

No. 2018- 5409

**Official Order
of the
Texas Commissioner of Insurance**

Date: **FEB 22 2018**

Subject Considered:

Texas Department of Insurance

v.

JMC Title of Texas, LLC D/B/A JMC Title Agency; Christie Lynnette Butzke A/K/A Christie Hill; Elleana Hooper; Michael Ronald Hooper; Lendscape Title & Escrow, LLC D/B/A Lendscape Settlement Services; and Tara Kay McNaughton

SOAH Docket No. 454-17-1761.C

General remarks and official action taken:

The subject of this order is an enforcement action brought by the Texas Department of Insurance (department) against the following Respondents: JMC Title of Texas, LLC d/b/a JMC Title Agency (JMC); Christie Lynnette Butzke a/k/a Christie Hill (Ms. Butzke); Elleana Hooper (Ms. Hooper); Michael Ronald Hooper (Mr. Hooper); Lendscape Title & Escrow, LLC d/b/a Lendscape Settlement Services (Lendscape); and Tara Kay McNaughton (Ms. McNaughton).

Following a hearing before the State Office of Administrative Hearings, the administrative law judge (ALJ) submitted a proposal for decision containing findings of fact and conclusions of law, recommending: (1) that the department-issued licenses of JMC and Ms. Butzke be revoked; and (2) that all Respondents be ordered to cease and desist engaging in the unauthorized business of insurance.

The proposed findings of fact, conclusions of law, and recommendation of the ALJ are adopted, with nonsubstantive formatting and style changes. A copy of this order will be provided to law enforcement and other appropriate administrative agencies for further investigation as may be warranted.

FINDINGS OF FACT

1. JMC holds a title insurance agent license issued by the department.
2. Ms. Butzke holds an escrow officer license issued by the department.
3. Mr. Hooper is a part-owner of Lendscape.
4. Ms. McNaughton is the other part owner of Lendscape.

5. At all times relevant to this proceeding:
 - Ms. Hooper was the primary owner and president of JMC;
 - Ms. Butzke was a licensed escrow agent and vice president of JMC; and
 - Mr. Hooper and Ms. Hooper were husband and wife.
6. Over the years, JMC or its predecessors has been variously owned and operated by Mr. Hooper or Ms. Hooper.
7. Westcor Land Title Insurance Company (Westcor) is in the business of issuing title insurance policies.
8. During at least some of the events at issue in this case, JMC held a valid appointment from Westcor to serve as its agent. This was the sole appointment JMC had from a title insurer.
9. In order to conduct its business as a title insurance agent for Westcor, JMC maintained two escrow accounts: a primary escrow account, and a reserve escrow account.
10. On many occasions in 2014 and 2015, JMC, with the direction, knowledge, and approval of Ms. Hooper and Ms. Butzke, illegally diverted monies from its escrow accounts into its operating account, using those funds to improperly pay for non-escrow expenses.
11. By January 1, 2015, JMC, Ms. Butzke, and Ms. Hooper had illegally diverted and spent at least \$166,000 in escrow funds.
12. At least some of the improperly diverted escrow funds were used to pay the rent at Ms. Hooper's personal residence and pay her personal credit card bill.
13. JMC, Ms. Hooper, and Ms. Butzke falsified bank records and engaged in other forms of delay, concealment, and dishonesty to hide from Westcor and the staff (Staff) of the department the fact that they were improperly diverting and spending escrow funds.
14. JMC gave false bank statements to Westcor to support the numbers used in JMC's escrow account reconciliation reports. JMC knew the bank statements were false and that Westcor would rely on the bank statements. Westcor did rely on the bank statements and was thereby harmed.
15. JMC, Ms. Butzke, and Ms. Hooper failed to maintain a separate and distinct accounting of escrow funds.
16. Mr. Hooper is the owner of a company known as Ameritage Land Tax (Ameritage). JMC frequently hired Ameritage to provide tax certificates for real estate transactions being closed by JMC, and Ameritage charged JMC \$64.95 for each tax certificate it obtained.

17. On April 7, 2014, JMC issued a check payable to Ameritage in the amount of \$64.95.
18. Mr. Hooper or someone else at Ameritage then fraudulently altered the check to state that the amount payable was \$6,495. The check was then cashed by Ameritage for this larger amount.
19. A JMC employee, Carolina Salas, discovered the fraudulent alteration of the check and: (1) sent an email to Ms. Hooper and Ms. Butzke informing them about the "fraud situation" involving the check to Ameritage; and (2) submitted to the bank on which the check was drawn an Affidavit of Forgery, Alteration, or Missing Signature/Endorsement in which she alleged that the check had been forged or altered by Ameritage. Shortly thereafter, Ms. Hooper instructed Ms. Salas to withdraw her fraud allegation with the bank. At the time, Ms. Hooper knew that Mr. Hooper had fraudulently altered the check.
20. JMC and Ms. Hooper reasonably suspected that a fraudulent insurance act had been committed by Ameritage and Mr. Hooper, but willfully declined to report the suspicion to the department's Insurance Fraud Unit.
21. By letter dated February 16, 2015, Westcor notified JMC, Ms. Hooper, and Ms. Butzke in writing that it was terminating JMC's appointment, effective immediately. The letter made it clear that the termination was for cause and identified the multiple reasons for the termination. Westcor timely sent written notice of the termination to the department.
22. Shortly after the issuance of the termination letter, Westcor agreed to extend the appointment of JMC for a short time in order to finish up transactions that were already "in the pipeline." Under this limited extension, the termination became effective February 28, 2015.
23. Following Westcor's termination, the department notified JMC that its title agent license was suspended on March 5, 2015.
24. Because Westcor had been JMC's only underwriter, JMC, Ms. Hooper, Mr. Hooper, and Ms. Butzke all knew and understood that JMC lacked the legal right to engage in the business of title insurance after February 28, 2015.
25. Despite this knowledge, JMC, Ms. Hooper, Mr. Hooper, and Ms. Butzke continued to engage in the business of title insurance during the month of March 2015 without the legal right to do so. In total, JMC closed between 60 and 80 title insurance transactions during the month of March 2015.
26. Many of the transactions closed by JMC in March 2015 were financed by Cardinal Financial Company (Cardinal).
27. In March 2015, JMC, with the involvement, direction, and participation of Ms. Hooper, Mr. Hooper, and Ms. Butzke, falsely represented to Cardinal representatives that JMC

still had an effective appointment from Westcor and could continue to legally engage in the title insurance business.

28. In order to continue doing title work in March 2015, Ms. Hooper opened a new escrow account for JMC that she kept secret from Westcor and Staff.
29. JMC acted fraudulently and dishonestly after Westcor terminated its appointment. On multiple occasions in March 2015, after the Westcor termination had gone into effect, JMC personnel repeatedly, but falsely, assured Westcor and the department that the company had ceased doing title work.
30. During March 2015, JMC, Ms. Butzke, and Ms. Hooper provided settlement statements to Cardinal, falsely representing that JMC would issue title insurance policies to Cardinal. They knew these representations were false when they made them, and they made them with the intention of inducing Cardinal to remit title insurance premiums and closing fees to JMC, which Cardinal did to its detriment.
31. The funds held in JMC's reserve escrow account represented title insurance premiums that were due to Westcor. JMC never fully remitted to Westcor funds that should have been in the reserve account and owes Westcor more than \$45,000 in premiums for title policies that the company issued.
32. Following the termination of the appointment, Westcor paid more than \$14,000 to third parties who were involved in real estate closings handled by JMC. These monies represented escrow funds due the third parties that were improperly diverted by JMC, Ms. Hooper, and Ms. Butzke.
33. Ms. McNaughton was an employee of JMC. She was actively involved in the title insurance transactions conducted by JMC during the month of March 2015.
34. In 2011, the department pursued an enforcement matter against JMC for various violations. That enforcement matter was resolved when the parties executed a consent order (the 2011 Consent Order).
35. The 2011 Consent Order concluded that JMC had committed a number of violations and included a number of ordering provisions, including a requirement that JMC never again employ or utilize Mr. Hooper in a managerial role.
36. JMC violated the terms of the 2011 Consent Order because Mr. Hooper worked in a managerial role at JMC in 2014 and 2015.
37. Ms. Hooper, Mr. Hooper, and Ms. McNaughton were not credible witnesses at the hearing, and their testimonies were often contradicted by other evidence in the record.

38. Mr. Hooper, who is licensed as an attorney in Texas, attempted, in bad faith, to use his law license as a smoke screen in order to perform an end-run around the 2011 Consent Order's prohibition against his serving in a managerial role at JMC. In fact, much of the work he did for JMC was as a manager of the company, not as an attorney.
39. Mr. Hooper and Ms. McNaughton are the co-owners of Lendscape.
40. Lendscape was formed in Texas; notified the Texas Secretary of State that it was doing business in all Texas counties; and was managed from an office on McDermott Road in Plano, Texas. However, Lendscape never applied for and never held a Texas title insurance agent license.
41. Lendscape and JMC shared business expenses and a common business plan; they both directed banks to mail bank statements to the same post office box in Frisco, Texas; JMC listed Lendscape as an additional insured on its title agency Errors and Omissions policy; and JMC permitted Lendscape to use JMC's website content on Lendscape's website.
42. Lendscape's website advertised that Lendscape could calculate good faith estimates for title insurance premiums for four different categories, one of which was "Texas home equity;" advertised premiums that matched the rates promulgated by the commissioner of insurance (commissioner); used "testimonials" from allegedly satisfied Texas customers; and presented Lendscape as a company doing business in Texas.
43. Lendscape maintained an office, had employees, solicited business, and received and delivered title insurance closing documents from the McDermott Road office address, and directed its customers to wire money for title insurance premiums to Lendscape's bank in Plano, Texas.
44. Lendscape conducted closings from the McDermott Road office.
45. The department's Staff sent a notice of the hearing, dated December 21, 2016, to all Respondents in this case. The notice informed them the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the factual matters asserted.
46. The hearing on the merits was held on January 18 - 20, 2017, before Administrative Law Judge Hunter Burkhalter at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff attorney Casey Seeboth represented Staff; attorney Bogdon Rentea represented Lendscape, Mr. Hooper, and Ms. McNaughton; and attorney Kergin Bedell represented Ms. Hooper. JMC and Ms. Butzke did not appear and were not represented at the hearing, but they both filed answers to Staff's notice of hearing. Staff also proved that it timely and properly served the notice of hearing on JMC and Ms. Butzke. The record closed on April 28, 2017, after the participating parties filed post-hearing briefs.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter. Tex. Ins. Code §§ 82.051 - 82.056, 101.101 - 101.153, 2501.005, 2651.001, 2651.010, 2651.201, 2651.301, 2652.201.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Texas Government Code Chapter 2003.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051 and 2001.052.
4. The hearing was conducted pursuant to the Administrative Procedure Act. Texas Gov't Code Chapter 2001.
5. In order to engage in title insurance business, a title agent (such as JMC) must possess two things: (1) a title agent license issued by the department; and (2) a valid underwriter appointment from at least one insurance company that issues title insurance policies. Tex. Ins. Code §§ 2651.001, 2651.009 - 2651.010.
6. The department may discipline a title insurance agent who commits "fraudulent or dishonest practices." Tex. Ins. Code § 2651.301(5).
7. Fraud is as "an act, omission, or concealment in breach of a legal duty, trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage." *Flanary v. Mills*, 150 S.W.3d 785, 795 (Tex. App.-Austin 2004, pet. denied).
8. Because JMC committed multiple fraudulent and dishonest practices, it is subject to sanctions. Tex. Ins. Code § 2651.301(5).
9. JMC repeatedly failed to maintain a separate and distinct accounting of escrow funds resulting in shortages in the escrow account, and it is, therefore, subject to sanctions. Tex. Ins. Code § 2651.301(7).
10. The department may discipline a title insurance agent who willfully violates another provision of the Texas Insurance Code. Tex. Ins. Code § 2651.301(1).
11. Any person who "reasonably suspects that a fraudulent insurance act has been or is about to be committed" must, within 30 days, report in writing the suspected fraud to the department's Insurance Fraud Unit. Tex. Ins. Code § 701.051.
12. JMC willfully violated the following statutes:
 - Texas Insurance Code § 701.051; and

- Texas Insurance Code §§ 2651.001, 2651.009, and 2651.010; and is, therefore, subject to sanctions pursuant to Texas Insurance Code § 2651.301.
13. JMC misappropriated and converted to its own use and illegally withheld money belonging to a title insurer, insured, or other person, in violation of state law. Tex. Ins. Code § 2651.301(4).
 14. A person generally "may not directly or indirectly do an act that constitutes the business of insurance ... except as authorized by statute." Tex. Ins. Code § 101.102.
 15. JMC engaged in the following activities that constituted the business of insurance, while lacking the authorization to do so:
 - proposing to make insurance contracts as defined by Texas Insurance Code § 101.051(b)(1);
 - receiving applications for insurance as described by Texas Insurance Code § 101.051(b)(3);
 - accepting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4);
 - acting as an agent for Westcor (albeit without authorization), soliciting and disseminating information related to coverages and rates as described by Texas Insurance Code § 101.051(b)(6)(A) and (B); and
 - closing transactions as described by Texas Insurance Code §§ 101.051(b)(8) and 2501.005(a)(2)(C);all in violation of Texas Insurance Code § 101.102.
 16. Because JMC failed to comply with multiple provisions of the Texas Insurance Code and the 2011 Consent Order, the company's department-issued license should be revoked. Tex. Ins. Code §§ 82.051, 82.054.
 17. The department may discipline an escrow officer who commits "fraudulent or dishonest practices." Tex. Ins. Code § 2652.201(a)(5).
 18. Because Ms. Butzke committed multiple fraudulent and dishonest practices, she is subject to sanctions. Tex. Ins. Code § 2652.201(a)(5).
 19. Ms. Butzke engaged in the following activities that constituted the business of insurance, while lacking the authorization to do so:
 - soliciting insurance on behalf of JMC as defined by Texas Insurance Code § 101.051(b)(6)(A);

- receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4); and
- closing transactions as described by Texas Insurance Code §§ 101.051(b)(8) and 2501.005;

all in violation of Texas Insurance Code § 101.102.

20. Because she failed to comply with multiple provisions of the Texas Insurance Code, Ms. Butzke's department-issued license should be revoked. Tex. Ins. Code § 82.051.
21. Westcor's termination of its appointment of JMC was done in accordance with applicable law. 28 Tex. Admin. Code § 9.1; Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas § VI, L-1, Subpart III.
22. The department's suspension of JMC's license was done in accordance with applicable law. Tex. Ins. Code § 2651.011.
23. Ms. Hooper engaged in the following activities that constituted the business of insurance, while lacking the authorization to do so:
 - soliciting insurance on behalf of JMC as defined by Texas Insurance Code § 101.051(b)(6)(A);
 - receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4); and
 - proposing to make insurance contracts as described by Texas Insurance Code § 101.051(b)(1);

all in violation of Texas Insurance Code § 101.102.

24. Staff failed to prove that Ms. Hooper violated Texas Insurance Code §§ 101.051(b)(3), 101.051(b)(8), or 2501.005.
25. An act occurring in Texas that constitutes the "business of insurance" does not cease to be the "business of insurance" merely because it "affects a person in another state or jurisdiction." Tex. Ins. Code § 101.051(c).
26. Mr. Hooper engaged in the following activities that constituted the business of insurance, while lacking the authorization to do so:
 - soliciting insurance and disseminating information relating to Texas title insurance as defined by Texas Insurance Code § 101.051(b)(6)(A) and (B);
 - taking or receiving an insurance application as described by Texas Insurance Code § 101.051(b)(3) and (b)(6)(C);

all in violation of Texas Insurance Code § 101.102.

27. Staff failed to prove that Mr. Hooper violated Texas Insurance Code § 101.051(b)(1) or (b)(4).

28. Lendscape engaged in the following activities that constituted the business of insurance, while lacking the authorization to do so:

- soliciting insurance as defined by Texas Insurance Code § 101.051(b)(6);
- receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4);
- taking or receiving an insurance application as described by Texas Insurance Code § 101.051(b)(3); and
- closing transactions as described by Texas Insurance Code §§ 101.051 (b)(8) and 2501.005;

all in violation of Texas Insurance Code § 101.102.

29. Staff failed to prove that Lendscape violated Texas Insurance Code § 101.051(b)(1).

30. Ms. McNaughton engaged in the following activities that constituted the business of insurance, while lacking the authorization to do so:

- soliciting insurance as defined by Texas Insurance Code § 101.051(b)(6);
- receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4); and
- taking or receiving an insurance application as described by Texas Insurance Code § 101.051(b)(3);

all in violation of Texas Insurance Code § 101.102.

31. Staff failed to prove that Ms. McNaughton violated Texas Insurance Code § 101.051(b)(1) or (b)(8).

32. The commissioner should issue cease and desist orders directing each of the Respondents to immediately cease and desist from engaging in the violations identified in this Proposal for Decision. Tex. Ins. Code § 101.103.

ORDER

It is ordered that the title insurance agent license of JMC Title of Texas, LLC d/b/a JMC Title Agency be revoked.

It is ordered that the escrow officer license of Christie Lynnette Butzke a/k/a Christie Hill be revoked.

It is ordered that each Respondent immediately cease and desist from engaging in the following activities in violation of Texas Insurance Code § 101.102:

1. JMC Title of Texas, LLC d/b/a JMC Title Agency must cease and desist in:
 - proposing to make insurance contracts as defined by Texas Insurance Code § 101.051(b)(1);
 - receiving applications for insurance as described by Texas Insurance Code § 101.051(b)(3);
 - accepting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4);
 - acting as an agent for a title insurance company without authorization and soliciting and disseminating information related to coverages and rates as described by Texas Insurance Code § 101.051(b)(6)(A) and (B); or
 - closing transactions as described by Texas Insurance Code §§ 101.051(b)(8) and 2501.005(a)(2)(C).

2. Christie Lynnette Butzke a/k/a Christie Hill must cease and desist in:
 - soliciting insurance on behalf of JMC as defined by Texas Insurance Code § 101.051(b)(6)(A);
 - receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4); or
 - closing transactions as described by Texas Insurance Code §§ 101.051(b)(8) and 2501.005.

3. Elleana Hooper must cease and desist in:
 - soliciting insurance on behalf of JMC as defined by Texas Insurance Code § 101.051(b)(6)(A);
 - receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4); or
 - proposing to make insurance contracts as described by Texas Insurance Code § 101.051(b)(1).

4. Michael Ronald Hooper must cease and desist in:
 - soliciting insurance and disseminating information relating to Texas title insurance as defined by Texas Insurance Code § 101.051(b)(6)(A) and (B); or
 - taking or receiving an insurance application as described by Texas Insurance Code §§ 101.051(b)(3) and (b)(6)(C).

5. Lendscape Title & Escrow, LLC d/b/a Lendscape Settlement Services must cease and desist in:
 - soliciting insurance as defined by Texas Insurance Code § 101.051(b)(6);
 - receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4);
 - taking or receiving an insurance application as described by Texas Insurance Code § 101.051(b)(3); or
 - closing transactions as described by Texas Insurance Code §§ 101.051 (b)(8) and 2501.005.

6. Tara Kay McNaughton must cease and desist in:
 - soliciting insurance as defined by Texas Insurance Code § 101.051(b)(6);

2018- 5409

SOAH Docket No. 454-17-1761.C

Page 12 of 12

- receiving or collecting premiums for title insurance as described by Texas Insurance Code § 101.051(b)(4); or
- taking or receiving an insurance application as described by Texas Insurance Code § 101.051(b)(3).

A handwritten signature in black ink, appearing to read 'Kent C. Sullivan', written in a cursive style.

Kent C. Sullivan
Commissioner of Insurance