NEBRASKA DEPARTMENT
OF INSURANCE

SEP 28 2004

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA DEPARTMENT OF INSURANCE, PETITIONER, vs. CHERI A. UETTWILLER, RESPONDENT.	))))))))))	CAUSE NO.: A-1584 FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDED ORDER AND ORDER

This matter came on for hearing on the 14th day of September, 2004, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Janette Adair. Cheri A. Uettwiller ("Respondent") was present and was not represented by counsel. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was introduced and the matter taken under advisement. Sherri Schrat testified on behalf of Respondent. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident insurance producer whose registered address with the Department as of the date of hearing is 412 S. 19th Street, Omaha, NE 68102. (Ex. 1).

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. On or about August 5, 2004, the Petition and Notice of Hearing were served upon Respondent by mailing the same to her address of record by certified mail, return receipt requested. On or about September 1, 2004, the mailing was returned to the Department marked "Unclaimed." (Ex. 1). At hearing, Respondent stated that she is currently employed with DRI Title & Escrow and had neglected to change her address of record. Respondent learned of the administrative hearing from her co-worker Tori Carlisle on the morning of the hearing.

4. The Department informed Respondent of the requirement for an annual certified public accountant audit required pursuant to *Neb. Rev. Stat.* §44-19,116 by Notice of December 17, 2003 sent to all title insurance agents by U.S. Mail, postage prepaid. (Ex. 1). Said letter was not returned to the Department.

5. Pursuant to *Neb. Rev. Stat.* §44-19,116, all title insurance producers were to have an audit conducted by a certified public accountant. Said audit was to cover the period of the previous calendar year and a copy submitted to the Department by March 31, 2004. See 210 *Neb. Admin. R. & Regs.* 34-007 (2004).

6. Respondent did not file an audit report with the Department by March 31, 2004. (Ex. 2).

7. Respondent testified that she was previously employed with American Title Services, Inc., as a title searcher by searching records and preparing title commitments, and that she did not believe she was subject to the audit requirement due to the type of work she performed. Respondent was appointed as one of two Designated Agent for American Title Services, Inc., from September 21, 2001 to present and as the one Designated Agent for American Escrow Services, Inc., from September 21, 2001 to present according to Department records which currently show American Title Services,

Inc., and American Escrow Services, Inc., in active title agency license status expiring on April 30, 2005.

8. Sherri Schrat testified on behalf of Respondent. Ms. Schrat is the owner of American Title Services, Inc., and American Escrow Services, Inc., and was Respondent's employer. Ms. Schrat affirmed that Respondent performed title searches and prepared title commitments while at American Title Services, Inc. Ms. Schrat explained that she had structured American Title Services, Inc., and American Escrow Services, Inc., as two separate corporate entities and that Respondent did not perform any escrow services or handle any escrow funds during the course of her employment. Nonetheless, Respondent is appointed as the Designated Agent for American Escrow Services, Inc., and, as a result of that appointment, is responsible for the agency's compliance with the insurance laws, rules, and regulations of Nebraska.

9. Sherri Schrat testified that she has not had a title insurance agent license for a number of years although she is owner of American Title Services, Inc., and American Escrow Services, Inc., until the agencies recently closed. Ms. Schrat testified that the agencies are no longer in business due to a number of employee issues and she, too, is currently employed with DRI Title & Escrow. However, Ms. Schrat offered to have an audit performed by a certified public accountant and provide the report to the Department.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat.* §44-4041 *et seq.*

2. The Department has personal jurisdiction over Respondent.

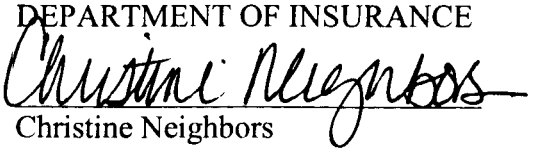
3. Respondent did violate *Neb. Rev. Stat.* §44-19,116 (2) and 210 *Neb. Admin. R. & Regs.* 34-007. Respondent, through her appointment as the Designated Agent for American Escrow Services, Inc., did hold funds in escrow, settlement, closing or security deposit accounts or oversee those activities.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent be ordered to pay an administrative fine of $750.00 and that Respondent ensure the completion of a certified public accountant audit be performed on the records of American Escrow Services, Inc., and filed with the Department no later than December 31, 2004. The Hearing Officer also recommends that Respondent request her name be removed as Designated Agent from the records of American Title Services, Inc., and American Escrow Services, Inc., effective the date that she began employment with DRI Title & Escrow.

Dated this 28th day of September 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Christine Neighbors
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance v. Cheri A. Uettwiller, Cause No.: A-1584.

Dated this 28th day of September 2004.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon the Respondent by mailing a copy to Respondent at DRI Title & Escrow, 11128 John Galt Blvd., #300, Omaha, NE 68137 by certified mail, return receipt requested, and to Respondent's home address of 9401 Brentwood Dr., #4, LaVista, NE 68128 by U.S. Mail, postage prepaid on this 28th day of September 2004.