

BEFORE THE DIVISION OF INSURANCE
DEPARTMENT OF LABOR AND REGULATION
STATE OF SOUTH DAKOTA

IN THE MATTER OF
BRANDI L. SLAVEN

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)

CONSENT ORDER

In resolution of the above matter and in lieu of issuance of a Notice of Hearing and a formal hearing, the undersigned parties do hereby agree to the following:

BRANDI L. SLAVEN, whose address of record is 306 S. 3rd St., Beresford, SD 57004, holds a resident insurance producer license in the State of South Dakota;

BRANDI L. SLAVEN is aware that the South Dakota Division of Insurance ("Division") has conducted an investigation;

The Division alleges the following with regard to BRANDI L. SLAVEN:

- 1) BRANDI L. SLAVEN was the subject of a felony embezzlement prosecution which resulted in a suspended imposition of sentence;
- 2) BRANDI L. SLAVEN did not report the felony prosecution to the Division within 30 days in violation of SDCL § 58-30-194;
- 3) Pursuant to SDCL §§ 58-30-167(2) and (8) and 58-30-194, the Director of the Division may revoke or suspend BRANDI L. SLAVEN's resident insurance producer license for the above-cited reasons.

BRANDI L. SLAVEN is aware of and understands the nature of the allegations and has been informed that she has the right to counsel, hearing, and appeal and that by agreeing to and signing this Consent Order, waives these rights;

In return for BRANDI L. SLAVEN agreeing to and complying with the provisions of this Consent Order, the Division agrees not to proceed to administrative hearing and agrees that this Consent Order will constitute an informal disposition of this licensing matter pursuant to SDCL § 1-26-20;

BRANDI L. SLAVEN agrees to pay \$1,000 pursuant to SDCL §§ 58-30-167 and 58-4-28.1, in lieu of an administrative hearing and Final Decision;

BRANDI L. SLAVEN further agrees to conduct herself in accordance with the insurance laws and regulations of the State of South Dakota and to abide by the terms of this Consent Order;

BRANDI L. SLAVEN further agrees to open and maintain a trust account (following the parameters of Exhibit A to this Consent Order) to be opened and in use no later than March 1, 2013;

BRANDI L. SLAVEN further agrees to submit all necessary documentation to the Division by April 1, 2013 to show that the trust account required by this Consent Order is in place no later than March 1, 2013;

BRANDI L. SLAVEN further agrees to submit monthly statements to the Division which show that she remains fully in trust by the 15th of each month for 6 consecutive months following March 1, 2013;

BRANDI L. SLAVEN further agrees that the Division may continue to require monthly submissions beyond the original 6 month period if BRANDI L. SLAVEN is not in compliance with the terms of this Consent Order;

BRANDI L. SLAVEN further agrees that the Division shall conduct an audit of the trust commencing within 9 months from the date the Director signs this Consent Order for compliance purposes, pursuant to SDCL Title 58;

BRANDI L. SLAVEN further agrees to maintain the trust account required by this Consent Order as long as she is a licensed insurance producer in the State of South Dakota, or until the Division releases her from the trust requirements of this Consent Order;

BRANDI L. SLAVEN further agrees that this Consent Order may be considered for the purpose of determining the appropriate sanction in any future actions with the Division for any violations of the laws or regulations of the State of South Dakota or for failing to abide by any order of the Director;

By the execution of this Consent Order, BRANDI L. SLAVEN waives her right to contest the allegations contained in this Consent Order in any future actions or licensing procedures with the Division;


Wherefore, good cause appearing from the foregoing, it is hereby ORDERED that BRANDI L. SLAVEN pay a monetary penalty in the amount of \$1,000 payable to "South Dakota Division of Insurance" for deposit in the general fund of the State of South Dakota; and it is further

ORDERED that BRANDI L. SLAVEN abide by the agreements made by her in this Consent Order, including all requirements of the trust account as mandated herein; and it is further

ORDERED that the use of this Consent Order for competitive purposes by an insurance agent or third-party administrator holding a license in the State of South 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; and it is further

ORDERED that the provisions of this Consent Order shall be effective from the date the Director signs this Order.

Dated at Pierre, South Dakota this 21st day of February, 2013.


Merle Scheiber, Director
South Dakota Division of Insurance

I have read and understand the terms of this Consent Order and the waiver of my due process rights and voluntarily enter into this Consent Order.

Dated this 18th day of February, 2013.

brandi slaven
Signature

brandi slaven
Name (typed or printed)

Exhibit A to Brandi L. Slaven Consent Order

Fiduciary Responsibility and Trust Accounting Requirement Section

Section 1. Definitions

- A. "Fiduciary fund account" means a financial account established to hold fiduciary funds.
- B. "Fiduciary funds" means all insurance premiums or return premiums, including premium taxes and fees received by an insurance producer. This includes:
 - (1) All funds paid to an insurance producer for selling, soliciting or negotiating policies of insurance except for those earned fees recognized by statute as earned by the insurance producer upon receipt which are payable to the insurance producer and not the insurance company;
 - (2) All funds that are received by an insurance producer from a client or on behalf of the client that are to be paid to an insurance company or its designees, or to the insurance producer's employer or to a bank or premium finance company which by escrow or agreement pays the premium or any part thereof on behalf of the clients; and
 - (3) All funds provided to an insurance producer by an insurance company or its designees that are to be paid to a policyholder or claimant pursuant to a contract of insurance unless such funds are made payable to the policyholder or claimant.
- C. "Insurance premium" means any consideration payable to an insurance company for any insurance contract and any consideration payable to an insurance producer as a deposit or future consideration for existing or future insurance contracts.

Section 2. Fiduciary Responsibility Account

- A. The insurance producer shall be responsible in a fiduciary capacity for depositing all fiduciary funds received or collected into a fiduciary account of a type set forth in Section 4 within no more than five (5) business days of receipt of all cash, checks, money orders and other negotiable payments. In lieu of making such a deposit, an insurance producer may remit such funds to the following:
 - (1) The appropriate insurer;
 - (2) Another licensed insurance producer or licensed business entity entitled to receive funds; or
 - (3) A person designated by the insurer that has an obligation to remit the fiduciary funds to the insurer.
- B. An insurance producer who receives and deposits fiduciary funds in accordance with subsection A shall document the receipt of those funds in sufficient detail to determine, at

a minimum, the date received, the name of the payee, the name of the payer, the purpose of the payment and the amount received.

Section 3. Deposit of Other Funds in an Account

- A. An insurance producer may deposit additional funds of its own into a fiduciary account, provided the producer maintains detailed records of all additional funds so deposited, for the sole purpose of:
- (1) Advancing premiums;
 - (2) Establishing reserves for the paying of return premiums; or
 - (3) Providing for any contingencies that may arise in the business of receiving and transmitting premium or return premium funds
- B. Any such deposit is hereinafter referred to as a "voluntary deposit"

Section 4. Types of Accounts Permitted

An insurance producer shall maintain fiduciary funds only in a checking account, demand account, savings account or other account in a federally insured financial institution.

Section 5. Account Designation

- A. A fiduciary fund account shall be so designated on the records of the financial institution. The account shall have a separate account number, a separate check register and its own checks.
- B. The phrase "Insurance fiduciary fund account" shall be displayed on the face of each check drawn on a fiduciary fund account or other designation as permitted by the financial institution to identify the checks.

Section 6. Interest Earnings

A fiduciary fund account may be either an interest bearing account or a non-interest bearing account as set forth in Section 5. The insurance producer shall maintain records establishing the existence and amount of interest earned and shall make such records available for examination by the Director. The insurance producer may retain the interest or income from the account.

Section 7. Permissible Distribution of Fiduciary Funds

Distributions from a fiduciary fund account shall only be made for the following purposes, and in the manner stated.

- A. To pay insurance premiums directly to insurers or the insurer's designee pursuant to a contract of insurance;
- B. To return premiums directly to an insured or other person or entity entitled to the premiums;

- C. To remit to the appropriate state or other proper recipient surplus lines premium taxes, fees and assessments imposed by state, county, municipal or local authorities, federal excise taxes, surplus lines stamping or service office fees and other fees pursuant to statute, collected from an insured;
- D. To reimburse voluntary deposits made by the insurance producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with previous voluntary deposits;
- E. To transfer earned interest into an operating account to the extent that fiduciary account funds exceed the amount necessary to meet all fiduciary obligations, only if the amount transferred can be matched and identified with interest previously earned and to which the insurance producer is entitled pursuant to Section 6;
- F. To transfer to an operating account actual commissions and those earned fees due to the insurance producer that are not prohibited by statute, only if the commission and fees can be matched and identified with premiums or fees previously deposited in the fiduciary funds account;
- G. To pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary funds account to the extent that fiduciary account funds exceed fiduciary obligations; and
- H. To transfer funds from one fiduciary fund account to another fiduciary fund account, provided that amounts required to be held for the benefit of one insurer are not credited or deposited to the account of another insurer.

Section 8. Audit of Fiduciary Funds

An insurance producer shall make all records of collections for, deposits to and disbursements from each fiduciary fund account as well as any related records accessible to the Director upon request.

Section 9. Prohibited Practices

An insurance producer shall not use fiduciary funds for their general business operations or personal use, including, but not limited to:

- A. Using, or allowing other persons to use, fiduciary funds as a personal asset or as collateral for a personal or business loan;
- B. Reporting fiduciary funds on a financial statement without recording an equivalent liability and disclosing through a footnote that the fiduciary funds are not available for use by the reporting entity;
- C. Authorizing a financial institution to withhold issue of money from a fiduciary fund account, unless authorization is required by a court order; or
- D. Authorizing a financial institution to seize money from a fiduciary fund account, unless authorization is required by a court order.

Section 10. Timely Disbursal of Fiduciary Funds

After receiving fiduciary funds, an insurance producer shall:

- A. Pay insurance premiums directly to insurers or the insurers' designee within fifteen (15) business days of receipt or pursuant to the terms and conditions as required by the insurer;
- B. Return to the payer the money received as a premium deposit, which is retained by the insurance producer or returned to the insurance producer by the insurer to the payer by the earlier of:
 - (1) Fifteen (15) business days from the date the insurer returns the premium deposit to the insurance producer for remittance to the applicant. If the return premium/refund is reflected as a credit on the insurance producer's billing statement to or from the insurer or other insurance producer, the insurance producer must pay the refund or credit the insured's account within fifteen days subsequent to payment of the statement or the due date of the statement whichever is sooner. If the refund is to be credited to the insured's account, the credit must be shown and applied to the next billing statement sent to the insured, or
 - (2) Fifteen (15) business days from the date the insurer notifies the insurance producer that coverage has been denied if the insurance producer retained the premium deposit.
- C. Pay return premiums/refunds to the insured or credit to the insured's account within fifteen (15) days after receipt from the insurer or other insurance producer. If the return premium/refund is reflected as a credit on the insurance producer's billing statement to or from the insurer or other insurance producer, the insurance producer must pay the refund or credit the insured's account within fifteen days subsequent to payment of the statement or the due date of the statement whichever is sooner.
 - (1) If the refund is to be credited to the insured's account, the credit must be shown and applied to the next billing statement sent to the insured.
 - (2) If the credit results in a credit balance on the insured's account the credit must be returned within fifteen days unless the licensee receives written authorization from the insured to retain the credit balance and other developed credit balances for a period of no more than twelve months from the date of authorization.
- D. Investigate to determine the entitlement to fiduciary funds held for more than 120 days, and pay those fiduciary funds to the appropriate person in accordance with this Article.