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**RECEIVED**  
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BEFORE THE INSURANCE COMMISSIONER  
 OF THE STATE OF UTAH

<p><b>COMPLAINANT:</b></p> <p>UTAH INSURANCE DEPARTMENT</p> <p><b>RESPONDENT:</b></p> <p>HEINERS INSURANCE CENTER        PO Box 12638        Ogden, UT 84412-2638        License No. 1426</p>	<p><b>STIPULATION AND ORDER</b></p> <p>Docket No. 2011-125 LC</p> <p>Enf. Case No. 2888</p>
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**STIPULATION**

1. Respondent, Heiners Insurance Center is a resident agency doing business in the State of Utah, holding license number 1426.
2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:
  - a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that would support the Findings of Fact herein;
  - b. Respondent admits the Findings of Fact and Conclusions made therefrom;

- c. Respondent stipulates to the summary entry of the Order herein which shall be in lieu of other administrative proceedings by Complainant in this matter; and
- d. Respondent and Complainant have negotiated the terms of the Order entered herein and Respondent agrees to its entry and further agrees to be bound by all its terms.


3. Respondent is aware of its right to a hearing at which it may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived its right to such hearing and to any appeal related thereto.


4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to its rights set forth herein.

6. Respondent acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

DATED this 6<sup>th</sup> day of July, 2011.

  
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HEINERS INSURANCE CENTER  
Shawn Heiner, Vice President

  
\_\_\_\_\_  
UTAH INSURANCE DEPARTMENT  
M. Gale Lemmon  
Assistant Attorney General

Based upon the foregoing Stipulation and information in the file, the Presiding Officer makes the following Findings of Fact:

**FINDINGS OF FACT**

1. On or about October 28, 2010, a public inquiry was received by the Department alleging that Respondent had unlicensed employees servicing and writing insurance.

2. On or about November 1, 2010, an email was sent to Respondent stating that an audit was being conducted and requesting copies of the last three months of the agency's operating and trust account statements.

3. On March 3, 2011, Department personnel met with Respondent's President and Vice President regarding Respondent's employees and their job duties. It was confirmed at the meeting that three individuals acting as customer service representatives were unlicensed but were performing various agency functions such as receipt of premiums, quoting, and servicing agency clients.

4. Respondent was also charging a "\$25.00 cash re-write fee" to clients whose policy had been canceled for non-payment in the previous six months. Although Respondent had posted a notice of the re-write fee, it did not use or have any signed disclosure on file.

5. Respondent's officers stated that they were unaware of the requirement to have a CSR license for their customer service staff. They also alleged that they had sought guidance from the state on the re-write fees and understood that as long as there was a posting, they were compliant.

6. Respondent was cooperative in the investigation from the beginning and immediately took steps to license the unlicensed staff. Respondent's Vice President removed the sign concerning the "re-write fee" and instructed all staff to immediately cease imposing the re-write

fee. Respondent had gained \$475.00 profit from imposing re-write fees.

7. Respondent agrees to an administrative forfeiture of \$3,000 for each unlicensed CSR and twice the profit of \$475.00 gained from re-write fees, totaling \$9,950.00 and to the imposition of probation for a period of one year.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

**CONCLUSIONS OF LAW**

1. Utah Code Ann. § 31A-23a-103 addresses requirement of license.

(1) (a) Unless exempted from the licensing requirement under Section **31A-23a-201** or **31A-23a-207**, a **person may not perform, offer to perform, or advertise any service as a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary in Utah, without a valid individual or agency license** issued under this chapter.

(b) A valid license includes at least one license type and one line of authority pertaining to that license type.

(c) **A person may not utilize the services of another as a producer, limited line producer, customer service representative, consultant, managing general agent, or reinsurance intermediary if that person knows or should know that the other does not have a license as required by law.**

2. Utah Code Ann. § 31A-23a-501 states in part:

(2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure required by this Subsection (2) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;. . .

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services. . . .

(c) A copy of the signed disclosure required by this Subsection (2) must be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

3. Respondent violated the above provisions when it utilized unlicensed individuals as customer service representatives and charged fees for services for which it earned a commission and in failing to obtain a signed disclosure for the fees prior to their imposition, and failing to maintain that disclosure in the file.

4. An administrative forfeiture in the amount of \$9,500.00 and probation for a period of one year is appropriate in this matter.

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the Presiding Officer herewith enters the following Order:

**ORDER**

**IT IS HEREBY ORDERED:**

1. Respondent Heiners Insurance Center is hereby assessed an administrative forfeiture in the amount of \$9,500.00 to be paid to the Department within 30 days of the issuance of this Order.

2. Respondent's license is placed on probation for a period of one year commencing with the date of this Order. The terms of probation are that Respondent shall timely pay the forfeiture assessed herein and shall have no further violations of the Utah Insurance Code, Department Rules of any order of the Commissioner.

**NOTIFICATION**

You are hereby notified that a failure to obey an Order of Commissioner may subject you to further penalties, including forfeitures of up to \$5,000 per violation and the suspension or revocation of your license and the filing of an action in district court, which may impose forfeitures of up to \$10,000 per day for continued violation.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

DATED this 13<sup>th</sup> day of July, 2011.

NEAL T. GOOCH  
Insurance Commissioner



Administrative Law Judge  
Utah Insurance Department  
State Office Building Room 3110  
Salt Lake City, UT 84114  
Telephone 801-538-3800