

NICK MAZANEC
Office of the Commissioner of Securities and
Insurance, Montana State Auditor (CSI)
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the CSI

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

IN THE MATTER OF)	
)	
COLLEEN M. BUZZELL,)	CASE NO.: INS-2013-211
)	
Respondent.)	SECOND AMENDED NOTICE OF
)	PROPOSED AGENCY ACTION AND
)	OPPORTUNITY FOR HEARING ON
)	DENIAL OF PRODUCER LICENSE
)	
)	
)	
)	

TO: Colleen M. Buzzell
2485 Meridian Road
Victor, MT 59875

PLEASE TAKE NOTICE:

On January 2, 2014, the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), filed and served upon Colleen M. Buzzell (Respondent) a Notice of Proposed Agency Action and Opportunity for Hearing on Denial of Producer License. On January 8, 2014, the CSI filed and served upon Respondent an Amended Notice of Proposed Agency Action and Opportunity for Hearing on Denial of Producer License. The CSI now files this Second Amended Notice of Proposed Agency Action and Opportunity for Hearing on Denial

of Producer License striking certain Allegations of Fact and Conclusions of Law. These changes are indicated by strikethrough herein.

On August 12, 2013, Respondent applied to the CSI for an individual insurance producer license. On December 4, 2013, the CSI refused to issue an individual insurance producer license to Respondent. On December 11, 2013, the CSI received a written demand for hearing from Respondent. On December 20, 2013, the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), granted the hearing request. On January 10, 2014, a scheduling conference will be held in this matter, at which time a date for hearing will be set.

Staff of the CSI, pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, et seq. (Code), is proposing that the Commissioner refuse to issue an insurance producer license to Respondent. The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-311, 33-17-201, 33-1-317, and 33-17-1001. Service of process is effectuated pursuant to § 33-1-314.

The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this Notice. If you require an accommodation please contact Darla Sautter, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, MT 59601, Phone: (406) 444-2726, Fax: (406) 444-3499, no later than 5:00 p.m. fourteen (14) days before the hearing to advise of the nature of the accommodation that you need.

REASONS FOR ACTION

There is reasonable cause to believe that the following facts, if proven, justify the denial of Respondent's application for an insurance producer license.

ALLEGATIONS OF FACT

2009 and 2010 Board of Realty Regulation Adjudication

1. The State of Montana Board of Realty Regulation (BRR) issued Respondent a Property Manager license on June 1, 2006.
2. On March 12, 2009, the BRR issued a Notice of Summary Suspension, Proposed Board Action, and Opportunity for Hearing (2009 Notice) to Respondent.
3. The 2009 Notice disclosed four complaints from Respondent's clients. It alleged numerous instances of professional misconduct by Respondent including, but not limited to, the following:
 - a. signing or issuing a document or statement that Respondent knew, or reasonably ought to have known, contained a false or misleading statement;
 - b. making a misleading, deceptive, false, or fraudulent advertisement or other representation in the course of business;
 - c. misappropriating client property or funds, or failing to properly account for and distribute client property or funds;
 - d. failing to properly maintain a trust account and ensure the safekeeping of all funds received;
 - e. improperly commingling funds in a trust account;
 - f. failing to timely deposit client funds into a trust account;
 - g. failing to timely transfer funds to property owners; and
 - h. failing to maintain proper records of client funds received, deposits made, and other financial transactions.

4. On May 22, 2009, Respondent entered into a stipulation in which she admitted to every one of the 2009 Notice allegations except the allegation of client fund misappropriation.
5. The stipulation included a one-year BRR license suspension, and required Respondent to repay her client, Michael Rau, \$1,050 no later than August 1, 2009.
6. On September 29, 2009, the BRR filed an internal complaint after Respondent failed to timely repay Rau. Respondent admitted this failure in writing, and committed to paying Rau \$100 weekly until the amount was satisfied. However, Respondent failed to make any weekly payments as promised, although she ultimately paid Rau \$1,050 in January of 2010.
7. On January 14, 2010, the BRR issued a Notice of Proposed Board Action and Opportunity for Hearing regarding the September 29, 2009, complaint.
8. The BRR entered a Final Order of Default on August 10, 2011, after Respondent failed to respond. In that Order, the BRR revoked Respondent's Property Manager license.

Rau Civil Judgment and Real Estate Recovery Account Obligation

9. Rau was a former client of Respondent. Rau secured a civil judgment against Respondent in the amount of \$2,960 in Ravalli County Justice Court; the judgment related to Respondent's failure to remit a tenant rental payment and security deposit owed to Rau. The judgment amount included the \$1,050 the BRR ordered Respondent to repay Rau.
10. Respondent failed to satisfy the balance of the judgment, and Rau applied for and received payment of \$1,905 from the BRR Real Estate Recovery Account. Upon payment, Rau's rights as a judgment creditor were subrogated to the BRR. On June 10, 2010, the BRR notified Respondent that Respondent was now obligated to repay the BRR \$1,905.
11. To date, Respondent has failed to satisfy the judgment of \$1,905 now held by the BRR.

2011 Board of Realty Regulation Adjudication

12. On June 29, 2011, the BRR issued another Notice of Proposed Board Action and Opportunity for Hearing (2011 Notice). The 2011 Notice related to a complaint filed by the BRR, and two more complaints received by clients of Respondent. The Notice alleged conduct including, but not limited to, the following:

- a. Falsification of documents, or signature of documents without authority, or another like act;
- b. Misappropriation of client funds, or failing to properly account for or distribute client property or funds;
- c. Failure to make reasonable efforts to perform obligations arising from a client-property manager agreement; and
- d. Failure to repay the BRR Recovery Account the \$1,905 owed.

13. The BRR entered a Final Order of Default on October 24, 2012, after Respondent failed to respond. Pursuant to the Order, the BRR fined Respondent \$1,000.

14. To date, Respondent has not paid the \$1,000 fine.

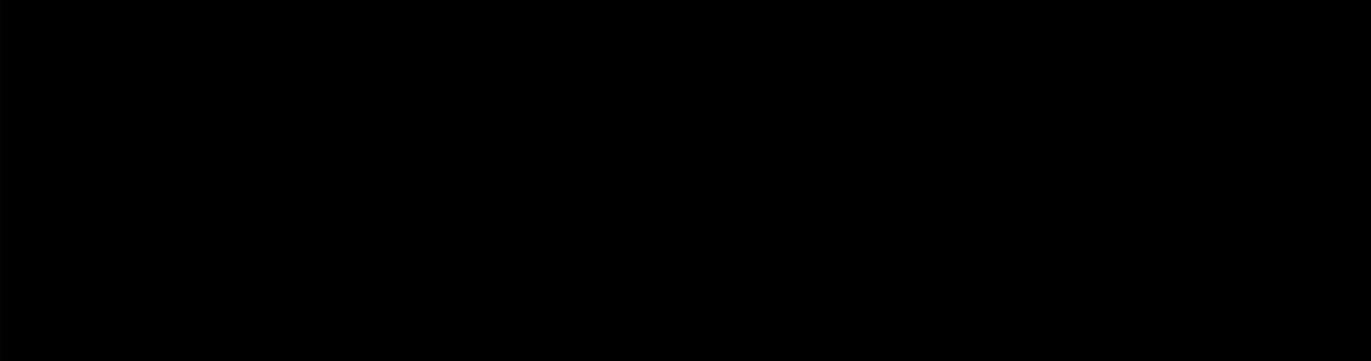
15. In total, eight complaints were filed with the BRR against Respondent in connection with her Property Manager license.

Private Investigator Trainee Application

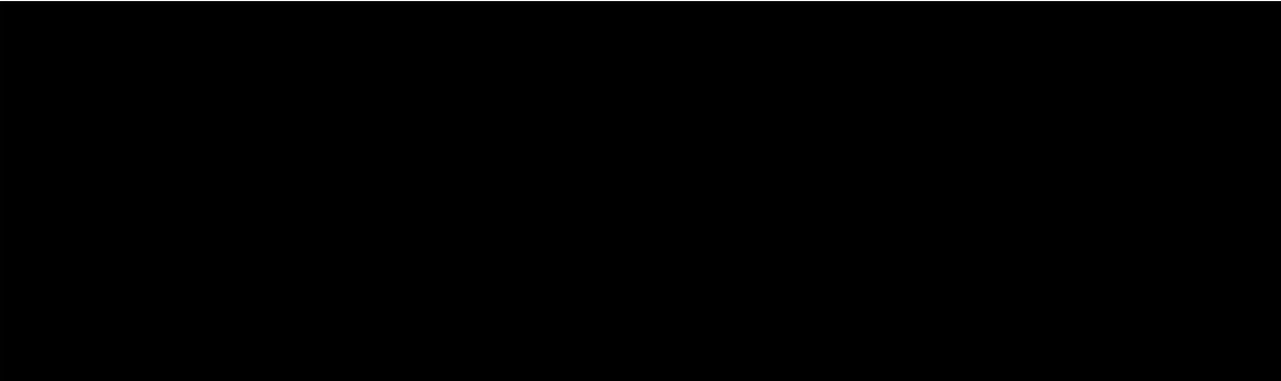
16. On March 24, 2008, a complaint was filed against Respondent with the BRR. Respondent received notice of the complaint and filed a response to the BRR on June 13, 2008.

17. On September 16, 2008, Respondent applied to the State of Montana Board of Private Security for a private investigator trainee (PIT) license.

18. The PIT application asked if Respondent had ever been subject to a complaint alleging unethical behavior or unprofessional conduct. The application required Respondent to identify and explain each complaint, and disclose any related documentation. Respondent did not disclose on the application that a customer complaint had been filed against her with the BRR on March 24, 2008, for unprofessional conduct, nor did she provide any documentation of the complaint.



Insurance Producer License Application

21. The CSI insurance producer licensing application requires an applicant to indicate whether he or she is a party to, or has ever been found liable in, any lawsuit involving allegations of misappropriation or conversion of funds, or breach of fiduciary duty.
22. On her August 12, 2013, licensing application, the Respondent failed to disclose that she was found liable in the lawsuit brought by Rau relating to misappropriation and conversion of funds, and breach of fiduciary duty.
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CONCLUSIONS OF LAW

1. The CSI has jurisdiction over this matter. § 33-1-311.
2. The CSI administers the Code to protect insurance consumers. § 33-1-311.
3. The Commissioner may refuse to issue an insurance producer's license when an applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public. § 33-17-1001(1)(f).
4. The CSI properly refused to issue an insurance producer's license to Respondent under § 33-17-1001(1)(f) because Respondent is incompetent, untrustworthy, financially irresponsible, and a source of injury and loss to the public, as demonstrated by:
 - a. the conduct to which she admitted in her May 22, 2009, stipulation;
 - b. her continued failure to timely repay Rau money owed despite her repeated promises to do so, and despite the civil judgment entered against her;
 - c. the BRR's suspension and eventual revocation of her Property Manager license and related conduct;
 - d. her continued failure to pay the \$1,905 owed to the BRR Recovery Account and the \$1,000 fine levied against her;
 - e. her failure to disclose an existing property management client complaint on her PIT application; and



11. Additionally, and alternatively, the Commissioner may refuse to issue an insurance producer's license when an applicant attempts to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application. § 33-17-1001(1)(b).

12. The CSI may properly refuse to issue an insurance producer's license to Respondent because she provided misleading, incomplete, and materially untrue information in her license application when she indicated she had not been found liable in a lawsuit involving misappropriation or conversion of funds, or breach of fiduciary duty, even though she was found liable in Rau's lawsuit. § 33-17-1001(1)(b).

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

That the Commissioner refuse to issue an insurance producer license to Respondent in accordance with § 33-17-1001(1)(c), (f).

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this Notice, and to present evidence and arguments on all issues involved in this case. A formal hearing will be scheduled as set out in the first page of this Notice, and will be held before an impartial hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act, § 2-4-601 et seq.

You have a right to be represented by an attorney at any and all stages of this proceeding. If the counsel you choose has not been admitted to practice 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 Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Sybil Shults, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, MT, 59601, 406-444-2040. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to attend the hearing will result in the entry of a default order imposing any

sanctions available under Montana law, without any additional notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 16th day of January, 2014.



NICK MAZANEC
Attorney for CSI

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing document was hand delivered, picked up by courier, emailed, or sent by U.S. Mail, postage paid, this 16th day of January, 2014, to the following:

Colleen M. Buzzell
2485 Meridian Road
Victor, MT 59875

Michael J. Rieley, Hearing Examiner
P.O. Box 1211
Helena, MT 59624

A handwritten signature in blue ink, appearing to read "Sybil Shull", is written over a horizontal line. The signature is cursive and includes a long, sweeping flourish that extends to the right.