

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of)	
)	
Scott Nicholson,)	CONSENT ORDER
NPN 16826311, and)	
BW Insurance Agency, Inc.,)	CASE NO. AG-13-405
NPN 659881)	
)	
Respondents.)	

Insurance Commissioner Adam Hamm (“Commissioner”) has determined as follows:

1. As a result of information obtained by the North Dakota Insurance Department (“Department”) regarding the conduct of Scott Nicholson, NPN 16826311, an individual who has at all relevant times hereto held or held himself out as holding a valid insurance producer license in the State of North Dakota, and BW Insurance Agency, Inc., NPN 659881, a North Dakota resident business entity insurance producer at all times relevant to this proceeding (collectively “Respondents”), the Commissioner has considered initiating administrative proceedings regarding Respondents’ conduct as alleged below and regarding the imposition of a civil penalty or any other action the Commissioner deems necessary. Respondents’ conduct is alleged to be in violation of N.D.C.C. §§ 26.1-04-02, 26.1-04-03(2) and 26.1-26-03.

2. N.D.C.C. § 26.1-04-02 states:

26.1-04-02. Unfair methods of competition or unfair and deceptive acts or practices prohibited. A person may not engage in this state in any trade practice

defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

3. N.D.C.C. § 26.1-04-03 states, in relevant part:

26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined. The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

...

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public . . . an advertisement . . . containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.

4. N.D.C.C. § 26.1-26-03 states:

26.1-26-03. License required – Acting as insurance producer or consultant without license prohibited - Penalty. No person may act or hold oneself out to be an insurance producer, insurance consultant, or surplus lines insurance producer unless licensed under this chapter. A person may not sell, solicit, or negotiate insurance in this state for any class of insurance unless the person is licensed for that line of authority in accordance with this chapter. Any person willfully violating this section is guilty of a class C felony.

5. Employees of the Department have investigated the alleged conduct of the Respondents, including reviewing written responses of Respondents as well as documentation provided by Respondents.

6. On or about October 3, 2012, an advertisement appeared in the Wahpeton Daily News which advertised Respondent Scott Nicholson as the new

“insurance sales manager” of Respondent BW Insurance Agency, Inc. (the “October 2012 ad”).

7. The October 2012 ad ran on four separate occasions, specifically October 3, 2012, October 4, 2012, October 5, 2012, and October 7, 2012, according to documentation provided to the Department by Respondents.

8. On each of the dates the October 2012 ad appeared in the Wahpeton Daily News, Respondent Scott Nicholson did not hold a valid insurance producer license in the State of North Dakota and Respondent BW Insurance Agency, Inc., was aware Respondent Scott Nicholson did not hold a valid insurance producer license in the State of North Dakota.

9. In Respondents’ written reply to the Department dated May 28, 2013, Respondents admit they “realize it was a mistake to place the ad too early”.

10. Respondent Scott Nicholson violated N.D.C.C. § 26.1-26-03 when he held himself out as an insurance producer and allowed the October 2012 ad to be purchased and placed by Respondent BW Insurance Agency, Inc., even though Respondent Scott Nicholson did not hold a valid insurance producer license in the State of North Dakota at the time the October 2012 ad appeared in the Wahpeton Daily News.

11. Respondent BW Insurance Agency, Inc., violated N.D.C.C. § 26.1-04-03(2) when it purchased and placed the October 2012 ad in the Wahpeton Daily News because the October 2012 ad was misleading in representing Respondent Scott Nicholson as an insurance producer prior to Respondent Scott Nicholson obtaining a valid insurance producer license in the State of North Dakota.

12. Respondents have agreed to informal disposition of this matter, without a hearing, as provided under N.D.C.C. § 28-32-22. For purposes of resolving this matter, without further administrative proceedings, Respondents and the Commissioner have agreed to enter into the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent Scott Nicholson, NPN 16826311, agrees to pay a fine of \$400 payable by money order, cashier's check, or credit card to the North Dakota Insurance Department within 30 business days of the effective date of this Order.

2. Respondent BW Insurance Agency, Inc., NPN 659881, agrees to pay a fine of \$400 payable by money order, cashier's check, or credit card to the North Dakota Insurance Department within 30 business days of the effective date of this Order.

3. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 28 day of June, 2013.



Adam Hamm
Insurance Commissioner
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, **Scott Nicholson and BW Insurance Agency, Inc.**, state that they have read the foregoing Consent Order, that they know and fully understand its

contents and effect; that they have been advised of their right to a hearing in this matter, their right to be represented by legal counsel, their right to present evidence and arguments to the Commissioner, and their right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order they waive those rights in their entirety, and consent to entry of this Order by the Commissioner. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either expressed or implied.

DATED this 24th day of JUNE, 2013.

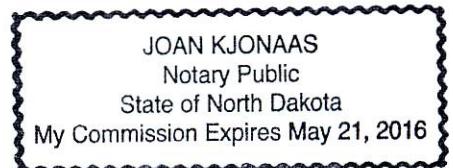
[Signature]
Scott Nicholson

Subscribed and sworn to before me this 24th day of June, 2013.

[Signature]
Notary Public

State of North Dakota
County of Cass

My commission expires: 5-21-2016



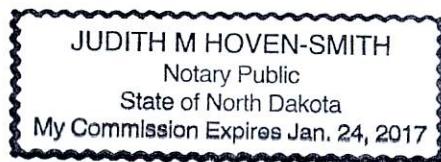
[Signature]
BW Insurance Agency, Inc.
Print Name: Wayne A. Dauwen
Title: CAO

Subscribed and sworn to before me this 26 day of June, 2013.

[Signature]
Notary Public

State of North Dakota
County of Cass

My commission expires:
1-24-17



RECEIVED
JUN 27 2013
Commissioner of Insurance
State of North Dakota