

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	
)	Division Case No. 114671
MARDY GOULD,)	
)	DEFAULT ORDER, FINDINGS OF
)	FACT, CONCLUSIONS OF LAW
)	AND ORDER
)	
Respondent)	

The Commissioner has taken up for consideration the Division’s motion for default order, filed on January 12, 2023, by Ms. Johanna Nagel as the attorney representing the Iowa Insurance Division (“Division”). Gould did not file an answer to the statement of charges or provide a timely response to the Division’s motion for default, so the Division’s motion for default was sustained and the Commissioner entered judgment in favor of the Division against Gould in an interlocutory order of default on January 25, 2023.

At the hearing on monetary relief on March 15, 2023, the Division appeared by counsel. Gould did not appear.

NOW THEREFORE, Douglas Ommen, Iowa Insurance Commissioner, being fully informed of the matter, issues the following default order, findings of facts, conclusions of law, and orders:

PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code chapter 507B—Insurance Trade Practices, Iowa Code chapter 522B—Licensing of Insurance Producers, and Iowa Administrative Code chapter 15—Unfair Trade Practices, pursuant to Iowa Code § 505.8.
2. Mardy Gould (“Gould”) is an individual with a last-known residence and mailing address of 1033 Larkspur Loop, St. Johns, Florida 32259.

3. Gould was licensed in the state of Iowa as a nonresident insurance producer from February 28, 2020 until his was surrendered license on May 17, 2022. He was licensed under National Producer Number 19425499.

4. Pursuant to Iowa Code § 505.28, Gould has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by chapters 507B and 522B.

5. From on or about January 6, 2022 to the present, Gould 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 chapters 505, 507B, 522B, and rules adopted pursuant to these chapters.

FINDINGS OF FACT

6. Gould applied for a nonresident 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, Gould designated the Commissioner as an agent for service of process.

7. The Division issued Gould a license as a nonresident insurance producer on February 28, 2020, and assigned to him National Producer Number 19425499.

8. Grow with MKG, L.L.C (“GROW”) is a limited liability company incorporated in Florida with a principal place of business and a mailing address of 1033 Larkspur Loop, Saint Johns, Florida 32259.

9. GROW is not registered with the Office of the Iowa Secretary of State.

10. Kamila Gould is listed on the business's articles of incorporation as a person authorized to manage GROW. Kamila's listed associated address is GROW's business and mailing address, which is also the same as Gould's residence and mailing address.

11. Gould is married to Kamila Gould.

12. On or about April 4, 2022, Respondent, or someone on behalf of Respondent, sponsored and paid for an advertisement on Facebook stating in part,

“JUST PASSED!!! The State of Iowa has recently approved
NEW self-employed health insurance programs, designed
specifically for small business owners and self-employed.”

The advertisement contains prominent images of the governor of Iowa and Iowa's state flag.

13. On or about April 27, 2022, a Division investigator sent administrative subpoenas by email and certified mail to Gould and GROW, care of Kamila Gould, at the mailing address listed in Gould's licensing record, the same address associated with GROW.

14. The subpoena commanded Gould and GROW to produce information regarding advertisements on Facebook and social media platforms that reference Iowa, and Iowa's governor or uses her likeness, and the language that Iowa's governor has just approved a new health insurance program. The subpoenas included a response deadline of May 16, 2022.

15. On April 28, 2022, Gould, in response to the subpoena sent to gouldg3@gmail.com, emailed the Division on behalf of both himself and GROW stating that neither he nor GROW had access to the advertisements and to call him if the Division had any questions.

16. The Division investigator replied to Gould's email that same day, informing Gould that the Division still requires a written response from each individual and entity served with a subpoena.

17. The subpoenas sent by certified mail sent to Gould and GROW were successfully delivered on or about May 2, 2022. Gould, or someone acting on behalf of Gould, signed a certified mail delivery card on May 2, 2022, accepting service of the administrative subpoenas.

18. Other than the April 28th email from Gould stating that neither he nor GROW had access to advertisements, no response or records were submitted to the Division as required by the subpoenas.

19. On May 16, 2022, the deadline to respond to the subpoenas, Gould requested the surrender of his Iowa nonresident producer license.

20. On December 7, 2021, the South Dakota Department of Labor and Regulation, Division of Insurance (“SD DOI”) issued an order revoking Gould’s nonresident insurance producer license. The SD DOI found that Gould directly or indirectly, engaged in solicitating or negotiating business of insurance prior to receiving licensure and making, publishing, disseminating, or circulating, directly or indirectly, an advertisement, containing any assertion, representation, or statement, which was untrue, deceptive, or misleading. The language used in the SD Facebook advertisement contained almost identical language found in the Iowa Facebook health insurance advertisement.

21. On February 25, 2022, the Nebraska Department of Insurance (“NE DOI”) issued an order revoking Gould’s resident insurance producer license for committing unfair trade practices when he failed to respond to the NE DOI’s request for information and when he paid for deceptive and misleading advertisements on Facebook. The advertisements used the Nebraska governor’s likeness and contained almost identical language found in the Iowa Facebook health insurance advertisement.

22. Gould did not report either the South Dakota or the Nebraska actions to the Division.

CONCLUSIONS OF LAW

Count 1: Unfair Methods of Competition or Unfair or Deceptive Acts or Practices

23. Under Iowa Code § 507B.3, “a person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.”

24. Iowa Code § 507B.4(3)(b)(1) prohibits “Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made...an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person’s insurance business, which is untrue, deceptive or misleading.”

25. Iowa Administrative Code chapter 15—Unfair Trade Practices establishes certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B.

26. Under Iowa Administrative Code rule 191— 15.3(9)(b), “No advertisement shall use any combination of words, symbols, or physical materials which by its content, phraseology, shape, color or other characteristics is so similar to combinations of words, symbols, or physical materials used by a municipal, state or federal agency that it would lead a reasonable individual to believe that the advertisement is approved, endorsed or accredited by an agency of the municipal, state or federal government.”

27. Under Iowa Administrative Code rule 191— 15.3(9)(b), “No advertisement shall use any combination of words, symbols, or physical materials which by its content, phraseology, shape, color or other characteristics is so similar to combinations of words, symbols, or physical

materials used by a municipal, state or federal agency that it would lead a reasonable individual to believe that the advertisement is approved, endorsed or accredited by an agency of the municipal, state or federal government.”

28. Gould, directly or indirectly, made, published, disseminated, circulated, or placed before the public, or caused, directly or indirectly, to be made an advertisement which contained an untrue, deceptive or misleading assertion, representation, or statement.

29. Gould, directly or indirectly, sponsored or paid for an advertisement on Facebook which misled, or had the capacity to mislead, the public that it was sponsored, endorsed, or associated with the Iowa government.

30. Gould used the image of a government official, the governor of Iowa, to lend credibility to his solicitation for insurance sales.

31. Gould’s advertisements were also deceptive because they gave consumers the impression that a new health insurance program had just been approved by the governor of Iowa specifically, or the state generally, when no such government-sponsored or government-endorsed product existed.

32. Gould’s failure to obey the subpoenas to himself and GROW constitute an unfair trade practice.

33. Gould’s acts and practices have been in violation of Iowa Code §§ 507B.3, 507B.4(3)(b)(1), 522B.11(1)(b), (g) and (p), and Iowa Administrative Code rule 191—15.3(9)(b), subjecting Gould to probation, suspension, or revocation of Gould’s insurance producer license, the imposition of a civil penalty, an order requiring Gould to cease and desist from engaging in such acts or practices, the imposition of costs of the investigation and

prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 507B.7 and 505.8.

Count 2: License Revoked in Another State and Failure to Report Action

34. Under Iowa Code § 522B.11(1)(i), the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in Iowa Code § 522B.17 for having their license denied, suspended, or revoked in any other state, province, district or territory.

35. Gould had his insurance producer license revoked in both South Dakota and Nebraska.

36. Under Iowa Code § 522B.16(1), and Iowa Administrative Code rule 191—10.13, an insurance producer is required to report to the Commissioner any administrative action taken against the insurance producer within thirty (30) days of final disposition.

37. Gould failed to report both the SD DOI and NE DOI actions to the Commissioner.

Gould's acts and practices have been in violation of Iowa Code §§ 522B.11(1)(i) and 522B.16(1) and Iowa Administrative Code rule 191—10.13, subjecting Gould to probation, suspension, or revocation of his insurance producer license, the imposition of a civil penalty, an order to cease and desist from engaging in the acts or practices alleged herein, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 507B.7 and 522B.17 and Iowa Administrative Code rule 191—10.20.

38. Penalties for violations of Iowa Code § 522B.11(1)(i) and § 522B.16(1) may be assessed pursuant to Iowa Code 507B. Iowa Code 507B.7(1)(a) permits an order to pay a civil penalty of up to \$1000 per violation or a civil penalty up to \$5000 per violation if the person knew or should have known that they were in violation of the law.

39. Gould committed numerous, but no less than one violation of Iowa Code §§ 507B.3, 507B.4(3)(b)(1) and Iowa Administrative Code rule 191—15.3(9)(b). Gould should have known and, in fact, did know that the language and images used in his advertisement would create false impressions, resulting in a maximum penalty of \$5000 per violation.

40. Gould committed four violations of Iowa Code §§ 522B.11(1)(i), 522B.16(1), and Iowa Administrative Code rule 191—10.13. Gould should have known and, in fact, did know that having his insurance licenses revoked in two other states could impact his Iowa nonresident license and should have been reported to the Commissioner within 30 days. The revocations and failures to report were violations, resulting in a maximum penalty of \$5000 per violation, for up to \$20,000.

41. The Division has proven that the investigative and prosecution costs exceeded \$1202.50.

ORDERS


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

- A. Gould's nonresident insurance producer license is immediately revoked pursuant to Iowa Code §§ 507B.7 and 522B.11;
- B. Gould is prohibited from selling, soliciting, or negotiating insurance, offering to the public advice, counsel, or services with regard to insurance, or transacting any insurance business in this state pursuant to Iowa Code § 505.8(10) without an insurance producer license;
- C. Gould shall, within 30 days of this Order, pay as civil penalties the amount of \$15,000.00, made payable to 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, 507B.7, 522B.11, and 522B.17;

- D. Gould shall, within 30 days of this Order, pay as costs of investigation and prosecution the amount of \$1,202.50, made payable to 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, 507B.7, 522B.11, and 522B.17; and
- 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), and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid penalties and other ordered monetary amount.

SO ORDERED on this 3rd day of May, 2023.



Douglas M. Ommen
Iowa Insurance Commissioner

Copies of this order shall be sent by both certified and first-class mail to:

Mardy Gould
1033 Larkspur Loop
Jacksonville, FL 32259
Gouldg3@gmail.com

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 8th, 2023.

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

Signature: Brooke Hohn
Brooke Hohn

NOTICE OF FINAL ORDER

A default decision becomes final agency action 15 days from the date of the decision was mailed unless a motion to vacate the default decision is filed within that time period. 191 IAC 3.22(3). A motion to vacate must state all the facts upon which the moving party relies to establish good cause for failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one affidavit by a person with personal knowledge of the fact, and the affidavit must be attached to the motion.

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 § 507 A. 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

When this Order becomes final, 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 an insurance producer license by order pursuant to Iowa Administrative Code 191-10.10.

Reissuance of an insurance producer license is subject to the discretion of the Commissioner. Additionally, it will not be granted unless and until you have fully complied with the terms of this Order, made the appropriate application, 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 probation, suspension, or 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 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.