

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: Kimberly Tacy

Docket No.: INS No. 16-035-EP

**ORDER TO SHOW CAUSE
AND
NOTICE OF HEARING**

The New Hampshire Insurance Department (“NHID”) orders Kimberly Tacy (“Respondent”) to show cause why the New Hampshire Insurance Commissioner should not suspend or revoke her New Hampshire insurance producer license, or levy an administrative fine, or both. In support of the Order to Show Cause and pursuant to RSA 541-A:31, RSA 400-A:17 *et seq.* and Ins Part 200, the NHID states as follows:

STATEMENT OF FACTS

1. The Respondent was a resident New Hampshire insurance producer licensed to sell Property and Casualty insurance. She surrendered her license on June 30, 2016.¹
2. On November 1, 2009 the Respondent began working at the Pittsfield Insurance Agency in Pittsfield, NH (“Agency.”) The owner of the Agency is Janet Tarantino. The Respondent and Ms. Tarantino were the only licensed producers working at the Agency.
3. The Respondent was tasked with overseeing the office when Ms. Tarantino was working outside the office. One of the Respondent’s main responsibilities was depositing customers’ cash premium payments in the Agency’s premium trust account.

¹ RSA 402-J:12, V provides: “The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and title XXXVII against any person who is under investigation for or charged with a violation of this chapter or title XXXVII even if such person’s license or registration has been surrendered or has lapsed by operation of law.”

4. Beginning in early 2015, Ms. Tarantino began noticing errors in the Respondent's work, and she called these errors to the Respondent's attention. Later that year she advised the Respondent that if she continued to make these errors, her employment would be terminated.

5. On January 20, 2016, Ms. Tarantino was balancing the Agency's ledgers when she discovered a \$900 premium payment made by customer Timothy B. ("Mr. B") to the Respondent on December 3, 2015 had never been deposited into the Agency's trust account.

6. When Ms. Tarantino confronted the Respondent about the missing deposit, the Respondent claimed that Mr. B had not, in fact, left payment at the Agency on December 3, 2015, and she offered to visit Mr. B to personally collect the premium payment.

7. On January 25, 2016, the Respondent returned to work with \$900 that Mr. B purportedly had given her; she deposited the \$900 into the Agency's premium trust account.²

8. In any event, Ms. Tarantino's ongoing review of the Agency's customer files disclosed that files were missing information and were otherwise incomplete. Consequently, Ms. Tarantino terminated the Respondent's employment with the Agency for poor performance on January 29, 2016.

9. Shortly after the Respondent's termination, Ms. Tarantino received a call from a customer named Jane O ("Ms. O"). Ms. O advised Ms. Tarantino she had received a notice of cancellation from her insurance company stating the company was canceling for nonpayment. The notice of cancellation baffled Ms. O because, as Ms. O explained to Ms. Tarantino, she had stopped by the Agency several weeks before and left \$300 in cash with the Respondent, a payment the Respondent was supposed to apply to Ms. O's insurance premium.

² In an interview with NHID Fraud Investigator Brendhan Harris, the Respondent admitted Timothy B had in fact come to the Agency and paid her the \$900 for his premium. The Respondent also admitted that the \$900 she subsequently claimed was from Timothy B actually belonged to another Agency customer.

10. Ms. Tarantino researched Ms. O's account and could not locate any record of Ms. O's \$300 payment. To avoid cancellation of Ms. O's policy, Ms. Tarantino paid Ms. O's premium using her own funds.

11. Around the same time Ms. O called Ms. Tarantino about the notice of cancellation, another customer, Michael S ("Mr. S"), also contacted Ms. Tarantino because he too had received a notice of cancellation from his insurance company. Mr. S stated he had visited the Agency on January 4, 2016 and had given the Respondent \$350 in cash to apply to his insurance premium. Again, Ms. Tarantino researched the Agency's files and could find no record of Mr. S's payment.

12. During her review of the Agency's accounts, Ms. Tarantino discovered the Agency's cash receipt book was missing. The Respondent was supposed to use this book to record the payments of those customers who paid insurance premiums with cash, so those customers would have a written receipt of payment. (Indeed, Mr. S was able to produce his receipt, confirming he had made a \$350 payment to the Respondent on January 4, 2016.)

13. On February 3, 2016—the day after Mr. S. had called her and two days after Ms. O had called—Ms. Tarantino contacted the New Hampshire Insurance Department to report her suspicion that the Respondent had misappropriated customer premium payments.

14. Five days later, the NHID Fraud Unit interviewed the Respondent. Investigator Brendhan Harris ("Inv. Harris") questioned the Respondent regarding her knowledge of the Agency's receipt book. The Respondent answered that she had left the receipt book in her desk when she was terminated.

15. Upon further questioning, the Respondent admitted to Inv. Harris that she had misappropriated customer funds on five separate occasions and that she had taken the cash and

stored it in a lock box in a closet in her home. The Respondent described the stolen funds as a “nest egg” in the event Ms. Tarantino fired her.

16. The Fraud Unit subsequently executed a search warrant on the Respondent’s residence, whereby the investigators located the receipt book belonging to the Agency. The Fraud Unit also discovered approximately fourteen grocery bags of items belonging to the Agency, including policy files and cancellation notices. The Fraud Unit, however, was unable to locate the lock box containing the customers’ premium payments.

17. Inv. Harris interviewed the Respondent a second time on June 30, 2016. During this interview, the Respondent admitted taking cash from clients that she knew was intended as payment for insurance premiums. The Respondent also admitted she had misappropriated premium payments made by Agency customers *in addition to* the three customers discussed above.

18. On October 20, 2016, a Merrimack County Grand Jury indicted the defendant for one count of Theft by Misapplication of Property, a Class A felony.

STATEMENT OF ISSUES

19. Whether the Respondent misappropriated customer insurance premium payments.

20. Whether the Respondent used fraudulent or dishonest practices or both in the conduct of business for the purpose of misappropriating customer insurance premium payments.

21. Whether the Respondent’s misappropriation of customer insurance premium payments demonstrated untrustworthiness or financial irresponsibility or both in the conduct of business.

22. Whether the Respondent employed any device, scheme or artifice for the purpose of defrauding the Pittsfield Insurance Agency and its customers.

23. Whether the Respondent violated RSA 402-J:12, I, (g) by committing fraud or an unfair insurance trade practice act or both.

24. Whether the Respondent violated RSA 402-J:12, I, (b) by violating the New Hampshire insurance laws cited in the subsequent section.

25. The NHID reserves the right to amend this statement of issues upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

NEW HAMPSHIRE INSURANCE LAWS VIOLATED BY RESPONDENT

26. The NHID maintains the Respondent violated the following New Hampshire insurance law statutes: RSA 402-J:12, I (d); RSA 402-J:12, I (h); RSA 402-J:12, I (b); RSA 402-J:12, I (g); and RSA 417:4 I (f).

27. The NHID reserves the right to amend this list of insurance laws violated by the Respondent upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

PENALTY REQUESTED

28. In the event the Hearing Officer determines after evidentiary hearing that the NHID sustained its burden of proof with respect to the allegations of fact and violations of law outlined above, the NHID requests that the Hearing Officer impose the following sanctions on the Respondent:

- a. Order permanent revocation of the Respondent's New Hampshire insurance producer license; and
- b. Order the Respondent to pay a fine in the amount of \$2,500 per violation.

NOTICE OF HEARING

A. Pursuant to RSA 541-A:31, RSA 400-A:17 *et seq.* and Ins Part 200, the hearing in this matter shall commence on January 19, 2017 at 9:00 a.m. at the offices of the Department, which are located at 21 South Fruit Street, Suite 14 in Concord, New Hampshire.

B. Heather Silverstein shall preside as the Hearing Officer in this matter. Sarah Prescott shall serve as clerk to the Hearing Officer. The parties should direct all communications to Ms. Prescott, whose contact information is:

Sarah Prescott, Clerk
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
Tel: (603) 271-2261
Fax: (603)271-1406
Email: sarah.prescott@ins.nh.gov

C. The Respondent has the right to be represented by a lawyer in this proceeding. However, the Respondent shall bear the cost of retaining said lawyer. Should the Respondent elect to retain a lawyer, her lawyer shall file a Notice of Appearance with Ms. Prescott, and said lawyer should do so at the earliest possible date. A copy of the Department's Notice of Appearance is enclosed with this Order.

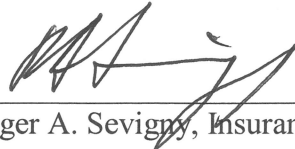
D. Any party may request a transcript of the proceeding. The party requesting a transcript of the proceeding shall file a written request for a certified court reporter with the Hearing Officer at least 10 days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.

E. Richard P. McCaffrey, Esq. and Mary C. Bleier, Esq. shall serve as staff advocates representing the interests of the NHID.

It is **SO ORDERED**.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 12-14-16

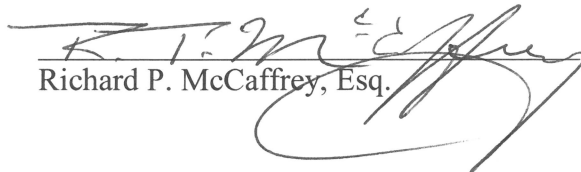


Roger A. Sevigny, Insurance Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Order to Show Cause and Notice of Hearing was sent this date by first-class mail, postage prepaid, and by certified mail, return receipt requested, to Kimberly Tacy, 18 Blue Boar Lane, Canterbury, NH 03224-2705, this being her mailing address on file with the Department.

Date: 12/14/16



Richard P. McCaffrey, Esq.