

MIKE WINSOR
Office of the Montana State Auditor
Commissioner of Securities and Insurance
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Attorney for the State

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

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)	
IN THE MATTER OF CHARLES)	CASE NO.: INS-2015-238
KARTCHNER and RIMROCK ROOFING,)	
)	NOTICE OF PROPOSED AGENCY
Respondents.)	DISCIPLINARY ACTION AND
)	OPPORTUNITY FOR HEARING
)	

Staff of the Office of the Montana State Auditor, Commissioner of Securities and Insurance, (CSI), by and through counsel, and pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq. (Code), is proposing the Montana State Auditor, Commissioner of Securities and Insurance (Commissioner), take specific action against the above-named Respondents for violating the Code. The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-1-318(1)(a),(3), 33-1-701, 33-17-301, 33-18-203, 33-18-302.

Specifically, staff is proposing, pursuant to § 33-1-317, that the Commissioner impose a fine not to exceed \$25,000.00 for each violation of the Code for the Respondent, in addition to all other penalties imposed by the laws of Montana. Additionally, staff is proposing, pursuant to

§ 33-1-318, that Respondent permanently cease and desist from making statements on the Rimrock Roofing website that are untrue, deceptive or misleading with respect to the business of insurance, or which indicate that Rimrock Roofing purports to be an insurance adjuster.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action.

ALLEGATIONS OF FACT

1. Charles Kartchner (Kartchner) is the proprietor of Rimrock Roofing (Rimrock) whose principal place of business is 1430 County Manor Blvd, #1, Billings, Montana, 59102.

2. Neither Respondent is licensed in any capacity by the CSI.

3. On February 17, 2016, the Respondents' website, www.rimrockroofing.com, represented

(a) that a free upgrade to a type of shingle would “permanently lower your insurance premiums.”

(b) that Rimrock “[o]ffers insurance claims experts to assist with any short comings on your hail damage estimate.”

(c) that “[a] seasoned Project Manager will walk you through the entire storm damage claim and repair process.”

CONCLUSIONS OF LAW

1. The CSI has jurisdiction over this matter. § 33-1-311.

2. The CSI administers the Insurance Department to protect insurance consumers.

§ 33-1-311(3).

3. A person or entity may not transact the business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the Montana Insurance Code. § 33-1-102(1).

4. A person is an individual, insurer, company, association, organization, Lloyd's, society, reciprocal, or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity. § 33-1-102.

5. "Transact," with respect to insurance, includes any of the following: (a) solicitation and inducement; (b) preliminary negotiations; (c) effectuation of a contract of insurance; or (d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it." § 33-1-201.

6. An adjuster is a person who, on behalf of the insurer, for compensation as an independent contractor, or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. § 33-17-102(1)(a).

7. A public adjuster is an adjuster employed by and representing the interests of the insured. § 33-17-102(21).

8. An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster. § 33-17-301(1).

9. Respondents violated § 33-17-301(1) by acting or purporting to act as independent adjusters by indicating on the Rimrock website that Rimrock could negotiate and assist with the insurance claims process.

10. Pursuant to § 33-18-203, a person may not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated,

appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Mike Winsor, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana 59601. The matter shall then be promptly set for hearing. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. 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 Mike Winsor, legal counsel for the CSI, at 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 give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without further 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 30th day of March, 2016.


MIKE WINSOR
Attorney for CSI

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 31 day of March, 2016, by U.S. mail, certified first-class postage paid, to the following:

Charles Kartchner
Rimrock Roofing
1430 Manor Blvd., #1
Billings, MT 59102

