

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

IN THE MATTER OF:)	RECOMMENDED FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
Irina Berezentseva)	OAH File No. 20180012
)	

.....

PROCEDURAL BACKGROUND

Irina Berezentseva ("Berezentseva") submitted an application for a nonresident individual insurance producer license to the North Dakota Insurance Department ("Department") on December 12, 2017. The Department denied Berezentseva's application on December 29, 2017. On January 5, 2018, the Department received a request from Berezentseva for a hearing relating to her license denial. On January 8, 2018, the Department requested an administrative law judge ("ALJ") be assigned to conduct an administrative hearing.

On January 9, 2018, the North Dakota Office of Administrative Hearings designated Administrative Law Judge Timothy J. Dawson to conduct these proceedings and issue recommended findings of fact and conclusions of law. A telephonic prehearing conference was scheduled on January 24, 2018, and rescheduled for January 25, 2018. At that time, Berezentseva requested a hearing as soon as possible and therein waived the notice requirement. On January 25, 2018, the ALJ served a Notice of Hearing scheduling the hearing for January 29, 2018, with Berezentseva appearing by telephone.

The Department appeared through its attorney, Special Assistant Attorney General Sara Behrens. The Department called Kelvin Zimmer, Director of the Producer Licensing Division,

and Berezentseva. The hearing was observed by Laney Herauf, Assistant Attorney General. Without counsel, Berezentseva appeared by telephone and provided testimony.

The North Dakota Rules of Evidence were waived under N.D.C.C. §28-32-24 to ascertain the substantial rights of the parties. Berezentseva was not familiar with the rules. Without objection, the ALJ admitted the Department's Exhibits 1-4. An Exhibit List is attached to this decision. The record of the hearing was closed at the conclusion of the hearing on January 29, 2018.

The issue to be determined is whether the North Dakota Insurance Department properly denied Irina Berezentseva's nonresident individual insurance producer license in accordance with N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(6) and (10).

Having thoroughly considered the record, the undersigned ALJ makes the following recommended Findings of Fact, Conclusions of Law and Recommended Order for consideration by the Insurance Commissioner.

RECOMMENDED FINDINGS OF FACT

1. On December 12, 2017, Berezentseva, born February 17, 1975, submitted an electronic application for a nonresident individual insurance producer license to the Department.
2. Berezentseva answered yes to question 2 inquiring as to whether she had ever been named or involved as a party in an administrative proceeding. "Involved" means having a license censured, suspended, revoked, concealed, terminated or being assessed a fine, a cease and desist order, a prohibition order, compliance order, placed on probation, sanctioned or surrendered a license to resolve an administrative action.
3. On September 17, 2008, Berezentseva and the State of New York Insurance Department entered into a stipulation in which Berezentseva admitted to violation of Section

2120(a) of the Insurance Law and Department Regulation 29 (11 NYCRR § 20.3) on or about March 2007 by commingling insurance premium funds and personal funds in her premium account and using the funds for expenses of her new office. She paid a penalty of \$500. As part of the application, she provided two written explanations. In short, she explained she paid for premiums for her customers with personal funds and when the customer paid the premium, she would reimburse herself from the premium account.

4. It is more likely than not that Berezentseva commingled funds.

5. On December 29, 2017, the Department issued a letter to Berezentseva denying her application. The application was denied because of the “regulatory action by New York for lack of fitness or trustworthiness for commingling funds.” As a result, it appears from the citation to N.D.C.C. § 26.1-26-15 in the letter, the Commissioner denied the application because he did not deem Berezentseva competent, trustworthy, and financially responsible and of good personal and business reputation. In particular, the letter stated she lacked trustworthiness and good personal reputation. In addition, the letter cited subsections 6 and 10 of N.D.C.C. § 26.1-26-42 which state the Commissioner is allowed to refuse to issue a license if he finds in the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices or has shown to be incompetent, untrustworthy, or financially irresponsible. In addition, the Commissioner is allowed to refuse to issue any license, if he finds an improper withholding of, misappropriation of, or converting to one’s own use any money belonging to policyholders or others.

6. If the funds used by Berezentseva were used solely to pay back premiums paid by her own personal funds, this does not show a lack of trustworthiness or a poor business and personal reputation. The opposite is true. It is more likely than not that her customers would

hold her in high regard for personally covering their premiums and would trust her with further financial matters. The New York stipulation stated she used the money in the premiums fund to pay for the premiums she had personally paid and for furniture for her new office. Whether this was her money being repaid from premiums or a loan to herself does not matter, both go to the crux of the issue which is it is very difficult to track funds that are commingled and this goes to Berezentseva's competency. In this case, commingling funds shows incompetency and financial irresponsibility. It is more likely than not Berezentseva misappropriated the funds or converted the funds to her own use. The evidence does not show she was committing fraud or was being dishonest or untrustworthy.

7. The evidence did not provide an explanation as to the funds used to pay for office furniture. Although one can assume the funds used to pay for furniture were repayments for her personal funds used to cover client's premiums, the undersigned ALJ does not know if this is true or if the funds used for furniture were a loan. If the funds were the latter, this would be a much more serious violation. However, the payment of a mere \$500 to resolve the matter makes the undersigned ALJ think it was the former. Again, the crux of the issue is it is difficult to track commingled funds.

8. Berezentseva testified that she did significant business with Egyptian clients and it was expected that she cover the premiums of her clients until the premiums were paid by her clients. There was no evidence as to whether Berezentseva would continue to have Egyptian or culturally similar clients in this state for which there would be the same expectation to cover premiums.

9. Berezentseva's explanation as to why she did what she did is based on a business partner who turned her in to New York as a means of punishment for leaving their business

relationship. Although if she was never turned in, she would not have been denied in this state, the explanation does not address her incompetent handling of funds and her financial irresponsibility.

10. There was no evidence as to actions taken or procedures implemented by Berezentseva to prevent similar problems from occurring in the future. Being that she has shown being incompetent in the managing of funds, one would expect evidence on educational programs and the implementation of procedural and accounting safeguards to prevent future reoccurrences of the same acts.

11. Berezentseva commingled funds and, as a result, misappropriated and converted the funds to her own use which is incompetent and financially irresponsible.

CONCLUSIONS OF LAW

1. N.D.C.C. § 26.1-26 is the chapter that governs the qualifications and procedures for the licensing of insurance producers, insurance consultants, and surplus lines insurance producers. N.D.C.C. § 26.1-26-01.

2. The Commissioner is statutorily responsible to license and regulate individual insurance producers under N.D.C.C. chapter 26.1-26.

3. N.D.C.C. § 26.1-26-15 states:

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. If the commissioner does not deem an applicant to be competent, trustworthy, financially responsible, of good personal reputation, or of good business reputation, the commissioner may deny the application for licensure.

4. N.D.C.C. § 26.1-26-42(6) and (10) states “the commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued

under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

...

10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.”

5. The denial was proper. Berezentseva violated subsection 10 of N.D.C.C. § 26.1-26-42. She misappropriated and converted to her own use funds in the premium account by commingling personal funds which shows incompetence and financial irresponsibility.

RECOMMENDED ORDER

The evidence of record has been considered and appraised. The facts, as established by the greater weight of the evidence, support denying Irina Berezentseva’s application for a North Dakota nonresident individual insurance producer license under the provisions cited.

The decision of the Insurance Commissioner to deny the application of a North Dakota nonresident individual insurance producer license for Irina Berezentseva’s was proper and should be affirmed.

Dated at Bismarck, North Dakota, this 22nd day of February 2018.

State of North Dakota
Insurance Commissioner

By: _____

Timothy J. Dawson
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street, Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

IN THE MATTER OF:

Irina Berezentseva

)
)
)
)

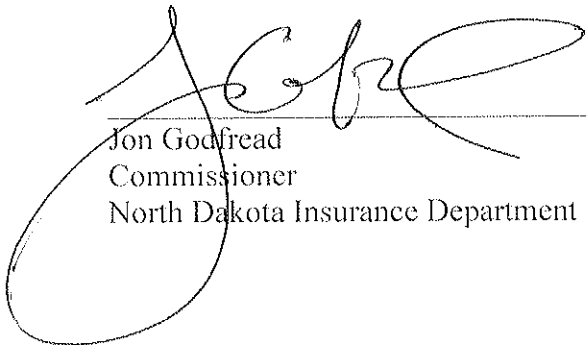
ORDER

OAH File No. 20180012

.....

The evidence of record has been considered and appraised. **IT IS ORDERED** that the Recommended Findings of Fact and Conclusions of Law of the Administrative Law Judge are adopted as the North Dakota Insurance Commissioner's Findings of Fact and Conclusions of Law in this matter. **IT IS FURTHER ORDERED** that the Recommended Order of the Administrative Law Judge is adopted as the North Dakota Insurance Commissioner's final Order in this matter and the denial of Irina Berezentseva's application for a North Dakota nonresident individual insurance producer license was proper.

Dated at Bismarck, North Dakota, this 23rd day of February 2018.



Jon Godfread
Commissioner
North Dakota Insurance Department