

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED
AUG 2 2006
ADMINISTRATIVE HEARING
COMMISSION

W. DALE FINKE, Director,)
Missouri Department of Insurance,)
Financial Institutions and Professional)
Registration,)

Petitioner,)

Case No.: 06-06272530

vs.)

RICHARD M. NIXON,)

Respondent.)

Serve at:)
Fulton Reception, Diagnostic)
and Correctional Center)
Inmate #: 1147509)
P.O. Box 190)
Fulton, Missouri 65251)

COMPLAINT

W. Dale Finke, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists for disciplinary action against Respondent, Richard M. Nixon because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("the Director"), whose duties include, pursuant to RSMo Chapters 374 and 375, the regulation, supervision, and discipline of licensed insurance producers.

2. The Missouri Department of Insurance, Financial Institutions and Professional Registration ("the department") issued a producer license to Respondent on June 3, 1996 (license

PR177489). Respondent surrendered his producer license, via letter, to the department on April 5, 2006. Respondent's producer license expired on June 3, 2006.

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Cum. Supp. 2005).

COUNT I

4. Respondent practiced, aided, or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with any insurance transaction, a ground for discipline of Respondent's insurance license pursuant to § 375.141.1(6), RSMo (2000).

5. The facts are as follows:

a. Respondent began working as a State Farm agent on or about October 1, 1997.

On or about May 1, 2005, Respondent resigned his position as a State Farm agent.

b. In January of 1998, Respondent completed an application for a Life policy on behalf of Dr. James E. Taft. At the time, Respondent was married to Sheila Taft Nixon and Dr. Taft was Respondent's father-in-law.

c. On or about February 19, 1998, State Farm issued a Universal Life policy insuring Dr. Taft's life in the initial amount of sixty-six thousand dollars (\$66,000.00).

d. On or about October 20, 2000, the address for Dr. Taft's Universal Life policy was changed from his physical address in Mexico, Missouri to 112 Crescent Drive in Booneville, Missouri. Respondent was residing at 112 Crescent Drive, Booneville, Missouri at that time. Dr. Taft has indicated that he did not request or authorize the address change, nor was he aware of the address change.

e. Between July 31, 2000, and November 30, 2001, funds were withdrawn from Dr. Taft's Universal Life policy via six (6) checks issued payable to "James E Taft," which totaled twenty-seven thousand, six hundred twenty-five dollars (\$27,625.00).

- f. The six (6) checks were issued in response to requests received from, or handled directly by Respondent.
- g. The six (6) transactions represented either withdrawals of cash value or loans from the Universal Life policy.
- h. State Farm issued four (4) checks which were sent directly to Respondent's office or mailed to 112 Crescent Drive, Booneville, Missouri. The final two (2) checks were issued in Respondent's office.
- i. The six (6) checks were endorsed in the names of James E. Taft and Sheila Taft Nixon.
- j. Boone County National Bank records indicated these six (6) checks were either deposited into an account held jointly by Respondent and Sheila Taft Nixon, or into Respondent's business account. Bank records further indicated the funds were transferred from the joint account into the business account or were withdrawn as cash shortly after the deposits were made. These transfers and cash withdrawals were shown to have been made by Respondent.
- k. Dr. Taft stated he did not ask Respondent to withdraw funds from his Life policy, nor did he authorize anyone else to do so. Dr. Taft also stated that he did not receive any of the money or proceeds from these six (6) checks.
- l. Sheila Taft Nixon indicated that she did not sign the endorsements in her name on the six (6) checks. She stated that she was not aware the funds had been withdrawn from her father's Universal Life policy, nor had she directed Respondent to initiate the transactions. Further, she stated she had no knowledge the checks has been negotiated through the bank account she held jointly with Respondent.
- m. On or about May 18, 2004, Dr. Taft's Universal Life policy lapsed due to the loan balance exceeding its cash value.

n. Dr. Taft indicated he never intended to let the Universal Life policy lapse nor was he aware that his Universal Life policy had lapsed.

o. On or about March 18, 2005, State Farm reinstated Dr. Taft's Universal Life policy by replacing the unauthorized withdrawn funds plus interest.

6. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1(6), RSMo (2000).

COUNT II

7. Respondent misappropriated, converted to his own use, or illegally withheld money belonging to an insurance company, its agent, or to an insured, beneficiary, or prospective insurance buyer, a ground for discipline of Respondent's insurance license pursuant to § 375.141.1(5), RSMo (2000).

8. The facts are as follows:

a. Petitioner realleges and expressly incorporates the allegations in paragraphs 4 through 5.

b. In March of 2001, Dorothy Oerly authorized a dividend payment change for one (1) of two (2) Life policies she owned.

c. On or about March 24, 2001, Respondent's office issued check number 001802931 in the amount of three thousand, seven hundred twenty-six dollars and three cents (\$3,726.03) as a withdrawal of dividends from one of Mrs. Oerly's Life policies. The check was made payable to "Dorothy R Oerly."

d. The back of check number 001802931 appeared to have been endorsed in the name of Dorothy R. Oerly and stamped indicating it was deposited into Respondent's Premium Funds Account ("PFA") at Exchange Bank. Exchange Bank records confirmed this check was deposited into Respondent's PFA on March 27, 2001.

- e. Respondent indicated that the PFA deposit on March 27, 2001, was an error which he corrected on March 30, 2001, by obtaining a cashier's check in the amount of three thousand, seven hundred twenty-six dollars and three cents (\$3,726.03) payable to Mrs. Oerly.
 - f. A purported Exchange Bank statement provided by Respondent indicated that on March 30, 2001, a cashier's check was issued by Exchange Bank from Respondent's account.
 - g. An Exchange Bank statement provided by Exchange Bank indicated that no such cashier's check had been issued from Respondent's account.
 - h. When questioned about the records discrepancy, Respondent admitted he had altered the bank documents he provided the department to suggest he had obtained a cashier's check payable to Mrs. Oerly.
 - i. On or about July 13, 2004, Respondent paid three thousand, seven hundred twenty-six dollars and three cents (\$3,726.03) to State Farm to be applied to Mrs. Oerly's dividend account.
 - j. State Farm credited an additional eight hundred seventy dollars and sixty cents (\$870.60) to Mrs. Oerly's account, which represented the interest Mrs. Oerly's account would have earned had the funds not been removed from the policy.
9. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1(5), RSMo (2000).

COUNT III

10. Respondent demonstrated the lack of trustworthiness or competence, a ground for disciplining Respondent's insurance license pursuant to § 375.141.1(4), RSMo (2000).
11. The facts are as follows:

a. Petitioner realleges and expressly incorporates the allegations in paragraphs 7 through 8.

12. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1 (4), RSMo (2000).

COUNT IV

13. Respondent signed the name of another to a document related to an insurance transaction without authorization, a ground for disciplining Respondent's insurance license pursuant to § 375.141.1(10), RSMo (Cum. Supp. 2005).

14. The facts are as follows:

- a. State Farm records indicated that on December 12, 1988, Caroline Maher became insured under Life policy number LF-0988-6443, in the amount of one hundred thousand dollars (\$100,000).
- b. On or about October 2, 2000, Caroline Maher's Life policy was transferred from the Dale Nichols Agency to Respondent's office after Agent Nichols retired.
- c. On or about March 13, 2003, a Life policy loan check (check number 003602377) made payable to Caroline Jane Maher in the amount of two thousand dollars (\$2,000.00) was identified during a review of Life checks issued in Respondent's office.
- d. Check number 003602377 was negotiated through Exchange Bank, a bank at which Respondent maintained an account.
- e. Check number 003602377 bore endorsements in the names of Respondent and "Carolyn" J. Maher.
- f. Caroline Maher indicated that she did not endorse check number 003602377.
- g. A search of files in Respondent's office, as well as in the office of Agent Shirley Fisher, to whose agency Caroline Maher had since transferred all her State Farm

policies, did not locate any record of a request form executed in conjunction with the two thousand dollar (\$2,000.00) Life policy loan check issued in Respondent's office in March 2003. Further, Life Company had no record of such a request form.

15. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1(10), RSMo (Cum. Supp. 2005).

COUNT V

16. Respondent improperly withheld, misappropriated, or converted moneys or properties received in the course of doing insurance business, a ground for disciplining Respondent's insurance license pursuant to § 375.141.1(4), RSMo (Cum. Supp. 2005).

17. The facts are as follows:

- a. On or about August 1, 2002, Vivian Weston became insured under Life policy number LF-2010-7490.
- b. Mrs. Weston indicated that about a year after she and her husband, Ernest Weston, purchased the Life policy, Respondent told Mr. and Mrs. Weston they could get a more favorable rate of return on their Life policy if they wrote him a personal check.
- c. At the time, Mr. and Mrs. Weston did not have the requested funds immediately available in their joint checking account.
- d. Respondent arranged to have money taken out of Mrs. Weston's Life policy in the form of loans, and deposited directly into the Weston's checking account so that Mrs. Weston could write him a personal check.
- e. Records indicated the following four (4) withdrawals were made under Mrs. Weston's Life policy in the form of loans which totaled thirty-eight thousand, five hundred dollars (\$38,500.00):

- i. On or about December 11, 2003, a loan was made in the amount of seven thousand, five hundred dollars (\$7,500.00).
 - ii. On or about July 30, 2004, a loan was made in the amount of nine thousand, five hundred dollars (\$9,500.00).
 - iii. On or about August 23, 2004, a loan was made in the amount of nine thousand, five hundred dollars (\$9,500.00).
 - iv. On or about October 15, 2004, a loan was made in the amount of twelve thousand dollars (\$12,000.00).
- f. Mrs. Weston, at Respondent's direction, wrote the following four (4) personal checks payable to Respondent, which totaled thirty-eight thousand, five hundred dollars (\$38,500.00):
- i. December 11, 2003: check number 9115 drawn on the account of Ernest and Vivian Weston, payable to "Richard Nixon State Farm Agency" in the amount of seven thousand, five hundred dollars (\$7,500.00).
 - ii. July 30, 2004: check number 9209 drawn on the account of Ernest and Vivian Weston, payable to "Richard Nixon S.F." in the amount of nine thousand, five hundred dollars (\$9,500.00).
 - iii. August 24, 2004: check number 9217 drawn on the account of Ernest and Vivian Weston, payable to "Richard Nixon S.F." in the amount of nine thousand, five hundred dollars (\$9,500.00).
 - iv. October 15, 2004: check number 9240 drawn on the account of Ernest and Vivian Weston, payable to "Richard Nixon S.F." in the amount of twelve thousand dollars (\$12,000.00).
- g. Respondent negotiated the four (4) checks as follows:

- i. Check number 9209 and check number 9207, both for nine thousand, five hundred dollars (\$9,500.00) were deposited into Respondent's business account at Alliant Bank.
 - ii. Check number 9240 for twelve thousand dollars (\$12,000.00) was negotiated for cash at UMB Bank in Columbia, Missouri.
 - iii. Check number 9115 was deposited into a Boone County National Bank account.
- h. Respondent did not apply the thirty-eight thousand, five hundred dollars (\$38,500.00) received from Mrs. Weston to her Life policy or any other insurance policy.

18. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1 (4), RSMo (Cum. Supp. 2005).

COUNT VI

19. Respondent used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, a ground for disciplining Respondent's insurance license pursuant to § 375.141.1(8), RSMo (Cum. Supp. 2005).

20. The facts are as follows:

- a. Petitioner realleges and expressly incorporates the allegations in paragraphs 13 through 17.

21. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1(8), RSMo (Cum. Supp. 2005).

COUNT VII

22. Respondent was convicted of a felony, a ground for disciplining Respondent's license pursuant to § 375.141.1(6), RSMo (Cum. Supp. 2005).

23. The facts are as follows:

a. On or about June 5, 2006, Respondent entered a guilty plea in Boone County Circuit Court to two (2) charges of passing a bad check for five hundred dollars (\$500) or more, a felony.

b. On or about July 17, 2006, the Boone County Circuit Court sentenced Respondent to four (4) years incarceration with the Missouri Department of Corrections. Respondent was also ordered to pay forty-six dollars (\$46.00) in court costs and three hundred dollars (\$300.00) in public defender costs.

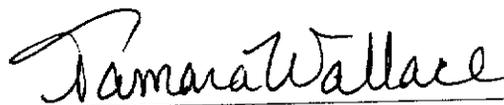
c. On or about August 18, 2006, Respondent entered a guilty plea in Howard County Circuit Court to a charge of passing a bad check for five hundred dollars (\$500) or more, a felony.

d. On or about August 18, 2006, the Howard County Circuit Court suspended the imposition of sentence and placed Respondent on probation for a period of five (5) years under the supervision of the Missouri Board of Probation and Parole. Respondent was ordered to pay twelve thousand, nine hundred dollars (\$12,900.00) restitution, forty-six dollars (\$46.00) in court costs, and three hundred dollars (\$300.00) in public defender costs upon release from the Department of Corrections.

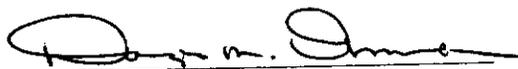
24. As a result, sufficient grounds exist for disciplining Respondent's insurance license pursuant to § 375.141.1(6), RSMo (Cum. Supp. 2005).

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent's insurance producer license under §§ 375.141.1(4), (5), and (6), RSMo (2000) and §§ 375.141.1(4), (6), (8), and (10), RSMo (Cum. Supp. 2005).

Respectfully submitted,



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