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BEFORE THE UTAH INSURANCE COMMISSIONER

<p>UTAH INSURANCE DEPARTMENT, Complainant, vs. GATEWAY TITLE INSURANCE AGENCY, LLC and KIMBERLY J. MOSBY fka KIMBERLY J. HOLT, Respondents.</p>	<p>STIPULATION FOR ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER Docket No. 2016-109 PC Enforcement No. 3823 Lisa Watts Baskin Presiding Officer</p>
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The parties, through respective counsel, stipulate that the Presiding Officer may enter Findings of Fact, Conclusions of Law and Order in the form attached.

DATED October 23, 2017.

/s/ Reed Stringham
Reed Stringham
Assistant Attorney General
Attorney for Utah Insurance Department

DATED October 23, 2017

/s/ Matthew R. Lewis
Matthew R. Lewis
Ray Quinney & Nebeker PC
Attorney for Respondents

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Complainant Utah Insurance Department ("the Department") and Respondent Gateway Title Insurance Agency, LLC have stipulated to entry of the following Findings of Fact, Conclusions of Law, and Order. Based on that stipulation, and good cause appearing, the Presiding Officer makes and enters the following:

FINDINGS OF FACT

1. Respondent Gateway Title Insurance Agency, LLC ("Gateway") is a Utah limited liability company that was formed to engage in title and escrow work. At all relevant times, Gateway has been licensed by the Department as an agency title insurance

producer.

Inducements to Obtain Title Insurance Business

2. In 2012 and 2014, Gateway entered into written contracts to pay compensation to realtors' spouses or associates when those realtors referred title insurance business to Gateway.

3. Gateway paid compensation pursuant to those contracts.

4. At the time that it entered into the contracts and paid the compensation, Gateway knew or should have known that Utah law prohibited paying or offering to pay, directly or indirectly, money or other consideration as an inducement to obtain title insurance business. Utah Code § 31A-23a-402(2)(a).

5. Gateway asserts that when it was formed in 2012, the initial capital necessary for its operations was provided by the realtors identified in paragraph 2 above. Gateway asserts that the purpose of the contracts identified in paragraph 2 and the payments made under them was to repay the realtors for the initial capital investment. .

Failure to Follow Closing Instructions - 2015

6. Gateway was the title and escrow company for a short sale transaction that closed in March 2015.

7. In connection with this 2015 real estate transaction, Gateway received closing instructions stating, among other things, that Gateway should disburse funds to West Jordan City in the amount of \$14,900 to procure the release of a lien for various code violations by the seller. The closing instructions also stated that Gateway should pay any excess funds from the transaction to the lender.

8. Prior to closing, a party to the sale represented to Gateway that West Jordan had released its lien. Based on this representation, Tyler Holt, acting on behalf of Gateway,

disbursed the \$14,900 to the buyer and buyer's real estate agent because they had incurred expenses to remedy the code violations and thereby obtain a release of the lien. Gateway did not disburse the \$14,900 to West Jordan City. The HUD-1 settlement statement for this 2015 real estate transaction did not reflect the disbursement to the buyer and buyer's real estate agent.

9. The buyer and his real estate agent subsequently paid the \$14,900 to West Jordan City.

Failure to Follow Closing Instructions - 2016

10. Gateway was also the title and escrow company for a short sale transaction that closed in February 2016.

11. In connection with this February 2016 real estate transaction, Gateway's closing instructions stated, among other things: Gateway must not collect money from the seller at closing; Gateway must not disburse loan proceeds until it can issue the lender's title insurance policy insuring a first priority lien position; Gateway must pay any excess funds to the lender.

12. An automobile financing company had a judgment lien on the subject property.

13. At closing, Gateway accepted the seller's payment of \$5,090 in partial satisfaction of seller's settlement of the judgment with the automobile financing company. Gateway was informed that seller would pay over time the balance of the amount owed to the finance company.

14. Gateway prepared a settlement statement that did not reflect the \$5,090 payment by the seller.

15. In closing the transaction, Gateway did not disburse to the automobile finance company an amount sufficient to satisfy the judgment lien on the subject property.

16. The seller subsequently satisfied the terms of the settlement with the automobile financing company and the judgment lien has been released.

CONCLUSIONS OF LAW

1. The Utah Insurance Commissioner has jurisdiction over the parties and this formal proceeding pursuant to Utah Code §§ 31A-1-105, 31A-2-201 and 31A-2-308.

2. The Utah Insurance Commissioner has legal authority to impose penalties on the Department's licensees who violate the Utah Insurance Code. Utah Code § 31A-2-308.

3. To promote fair competition in the title insurance industry, Utah law states that individual and agency title insurance producers cannot provide a "material inducement" to obtain title insurance business. Utah Code § 31A-23a-402(2)(a)(iv).

4. The contracts and payments described in Findings of Fact ¶¶ 2-3 constituted violations of the material inducement prohibitions set forth in Utah Code § 31A-23a-402(2)(a).

5. Under Utah law, Respondents must use money held in escrow solely to fulfill the terms of the individual escrow. Additionally, they may not use that money until the conditions of the escrow are met. Utah Code § 31A-23a-406(3)(b) and (c).

6. Gateway's conduct described in Findings of Fact ¶¶ 6-8 and 10-15 constituted violations of Utah Code Ann. § 31A-23a-406(3)(b) and (c).

7. As penalties for the violations in this case, Gateway should be ordered to pay a forfeiture of \$17,500.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ordered:

1. Gateway shall pay a forfeiture of \$17,500 for the violations described in the Conclusions of Law.

2. Gateway is ordered not to commit the violations described in the Conclusions of Law in the future.


3. Gateway is placed on probation for a period of twelve months beginning on the date this order is signed. During that period, the Department may monitor Gateway's operations on a quarterly basis. Monitoring may include reviewing any documents that pertain to Gateway's license qualifications. If the Department visits Gateway's offices, the visits will occur at a mutually convenient time and will be as minimally disruptive to Gateway's business as possible. Gateway will promptly respond to Department requests for documents and other information.

4. The forfeiture amount shall be paid in full by the end of the probation period.

5. All claims in the Complaint not addressed herein and all claims against Kimberly Mosby are dismissed with prejudice. The dismissal of Kimberly Mosby has no effect on the Findings and Fact and Conclusions of Law set forth above. The Department shall not seek any additional penalties or remedies against Gateway for the conduct addressed herein.

DATED this 15th day of November, 2017.

TODD E. KISER
Utah Insurance Commissioner



Lisa Watts Baskin
Presiding Officer
Utah Insurance Department

NOTICE TO RESPONDENT

You are hereby notified that a failure to obey an Order of the 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.

**Title and Escrow Commission Decision
Regarding Imposition of Penalty**

Pursuant to Utah Code § 31A-2-404(1)(b)(ii) and by a vote of 5 to 5 taken
in open meeting on this date, the Utah Title and Escrow Commission hereby

concurs

does not concur

with the Order of the Presiding Officer.

Dated: March 12, 2018.



Alison McCoy
Utah Title and Escrow Commission Chair