

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
3RD FLOOR, SUITE 300
COLUMBUS, OHIO 43215

IN THE MATTER OF:	:	
UNITED AGENCIES INC.	:	
NPN: 2776366	:	JUDITH L. FRENCH
TO BE LICENSED AS A RESIDENT	:	Superintendent/Director
BUSINESS ENTITY INSURANCE	:	
AGENT IN THE STATE OF OHIO	:	

FINAL ORDER

After considering the Hearing Officer's recommendation, the transcript of testimony and evidence, and United Agencies, Inc.'s Objections to the Hearing Officer's Report and Recommendation, and in accordance with Ohio Revised Code ("R.C.") 119.09 and 3905.01 through 3905.14, the Ohio Department of Insurance ("Department"), by and through its Superintendent, confirms and approves the Hearing Officer's findings of fact and conclusions of law, but modifies the Hearing Officer's recommended amounts for a civil penalty and administrative costs. Instead of accepting the recommendation to assess United Agencies Inc.'s resident business entity insurance agent license a civil penalty of \$2,000.00 and administrative costs of \$2686.57, the Superintendent assesses a civil penalty of \$500.00 and administrative costs of \$1,000.00.

United Agencies Inc. ("United Agencies") is licensed as a resident business entity insurance agent in the State of Ohio. The Department issued United Agencies a Notice of Opportunity for Hearing dated July 8, 2022 ("Notice"), after it received a complaint regarding its activities and investigated the issues raised in that complaint. The Notice stated that the Department intended to suspend, revoke or refuse to issue or renew United Agencies' license as a resident business entity insurance agent in the State of Ohio or impose any other sanction authorized by R.C. 3905.14, including assessment of a civil penalty or administrative costs, for a violation of R.C. 3905.14(B)(13), described therein. The Notice informed United Agencies of its right to request a hearing on the proposed action. United Agencies timely requested a hearing.

A hearing began on January 12, 2023. Counsel Joseph Nicholas Jr. represented United Agencies. Assistant Attorney General Christie Limbert represented the Department. During the hearing, the Department admitted 14 exhibits into the record. United Agencies admitted 15 exhibits into the record.

On February 15, 2023, the Hearing Officer issued a Report and Recommendation in this matter. The Hearing Officer found that the Department sustained its burden of proof by a preponderance of the evidence, and United Agencies failed to rebut the evidence presented on the violation of R.C. 3905.14(B)(13) described in the Notice. The Hearing Officer recommended that the Department assess a civil penalty and administrative costs towards United Agencies' resident business entity insurance agent license based on the violation of R.C. 3905.14(B) and United Agencies' failure to rebut the evidence or provide mitigating evidence under R.C. 3905.14(F).

Pursuant to R.C. 119.07 and 3905.14(D), the Hearing Officer's Report and Recommendation was served on United Agencies. United Agencies timely filed Objections to the Report and Recommendation

on March 14, 2023. The Department reviewed United Agencies' objections prior to issuing this Final Order and determined that the record does not support them.

The record demonstrates and the Hearing Officer found that the Department sustained its burden of proof by a preponderance of the evidence on a violation of 3905.14(B) described in the Notice and that United Agencies failed to rebut the evidence presented on that violation. The Hearing Officer recommended that the Department assess a civil penalty and administrative costs towards United Agencies' resident business entity insurance agent license based on the violation of R.C. 3905.14(B).

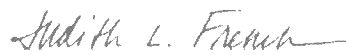
The Superintendent confirms and approves the Hearing Officer's findings of fact and conclusions of law, contained in the attached Report and Recommendation, which is incorporated into this Final Order by reference. However, the Superintendent finds there is mitigating evidence under 3905.14(F) and reduces the Hearing Officers civil penalty and administrative costs recommendations to \$500.00 and \$1000.00, respectively.

NOW, THEREFORE, IT IS ORDERED:

Pursuant to the authority in R.C. 3905.14(E)(1) and (2), the Department assesses a civil penalty and administrative costs against the resident business entity insurance agent license of United Agencies as follows:

- 1.) United Agencies shall pay a civil penalty in the amount of \$500.00. Payment is due within 90 days after the date of the mailing of an invoice from the Department's Fiscal Division.
- 2.) United Agencies shall pay administrative costs in the amount of \$1,000.00. Payment is due within 90 days after the date of the mailing of an invoice from the Department's Fiscal Division.
- 3.) The Department shall issue an invoice to United Agencies upon the issuance of this Order.
- 4.) If United Agencies fails to comply with the terms of this Order, it will be in violation of R.C. 3905.14(B)(2) for failing to comply with an order of the Superintendent.

This Final Order is effective immediately, signed this 15th day of June, 2023.



JUDITH L. FRENCH
Superintendent/Director

NOTICE OF APPELLATE RIGHTS

This Order may be appealed by filing a Notice of Appeal with the Ohio Department of Insurance ("Department"), Attn: Hearing Program Administrator, 50 West Town St., Suite 300, Columbus, Ohio 43215, setting forth the order appealed from and stating that the Department's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal may, but need not, set forth the specific grounds of the appeal beyond the statement that the Department's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notices of Appeal shall also be filed by the party desiring the appeal with the appropriate court of common pleas. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the Department's Order as provided in R.C. 119.12. In filing a Notice of Appeal with the Department or court, the notice that is filed may be either the original notice or a copy of the original notice.

STATE OF OHIO
DEPARTMENT OF INSURANCE

In the matter of:)	
)	
SUITABILITY OF)	HEARING NO.: LGL-202201-018
UNITED AGENCIES, INC)	
NPN:2776366)	HEARING OFFICER WILLIAM GREENE
TO BE LICENSED AS A)	
RESIDENT BUSINESS)	REPORT AND RECOMMENDATION
ENTITY INSURANCE)	
AGENT)	

REPORT

BASIS FOR THE HEARING

On July 8, 2022, the State of Ohio Department of Insurance (the “Department”) notified United Agencies, Inc. (“United Agencies”), that it intended to revoke United Agencies’ license as a resident business insurance agent in the State of Ohio and/or impose any sanction authorized by R.C. 3905.14(D) and (F), including civil penalties and administrative costs, through a Notice of Opportunity for Hearing (“Notice”). (State’s Exhibit (“St. Ex.” 1). The basis for action was a violation of R.C. 3905.14(B)(13) knowingly accepting insurance business from an individual that is not licensed. (Count One). In response to the Notice, United Agencies timely requested a hearing. (St. Ex. 2).

HEARING

The hearing was scheduled to be conducted remotely through Microsoft Teams on January 12, 2023 at 10:00 am. United Agencies was given the opportunity to have the hearing conducted at the Departments offices located at 50 West Town Street, Columbus, Ohio. United Agencies agreed to conducting the hearing remotely through Microsoft Teams. The hearing began at 10:00 am on January 12, 2023. All exhibits and the transcript of testimony, even if not

specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Appearances

On behalf of the Department, Christie Limbert, Assistant Attorney General, Ohio Attorney General's Office. Also present was the Department's representative Joshua Monroe.

On behalf of United Agencies, Joseph F. Nicholas, Jr., Esq.

Exhibits

The Department introduced 14 exhibits: 1) Notice of Opportunity for Hearing; 2) Request for hearing; 3) Hearing Scheduling Notification; 4) Notice of Appearance, Request for Continuance, Continuance Order, Scheduling Order; 5) United Agencies licensing screens; 6) Joann Justus licensing screens; 7) Complaint against United Agencies; 8) Westfield Policy Declarations Page; 9) October 20, 2015 email Justus to Barry; 10) Westfield Application; 11) United Agencies Agreement with Westfield; 12) Justus deposition; 13) Justus affidavit; and 14) McMahon deposition. These exhibits were admitted into evidence without objection. (Transcript ("Tr.") at 11, 144).

United Agencies introduced 15 exhibits: D) Journal entry granting summary judgment to United Agencies in SL & MB v. United Agencies; E) 8th District Court of Appeals journal entry and opinion in SL & MB vs. United Agencies; F) 8th District Court of Appeals journal entry re motion for reconsideration; H) Hathaway affidavit; I) October 9, 2015 email between Bonne Taylor and McMahon; J) October 16, 2015 email from Barry to Justus; K) January 1, 2012 quote from Dennis Agency; L) October 20, 2015 email from Justus to Barry; M) October 21, 2015 email from Barry to Justus; N) Initial application from Justus to Barry for assistance in application; O) May 2, 2016 email from Justus to Makins; P) May 2, 2016 email from Justus to

Barry; Q) May 31, 2016 email from Justus to Barry; R) June 13, 2016 application signed by Barry; S) June 13, 2016 email from Justus to Makins. (Tr. at 203-205)

Witnesses

The Board called three witnesses, Roger Hinkle as a witness on direct examination, Joann Justus as a witness as if on cross examination, and James McMahon as if on cross examination. Thereafter, United Agencies called James McMahon and Joann Justus in their case in chief.

Roger Hinkle testimony summary.

Mr. Hinkle is an investigator the Ohio Department of Insurance. (Tr. at 17) Prior to that, Mr. Hinkle was a licensed insurance agent. (Tr. at 18-19) Mr. Hinkle was the agent that investigated the complaint against United Agencies and Joann Justus which involved the circumstance that surrounded United Agencies' procurement of a Westfield insurance policy for Tracy Barry for a horse farm located at 8560 Billings Road, Kitkland, Ohio (the "Billings Rd. Property"). (Tr. at 26, 32; St. Ex. 7) The complaint alleged that Ms. Justus was not a licensed insurance agent and that Ms. Justus sold a policy of insurance without a license. (Tr. at 35). Mr. Hinkle learned that Justus was a licensed insurance agent at one time and that Justus voluntarily surrendered her license on March 29, 2011. (Tr. at 31; St. ex. 6) Justus reactivated her license on March 23, 2021. (Tr. at 31; St. ex. 7) Justus was not a licensed insurance agent from March 29, 2011 through March 23, 2021. (Tr. at 32)

Mr. Hinkle interviewed Justus. Justus told Hinkle that McMahon told her to contact Tracy Barry and to handle the business. (Tr. at 41) Justus told Hinkle that she went to the Billings Rd. Property. (Tr. at 39) Mr. Hinkle learned that Justus communicated with Ms. Barry by phone and email in order to complete the Westfield insurance application. (Tr. at 39-40; St..Ex., 9; Resp. Exs. J, L, M) Mr. Hinkle also learned that Justus also communicated with

Westfield regarding the application and submitted the application to Westfield. (Tr. at 40-41; Resp. Exs. H, O, S.)

Mr. Hinkle interviewed Tracy Barry. Ms. Barry stated that she never spoke to Mr. McMahon. (Tr. at 78-79) During his investigation, Mr. Hinkle never received any documentation that a licensed insurance agent ever communicated with Ms. Barry. (Tr. at 48-49)

In summarizing what he had learned in his investigation, Mr. Hinkle stated “[T]hat she (Justus) had been the individual that completed the application . . . and had basically been the sole . . . point of contact between Tracy Barry and Westfield.” (Tr. at 39).

Joann Justus testimony

Ms. Justus became a licensed insurance agent in 1995. (Tr. at 165) In 2011, while working at Goodyear, Ms. Justus surrendered her insurance agent license. (Tr. at 165) Ms. Justus began working for United Agencies in June of 2015. (Tr. at 111) At that time, Ms. Justus did not have an insurance agent license. (Tr. at 165) In 2015, Ms. Justus began working at United Agencies as a commercial account manager. (Tr. at 169-170) In October 2015, Mr. McMahon asked Ms. Justus to help with Tracy Barry’s request to obtain a Westfield insurance policy for Ms. Barry’s horse farm. (Tr. at 174) Ms. Justus contacted Ms. Barry by telephone to arrange a visit to the Billings Rd. Property. (Tr. at 174) Thereafter, Ms. Justus input the information she obtained from her visit into Westfield’s system to obtain replacement value. (Tr. at 179-180) On October 20, 2015, Ms. Justus then emailed that replacement value figures to Ms. Barry. (St. Ex. 9) After some back and forth communications, Ms. Justus completed and application and obtained a quote. (Tr. at 182-185) Ms. Barry did not respond to the quote. (Tr. at 185-186) In April 2016, Ms. Barry reengaged and Ms. Justus resubmitted an application to Westfield. (Tr. at 187-188; Resp. Ex. O) Ms. Justus testified that “I recall there being a lot of

back and forth with the underwriter, as she tried to understand what it was – you know, what the risk was about. So lots of questions back and forth from the underwriter to me and from me to Ms. Barry.” (Tr. at 187-188) The policy on the Billings Rd. Property was put in place in June 2016. (Tr. at 195)

James McMahon testimony

Mr. McMahon is the chief operating officer of United Agencies. (Tr. at 125) Mr. McMahon testified that Westfield contacted United Agencies’ Willoughby office to assist Ms. Barry in obtaining insurance for the Billings Rd. Property. (Tr. at 126) Bonne Taylor of the Willoughby office referred the matter to the United Agencies’ downtown office. (Tr. at 127; Resp. Ex. I) Mr. McMahon assigned the matter to Joann Justus. (Tr. at 128)

Mr. McMahon testified that he initially spoke to Ms. Barry before assigning the matter to Ms. Justus, because he “came to know how many horse barns there were. . .” (Tr. at 128) Mr. McMahon acknowledged that, in a 2019 deposition, he did testified that he did not speak to Ms. Barry, prior to assigning the matter to Ms. Justus. (Tr. at 133) After the matter was assigned to Ms. Justus, Ms. Justus was the only person at United Agencies that spoke to Ms. Barry (Tr. at 135) Mr. McMahon knew that Ms. Justus was not a licensed insurance agent in 2015 and 2016. (Tr. at 126)

FINDNGS OF FACT

1. United Agencies’ Willoughby office received a call that was referred by Westfield for a prospective insured by the name of Tracy Barry who was seeking a Westfield Commercial Policy for a farm located at 8460 Billings Road, Kirtland, Ohio 44094. (McMahon Testimony; Resp. Ex. I)

2. On October 1, 2015, Bonne Taylor sent an email to the United Agencies Cleveland office regarding Tracy Barry. (McMahon Testimony; Resp. Ex I) On October 9, 2015, at 12:50 p.m., Bonne Taylor forwarded that email to James McMahon. (Resp. Ex. I)
3. James McMahon assigned Joann Justus to work on the policy for Tracy Barry because of Ms. Justus's familiarity with horses. (McMahon Testimony)
4. On October 9, 2015, at 12:55 p.m., James McMahon forwarded Bonne Taylor's email to Joann Justus. (Resp. Ex. I) Mr. McMahon message that accompanied the forwarded email stated "Joann- Bonne is saying "40stalls – 100x20 indoor riding arena 375 x 175 outdoor riding arena, separate barn with 6 stalls is all I have" see more below." (Resp. Ex. I)
5. James McMahon never spoke to Tracy Barry. (McMahon Testimony, Resp. Ex. I) There is no written communication in the record between Mr. McMahon and Ms. Barry. There is no written communication in the record between Mr. McMahon and Westfield regarding Ms. Barry.
6. After being assigned to work on a policy for Tracy Barry, Joann Justus:
 - a. Called Tracy Barry and arranged to visit the Billings Rd. Property;
 - b. Visited the Billings Rd. Property;
 - c. Submitted information obtained from her visit and information provided by Ms. Barry into a Westfield program to generate property replacement values;
 - d. Communicated these replacement values with Ms. Barry and thereafter,

with Ms. Barry's assistance, prepared an application for commercial farm insurance;

- e. Submitted Ms. Barry's application to Westfield;
- f. and acted as the intermediary between Westfield's underwriter and Ms. Barry, to answer the underwriter's questions regarding the application.

(Justus Testimony)

- 7. Westfield issued a policy to Ms. Barry with a policy period of June 16, 2016 to June 16, 2017. (St. Ex. 8)
- 8. United Agencies, Inc was listed as the Agency on the declaration page of the policy issued to Tracy Barry by Westfield. (St. Ex. 8)
- 9. From the time that James McMahon assigned Joann Justus to work on the policy for Tracy Barry to the time that Westfield issued a policy to Tracy Barry, Joann Justus:
 - a. Was the only United Agencies employee to speak with Tracy Barry;
 - b. Was the only United Agencies employee to send email to and receive emails from Tracy Barry;
 - c. Was the only United Agencies employee that communicated by phone and/or email with Westfield regarding the policy for Tracy Barry.

(McMahon Testimony, Justus Testimony, St. Ex. 9; Resp. Exs. H, I, J, L, M, N, O, P, Q, S)

- 10. Joann Justus was not a licensed insurance agent from March 29, 2011 through March 23, 2021. (Hinkle Testimony, St. Ex. 6)

11. United Agencies was granted summary judgement in a lawsuit, regarding Barry's Westfield policy, filed by S.L. and M.B. because United Agencies did not have a duty to protect third parties when issuing an insurance policy. (Resp. Exs. D, E)

12. There was a fire at the Billings Rd. Property. Tracy Barry made a claim under the Westfield Insurance policy and Westfield paid the claim. (Resp. Ex. E)

ANALYSIS

James McMahon assigned Joann Justus to work on a policy of insurance for Tracy Barry. At that time, Mr. McMahon knew that Joann Justus was not a licensed insurance agent. On June 16, 2016, Westfield issued a policy of insurance to Tracy Barry. From the time that Mr. McMahon assigned Ms. Justus to work on the policy of insurance for Tracy Barry to the time that Westfield issued the policy to Tracy Barr, Ms. Justus was the only United Agencies employee to have any contact with Tracy Barry and Westfield. Therefore, with regards to Tracy Barry's insurance policy, the only individual at United Agencies that could have sold, solicited, or negotiated insurance was Joann Justus. Consequently, United Agencies knowingly accepted insurance from an individual that was not licensed.

United Agencies argues that pursuant to R.C. 3905.03(A)(9)(b), Joann Justus was an exception to the licensing requirement because she was only obtaining information at the direction of James McMahon. R.C. 3905.03(A)(9)(b) states in pertinent part "(A) Section 3905.02 of the Revised Code does not apply to . . . (9) Any employee of an insurer or of an insurance agent who, at the direction of the insurer or agent, performs . . . (b) The gathering of information, such as names, addresses, expiration dates of current insurance, and names of current insurers." R.C. 3905.02 is the insurance license requirement. As describe in Findings of Fact 6 and 9, Joann Justus did much more than gather names, addresses, expiration dates. This argument is without

merit.

The S.L. and M.B. lawsuit against United Agencies is not relevant to determination of whether United Agencies knowingly accepted insurance from an individual that was not licensed. United Agencies was granted summary judgement in a lawsuit, regarding Barry's Westfield policy, filed by S.L. and M.B. because United Agencies did not have a duty to protect third parties when issuing an insurance policy. Likewise, the fact that Westfield paid the fire damage claim is also not relevant to whether United Agencies knowingly accepted insurance from an individual that was not licensed.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions as described in the Findings of Fact, individually and/or collectively, constitutes "knowingly accepting insurance business from an individual who is not licensed" as that clause is used in Revised Code ("R.C.") 3905.14(B)(13). Count One has been proven by a preponderance of the evidence.
2. Pursuant to R.C. 3905.14(B)(13), the Superintendent may suspend, revoke, or refuse to issue or renew any license of an insurance agent, assess a civil penalty, or impose any other sanction or sanctions authorized under this chapter.

RECOMMENDATION

It is recommended that the Director of the Department of Insurance assess a civil penalty against United Agencies, Inc. in the amount of two thousand dollars (\$2,000.00). It is also recommended that United Agencies pay the administrative hearing costs.

WRITTEN OBJECTIONS

United Agencies, Inc. may, within ten days of the receipt of a copy of this Report and Recommendation, file with the Ohio Department of Insurance written objections to this Report and Recommendation. Such objections will be considered by the Ohio Department of Insurance before approving, modifying, or disapproving the Recommendation contained herein.

February 13, 2023

DATE



William C. Greene
Hearing Officer