

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

)	
)	
IN RE: Debbie Jo Gould)	
Maine License No. PRR 59446)	DECISION AND ORDER
National Producer No. 3680995)	
)	
Docket No. INS-17-202)	

The staff of the Bureau of Insurance has requested that the insurance producer license of Debbie Jo Gould be revoked and that other appropriate disciplinary sanctions be imposed as permitted by law for violations of the Maine Insurance Code. For the reasons discussed more fully below, Ms. Gould’s privilege to act as an insurance producer is revoked, she is ordered to pay a civil penalty of \$600, and she is order to pay restitution.

Background and Procedural History

Ms. Gould has been licensed in Maine as an insurance producer with Property and Casualty authority since December 7, 1998. Her Maine Producer Number is PRR 59446 and her National Producer Number is 3680995.

On June 13, 2017, Bureau of Insurance Staff filed a Petition for Enforcement alleging that Ms. Gould misappropriated agency funds in violation of 24-A M.R.S. § 1420-K(1)(D); that she mishandled client funds in violation of 24-A M.R.S. § 1449; and that she had engaged in fraudulent, coercive or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in violation of 24-A M.R.S. § 1420-K(1)(H). In an order dated June 13, 2017, the Superintendent designated me as the Presiding Office and delegated the authority to render a decision in this matter. A “Notice of Pending Proceeding and Hearing” was sent to Ms. Gould and the Bureau Staff on July 25, 2017, informing them that an adjudicatory hearing would be held at 10:00 a.m. on September 11, 2017, in the Kennebec Room at the Department of Professional and Financial Regulation Building, Gardiner Annex, 76 Northern Avenue, Gardiner, Maine.

A prehearing conference was held on August 14, 2017. Ms. Gould and Bureau Staff attended the conference. Following the conference, a prehearing order was issued on August 17, 2017, requiring, among other things, that the parties exchange exhibits and witness lists by August 28, 2017 and confer by September 5, 2017, to determine which exhibits, if any, may be admitted without objection and whether any facts may be entered into the record by stipulation. Bureau Staff submitted proposed exhibits and its witness list on August 28, 2017. Ms. Gould did not submit any proposed exhibits or a witness list. On September 5, 2017, Bureau Staff moved for the admission of its proposed exhibits on the alleged grounds that Ms. Gould did not respond to requests from Bureau Staff to discuss the admissibility of the exhibits, as required by the

prehearing order. I denied Bureau Staff's motion on September 8, 2017, and deferred the admissibility of exhibits to the hearing.

Hearing was held on September 11, 2017, in accordance with the July 25, 2017 "Notice of Pending Proceeding and Hearing." Bureau Staff was present at the hearing, represented by AAG Colin Hay. Ms. Gould was present at the hearing and appeared pro se. The following witnesses testified under oath:

Mr. Robert Lymburner
Mr. Victor Dennison
Mr. Michael Giles
Ms. Debbie Jo Gould

In addition, the following exhibits were admitted into the record:

Exhibit 1, Debbie Jo Gould licensing record (admitted without objection);
Exhibit 2, Atlantic reprimand dated April 22, 2016 (admitted over objection);
Exhibit 3, Hanover record of Gould payments (admitted without objection);
Exhibit 4, Atlantic AM360 records of Gould payments (admitted without objection);
Exhibit 5, Dennison receipt dated May 16, 2016/April 29, 2016 (admitted without objection);
Exhibit 6, Atlantic AM360 record of Dennison payments (admitted without objection);
Exhibit 7, Vermont Mutual record of Dennison payments (admitted without objection);
Exhibit 8, Lymburner receipt dated April 25, 2016 (admitted without objection);
Exhibit 9, Atlantic AM360 record of Lymburner payments (admitted without objection);
Exhibit 10, Hanover record of Lymburner payments (admitted without objection);
Exhibit 11, Blastow receipt dated February 26, 2016 (admitted without objection);
Exhibit 12, Atlantic AM360 record of Blastow entries (admitted without objection);
Exhibit 13, Ohio Mutual record of quote dated February 26, 2016 (admitted over objection);
Exhibit 14, Ohio Mutual record of payments to auto policy (admitted without objection);
Exhibit 15, Example receipt issued by Atlantic (admitted without objection);
Exhibit 16, Photo of Debbie Jo Gould (admitted without objection);
Exhibit 17, Blastow affidavit (admitted without objection);
Exhibit 18, Ohio Mutual Agency Contract (admitted without objection);
Exhibit 19, Vermont Mutual Agency Contract (admitted without objection);
Exhibit 20, Hanover Agency Contract (admitted without objection);
Exhibit 21, Transcript of Debbie Jo Gould interview January 9, 2017 (admitted without objection);

Ms. Gould did not offer any exhibits during the hearing, but she testified.

Findings of Fact

Ms. Gould was employed by Atlantic Insurance and Benefits ("Atlantic") from November 14, 2014 until July 7, 2016. She was previously employed by Norman Assurance

Associates which was acquired by Atlantic in 2014. Norman continued to operate as a branch office of Atlantic after the acquisition (the “Norman branch”). Mr. Michael Giles is the owner and manager of Atlantic. Atlantic had written procedures for the handling of cash payments from customers, of which Ms. Gould was made aware.

On February 26, 2016, Mr. Brock Blastow went to the Norman branch, where he obtained a quote from Ms. Gould for renter’s insurance with Ohio Mutual Insurance Group. He gave Ms. Gould \$100 in cash to apply to the policy, which she accepted and for which she gave Mr. Blastow a receipt indicating it was for tenant/homeowner’s insurance. After several months without having received any further information, Mr. Blastow returned to the Norman branch and was informed that the payment had not been applied to a renter’s insurance policy on his behalf. Records from the carrier’s website show that Ms. Gould obtained a quote for the insurance on February 26, 2016, but that it was refused. The \$100 deposit was not recorded in the agency’s record management system and there were no notes entered by Ms. Gould regarding the quote, which as required by agency procedures. The Norman branch credited Mr. Blastow’s account to reflect the payment he made to Ms. Gould.

The record is unclear as to why the quote for Mr. Blastow’s renter’s insurance is marked as refused. The reason, however, is not controlling. Ms. Gould accepted the payment and gave him a receipt for the money to be applied to an Ohio Mutual renter’s policy. Ms. Gould did not establish a renter’s policy for Mr. Blastow.

On either April 29, 2016 or May 16, 2016, Mr. Victor Dennison went to the Norman branch where he made a \$177 cash premium payment on his automobile policy.¹ Ms. Gould accepted the payment and provided Mr. Dennison with a receipt. The payment was not recorded in the agency’s record management system, nor was it applied to Mr. Dennison’s policy.

On May 25, 2016, Mr. Robert Lymburner went to the Norman branch where he made a \$105 cash payment for a commercial policy. Ms. Gould accepted the payment and provided Mr. Lymburner with a receipt. The payment was not recorded in the agency’s record management system, nor was it applied to Mr. Lymburner’s policy.

On April 22, 2016, Mr. Giles issued a written reprimand to Ms. Gould regarding improper handling of customer premiums and the late deposit of those premiums. The reprimand noted the existence of several incidents where cash payments were not logged into the agency records management system or the cash register, nor deposited until days or weeks later. The reprimand followed a verbal warning on the same subjects given several months prior. A copy of the agency’s procedure for handling cash payments was attached. Ms. Gould was warned that future incidents involving improper handling of customer funds would result in termination. Following the April/May 2016 incidents Ms. Gould was, in fact, terminated in June, 2016.

¹ The receipt in Exhibit 5 shows both dates. Regardless of the discrepancy in the dates on the receipt, Mr. Dennison’s testimony that he went to the Norman branch, made the payment to Ms. Gould and was given a receipt, by her, was credible.

Ms. Gould failed to follow Atlantic's written procedures for handling cash payments and failed to apply payments from Mr. Blastow, Mr. Dennison and Mr. Lymburner on their behalf. According to Mr. Giles, had those procedures been properly followed, the payments would have been immediately applied to the customers' accounts. The cash receipts given to these customers by Ms. Gould did not follow an approved agency format.

Atlantic maintained a trust fund account from which it transferred customer payments to the appropriate insurance policy. On Sunday, June 19, 2016, Ms. Gould electronically transferred \$110 from Atlantic's trust fund account to the balance on her personal auto policy. On Monday, June 20, 2016, Ms. Gould generated a receipt from the trust account for a check from her in the amount of \$110. However, it was not until Wednesday, June 22, 2016, that the trust account actually reflected her check. The evidence indicates that Ms. Gould took \$110 from the trust account to pay for her auto policy three days prior to sufficient funds from her being deposited to cover that amount. The evidence does not provide an explanation for the delay. Although I do not believe this action rises to the level of misappropriation of agency funds, it demonstrates untrustworthiness and financial irresponsibility in the conduct of business.

Conclusions of Law

Pursuant to 10 M.R.S. § 8003(5) and 24-A M.R.S. §§ 12-A, 215 and 1420-K(1)(B), the Superintendent may impose disciplinary sanctions against a producer who violates any provision of Title 24-A. Pursuant to 24-A M.R.S. § 1420-K(1)(D), the Superintendent may impose disciplinary sanctions against a producer who misappropriated agency funds. Pursuant to 24-A M.R.S. § 1449, the Superintendent may impose disciplinary sanctions against a producer who mishandled client funds. Pursuant to 24-A M.R.S. § 1420-K(1)(H), the Superintendent may impose disciplinary sanctions against a producer who uses fraudulent, coercive, or dishonest practices or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Maine or otherwise.

Ms. Gould mishandled client funds in violation of 24-A M.R.S. § 1449 by accepting cash payments from customers on three occasions and failing to properly record those payments in Atlantic's payment record system and failing to apply those payments to insurance policies on the customers' behalf.

Ms. Gould demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business in violation of 24-A M.R.S. § 1420-K(1)(H) in the following ways:

- by accepting cash payments from customers on three occasions and failing to properly record those payments in Atlantic's payment record system and failing to apply those payments to insurance policies on the customers' behalf;
- by failing to establish a renter's policy for Mr. Blastow; and
- by taking money from the agency's trust account to pay for her own personal auto policy prior to ensuring that her funds had been properly deposited into the agency's account.

As explained above, I find that insufficient evidence has been presented to demonstrate that Ms. Gould misappropriated agency funds under 24-A M.R.S. § 1420-K(1)(D).

Sanctions

In determining the appropriate remedy, I consider the violation, extent of the wrongdoing, and the circumstances surrounding the conduct to assure that the remedy is reasonable in relation to the violations that were committed. That consideration includes factors such as harm to others, acceptance of responsibility by the actor, and the nature of the violation.

Ms. Gould has given no explanation for the events surrounding this matter. She has not taken responsibility for the disappearance of client premium funds and has not even acknowledged that the events described under oath have occurred. The consumers she took payment from were fortunate not to have their policies cancelled. Mr. Blastow was fortunate not to have incurred a claim during the time he believed he was insured.

To protect consumers, regulators must hold licensed insurance producers to the highest standard of conduct. The authority given and trust placed in licensed insurance producers leaves no room for incompetence or inattention. Licensed producers must take their responsibilities seriously, with competence, attention and diligence.

Under the circumstances of this case, taking into account the nature of Ms. Gould's conduct, revocation of her producer's license and a civil penalty are warranted. Therefore, Ms. Gould's license shall be revoked and a civil penalty in the amount of \$600 is imposed. Pursuant to 24-A M.R.S. § 12-A(6), I am also ordering restitution. To the extent that Ms. Gould has not repaid the missing funds to either Norman Associates or the policyholders to which she gave receipts, she must do so.

Order and Notice of Appeal Rights


It is therefore *ORDERED*:

1. The Petition for Enforcement is *GRANTED*.
2. Ms. Gould's privilege to act as an insurance producer is *REVOKED*.
3. Ms. Gould shall pay a civil penalty of \$600, by check payable to the Treasurer of State within 45 days of this Decision and Order.
4. Ms. Gould shall pay appropriate restitution.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S. § 236 and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within 30 days after receiving this notice. Any aggrieved nonparty whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before 40 days from the date of this Decision and Order.

Per order of the Bureau of Insurance

DATED: September 28, 2017

By: 

Pamela Stutch, Esq.
Hearing Officer