

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED
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ADMINISTRATIVE HEARING
COMMISSION

DOUGLAS M. OMMEN, Director,)
Missouri Department of Insurance,)
Financial Institutions and Professional)
Registration,)

Petitioner,)

vs.)

MICHAEL G. GRIMES,)
Respondent.)

Case No.: 06-1352 DI
0605122212C

PETITIONER'S REPLY BRIEF

Pursuant to the Commission's Order dated April 4, 2007, Douglas M. Ommen, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Reply Brief. Despite any contentions and allegations made in Respondent's Brief, the evidence presented in this matter demonstrates that the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" or "Petitioner") has established cause to discipline Respondent's insurance license pursuant to sections 375.141.1(2), (5), (7), and (8), RSMo (Supp. 2005).

1. On or about April 30, 2007, Petitioner filed Petitioner's Brief with this Commission.
2. On or about June 4, 2007, Michael G. Grimes ("Respondent") filed Respondent's Brief with this Commission.
3. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, whose duties include, pursuant to RSMo Chapters 374 and 375, the regulation, supervision, and discipline of licensed insurance producers.

4. The substantial and competent evidence in the record establishes that Respondent failed to report administrative action taken against him by another governmental agency in this state within thirty (30) days of the final disposition of the matter as required by section 375.141.6, RSMo (Supp. 2005), a violation of the insurance laws of Missouri, and grounds for discipline of Respondent's insurance license pursuant to section 375.141.1(2), RSMo (Supp. 2005). In his brief, Respondent admits that Petitioner has presented substantial and competent evidence to establish cause to discipline Respondent's insurance license pursuant to section 375.141.1(2), RSMo (Supp. 2005). *Respondent's Brief, paragraphs 7, 13 and 21.*

5. In his brief, Respondent suggests that he is not responsible for the inaccuracies on several agent applications because Triumph Marketing employees completed the applications. *Respondent's Brief, paragraph 10.* However, even if another individual completed applications on his behalf, Respondent is responsible for the content of those applications completed by Triumph because he authorized and attested to the fact that he had "read and reviewed the documents for which" he authorized his signature. *Exhibit 3.1.* Any accusations directed toward Julie Hackett, President of Triumph Marketing, or regarding Petitioner's disciplinary treatment of Ms. Hackett are irrelevant to the case at hand and possibly mentioned solely to divert this Commission's attention away from Respondent's own conduct.

6. In response to Petitioner's third count, Respondent contends that Petitioner's case fails because "Petitioner offered no evidence . . . that Respondent knew that he had to be associated with an NASD member firm when the letter was sent, which would be required in order to show intent to defraud."¹ *Respondent's Brief, paragraphs 17–18.* Respondent misstates Petitioner's burden with

¹ The Missouri Court of Appeals for the Southern District of Missouri notes that "everyone is presumed to know the

regard to proving a violation of § 375.144, RSMo, which prohibits engaging “in any act, practice, or course of business which *operates* as a fraud or deceit upon any person” “in connection with the offer, sale, solicitation or negotiation of insurance”. (Emphasis added). Respondent’s knowledge that his conduct was wrongful or his intent is not at issue. Petitioner must prove that by sending the letter in question, Respondent acted in a way that *operated* as a fraud or deceit upon any person. Petitioner presented such evidence that Respondent’s solicitation letter *operated* as a fraud or deceit upon any person at the hearing before this Commission.

On or about November 6, 2006, Respondent sent a solicitation letter to one or more of his Missouri clients indicating that he is “properly licensed in . . . Variable Annuities.” *AHC Transcript at pages 56-59 and Exhibit 10, Respondent’s Brief, paragraph 16.* Respondent’s statement in said solicitation letter that he is “properly licensed in . . . Variable Annuities” acts as a fraud or deceit upon those who read it because the plain meaning of the words “properly licensed” implies that Respondent is fully compliant with applicable insurance laws and regulations. While it is technically true as Respondent asserts that he holds a variable annuities license, at the time he sent the solicitation letter Respondent failed to comply with the NASD supervision requirement stated in Missouri regulation 20 CSR 700-1.147.²

On or about November 6, 2006 Respondent was not allowed to affiliate with an NASD member pursuant to a consent order entered into with the Division of Securities. *Exhibit 2.* Affiliation with an NASD member is required by those licensed in variable annuities pursuant to 20 CSR 700-1.147. Failure to affiliate with an NASD member when engaging in the offer, sale or

law and is bound to take notice of the law”. 46 S.W.3d 636, 639 (Mo.App. S.D.,2001) and *Lucas v. Enkvetchakul*, 812 S.W.2d 256, 260 (Mo.App.1991). However, the issue of intent need not be addressed to determine whether or not Respondent’s conduct acted as a fraud or deceit upon any person in violation of § 375.144, RSMo. 20 CSR 700-1.147 states in part: “each individual producer licensed to sell variable life and variable annuity

exchange of variable products subjects a variable products licensee to discipline pursuant to § 375.141.1(8), RSMo (Supp. 2005). When Respondent sent the solicitation letter, he engaged in the offer, sale or exchange of variable annuity products without affiliating with an NASD member. Such conduct subjects him to discipline for demonstrating incompetence, untrustworthiness or financial irresponsibility, pursuant to § 375.141.1(8), RSMo (Supp. 2005). Respondent's statement that he is "properly licensed in . . . Variable Annuities" while contemporaneously engaging in activities explicitly subjecting himself to discipline operates as a fraud or deceit on any person who reads the statement and demonstrates incompetence, untrustworthiness or financial irresponsibility.

WHEREFORE, based on the foregoing Reply Brief and Petitioner's first brief, the Director respectfully requests that this Commission make findings of facts and conclusions of law stating that Petitioner has established cause to discipline the license of Respondent, Michael G. Grimes.

Respectfully submitted,



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products shall be supervised by a member of the National Assosication of Securities Dealers (NASD). . .”.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 15th day of June, 2007, to:

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