

JAN 22 2013

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	
PETITIONER,)	CONSENT ORDER
)	
VS.)	
)	
PAMELA A. SIROKY,)	CAUSE NO. A-1964
NAIC National Producer # 3188815)	
)	
RESPONDENT.)	

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney, Christine Neighbors and Pamela A. Siroky, ("Respondent"), mutually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047, et seq.
2. Respondent is licensed as a resident insurance agent under the laws of Nebraska at all times material hereto. Respondent's registered business address with the Department is Agency One Insurance, 594 N. 4th Street, P. O. Box 275, David City, Nebraska 68632. Her registered home address with the Department is 957 N. 11th Street, David City, Nebraska 68632.

FACTUAL ALLEGATIONS

1. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Pamela A. Siroky, Cause Number A-1964 on October 24, 2012. A copy of the petition was served upon the Respondent at the Respondent's

business address registered with the Department by certified mail, return receipt requested, and Respondent's home address registered with the Department by First Class U.S. Mail.

2. The Department alleges Respondent violated §§44-4059(1)(b) and 44-4059(1)(h) as a result of the following conduct listed below. Respondent provided her response to portions of the allegations:

- a. On or about March 15, 2011, Douglas Inlay ("Inlay"), whose business address was Agency One Insurance, 4300 S. Lakeport, Suite 104, Sioux City, Iowa, had his Nebraska insurance producer license suspended by order of the Director in Nebraska administrative action A-1901. Shortly thereafter, the Nebraska Department of Insurance Consumer Affairs Division ("CAD") was contacted by a person alleging Inlay had attempted to sell her insurance, but before purchasing the insurance she had discovered that his Nebraska insurance producer license was suspended. CAD began an investigation into the activities of Inlay, which included both speaking with and sending a letter to Respondent, the owner of Agency One Insurance, Inc. in David City, Nebraska asking her to provide information on her business relationship with Inlay and to also provide documentation of business solicited/submitted by Inlay after March 15, 2011. Respondent states that before receiving the phone call from CAD on April 20, 2011, Respondent was unaware that Inlay's Nebraska license had been suspended.
- b. Respondent submitted a letter to CAD, dated May 6, 2011, in which she included information that Candice Hunter, an insurance producer who became licensed in Nebraska April 1, 2011 and was working with Inlay at Agency One in Sioux City, Iowa had solicited insurance business with some insurers, including the MetLife ("MetLife") group of companies and Progressive Northern Insurance Company ("Progressive"). CAD sent a letter to MetLife requesting information on MetLife business written through Agency One Insurance since May 1, 2010 when Inlay signed an Independent Agent agreement with Agency One Insurance agency of David City, Nebraska and its owner Respondent.
- c. MetLife provided CAD with information listing policies written on their insureds through Agency One insurance agency of David City, Nebraska, including the Agency One agency office of Inlay in Sioux City, Iowa. MetLife also advised that it does assign a user id and password to each licensed and appointed insurance producer who is granted access to the Company's Agent Resource Site (ARS); additionally, the Agency One insurance agency of David City, Nebraska was provided a generic user id.

One of the agents at Agency One provided a user id and password from MetLife was Connie Samek.

MetLife advised that it appointed Inlay in the State of Iowa although Inlay was never appointed as an agent of MetLife in Nebraska. Respondent advises that at the same time she sent Inlay's Iowa insurance license to MetLife and requested that he be appointed in Iowa, she also sent Inlay's Nebraska and South Dakota licenses and instructed MetLife to appoint Inlay in the States of Nebraska and South Dakota. Unbeknownst to Respondent, Inlay was never appointed as an agent of MetLife in the State of Nebraska while he was associated with Agency One and its owner Respondent.

Respondent contends that when Inlay became associated with Agency One, she and Samek met with Kelly Hanson, marketing representative for MetLife, to discuss steps to be taken in incorporating Inlay into Agency One. During that meeting, Hanson was informed that Inlay wanted to start moving insurance business from other insurers to MetLife. During that meeting, Hanson specifically authorized Samek to give Inlay her MetLife ID and password until MetLife could set up an ID and password for Inlay. Respondent acknowledges that after that meeting, she instructed Samek to give her MetLife user id and password to Inlay so that he could solicit Nebraska insurance business for MetLife electronically. Samek has also informed CAD that based on instructions from Hanson and Respondent, she allowed Inlay to use her MetLife id and password. Respondent further contends that any production of insurance business in the State of Nebraska by Inlay to MetLife would have been written with the express knowledge of MetLife.

- d. As shown on the MetLife information listing policies written on their insureds through Agency One insurance agency of David City, Nebraska, including the Agency One agency office of Inlay in Sioux City, Iowa, beginning in May, 2010, Inlay, who was the only licensed insurance producer in the Sioux City, Iowa office at that time, solicited/wrote 6 MetLife policies on Nebraska insureds residing in the surrounding northeast Nebraska area, and submitted the business to MetLife under Samek's electronic user ID. (On June 17, 2010, Agency One insurance agency of David City, Nebraska issued Inlay a \$3,722.62 commission check, a portion of which, upon our information and belief, was based on those MetLife policies.) In the month of June, 2010 Inlay solicited/wrote 15 MetLife policies on Nebraska insureds residing in the surrounding northeast Nebraska area and Inlay submitted the business to MetLife under Samek's electronic user ID. (On July 13, 2010, Agency One insurance agency of David City, Nebraska issued Inlay an \$8,268.14 commission check, a portion of which, upon our information and belief, was based on those MetLife policies.)

- e. Inlay hired Joseph Sauce (“Sauce”), a licensed insurance producer, who began working with Inlay at Agency One in Sioux City, Iowa on July 1, 2010, and continued there until Sauce was no longer allowed in that office by Inlay after March 9, 2011. Inlay claims he was aware that Sauce was never appointed as an agent of MetLife in the State of Nebraska. Whether the Nebraska MetLife insurance business from Inlay’s Agency One agency office in Sioux City, Iowa was thereafter solicited by Inlay or Sauce, it was submitted electronically by Inlay to MetLife under Samek’s (or Respondent’s) electronic user ID. In the month of July, 2010, Inlay and/or Sauce solicited/wrote 15 MetLife policies on Nebraska insureds residing in the surrounding northeast Nebraska area, and Inlay submitted the business to MetLife under Samek’s electronic user ID. (On August 24, 2010, Agency One insurance agency of David City, Nebraska issued Inlay an \$8,093.12 commission check, a portion of which, upon our information and belief, was based on those MetLife policies.) In the month of September, 2010, Inlay and/or Sauce solicited/wrote 2 MetLife policies on Nebraska insureds residing in the surrounding northeast Nebraska area, and Inlay submitted the business to MetLife under Samek’s electronic user ID. (On September 28, 2010, Agency One insurance agency of David City, Nebraska issued Inlay a \$3,142.95 commission check, a portion of which, upon our information and belief, was based on those MetLife policies.) In the month of October, 2010, Inlay and/or Sauce solicited/wrote 9 MetLife policies on Nebraska insureds residing in the surrounding northeast Nebraska area, and Inlay submitted the business to MetLife under Samek’s electronic user ID. (On October 31, 2010, Agency One insurance agency of David City, Nebraska issued Inlay a \$2,986.09 commission check, a portion of which, upon our information and belief, was based on those MetLife policies.) In the month of November, 2010, Inlay and/or Sauce solicited/wrote 1 MetLife policy on a Nebraska insured residing in the surrounding northeast Nebraska area, and Inlay submitted the business to MetLife under Samek’s electronic user ID. In the month of January, 2011, Inlay and/or Sauce solicited/wrote 3 MetLife policies on Nebraska insureds, and Inlay submitted the business to MetLife under Samek’s electronic user ID. In the month of February, 2011, Inlay and/or Sauce solicited/wrote 4 MetLife policies on Nebraska insureds residing in the surrounding northeast Nebraska area, and Inlay submitted the business to MetLife under Samek’s electronic user ID on 3 of the policies and under Respondent’s electronic user ID on the other policy.

Respondent’s position is that at all times when commission checks were issued by Agency One to Inlay, it was with a good faith assumption that Inlay had been appointed by MetLife in Nebraska as well as in Iowa.

- f. Respondent alleges that before meeting Inlay, she had no business contacts in the South Sioux City/Northeast Nebraska vicinity. Before entering into a

business relationship with Inlay, Respondent was never involved in the marketing or solicitation of insurance business in the geographical region of Nebraska referenced in the petition at issue. During marketing meetings which included Kelly Hanson, the MetLife marketing representative and Inlay, Respondent believes it was clear that MetLife understood that any new business generated from that geographical region would be business solicited by Inlay or other agents operating out of Inlay's Sioux City, IA office. Much of the work to produce the multiple policies referenced above was performed via email. In responding to the on-line applications submitted by Inlay, MetLife would not respond via email to Respondent or other agents working out of Agency One's David City, Nebraska office. Instead, those email responses, calls from underwriters and confirmations of coverage were sent by MetLife directly to Inlay in the Sioux City, Iowa office. Initially after Inlay entered into the contract with Agency One, Agency One representatives in David City, Nebraska, would occasionally receive requests for information from MetLife regarding business initiated by Inlay. On those occasions, MetLife was referred on to Inlay as other Agency One representatives were simply unable to respond to the inquiries. Thereafter, MetLife submitted inquiries directly to Inlay regarding insurance business initiated by Inlay.

- g. Progressive also provided CAD with information on policies written on their insureds through Agency One insurance agency of David City, Nebraska, including the Agency One agency office of Inlay in Sioux City, Iowa. (Neither Inlay nor Sauce was ever appointed as an agent of Progressive in the State of Nebraska.) Respondent did submit an application to Progressive to allow Inlay to produce insurance business on behalf of Progressive in both the states of Iowa and Nebraska. Respondent assumed that Progressive had appointed Inlay in both states. Progressive had assigned an agent code for the Agency One insurance agency of David City, Nebraska, which was the only Agency One location in the Progressive system. Agency One insurance agency of David City, Nebraska and its owner Respondent provided Inlay its user ID and password to allow him to access the Progressive electronic quoting system which then allowed Inlay (even though neither he or Sauce were appointed with Progressive) to pick from a list of licensed and appointed agents of Agency One insurance agency of David City, Nebraska with Progressive to complete the appropriate policy application online, which according to Progressive was done without Progressive's knowledge or approval. Inlay and/or Sauce solicited/wrote 2 Progressive policies on Nebraska insureds in August, 2010, and Inlay submitted the business to Progressive by "picking" Samek's name. Inlay and/or Sauce solicited/wrote 3 Progressive policies on Nebraska insureds in September, 2010, and Inlay submitted the business to Progressive by "picking" Samek's name. Inlay and/or Sauce solicited/wrote 4 Progressive policies on Nebraska insureds in October, 2010, and Inlay submitted the business to Progressive by "picking"

Samek's name. Inlay and/or Sauce solicited/wrote 1 Progressive policy on a Nebraska insured in January, 2011, and Inlay submitted the business to Progressive by "picking" Respondent's name. Inlay and/or Sauce solicited/wrote 1 Progressive policy on a Nebraska insured in February, 2011, and Inlay submitted the business to Progressive by "picking" Respondent's name. Inlay solicited/wrote 3 Progressive policies on Nebraska insureds in March, 2011 and Inlay submitted the business to Progressive by "picking" Samek's name on 2 of the policies and "picking" Respondent's name on the other policy. Inlay solicited/wrote 2 Progressive policies on Nebraska insureds in April, 2011 and Inlay submitted the business to Progressive by "picking" Samek's name on 1 of the policies and "picking" Respondent's name on the other policy. Inlay solicited/wrote 2 Progressive policies on Nebraska insureds in May, 2011, and Inlay submitted the business to Progressive by "picking" Respondent's name.

- h. Respondent states she was also aware that Inlay would initially be utilizing the Agency One insurance agency of David City, Nebraska, user ID and password to allow him to access the Progressive electronic quoting system. Respondent assumed that Progressive had appointed Inlay after making the request to Progressive. Even though Inlay (nor Sauce) was never appointed as an agent of Progressive in Nebraska, and was never on the "pick list" of licensed and appointed agents of Agency One insurance agency of David City, Nebraska, Inlay was able to submit applications to Progressive to complete the appropriate policy application online. During all relevant times, Respondent represents Progressive Insurance assigned Ryan Phillips to be the "relationship manager" with Agency One. Phillips was aware of Inlay entering into an independent contract with Agency One and that Inlay would be producing both Iowa and Nebraska insurance to Progressive out of the Sioux City, Iowa office.

Further, commission statements were mailed monthly to the Agency One Insurance agency office in David City, Nebraska. Even though Respondent, as owner of Agency One Insurance under the independent producer contract that Inlay entered with Agency One insurance agency of David City, Nebraska and its owner Respondent, receives a percentage of commission on new business written through MetLife or Progressive policies solicited/written by Inlay, she claims she doesn't review the commission statements but instead gives them to the agency bookkeeper. CAD has obtained copies of MetLife commission statements for MetLife business written through Agency One Insurance since May 1, 2010 when Inlay signed an Independent Agent agreement with Agency One Insurance agency of David City, Nebraska and its owner Respondent. Although by agreement between Agency One Insurance and MetLife all insurance commissions on insurance business written through Agency One are paid monthly to Agency One Insurance in David City, Nebraska, the monthly statements have

separate statements for each agent user id to allow the individual insurance producer (as well as the Respondent) to track the insurance business they have written through MetLife each month. Therefore, if Respondent had taken the initiative to review those monthly agent commission statements as a “licensed insurance producer” as well as the owner of Agency One Insurance agency of David City, Nebraska, she could have discovered the ongoing new business written under both Samek’s and her user id by Inlay (and/or Sauce) as referenced in subparagraph 5c and d above, as neither was ever appointed as an insurance producer for MetLife in the state of Nebraska. Not only should Respondent not have initially allowed the non-appointed Inlay to utilize Samek or her user id and password to solicit/write MetLife business on Nebraska insureds, but her claimed failure to ever review any of the monthly MetLife agent commission statements from May, 2010 through March, 2011 continued to enable the never Nebraska appointed for MetLife Inlay to solicit/write MetLife business on Nebraska insureds without MetLife knowledge or approval to both Inlay’s and Agency One Insurance owner Respondent’s financial benefit. The same scenario holds true on both Respondent’s initially allowing the non-appointed Inlay to utilize Agency One insurance agency of David City, Nebraska user ID and password to allow him to access the Progressive electronic quoting system to solicit/write Progressive business on Nebraska insureds, as well as her claimed failure to ever review any of the monthly Progressive agency commission statements from May, 2010 through May, 2011 continued to enable the never Nebraska appointed for Progressive Inlay to solicit/write the Progressive business on Nebraska insureds referenced in subparagraph 5e above without Progressive knowledge or approval to both Inlay’s and Agency One Insurance owner Respondent’s financial benefit. Respondent has acknowledged that neither she nor any of the licensed and appointed agents for MetLife or Progressive in her Agency One insurance agency of David City, Nebraska office solicited/wrote any of the personal lines insurance business solicited and submitted through the Agency One insurance agency office in Sioux City, Iowa on Nebraska insureds.

Respondent acknowledges that possibly she could have ascertained that insurance business produced by Inlay and Sauce was being produced through other Agency One agent’s identification by reviewing commission statements. However, given her prior experience in the industry, Respondent had a good faith basis to assume MetLife and Progressive would appoint Inlay and Sauce at the time the request was made and their insurance licenses were submitted. Respondent states she was never provided any information before April 2011 that a problem existed with Inlay’s appointment by MetLife and Progressive, and there were never concerns raised by MetLife and/or Progressive about insurance business Inlay was producing until after Inlay’s license was suspended even though both MetLife and Progressive marketing representatives were well aware that any

insurance produced in the Northeast Nebraska vicinity would be produced by Inlay or Sauce out of the Sioux City, Iowa office. Because of their ongoing dealings with Inlay, Respondent believes MetLife and Progressive were in a much better position to ascertain that Nebraska insurance business was being produced by Inlay and Sauce than was Respondent.

3. The Department further alleges Respondent violated Neb. Rev. Stat. §44-393 and Neb. Rev. Stat. §44-4059(1)(b) as a result of the following conduct:

- a. Respondent has advised CAD that Inlay was to handle client premiums the same way out of Agency One insurance agency office in Sioux City, Iowa as it was in the David City, Nebraska office. When clients paid premiums in cash, the designated premiums were to be swept from the Agency One Insurance agency checking account in David City to pay to the insurer, and Inlay was to deposit the cash funds he had received back in to the David City account. Respondent learned that at some time, Inlay was slow in forwarding premium payments for policies produced out of the Sioux City, Iowa office. Respondent was continuously communicating with Inlay to make sure those payments were sent. Respondent advised CAD in August, 2011 that Inlay had failed to reimburse her over \$8,000 in such premiums, which she claimed to have just learned about that summer. However, her agency's bookkeeper, Heather Oltmer in her written statement to CAD advised that she alerted Respondent about the late submission of funds (that had begun in November, 2010) in April, 2011. Oltmer further notes that she and Respondent met with Inlay about this in May, 2011. (At that time, according to the statement Oltmer provided CAD, Inlay had withheld payment on 4 accounts from his October 2010 business statement, 5 accounts from his November, 2010 business statement, 6 accounts from his December, 2010 statement, 2 accounts from his March, 2011 statement, and 4 accounts from his April, 2011 statement.)

Respondent states she recognized that it was imperative that the delay in keeping Inlay's accounts current not impact coverage for any Agency One customer. In order to make sure that insurers were paid and insureds covered, Respondent made sure that premium was forwarded to insurers even if it had yet to be received from Inlay. To Respondent's knowledge, at no time did any customer experience any lack of coverage. Furthermore, all premium paid was submitted to the appropriate insurer.

- b. Although Inlay had clearly improperly withheld, and misappropriated money received on insurance business over a lengthy period of time, and Respondent's bookkeeper had alerted her to this, Respondent failed to promptly report these violations by Inlay to the Nebraska Department of

Insurance, but rather waited months later after she had terminated her business relationship with Inlay to report his misconduct to the Department.

Respondent does not believe that any premium was “misappropriated” by Inlay. Instead, Respondent contends that Inlay’s failure to promptly submit payments was a problem she needed to work out with Inlay.

4. Respondent was informed of her right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving her right to a public hearing, Respondent also waives her right as part of this proceeding to confrontation of witnesses, production of evidence, and judicial review.

5. For the purposes of resolving issues raised by the Department in the pending Petition, Respondent neither admits nor denies the allegations set forth in Paragraphs #2 and #3 above.

CONCLUSIONS OF LAW

The Department concludes that Respondent’s conduct as alleged above, if proved could constitute violations of §§44-393, 44-4059(1)(b) and 44-4059(1)(h) thereby subjecting Respondent to disciplinary action pursuant to Neb. Rev. Stat. Section 44-4059. For purposes of this Consent Order, Respondent neither admits nor denies the allegations referenced above but in order to avoid further proceedings and the expense of this matter being heard, does consent to the entry of this Consent Order.

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent Pamela A. Siroky, that Respondent shall pay an administrative fine of three thousand dollars (\$3000.00), due within thirty (30) days after the Director of Insurance or his designee approves and signs this consent order. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Department to enforce this order.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing their signature below.

Christine M. Neighbors

Christine M. Neighbors #19856
Attorney for Nebraska
Department of Insurance
941 O Street, Suite 400
Lincoln, Nebraska 68508
(402)471-2201

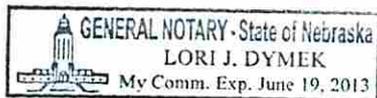
1/18/13
Date

Pamela A. Siroky
Respondent

1-11-13
Date

State of Nebraska)
County of Lancaster) ss.

On this 11th day of January, 2013, Pamela A. Siroky personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be her voluntary act and deed.



Lori J. Dymek
Notary Public

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Pamela A. Siroky, Cause No. A-1964.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Bruce R. Ramge

BRUCE R. RAMGE
Director of Insurance

1-22-2013

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was sent to the Respondent at her business address registered with the Department at Agency One Insurance, 594 N. 4th Street, P. O. Box 275, David City, Nebraska 68632, by certified mail, return receipt requested on this 22 day of January, 2012.

Jenny A. Fisher

RECEIVED

JAN 11 2013

**NEBRASKA DEPARTMENT
OF INSURANCE**