

No. 2017- 4947

**OFFICIAL ORDER
of the
COMMISSIONER OF INSURANCE**

Date: FEB 21 2017

Subjects Considered:

GRETCHEN H. SMITH
3670 Hilliard Station Road
Hilliard, Ohio 43026-9328

PERFORMANCE BLOODSTOCK INSURANCE SERVICES, INC.
231 Katy B Lane
Bastrop, Texas 78602-6653

CONSENT CEASE AND DESIST ORDER
TDI ENFORCEMENT FILE NOS. 12349 and 12350

General remarks and official action taken:

The commissioner of insurance considers whether a cease and desist order should be issued against Gretchen H. Smith and Performance Bloodstock Insurance Services, Inc. (the Corporation).

WAIVER

Smith and the Corporation acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Smith and the Corporation waive all of these rights in consideration of the entry of this consent order.

FINDING OF FACT

The commissioner makes the following findings of fact:

1. Gretchen H. Smith has never held an individual insurance license issued by TDI. On October 14, 2016, Smith filed an application with TDI to become a nonresident agent in Texas. The department proposed to deny her application, and Smith filed a request for hearing. In consideration of this order, Smith withdrew her request for a hearing, thereby making the department's denial of her application effective January 11, 2017.
2. The Corporation has never held an agency insurance license issued by TDI.
3. According to Texas Secretary of State records, Smith was the sole director for the Corporation, a for-profit entity domiciled solely in Texas.

4. Both Smith and the Corporation have performed acts that constitute the business of insurance in Texas without holding a license.
5. Smith collaborated with her son, James W. Lane III (whose license was revoked on October 25, 2016), and created the Corporation to afford Lane the ability to continue working in the business of insurance after his license was revoked. Lane conducted the business of insurance under the Corporation's name, thereby attempting to evade insurance laws that prohibit him from doing so individually, without a license.
6. On October 28, 2016, three days after Lane's revocation order was signed by the commissioner, Smith formed the Corporation with the Texas Secretary of State under its original name, Jim Lane Equine Insurance Services, Inc.
 - a. The filing incorporated the name Lane had previously used as an assumed name, which includes his legal name.
 - b. The filing listed Smith as the Corporation's sole director.
 - c. The filing listed Smith's address as Lane's home address in Texas, not the address in Ohio that she provided on her license application with TDI.
7. On December 7, 2016, the Corporation changed its name to Performance Bloodstock Insurance Services, Inc.
8. In November of 2016, the department received information alleging that Lane was conducting the business of insurance without a license. A TDI investigator purporting to be Ms. Frances Smith, a consumer from Plantersville, Texas, began communicating with Lane. These communications happened via e-mail and phone. Each of Lane's e-mails were closed with the name of the Corporation in the signature block. Through this series of correspondence Lane, on behalf of the Corporation, did the following:
 - a. held himself out as an insurance agent,
 - b. solicited specific details regarding the property to be insured,
 - c. explained coverage options,
 - d. provided an application and other documentation for the consumer to fill out,
 - e. provided a detailed quote for annual premiums,
 - f. provided the specific insurer associated with the quoted coverage, and
 - g. explained how payments would be made from the consumer to himself and the Corporation.
9. Since its formation, the Corporation has advertised on Facebook for insurance services. Originally, the Facebook page was listed under Lane's former dba. After the Corporation was incorporated, the Facebook page added "Inc." to its advertising. On December 5, 2016, it changed again to the Corporation's new name, Performance Bloodstock Insurance Services. The page stated that the entity was an insurance broker in Whitesboro, Texas, specializing in the needs of the western performance horse industry. After the Facebook page name changed to the Corporation's new name, the e-mail

associated with the page changed from Lane's e-mail address to Smith's. Yet there was no announcement of a change in ownership for the Corporation.

10. Both Smith and the Corporation conducted the business of insurance in Texas on behalf of consumers in other states when they did not hold licenses in those other states.
 - a. The Corporation, through Lane, conducted the business of insurance in Oklahoma without holding licenses issued by the Oklahoma Department of Insurance. Between August and November 2016, Lane, as an agent of the Corporation, initiated a claim on behalf of an Oklahoma resident and communicated with a licensed adjuster regarding the claim.
 - b. The Corporation and Smith conducted the business of insurance in Michigan without holding licenses issued by Michigan's Department of Insurance and Financial Services. Policyholder C.L., a Michigan resident, attempted to renew her policy in November 2016. Smith collected C.L.'s renewal paperwork and \$975 premium payment. In January 2017, C.L. attempted to file a claim on the policy and discovered it had not been renewed. On January 17th, Smith e-mailed C.L. saying the renewal package had never left her outgoing e-mail and that the underwriter would not allow a resubmission. In her e-mails, Smith held herself out as a licensed agent for the Corporation. Lane has since refunded C.L.'s premium payment that Smith failed to remit, and the insurer reinstated C.L.'s policy and honored her claim.
 - c. The Corporation and Smith conducted the business of insurance in California without holding licenses issued by the California Department of Insurance. On multiple occasions Smith, representing herself as a licensed agent for the Corporation, sent California resident M.V. paperwork to renew an existing policy. The renewal paperwork had the Corporation's name on it. On January 3, 2017, Smith received M.V.'s premium payment of \$847.50. On January 30, 2017, Smith informed M.V. that she would forward her the policy documents as soon as Smith received them from the insurer, and explained coverage details regarding how they would attempt to remove a potential exclusion on the policy. On February 1, 2017, Smith informed M.V. the policy had not been renewed and that she could not handle the renewal as she did not hold a license in California. Lane has since refunded M.V.'s premium that Smith failed to remit.
11. The Corporation has ceased all business activities and Smith agrees she will not use the Corporation in the future. Smith will take the necessary, legal steps to terminate or forfeit the existence of the Corporation by May 31, 2017. In the meantime, Smith and the Corporation agree they will not amend the Corporation's records with the Texas Secretary of State, including but not limited to modifying its legal name or its list of officers, directors, or shareholders.

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.052, 101.001, 101.051, 101.102, 101.103, 101.105, 101.151-101.153, 4001.051-4001.101, 4005.101, and 4005.051-4005.053, and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. TEX. GOV'T CODE § 2001.056, TEX. INS. CODE § 82.055, and 28 TEX. ADMIN. CODE § 1.47 give the commissioner authority to informally dispose of this matter.
3. Smith does not hold a license or authorization to perform the acts of an agent or engage in the business of insurance, as required by TEX. INS. CODE §§ 101.102, 4001.101, and 4051.051.
4. The Corporation does not hold a license or authorization to perform the acts of an agent or engage in the business of insurance, as required by TEX. INS. CODE §§ 101.102, 4001.101, and 4051.051.
5. Insurance agencies are required to have at least one licensed officer or director in order to qualify for an agency license, pursuant to TEX. INS. CODE § 4001.106 and TEX. ADMIN. CODE § 19.902. Due to this direct relationship, any act of insurance the Corporation conducted without a license is attributed to Smith.
6. Smith and the Corporation engaged in acts that constitute the business of insurance and the acts of an agent and agency, including:
 - a. directly or indirectly acting as an agent for or otherwise representing or assisting a person in:
 - i. soliciting, negotiating, procuring, or effectuating an application for insurance, as contemplated by TEX. INS. CODE §§ 101.051(b)(6)(A) and 4001.101(a)(1);
 - ii. disseminating information relating to coverage or rates, as contemplated by TEX. INS. CODE § 101.051(b)(6)(B);
 - iii. forwarding an insurance application, as contemplated by TEX. INS. CODE § 101.051(b)(6)(C); and
 - iv. investigating or adjusting a claim or loss, as contemplated by TEX. INS. CODE § 101.051(b)(6)(G); and
 - b. doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance, as contemplated by TEX. INS. CODE § 101.051(b)(8).
7. Smith and Lane created the Corporation in order to do or to propose to do insurance business in a manner designed to evade statutes relating to insurance, as contemplated by TEX. INS. CODE § 101.051(b)(9).
 - a. Smith filed the formation documents because Lane does not have the right or ability to control the Corporation because his insurance license was revoked, pursuant to TEX. INS. CODE § 4001.106(b)(7)(A).
 - b. The Corporation permitted Lane, and unlicensed employee, to perform the acts of an agent on its behalf, in violation of TEX. INS. CODE § 4001.101(d).

COMMISSIONER'S ORDER

Gretchen H. Smith and Performance Bloodstock Insurance Services, Inc.

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8. The department is charged with protecting its residents against evasion of the insurance regulatory laws of this state, as contemplated by TEX. INS. CODE § 101.001(b)(4).
9. Smith and the Corporation willfully violated an insurance law of this state, as contemplated by TEX. INS. CODE § 4005.101(b)(1).
10. Smith and the Corporation misappropriated, converted to their own use, or illegally withheld money belonging to an insured, in violation of TEX. INS. CODE § 4005.101(b)(4)(C).
11. Smith and the Corporation engaged in fraudulent or dishonest acts, in violation of TEX. INS. CODE § 4005.101(b)(5).
12. Smith and the Corporation published advertising that is misleading either in fact or in implication, in violation of 28 TEX. ADMIN. CODE § 21.103.
13. According to TEX. INS. CODE § 101.001(d), TDI is charged to ensure that Texas is not a safe harbor for Texas residents who engage in unauthorized insurance business in this state, that affects residents of other states. Any act constituting the business of insurance, as described in TEX. INS. CODE § 101.051(b), made by an unlicensed person that occurs in this state and that affects a person in another state constitutes the business of insurance in this state, pursuant to TEX. INS. CODE § 101.051(c).
14. Pursuant to TEX. INS. CODE § 4005.105, Smith's application has been denied and she may not apply for an agent license before the January 11, 2022.

The commissioner of insurance orders Gretchen H. Smith to cease and desist performing the acts of an insurance agent and engaging in acts that constitute the business of insurance in Texas.

The commissioner further orders Performance Bloodstock Insurance Services, Inc. to cease and desist performing the acts of an insurance agency and engaging in acts that constitute the business of insurance in Texas.

The commissioner further orders Smith to take the necessary, legal steps to terminate or forfeit the existence of the Corporation by May 31, 2017.



David C. Mattax, Texas Commissioner of Insurance
By: Kevin C. Brady, Deputy Commissioner
Delegation Order 4506

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APPROVED AS TO FORM AND CONTENT:

A handwritten signature in black ink, appearing to read "Erin Dinsmore", written over a horizontal line.

Erin Dinsmore, Staff Attorney

Compliance Division, Enforcement Section

Affidavit

STATE OF Texas

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COUNTY OF Grayson

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Gretchen H. Smith. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

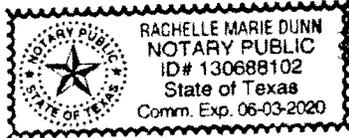
I waive rights provided by the Texas Insurance Code and other applicable laws, and acknowledge the jurisdiction of the commissioner.

I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the state of Texas."

Gretchen H. Smith
Affiant

SWORN TO AND SUBSCRIBED before me on this 17th day of February, 2017.

(NOTARY SEAL)



Rachelle Marie Dunn
signature of Notary Public

