

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA

IN THE MATTER OF:)	CASE NO. INS-2010-76
)	
Eugene Lavey, in his capacity as an insurance producer, License # 27042)	TEMPORARY CEASE AND DESIST ORDER
Respondent.)	

The State Auditor in her capacity as Commissioner of Securities and Insurance of the State of Montana (Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

ALLEGATIONS OF FACT

1. Eugene "Tip" Lavey (Lavey) owns the Lavey Insurance Agency at 308 Timmons St., Scobey, MT 59263.
2. Starting on December 1, 1999, Lavey was an appointed insurance agent with Farmers Insurance Company (Farmers). He sold Farmers insurance products and collected policyholders' premium payments at his office.
3. As a mail-in agent, Farmers contractually required Lavey to deposit premium into an independent trust account. The contract required Lavey to send a check for the total cash amount

collected and all other check collections to an approved co-owned bank account. Farmers required Lavey to perform this task within two days upon receipt.

4. On April 22, 2009, Farmers audited Lavey's insurance company largely because he had not forwarded \$22,448.00 in premium payments.

5. Farmers' auditor found \$13,510.30 in un-deposited premium checks at Lavey's office. The remaining \$8,937, however, could not be located and Lavey could not account for these missing funds.

6. Furthermore, the audit revealed Lavey kept premium payments in his personal bank account and not an independent trust account.

7. On May 17, 2009, Farmers terminated Lavey.

8. On November 11, 2009, the Office of the Commissioner of Securities and Insurance (CSI) received a complaint from Farmers alleging Lavey misappropriated premium payments.

9. CSI assigned Investigator Neil Brunett (Brunett). Brunett relied on standard investigation methods, requesting information from Mr. Lavey, Lavey Insurance Agency, and Farmers.

10. On December 13, 2010, CSI investigators interviewed Lavey at his Scobey office. There, Lavey admitted he deposited policyholders' premium payments into his personal banking account and he used premium payments for his personal use, although he could not say the exact amount.

11. CSI obtained Lavey's personal bank records. The records revealed that between May 1, 2008, through April 30, 2009, Lavey personally used \$56,514.55 in policyholders' premium on approximately 219 separate instances.

12. CSI investigators conducted a follow-up interview on April 15, 2010. Lavey stated that he was going through some mental health issues and was living outside his means. He again admitted he used policyholders' premium payments for personal use.

13. Lavey explained while he would immediately credit policyholders in Farmers' computer system, he would often wait several weeks before forwarding the payments. He did this because he did not have enough funds to cover all outstanding premiums. Lavey admitted he used money coming in from newer payments to pay older amounts and this process continued until Farmers audited his company.

14. Lavey admitted he knew using policyholders' premium payments for personal use violated the Montana Insurance Code.

15. Lavey is still an insurance agent operating out of his office in Scobey, Montana.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-101, *et seq.*

2. Pursuant to Mont. Code Ann. §§ 33-1-1302(8) and 45-6-301(6), a person commits the offense of theft when the person purposely or knowingly is involved in the misappropriation of insurance premiums or proceeds.

3. Lavey violated Mont. Code Ann. § 33-1-1302(8) by purposely and knowingly misappropriating \$56,514.55 of policyholder's premium payments, on approximately 219 separate occasions, for his personal use.

4. Pursuant to Mont. Code Ann. § 33-17-1102, all insurance premiums received by an insurance producer must be held in a separate trust account and an insurance producer may not divert or appropriate the funds or any portion of the funds to the insurance producer's own

use. An insurance producer who purposely or knowingly diverts or misappropriates insurance premiums commits theft.

5. Lavey violated Mont. Code Ann. § 33-17-1102 by purposely and knowingly depositing \$56,514.55 in premium payments, on approximately 219 separate occasions, into his personal bank account.

ORDER

Pursuant to Mont. Code Ann. § 33-1-318, it appears to the Commissioner that the above-named Respondent committed acts constituting violations of the Insurance Code of Montana, including acts constituting insurance theft and misappropriation. Therefore, the Commissioner hereby orders Respondent to cease and desist any actions or activity wherein Respondent acts in violation of the Insurance Code of Montana.

Pursuant to Mont. Code Ann. § 33-17-1001(d), the Commissioner suspends Respondent's insurance license. The Commissioner furthermore orders Respondent to cease and desist any actions or activity wherein Respondent acts as an insurance agent within the State of Montana.

NOTICE

Respondent is notified that the Commissioner has issued this order temporarily ordering him to cease and desist violating the insurance code and acting as an insurance agent. If Respondent wishes to contest the allegations herein, he shall make a written request for a hearing to Jameson C. Walker of this office within 15 days of receipt of this order. The hearing shall then be held within 20 days of the Commissioner's receipt of the hearing request unless otherwise agreed by the parties. **If no hearing is requested within 15 days of receipt of this order by Respondent, and the Commissioner orders none, this cease and desist order shall become permanent.**

Should Respondent request a hearing, he has the right to be accompanied, represented and advised by counsel. If the counsel Respondent chooses has not been admitted to the practice of law in the State of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

DATED this 28th day of June, 2010.

MONICA J. LINDEEN
Commissioner of Securities and Insurance



BY: Robert W. Moon
Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 29th day of June, 2010, by US mail, certified, first-class postage paid, to the following:

Eugene Lavey
308 Timmons St.
Scobey, MT 59263

