

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF INSURANCE  
HELENA, MONTANA

IN THE MATTER OF: ) CASE NO. 2003-13  
 )  
 )  
BOZEMAN ABSTRACT AND TITLE ) FINDINGS OF FACT,  
SERVICES, INC. f/k/a ROCKY ) CONCLUSIONS OF LAW AND  
MOUNTAIN LAND TITLE COMPANY, ) FINAL ORDER  
 )  
Respondent. )

FINDINGS OF FACT

1. The Secretary of State notified the State Auditor that Rocky Mountain Land Title Company (Rocky Mountain) had lost its authority to conduct business using that name.

2. Based on the information from the Secretary of State, the State Auditor terminated the insurance producer license of Rocky Mountain on September 26, 2002. The State Auditor mailed a letter to Rocky Mountain about this change in license status.

3. On October 22, 2003, Bozeman Abstract and Title Services, Inc., f/k/a Rocky Mountain Land Title Company, sent a response to the State Auditor.

4. Based upon this response, the State Auditor issued a provisional license on October 23, 2003 with an expiration date of January 23, 2003.

5. On January 16, 2003, two investigators from the State Auditor's Office visited the office of Bozeman Abstract and Titles Services, Inc. During this visit, Michelle Mogck, told

the investigators that Bozeman Abstract and Title Services, Inc. did not use a title insurer and did not currently collect premiums. She said that Bozeman Abstract and Title Services, Inc. used title insurance producer General American Corporation (GAC) which is appointed with title insurer American Pioneer Title Insurance Company.

6. On January 23, 2003, the provisional license expired.

7. On March 6, 2003, investigators and an attorney with the State Auditor's Office went to the office of Bozeman Abstract and Title Services, Inc. upon the invitation of Joseph W. Sabol II, esq. (Sabol). In addition to Sabol being at the meeting, Allan D. Williams (Williams) and Michelle Mogck (Mogck), owners of Bozeman Abstract and Title Services, were present. At the meeting, Mogck and Sabol stated that Bozeman Abstract and Title Services, Inc. has not acted as a producer since losing the appointment with Fidelity National Title Insurance Company on October 31, 2002. They stated that Bozeman Abstract and Title Services, Inc. does closings and settlements for banks, real estate agents or whomever needs their services. They stated that Bozeman Abstract and Title Services, Inc. does not solicit business, but rather business comes to it. Bozeman Abstract and Titles Services, Inc. occasionally uses Sabol to draft up documents. Bozeman Abstract and Title Services, Inc. does not have a title insurance producer that they use, but if someone needs a producer, they recommend GAC.

8. Mogck stated that GAC is an internet company that is contacted by buyers and sellers of property to obtain title insurance.

9. Mogck also stated that there was a separate entity called Bozeman Abstract, Inc. that did nothing but abstracting services. Bozeman Abstract Inc. shares the same office space as Bozeman Abstract and Title Services, Inc. GAC would contact Bozeman Abstract Inc. to abstract the title before GAC would give a "commitment", which is similar to a binder. Bozeman Abstract, Inc. charges \$150 for any property valued under \$150,000 and \$250 for any property valued at or above \$150,000. The premium would not be remitted to the title insurer until all the title work was done, which could take 6 to 12 weeks.

10. There is no entity registered at the Secretary of State's Office named "Bozeman Abstract, Inc."

11. In summary, Bozeman Abstract and Title Services, Inc. acts as a closing and settlement company. Bozeman Abstract and Title Services, Inc. claims not to solicit business, but rather that business comes to it through real estate agents, banks and other entities looking for a closing company. Bozeman Abstract and Title Services, Inc. then directs a person to use GAC as a title insurance producer to obtain title insurance. This is verified by the records photocopied by the investigators, in that the title insurance business since October 31, 2002 has been directed to GAC. GAC then contacts "Bozeman Abstract, Inc." to do the abstracting of the title for the closing. It is clear that there are not two separate entities, but that Bozeman

Abstract, Inc. is really Bozeman Abstract and Title Services, Inc. conducting the abstracting.

CONCLUSIONS OF LAW

1. A person may not transact the business of insurance in the state of Montana without complying with the applicable provisions of this code. Section 33-1-102(1), Mont. Code Ann.

2. Chapter 25 of Title 33 applies to all persons engaged in title insurance business in this state.

3. The definition of title insurance producer means a person who holds a valid title insurance producer's license and is authorized in writing by a title insurer to solicit title insurance business, collect rates, determine insurability and issue policies. Section 33-25-106, Mont. Code Ann. Bozeman Abstract and Title Services, Inc. is conducting title insurance business in that it is soliciting the issuance of a title insurance policy; it is handling settlements and closings; and it is abstracting titles. Sections 33-25-106(a)(i), 33-25-106(11)(b), and 33-25-105(1), Mont. Code Ann.

4. While Bozeman Abstract and Title Services, Inc. does not have a title producer's license as of January 23, 2003, Bozeman Abstract and Title Services, Inc. is acting in a manner to evade licensing as a title insurance producer pursuant to Section 33-25-106(11)(d), Mont. Code Ann.

5. Bozeman Abstract and Title Insurance, Inc. is acting as an insurance producer without a license, in violation of Section 33-17-201, Mont. Code Ann.

6. Whenever it appears to the Commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of § 33-1-501, § 33-14-201; chapters 2, 16 through 18, and 30 of this title; or part 4 of chapter 25 of this title; or any rule or order issued under this code, the Commissioner may issue an order directing the person to cease and desist from continuing the act or practice and give reasonable notice and opportunity for a hearing.

The alleged violations are sufficient to authorize the Commissioner to order Respondent to cease and desist engaging in activities of the kind herein alleged.

FINAL ORDER

Pursuant to the Findings of Fact, and Conclusions of Law as set out above, and Respondent's failure to respond within the time allowed by law, Respondent is ordered to cease and desist engaging in activities of the kind herein alleged.

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

Any party who is aggrieved by this order or has a pecuniary interest, may appeal the order or may file a motion for a rehearing or reargument pursuant to Section 33-1-711, Mont. Code Ann.

DATED this 6th day of June, 2003.

JOHN MORRISON  
State Auditor and Commissioner of  
Insurance

By: Angela Huselka  
Deputy Insurance Commissioner