



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF
MICHAEL J. HEIBERGER,

NPN 236917,
DOB 6/15/XXXX,

Respondent.

Division Case No. 105209

**ORDER AND
CONSENT TO ORDER**

COMES NOW the Iowa Insurance Division (“Division”) and pursuant to the provisions Iowa Code chapter 522B—Licensing of Insurance Producers, alleges the following:

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas Ommen, directly and through his designees, administers and enforces Iowa Code chapter 522B—Licensing of Insurance Producers pursuant to Iowa Code § 505.8.
2. Michael J. Heiberger (“Respondent”) is an individual with a last-known residence address of 309 Horsfield Drive, Epworth, Iowa 52045.
3. Respondent is and has been licensed in the state of Iowa as a resident insurance producer since February 18, 1993. He is licensed under National Producer Number 236917.
4. Pursuant to Iowa Code § 505.28, Respondent has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by chapter 522B.
5. On or about January 2018 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; restitution; and civil penalties or other relief under Iowa Code §§ 505.8(10), 507B.7, 522B.11 and 522B.17 and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

6. Respondent applied for a resident insurance producer license with the Division and the Division issued Respondent a license as an insurance producer on February 18, 1993 and assigned him National Producer Number 236917.
7. Respondent renewed his resident insurance producer license with the Division on June 1, 2018, by submitting an application for renewal through the National Insurance Producer Registry. In this renewal application, Respondent designated the Commissioner as an agent for service of process
8. Respondent works as an agent for Heiberger Insurance with its home office in Epworth, Iowa.
9. Respondent is appointed as an agent with Heritage Mutual Insurance Association (“Heritage”), IMT Insurance Company (“IMT”).

Consumers LH & PH

10. Consumer LH purchased a property insurance policy with Heritage in 1998. LH and his wife PH pay an annual premium of \$4,119.40 directly to Heritage in March of each year.
11. In March of 2019, PH called Respondent, who was her insurance agent, because she believed she had not received her annual bill in the mail.
12. Respondent came to PH’s home to collect the premium payment directly.
13. PH initially made the check out to Heritage Mutual like she always does. However, on this occasion, Respondent asked her to cross out Heritage’s name and write the check to Heiberger Insurance.
14. PH wrote a check for \$4,119.40 to Heiberger Insurance and gave it to Respondent, believing he would send the payment on to Heritage.

15. Instead of submitting the premium payment to Heritage, Respondent deposited PH's check into his account. Fifteen days later, Respondent submitted an on-line payment to Heritage for LH's policy in the amount of \$1,034.85.

16. Respondent also changed LH's billing cycle from annual to quarterly without authorization from LH or PH.

17. In April 2019 Heritage sent LH and PH a balance due bill in the amount of \$3,084.55.

18. PH paid the additional \$3,084.55 to Heritage.

19. A few days after PH paid the additional amount she found the original bill from Heritage that she received in March of 2019. She realized she had misplaced that bill at the time.

20. PH called Respondent to find out why she was billed the additional \$3,084.55 when she had paid him a check for the full premium amount.

21. Respondent told PH he would take care of the situation and get her a refund for the \$3,084.55.

22. Time passed and PH never received a refund or an explanation. PH then asked her son, TH, to look into the matter.

23. TH contacted Respondent and inquired about the situation. Respondent told TH that he would mail a check for the \$3,084.55 to TH's parents and that they would have it by the end of the week. When the check never came, TH went to Respondent's office and Respondent promised the check would be in the mail in a few days. When this did not occur, TH went back to Respondent's office two more times demanding payment for his parents.

24. The final time TH went to Respondent's office, Respondent stated he would have a money order in the mail the next day. The next day, Respondent's office caught fire.

25. A few days later Consumers LH and PH received a money order in the mail from the Respondent for the amount of \$3,500.

26. It took Respondent approximately six months to refund the money to PH and LH.

27. On September 29, 2019, TH filed a complaint against the Respondent with the Division.

Other Consumers

28. Respondent engaged in similar behavior with at least four other accounts through Heritage and one other account through IMT.

29. On or about January 2018, Respondent misappropriated moneys from the following consumers: Consumer JF, Consumers AS & ES, Consumer AK, Consumer VM, and Consumer MAS.

30. Respondent changed billing cycles for multiple clients without their knowledge and changed their email contact information to his own personal email so that all correspondence from the company would go to him.

31. In total, Respondent misappropriated more than \$30,000 of client funds.

32. The Division interviewed Respondent on February 5, 2020. Respondent admitted what he did was wrong. Respondent stated he was having cash flow problems and used these premium payments to cover debts in his personal finances.

33. No policies lapsed or were cancelled due to Respondent's actions, but late notices were sent out multiple times on policies due to Respondent's failure to pay the full premium amounts.

34. No consumers are owed any further moneys due to the Respondent's actions.

III. CONCLUSIONS OF LAW

COUNT ONE

Improperly Misappropriating or Converting Moneys in the Course of Doing Insurance Business

35. Under Iowa Code § 522B.11(1)(d), a producer is prohibited from improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.

36. Respondent took premium money from his clients and misappropriated it for his own personal use.

37. In the course of his insurance business, Respondent misappropriated insurance moneys from six different client accounts.

38. Respondent misappropriated more than \$30,000.00.

39. Respondent's acts and practices are in violation of Iowa Code § 522B.11(1)(d) subjecting Respondent to suspension or revocation of Respondent's insurance producer license, to the imposition of a civil penalty, an order requiring Respondent to cease and desist from engaging in such acts or practices, the imposition of costs of the investigation and the prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 522B.11, 522B.17, and 505.8.

IV. JOINT RECOMMENDATION OF THE PARTIES

40. The parties made a joint recommendation for disposition in this matter and in support of their recommendation stated the following:

41. That Respondent's actions violated his duties as a licensed insurance producer. That Respondent has taken responsibility for his actions by consenting to the revocation of his license. Therefore, the parties jointly recommend that:

A. Respondent's Iowa resident insurance producer license be immediately revoked pursuant to Iowa Code §§ 522B.11 and 522B.17;

B. That Respondent immediately cease and desist from engaging in the business of insurance in this state pursuant to Iowa Code §§ 507B.7 and 522B.17;

C. That Respondent be prohibited from applying for licensure for a period of five years pursuant to Iowa Code §§ 522B.11 and 522B.17; and

D. That Respondent be assessed \$1,430 for the costs of investigation.

E. That restitution is not being sought, as no consumers require restitution in this matter.

V. ORDER

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

A. Respondent's Iowa resident insurance producer license is immediately revoked pursuant to Iowa Code §§ 522B.11 and 522B.17;

B. Respondent, pursuant to Iowa Code §§ 507B.7 and 522B.17, shall immediately cease and desist from engaging in the business of insurance in this state;

C. Respondent is prohibited from applying for licensure for a period of five years pursuant to Iowa Code §§ 522B.11 and 522B.17; and

D. Respondent shall, contemporaneously with this Consent Order, pay the amount of \$1,430 for costs of investigation and proceeding pursuant to Iowa Code § 505.8. 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.

E. These orders may be enforced under Iowa Code chapters 507B and 522B, including but not limited to Iowa Code §§ 507B.8 and 522B.17(3).

SO ORDERED on the 1st day of May, 2020.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,

/s/ Adam J. Kenworthy

Adam J. Kenworthy
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Copy to:
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309 Horsfield Dr
Epworth, IA 52045
RESPONDENT

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 May 1, 2020.

By: First Class Mail (May 4) () Personal Service
 Restricted certified mail, return receipt Email, by consent
 Certified mail, return receipt () _____

Signature: /s/ Hilary Foster
 Hilary Foster

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 revocation. 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 reissue your insurance producer license by order pursuant to Iowa Administrative Code rule 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 revocation 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.

CONSENT TO ORDER AND AGREEMENT

I, Michael J. Heiberger, 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 further understand this Order is considered a final administrative action that will be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand this Order is a public record under Iowa Code chapter 22 and information may be shared with other regulatory authorities or governmental agencies, pursuant to Iowa Code § 505.8(8)(d). I also understand this Order will be posted to the Division's website and a notation will be made to the publicly available website record that administrative action has been taken against me.

Dated: 4-1-20



Michael J. Heiberger, Respondent

309 Horsfield Dr Epworth, IA 52045
Address of Signatory

Luke M Maier
Witness Printed Name

4/1/2020
Date

Luke M Maier
Witness Signature