hawk County Sheriff's authority on March 22, 2017, demonstrated a lack of the trustworthiness that we expect of a licensed insurance producer, subjecting McClellan-Bey to discipline under Iowa Code § 522B.11(1)(h).

41. McClellan-Bey's acts are grounds for discipline under Iowa Code § 522B.11(1)(h), subjecting McClellan-Bey to suspension of his resident insurance producer license.

42. McClellan-Bey may be assessed costs of investigation and prosecution in this matter under Iowa Code § 505.8(10).

### **III. ORDERS**

**IT IS THEREFORE ORDERED** that, pursuant to Iowa Code § 522B.11, McClellan-Bey's resident insurance producer license is under suspension for a period of 90 days beginning on November 12, 2018. McClellan-Bey is prohibited from writing or posting surety bonds in the state of Iowa during his suspension and until February 15, 2019, or until McClellan-Bey has paid all costs ordered in this matter.

**IT IS FURTHER ORDERED** that McClellan-Bey shall pay the amount of \$2,000.00 for costs of investigation and prosecution of this matter pursuant to Iowa Code § 505.8(10). Payment shall be made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education.

These orders may be enforced under Iowa Code Chapters 505 and 522B, including but not limited to Iowa Code § 522B.17(3), and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid penalties and other ordered monetary amounts.

SO ORDERED on this 12<sup>th</sup> day of October, 2018.



DOUGLAS M. OMMEN  
Iowa Insurance Commissioner

Serve copies upon Respondent and counsel.

**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 REISSUANCE**

Upon entry of this Order, your insurance producer license will become inactive due to suspension. While your license is inactive, you are prohibited from conducting the business of

insurance. Your license will not be active until the Division makes the determination to reinstate your insurance producer license by order pursuant to Iowa Administrative Code 191—10.10.

Reissuance of your insurance producer license is subject to the discretion of the Commissioner. Additionally, it will not be granted unless and until you have complied with the terms of this Order, made the appropriate Application for 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 OF FINAL ORDER IMPACT**

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

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.

CERTIFICATE OF SERVICE

County of Polk        )  
                                  )  
State of Iowa         )

The undersigned affiant certifies under penalty of perjury and pursuant to the laws of Iowa, on the 12<sup>th</sup> day of October, 2018, the foregoing order was delivered via email, by consent, to:

Mr. Maurice Spencer  
[mospenceesq@gmail.com](mailto:mospenceesq@gmail.com)  
Attorney for Respondent

  
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Hilary Foster  
Iowa Insurance Division