

**STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT**

In the Matter of)	INSURANCE DEPARTMENT'S
)	FINDINGS OF FACT, CONCLUSIONS OF
Larry Werlinger)	LAW AND ORDER
)	
)	OAH File No. 20170636

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 be REJECTED as the Commissioner's Findings of Fact, Conclusions of Law and Order in this matter. Enclosed are the Commissioner's Final Findings of Fact, Conclusions of Law and Order.

PROCEDURAL BACKGROUND

The North Dakota Insurance Department ("Department") served an administrative complaint on Mr. Larry Werlinger ("Werlinger"), Respondent seeking the imposition of a three-year conditional license and a \$3,000 fine. This complaint was served on November 16, 2017. On December 13, 2017, by and through his attorney, Jeff Bredahl, Werlinger filed an Answer to the Complaint and requested a hearing. The following day, the Department contacted the North Dakota Office of Administrative Hearings (OAH) and requested an Administrative Law Judge be assigned to the case. Judge Jeanne L. McLean was designated to conduct the proceedings and issue a recommended findings of fact and conclusions of law. The parties participated in a scheduled prehearing conference on January 12, 2018. The hearing was scheduled for April 23, 2018. On

April 13, 2018, the parties participated in a second prehearing conference where Department attorney and Special Assistant Attorney General, Sara Behrens requested a continuance. This request was granted and the hearing was reset for July 19, 2018. A third prehearing conference was held on July 2, 2018. The hearing for the case at hand was held on July 19, 2018 at the Job Service Building in Fargo, ND. Representing the Department at the hearing were Special Assistant Attorneys General Sara Behrens and Helene Herauf along with Kelvin Zimmer, Director of Producer Licensing for the Department as well as the complainant. Representing the Respondent, attorneys Jeff Bredahl and Nicole Bredahl appeared with Werlinger. The Department's witnesses were as follows: James Osmanski with Auto Owners Insurance Company, Kelvin Zimmer, Director of Producer Licensing with the Department, William Goodwill, policy holder, Chad Reith with Bank Forward, Jon Erickson with Insurance Forward, Larry Werlinger, the Respondent, and Joe Dale Pittman, an investigator with the North Dakota Insurance Department. The witnesses for the respondent were Rita Goodwill, the policy holder, Larry Werlinger, the Respondent and Kelvin Zimmer.

Mr. Bredahl requested that witnesses be sequestered. This request was granted, however attorneys for the witnesses were allowed to remain in the room. The Department offered one exhibit, Exhibit 1, which was the same as Exhibit A from the Respondent. They were accepted. Respondent also offered Exhibits B, C, D, L, and M, which were accepted, but L was accepted for illustrate purposes only. The Department submitted written closings on October 17, 2018. The Respondent provided written

closings on November 9, 2018. The hearing was closed upon receipt of both closing arguments.

The issue for hearing is as follows:

Whether the North Dakota Insurance Department can impose a three year conditional license and a \$3,000 fine upon Mr. Werlinger in relation to his insurance producer license in accordance with the provisions of N.D.C.C. §26.1-26-42 and 26.1-26-50.

The ALJ issued Recommended Findings of Fact, Recommended Conclusions of Law and Recommended Order for consideration by the Insurance Commissioner on December 31, 2018. The Department disagrees with the ALJ's Recommended Findings of Fact, Conclusions of Law and Order and proposes its own.

RECOMMENDED FINDINGS OF FACT

1. The Department received an anonymous complaint alleging that Werlinger had signed William Goodwill's name on an agent of record form without Mr. Goodwill's permission. Detective Joe Dale Pittman ("Pittman") was assigned to investigate that claim. The evidence as it came out in testimony is as follows:

2. Sometime in February of 2016, Rita Goodwill approached Werlinger looking for assistance in making a claim for some automobile damage. Werlinger worked at Insure Forward and had the ability to sell Auto Owners policies. Werlinger stated that he would assist Ms. Goodwill in making the claim, but he must become the agent of record first. He prepared the documentation and asked her to come in and sign them. Ms. Goodwill shared a policy with Mr. Bill Goodwill. Ms. Goodwill states that she instructed Werlinger to "sign their names" to the document because she was unable to go to his office and

do it herself that day. Werlinger signed both Ms. Goodwill's and Mr. Goodwill's name to the change of agent form. (Exhibit A) He then submitted it to Auto Owners ("Company"). Mr. Goodwill did not wish to change insurance agents and did not provide his authorization for Werlinger to sign his name to any documentation. When the Company received two documents, it investigated further and determined that the form filed by Werlinger was not an authentic signature so the form was disregarded. Werlinger was at no time Mr. Goodwill's agent.

3. The Department issued a consent order on November 16, 2017 citing North Dakota Century Code §§ 26.1-26-42 and 26.1-26-50.

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: 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.

N.D.C.C. §26.1-26-42(6). During the testimony, the Department narrowed the scope of the statute by stating that it believed that Werlinger's actions were untrustworthy and or a dishonest practice.

"Dishonesty" means a criminal act, including an offense constituting or involving perjury, bribery, arson, knowingly receiving or possession of stolen property, forgery, or falsification of documents, counterfeiting, knowingly issuing a bad check, false or misleading oral or written statements, false pretenses, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations, or the failure to disclose material facts.

N.D.C.C. §26.1-02.1-01(3). Untrustworthy is defined using the plain meaning of the word. Merriam Webster's dictionary defines untrustworthy as "not dependable or worthy of confidence."

4. Forgery was presented at the hearing as the criminal act the Department needed to show in order to prove dishonesty. "A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such deception or harm by another person, the person: (a) knowingly and falsely makes, completes, or alters any writing; . . ." N.D.C.C. §12.1-24-01(1).

5. Werlinger admitted in testimony that he signed both Ms. Goodwill and Mr. Goodwill's names to the agent of record form. He signed Ms. Goodwill's name to the form with her verbal permission. He signed Mr. Goodwill's name to the form without any permission from him to do so.

6. James Osmanski with Auto Owners Insurance testified that Auto Owners does not allow insurance producers to sign the name of another person on an Auto Owners change of agent form.

7. Chad Reith, with Bank Forward, of which Insure Forward is a subsidiary and a director on the Insure Forward Board of directors testified that Insure Forward has an ethics policy. The ethics policy guides all employees of the bank, insurance agencies, and states that they will abide by normal business practices, and that normal business practices would dictate that they would not sign a customer's name according to a witness statement. Mr. Reith did state that he believed Werlinger to be a competent and trustworthy individual, but also stated that it was not completely ethical to sign someone else's name to a document.

8. Mr. Zimmer testified that Werlinger's act was tantamount to a dishonest practice through the act of forgery. Mr. Zimmer also testified that untrustworthiness was

determined on a case-by-case basis and that the actions of Mr. Werlinger by signing someone else's name to a document was untrustworthy. Additionally, Detective Pittman stated that Werlinger's act was forgery.

9. Werlinger testified that there was no written policy at Insure Forward that allowed him as an agent to sign customers' names on any forms, but that he understood that there was a verbal or unwritten policy that allowed an agent to sign an insured's name with the insured's permission or approval. Werlinger indicated that he believed that he had permission to sign Mr. Goodwill's name, because Ms. Goodwill had asked him to sign both of their names to the change of agent form.

10. The greater weight of evidence established that Werlinger exhibited a dishonest practice by committing the criminal act of forgery and that by signing Mr. Goodwill's name to the document, he intended to deceive the company into believing that Mr. Goodwill had signed the document and it therefore was a valid document.

11. The Insurance Department has established by a greater weight of the evidence that by acting contrary to the policies of both Auto Owners and Insure Forward, he displayed untrustworthy behavior.

RECOMMENDED CONCLUSIONS OF LAW

1. Anyone who sells, solicits, or negotiates insurance in North Dakota must be properly licensed by the Insurance Department. N.D.C.C. § 26.1-26-03. A license to practice as an insurance producer is subject to the control and regulation of the Insurance Commissioner. "A regulated privilege is not a right." See North Dakota Dep't of Transp. v. DuPaul, 487 N.W.2d 593, 598 (N.D. 1992). An individual will be granted

the privilege to practice as an insurance producer only as prescribed by N.D.C.C. ch. 26.1-26.

2. As a North Dakota licensed insurance producer, Werlinger must operate within the confines of the law to retain that license.

3. In order to operate within the confines of the law, among other things, in the conduct of affairs Werlinger must not use “fraudulent, coercive, or dishonest practices” or show himself to be “incompetent, untrustworthy, or financially irresponsible.” N.D.C.C. §26.1-26-42(6).

“Dishonesty” means a criminal act, including an offense constituting or involving perjury, bribery, arson, knowingly receiving or possession of stolen property, forgery, or falsification of documents, counterfeiting, knowingly issuing a bad check, false or misleading oral or written statements, false pretenses, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations, or the failure to disclose material facts.

N.D.C.C. §26.1-02.1-01(3). Forgery is an act stated in the above dishonesty definition and forgery is defined by the criminal code as: “A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such deception or harm by another person, the person: (a) knowingly and falsely makes, completes, or alters any writing; . . .” N.D.C.C. §12.1-24-01(1).

4. The Commissioner determined that the act of signing someone else’s name to a document to deceive the company into believing it was an authentic signature on the agent of record form showed Werlinger was dishonest under the definition of dishonest practices and was untrustworthy.

5. If the Commissioner finds that a producer has shown him or herself to be fraudulent, coercive, dishonest, incompetent, untrustworthy or financially irresponsible in the conduct of affairs, the Commissioner may suspend, revoke, place on probation or refuse to continue or refuse to issue any license issued under N.D.C.C. 26.1 after notice to the licensee and a hearing. N.D.C.C. §26.1-26-42(6). Additionally, the Commissioner may, after a hearing, assess a civil fine to any person violating N.D.C.C. 26.1 not exceeding ten thousand dollars. N.D.C.C §26.1-26-50.

6. Through signing another person's name to a document, Werlinger used a dishonest practice and showed himself to be untrustworthy based on N.D.C.C. §§26.1-26-42(6), 26.1-02.1-01(3) and 12.1-24-01(1). Therefore, the Commissioner has a basis in law and fact to impose a conditional license and fine upon Werlinger.

RATIONALE FOR NOT ADOPTING CONTRARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE

Many of the ALJ's Recommended Findings of Fact were adopted; however, some were amended to either eliminate unnecessary factual findings or to insert additional relevant factual findings.

The Conclusions of Law were modified because the ALJ misinterpreted and misapplied the law and facts.

In paragraph 7 of the ALJ's recommended conclusions of law, she states "The Department alleges Werlinger's acts constitutes dishonesty. The Department provides the definition of dishonesty as a 'criminal act' There has been no testimony that the Department thinks this rises to the level of a criminal act." Both Department employees that testified at the hearing testified that it was their belief that Werlinger committed the criminal act of forgery. Kelvin Zimmer's testimony, "Yes. By his – by his signing a

signature that is not his, it's forgery." OAH Hr'g Tr. Pg 85 July 19, 2018. When talking about whether Werlinger committed the crime of forgery, Detective Pittman stated "Yeah, I mean, the technical terms of the law, I believe he did because he did not have Bill's permission to sign Bill's name." OAH Hr'g Tr. Pg. 162 July 19, 2018. When Werlinger's attorney asked "So when it comes to forgery, we leave here today saying, you don't know if he committed the crime of forgery?", Detective Pittman answers, "I believe he did." Furthermore, when Ms. Behrens, attorney for the Department asked Detective Pittman if Werlinger could have been charged criminally, Mr. Bredahl objected and it was sustained by the court. The Department did present testimony that the Department believed that this rose to the level of a criminal act.

Also, in paragraph 7 of the ALJ's recommended conclusions of law, she states "This Administrative Law Judge has not seen any evidence of the intent required to constitute a criminal act." The evidence the Judge is looking for is in the signature itself. In the Department's written closing argument, it spends a great deal of time stating that the intent to deceive or harm need not be an intent to deceive or harm the Goodwills. By signing the document, Werlinger showed the requisite intent to deceive the company into believing that Mr. Goodwill had signed that document. The statute does not require nefarious purposes behind that intent to deceive, nor does it require an intent to harm. The element of intent to deceive is sufficient to satisfy the definition of forgery under North Dakota Law. If Werlinger did not have an intent to deceive the company, he would have written his own name on the line. The evidence the Judge is searching for is in the forged signature itself.

In Paragraph 8 of the ALJ's recommended conclusions of law, she states "This Administrative Law Judge has not heard any evidence that this act is specifically addressed in 'Company policy' nor any evidence that showed Werlinger was aware of the policy addressing this situation." By being an employee of a company or appointed with a company, Werlinger is responsible to know the policies within that organization. To state that he is not responsible to the policies simply because he was unaware, shows a lack of competence on his part, which is also required by the statute. Additionally, both Insure Forward and Auto Owners testified that it was against company policy to sign another person's name to a document. When Ms. Behrens asked "[t]o your knowledge, does Auto Owners allow insurance producers to sign the name of another person on an Auto Owners change of agent form?", Jim Osanski responded, "We don't allow that." OAH Hr'g Tr. Pg. 52 July 19, 2018. When Ms. Behrens asked "[a]nd is it an acceptable practice at Insure Forward for an insurance producer to sign the name of someone other than himself?", Chad Reith responded, "Insure Forward has an ethics policy. The ethics policy guides all employees of the bank, insurance agencies, and state that they will abide by normal business practices. And normal business practices would be that they don't sign the customer's name according to a witness statement as well." OAH Hr'g Tr. Pgs. 116-117 July 19, 2018. There was testimony that both companies had policies that did not allow for agents to sign another's name, and by being an employee with those companies, Werlinger had the responsibility to be aware of the policies. Furthermore, Werlinger testified that he was aware that it was against Auto Owners policy to sign another's name to a document. When asked if he was aware that it was not acceptable to Auto Owners to sign

customer's names, Werlinger stated that he was aware of that policy. OAH Hr'g Tr. Pgs. 138. Testimony was presented that Werlinger was aware of the policy and disregarded it, exhibiting untrustworthy behavior.

In Paragraph 11 of the ALJ's recommended conclusions of law, she states "Werlinger signed for the policy holders with the best intentions and with no personal gain." Werlinger testified that it was his intent to eventually get the Goodwill's homeowners insurance. "Q. Was it your intention in doing this change to eventually get the Goodwills' homeowners insurance? A. As a good salesperson, yes, that would be the next step." OAH Hr'g Tr. Pgs 135-136 July 19, 2018. The argument that he signed the document altruistically and with no intent for personal gain is refuted by his statement that he hoped and intended to eventually gain their homeowners business as well as the automobile business.

ORDER

The evidence of record has been considered and appraised. The facts, as established by the greater weight of the evidence, establish grounds for imposing a three year conditional license and \$3,000 fine on Mr. Werlinger.

DATED at Bismarck, North Dakota, this 7th day of March, 2019.



Jon Godfread
Commissioner
North Dakota Insurance Department
600 East Boulevard Avenue, Dept. 401
Bismarck, North Dakota 58505
Telephone: (701) 328-2440