

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Stephen J. Drohan

and

SJD Insurance Agency, Inc.

Docket No.: INS 09-10-036-EP

ORDER

A hearing was conducted on November 22, 2010, before this hearing officer pursuant to the provisions of Ins 200, specifically Ins 204.04 Summary Suspension of Department Issued Licenses, in regard to the summary suspension of license of the Respondent, Stephen J. Drohan. Respondent Stephen J. Drohan ("Mr. Drohan") appeared *pro se* at the hearing, both individually and as President of Respondent SJD Insurance Agency, Inc. ("SJD"). Richard McCaffrey presented the case against the Respondent on behalf of the Department.

This order is a final order on the summary suspension proceeding. This order resolves all issues presented at the hearing, including any taken under advisement during the course of the hearing.

This proceeding is governed by RSA Chapter 541-A, the Administrative Procedure Act, as well as by the rules adopted by the Department, Ins 200, Practices and Procedures. The evidence received in this proceeding, both testimonial and documentary, has met this standard.

FINDINGS OF FACT

The evidence presented at the hearing, including, but not limited to, Mr. Drohan's admissions during cross examination, establishes by a preponderance of the evidence that:

1. Two witnesses testified at the hearing and several exhibits were offered, and received, into evidence. The NHID also submitted a Proposed Order. No submission by the Respondent was received by close of business on this day, December 2, 2010, the deadline for submitting proposed findings of fact, rulings of law or proposed orders.
2. Mr. Drohan is a licensed New Hampshire insurance producer and the President of SJD. SJD was formed as a New Hampshire corporation on March 3, 1999, and it was licensed as a New Hampshire producer at that same time. SJD last filed an annual report with the Office of the New Hampshire Secretary of State on March 31, 2009. SJD is not currently in good standing. In testimony at the hearing, Mr. Drohan admitted that SJD continued to conduct insurance business in New Hampshire even after SJD was no longer in good standing with the Office of the New Hampshire Secretary of State. (*See also* Exh. 14).
3. Dwayne Hakey ("Mr. Hakey") is a New Hampshire citizen who resides in Alstead, New Hampshire with his wife Karen ("Mrs. Hakey"). Mr. Hakey, with assistance from Mrs. Hakey, operates a small commercial trucking company, and for several years Mr. Hakey procured liability insurance on his trucks through SJD and Mr. Drohan.

4. On June 1, 2009, in connection with the renewal of liability insurance for various trucks owned by Mr. Hankey, a premium finance agreement was completed in which All Island Credit Corp. ("All Island"), a premium finance company, agreed to finance Mr. Hakey's acquisition of liability insurance on three commercial trucks, including a 1995 Mack dump truck. (Exh. 1).
5. Mr. Drohan signed the premium finance agreement on his own behalf, and he testified at the hearing that he also signed the agreement on Mr. Hakey's behalf, although Mr. Drohan also testified he did so with Mr. Hakey's knowledge and approval. (Exh.1; and testimony of Stephen Drohan and Karen Hakey).
6. The premium finance agreement indicated that Mr. Hakey's insurance policy would be issued by Empire Fire & Marine Insurance ("Empire") through Surplex Underwriters Inc. ("Surplex"), a managing general agency. (Exh. 1). Mr. Hakey's premium for this insurance was \$8,019.00, plus the finance charges payable to All Island. (Exh. 1).
7. The premium finance agreement required Mr. Hakey to make a cash down payment of \$1,202.85, and then to make a total of nine monthly payments in the amount of \$828.45 directly to All Island. (Exh. 1; and testimony of Stephen Drohan and Karen Hakey).
8. By a check dated June 8, 2009, and made payable to "SJD Ins." in the amount of \$1,202.85, Mr. Hakey paid the cash down payment on the Empire policy. (Exh. 4; and testimony of Stephen Drohan and Karen Hakey). Mr. Drohan did, in fact, forward the \$1,202.85 down payment to the Surplex. (Testimony of Stephen Drohan).

9. On July 28, 2009, Mrs. Hakey sent an email to SJD requesting that the 1995 Mack dump truck be removed from the Empire policy. (Exh. 6 and testimony of Stephen Drohan and Karen Hakey).
10. On that same date, July 28, 2009, Mr. Drohan relayed by e-mail Mrs. Hakey's request to Surplex and further requested that Surplex advise of the credit due Mr. Hakey. (Exh. 7 and testimony of Stephen Drohan and Karen Hakey). The credit that Mr. Drohan referred to in this communication to Surplex was a credit for the premium that was required to be returned to Mr. Hakey since he was removing one of his trucks from Empire policy before the end of the policy term.
(Testimony of Stephen Drohan).
11. The net return premium (that is, the gross return premium minus the broker's commission) that was owed to Mr. Hakey as a result of the removal of the 1995 Mack dump truck from the Empire policy was \$2,012.40. (Exh. 11; and Exh. 7a).
12. SJD maintained a premium trust account (number 40304952506) with Sovereign Bank. (Exhibit 12; Exhibit 13; and testimony of Stephen Drohan.)
13. On October 7, 2009, Surplex, on behalf of Empire, made a check payable to "SJD Insurance Agency, Inc." in the amount of \$2,020.23. This check included the \$2,012.40 in the net return premium related to the removal of the 1995 Mac dump truck by Mr. Hakey from the Empire policy (Exhibit 7a.).
14. As evidenced by the deposit stamp on the back of the Surplex check, as well as by Mr. Drohan's testimony at the hearing, Mr. Drohan deposited the \$2,020.23 Surplex check in his premium trust account with Sovereign Bank.

15. Between June 19, 2009 and February 19, 2009, Mr. Hakey made all nine payments due to All Island pursuant to the terms of the premium finance agreement. (Exh. 8; and Exh. 9). These nine payments directly from Mr. Hakey to All Island fully satisfied Mr. Hakey's obligation to All Island.
16. Mr. Drohan stated we would pay the \$2,012.40 in net return premium to Mr. Hakey (testimony of Karen Hakey).
17. When payment was not received, Mr. Hakey filed a Small Claims Complaint against Mr. Drohan in the Keene District Court on or about September 16, 2010, to recover the net return premium related to the removal of the 1995 Mack dump truck from the Empire policy. (Exh. 17; and testimony of Stephen Drohan and Karen Hakey). After Mr. Drohan defaulted on that action, Mr. Hakey filed an Affidavit of Damages and is awaiting judgment from the Court. (Exh. 17.) Mr. Drohan testified that he does not intend to appeal the order in the Keene District Court matter.
18. Mr. Drohan admitted on cross-examination at the hearing, he never paid Mr. Hakey the \$2,012.40.
19. During the period of February 1, 2010 through July 31, 2010, there were a dozen instances where the funds in SJD's premium trust account were insufficient to cover withdrawals made against the account. (Exhibit 13.)

RULINGS OF LAW

I find based on the a preponderance of the evidence as set forth above in the Findings of Fact that:

1. Mr. Hakey was entitled to receive the \$2,012.40 in net return premium as a result of the removal of the 1995 Mack dump truck from the Empire policy.
2. Mr. Drohan has not paid the \$2,012.40 in net return premium to Mr. Hakey.
3. Mr. Drohan misappropriated and converted \$2,012.40 belonging to Mr. Hakey by failing to pay Mr. Hakey \$2,012.40 in net return premium.
4. Mr. Drohan violated RSA 402-J:12, I (d) by improperly withholding, misappropriating, and converting the \$2,012.40 in net return premium in the course of doing insurance business.
5. Mr. Drohan violated RSA 402-J:12, I (h) by using fraudulent and dishonest practices and demonstrating incompetence, untrustworthiness and financial irresponsibility in the conduct of business in this state.
6. Mr. Drohan violated RSA 417:4,I(g) by obtaining money or property by means of an untrue statement of a material fact.
7. Mr. Drohan violated RSA 417:4,I(h) by engaging in a course of business which operates as a fraud or deceit upon an insured.
8. SJD, through its President, Mr. Drohan, knowingly participated in the misappropriation and conversion of Mr. Hakey's funds and thereby violated RSA 402-J:12, I (d, h) and RSA 417:4, I (g, h).
9. Mr. Drohan and SJD, in whose name the premium trust account was maintained, violated Ins 4301.04 by failing at all times to maintain the premium trust account "so that the funds therein contained shall be immediately available during normal business hours" (Ins 4301.04(b)).

10. Mr. Drohan and SJD, in whose name the premium trust account was maintained, violated Ins 4301.04 by failing at all times to maintain “an amount at least equal to the premiums and return premiums, net of commissions, received by him and unpaid to the persons thereto . . . for the account of such persons.” (Ins 4301.04(c)).
11. Mr. Drohan and SJD violated Ins 4301.03 by depositing Mr. Hakey’s \$2,012.40 in the premium trust account and then failing to pay those funds over to Mr. Hakey when requested to do so.

PENALTY

Stephen J. Drohan

As a result of the violations of New Hampshire insurance law discussed above and pursuant to RSA 417:10, 402-J:12, I and RSA 400-A:15, III, it is hereby ordered that Mr. Drohan’s New Hampshire insurance producer license be revoked immediately and that Mr. Drohan pay an administrative penalty in the amount of thirty-seven thousand, five-hundred dollars (\$37,500.00) within ten (10) days of the Commissioner’s execution of the final order. This penalty is itemized as follows:

1. \$2,500 for misappropriating and converting Mr. Hakey’s funds in violation of RSA 402-J:12, I (d, h);
2. \$2,500 for misappropriating and converting Mr. Hakey’s funds in violation of RSA 417:4, I (g, h);
3. \$30,000 for failing to properly maintain and administer a premium trust account in violation of Ins 4301.04 (\$2,500 for each of 12 separate acts); and

4. \$2,500 for failing to immediately pay return premium deposited in a premium trust account when requested by Mr. Hakey to do so in violation of Ins. 4301.03.

SJD Insurance Agency, Inc.

As a result of the violations of New Hampshire insurance law discussed above and pursuant to RSA 417:10, 402-J:12, I and RSA 400-A:15, III, it is hereby ordered that SJD Insurance Agency, Inc.'s New Hampshire insurance producer license be revoked immediately. However, based on the licensing and corporation documents accepted into evidence as Exhibit 14, SJD Insurance Agency, Inc. appears to have no officers or directors other than Mr. Drohan. In other words, Mr. Drohan was solely responsible for SJD's wrongdoing. Where Mr. Drohan has been ordered individually to pay the administrative penalty delineated above, the hearing officer declines to impose a further penalty against SJD.

SO ORDERED.

Date: December 2, 2010



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