

DEPARTMENT OF INSURANCE

STATE OF WYOMING

WYOMING INSURANCE DEPARTMENT,)
)
Petitioner,)
)
vs.)
)
KELLY MAE FOSSEY,)
)
Respondent.)

Docket No. 11-15

CONSENT ORDER

THIS MATTER having come on for consideration and final disposition upon the Stipulation for Consent Order dated the 21 day of November, 2011, presented herewith, and the Commissioner being otherwise fully advised in the premises, finds:

1. The Wyoming Insurance Commissioner has jurisdiction over this matter pursuant to Wyo. Stat. §§ 26-1-103, 26-2-109 and 26-9-211.

2. The entry of this Consent Order and compliance with the Stipulation for Consent Order filed herein shall conclude the administrative proceedings of Docket No. 11-15.

IT IS THEREFORE ORDERED:

A. The Stipulation for Consent Order dated the 21 day of November 2011, attached hereto, is hereby approved and fully incorporated herein by reference.

B. That compliance with the Stipulation for Consent Order fully settles the subject matter herein and the same is hereby closed.

Dated this 23rd day of November, 2011.

Kenneth G. Vines
Kenneth G. Vines, Insurance Commissioner

FILED
WYOMING INSURANCE DEPARTMENT
DATE November 23, 2011
BY Deborah M. Wilson

DEPARTMENT OF INSURANCE

STATE OF WYOMING

WYOMING INSURANCE DEPARTMENT,)
)
Petitioner,)
)
vs.) Docket No. 11-15
)
KELLY MAE FOSSEY,)
)
Respondent.)

STIPULATION FOR CONSENT ORDER

IT IS HEREBY AGREED AND STIPULATED by and between Kelly Mae Fossey (“Respondent”) and the Wyoming Insurance Department (“Petitioner”), as follows:

1. The Wyoming Insurance Commissioner has jurisdiction over this matter pursuant to Wyo. Stat. §§ 26-1-103, 26-2-109, and 26-9-211.
2. A uniform application for a producer license was received by the Department on August 18, 2011, from Respondent herein.
3. The “Applicant’s Certification and Attestation” on Page 4 of the uniform application states, “I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the licensing and may subject me to civil or criminal penalties.”
4. Respondent signed and dated the application August 10, 2011.
5. Question No. 1 on the uniform application asks, “Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?” The question goes on to define “crime” as including “a misdemeanor, felony or a military offense.” The term “convicted” as used in the application, “includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.” Applicants are not required to disclose “misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses.”
6. Respondent answered “No” to Question 1 on the uniform application dated August 10, 2011.
7. Before approving the application, the commissioner must find that the individual “has provided the commissioner fingerprints and other information and permission necessary for a criminal history record background check as provided in Wyo. Stat. § 7-19-201(a).”
8. Respondent submitted fingerprint cards which the Department forwarded to the Division of Criminal Investigations for a Criminal History Report.

FILED
WYOMING INSURANCE DEPARTMENT
DATE *November 23 2011*
BY *Lee Ann Thibault*

9. While the contents of the Criminal History Report from the Division of Criminal Investigation are confidential, information in the report led the Department to contact the Fremont County Clerk of Court and was provided with copies of a Felony Information filed November 22, 2002, in the Circuit Court, Ninth Judicial District, together with a copy of an Order After Arraignment and Judgment and Sentence filed in the District Court of Fremont County, Wyoming on May 2, 2003, in the Matter of the State of Wyoming vs. Kelly Mae Gordon, Criminal Action No. 5842.

10. The Judgment and Sentence above-mentioned shows that Respondent plead guilty and the conviction was entered on two counts of misdemeanor larceny by bailee. A third count, felony larceny by bailee was dismissed without any adjudication of guilt pursuant to Wyo. Stat. 7-13-301 (Amended 1987).

11. Pursuant to Wyo. Stat. § 26-9-211(a), "The commissioner may, after appropriate notice and opportunity for hearing . . . refuse to issue or renew an insurance producer's license or other license issued under this code, or may levy a civil penalty in accordance with W.S. 26-1-107 or any combination of actions, for any one (1) or more of the following causes:

- (i) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
- (ii) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (viii) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."

12. A Notice and Order to Show Cause was issued on October 28, 2011, seeking denial of Respondent's application for licensure, providing that the Respondent not be eligible to reapply for licensure for a period of twelve (12) months from the date of the application and providing that Respondent be assessed a civil penalty in the amount of \$500.

13. The Notice and Order to Show Cause advised Respondent that she was entitled to a hearing on the merits of the case and that she was required to file an answer or otherwise appear in this proceeding within 20 days of October 28, 2011, or default would be entered.

14. On November 7, 2011, a response was received from Petitioner in the form of a letter filed herein explaining the background of her criminal record, providing documentation in support thereof and requesting an amicable resolution of the matter.

15. Upon consideration of Respondent's response herein, in lieu of further proceedings herein, it is hereby agreed that it would be in the best interests of the parties to settle this matter as follows:

- a) Respondent agrees that she was properly served with the Notice and Order to Show Cause and hereby waives any defects in service or notice in this matter.

b) Respondent voluntarily waives the right to a hearing in this matter and voluntarily enters into this Stipulation for Consent Order ("Stipulation").

c) Respondent admits to the allegations set forth in the Petition.

d) Respondent agrees to pay a civil penalty in the amount of Two Hundred Dollars (\$200.00) payable to the Wyoming State Treasurer, simultaneously with the execution of this Stipulation.

e) Respondent agrees to obey the laws of the state of Wyoming, specifically including the Wyoming Insurance Code.

f) The parties agree that this Consent Order is a public record and contains information which is routinely reported to the National Association of Insurance Commissioners' "RIRS" database. Respondent acknowledges that this matter constitutes an administrative action that may need to be reported to each state in which Respondent is licensed.

g) Respondent will submit a new application with a corrected answer to Question No. 1 for consideration of licensing upon resolution of this matter.

16. By entering into this Stipulation and by the filing of a Consent Order in this case, the Respondent and the Department intend to and do resolve all issues pertaining to the license disciplinary administrative penalties to be imposed against the Respondent based upon the allegations herein.

17. This Stipulation is subject to the approval of the Commissioner. Upon his approval, and without further notice, the Commissioner may issue a Consent Order providing for the following:

a) Incorporation by reference all the terms and conditions of this Stipulation.

b) That upon compliance with the terms of this Stipulation, this matter will

be fully settled and closed.

Dated: November 16th 2011

Kelly Mae Fossey
Kelly Mae Fossey, Respondent

Dated: 11/21/2011

Stephanie Bryant McGee
Stephanie Bryant McGee, Deputy Commissioner