IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

WALKER SERVICES, INC.,	)	
	)	
Appellant-Petitioner,	)	
vs.	)	Case No. 07CC-02000
	)	
MISSOURI DEPARTMENT OF INSURANCE,	)	Div. 15
	)	
Respondent.	)	

LEGAL DEPT.

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MO. DEPT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

Consolidated with:

LONNELL WALKER, SR.,	)	
	)	
Appellant-Petitioner,	)	
vs.	)	Case No. 07CC-00248
	)	
MISSOURI DEPARTMENT OF INSURANCE,	)	Div. 15
	)	
Respondent.	)	

JUDGMENT AND ORDER

The Parties by consent agreed to the consolidation of the above two cases before this Court and upon review of the administrative record before the Administrative Hearing Commission and in consideration of the written and oral arguments by Petitioners, by counsel, Thomas H. Lake and by Respondent Missouri Department of Insurance,[1] by counsel Mary S. Erickson, and for good cause shown, being fully advised of the premises, the Court finds as follows:

1. The scope of this Court's review of Petitioner Walker Services, Inc.'s Petition for Judicial Review and Petitioner Lonnell Walker, Sr.'s Petition for Judicial Review is limited to and by § 536.140 RSMo (Supp. 2008).

[1] The entity is now known as the Department of Insurance, Financial Institutions and Professional Registration.

2. The Administrative Hearing Commission ("AHC") consolidated for hearing the administrative appeals of *Lonnell Walker, Sr. v. Director of Insurance,* AHC No. 05-1585 DI and *Director of Insurance v. Walker Services, Inc., d/b/a Walker Insurance Agency*, AHC No. 05-1716. Respondent Department and Petitioners Walker Services, Inc. and Lonnell Walker, Sr. appeared at the hearing before the AHC and presented evidence.

3. The AHC properly found cause in *Director of Insurance v. Walker Services, Inc., d/b/a Walker Insurance Agency*, AHC No. 05-1716, to discipline the business entity insurance producer license of Walker Services, Inc. under § 375.141.1(2), (4) and (8) RSMo.

4. The AHC properly found cause to deny Lonnell Walker, Sr.'s application for renewal of his insurance producer license under § 375.141.1(2), (4), (8) and (10) in *Lonnell Walker, Sr. v. Director of Insurance,* AHC No. 05-1585 DI. The AHC also properly exercised its discretion to deny such application.

5. The Decisions of the AHC in *Lonnell Walker, Sr. v. Director of Insurance,* AHC No. 05-1585 DI and *Director of Insurance v. Walker Services, Inc., d/b/a Walker Insurance Agency* are:

(1) not in violation of constitutional provisions;

(2) not in excess of the statutory authority or jurisdiction of the AHC;

(3) supported by competent and substantial evidence upon the whole records;

(4) authorized by law;

(5) made upon lawful procedure and a fair trial;

(6) not arbitrary, capricious or unreasonable; and

(7) does not involve an abuse of discretion.

6. Thereafter, the Director of Respondent Department of Insurance disciplined Petitioner Walker Services, Inc. by revoking the business entity insurance producer license of

Petitioner Walker Services. The Director also refused to renew the insurance producer license of Petitioner Lonnell Walker, Sr.

7. The decisions of the Respondent Department of Insurance are:

(1) not in violation of constitutional provisions;

(2) not in excess of the statutory authority or jurisdiction of the AHC;

(3) supported by competent and substantial evidence upon the whole records;

(4) authorized by law;

(5) made upon lawful procedure and a fair trial;

(6) not arbitrary, capricious or unreasonable; and

(7) does not involve an abuse of discretion.

8. Petitioners have not been deprived of any due process rights and no due process violations occurred during the administrative proceedings. Specifically, the Court finds that:

(1) Administrative disciplinary proceedings are not criminal trials in which a defendant has a constitutional right to confront witnesses. *In re Cupples*, 952 S.W.2d 226, 233 (Mo. banc 1997). Moreover, Petitioner Lonnell Walker, Sr. attended and testified on his own behalf and on behalf of his company Walker Services, Inc. at the hearing and Petitioner's had full and fair opportunity to refute Respondent's evidence.

(2) A commissioner who decides the case after reading the full record but without hearing the evidence does not violate due process. *Angelos v. State Bd. of Registration for the Healing Arts*, 90 S.W.3d 189,193 (Mo Ct. S.D. 2002); § 536.080 RSMo 2000. The AHC's Decisions state that the Commissioner who rendered the Decisions "read the full record, including all the evidence."

(3) The AHC delay in rendering its Decisions was not adequately explained but was not so extreme as to render the Decisions improper or invalid and Petitioner was not thereby denied any due process rights.

9. The AHC properly exercised its discretion in finding that the Department satisfied the foundational requirements of § 536.070(10) RSMo 2000 for various exhibits, including Exhibits 25 and 26, objected to by Petitioners. To the extent the exhibits may contain hearsay, this is not grounds for excluding the documents, but goes to the weight of the evidence. § 536.070(10); *State ex rel. Sure-Way Transp. v. Division of Transp.,* 836 S.W.2d 23, 26-27 (Mo. App. W.D. 1992). Because this Court may not determine the weight of the evidence or substitute its discretion for that of the AHC, *Angelos v. State Bd. of Registration for the Healing Arts*, 90 S.W.3d 189, 191 (Mo. App. S.D. 2002), the AHC's decision must be upheld.

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Decision of the Administrative Hearing Commission finding cause to discipline Respondent Walker Services, Inc.'s business entity insurance producer license is affirmed.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the decision of the Director of Respondent Missouri Department of Insurance revoking Respondent Walker Services Inc.'s business entity insurance producer license is affirmed.

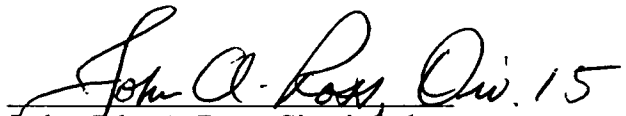
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Decision of the Administrative Hearing Commission finding cause to deny renewal of Petitioner Walker's insurance producer license is affirmed.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Decision of the Administrative Hearing Commission exercising its discretion to deny the renewal of Petitioner Walker's insurance producer license is affirmed.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the decision of the Director of Respondent Missouri Department of Insurance refusing to renew Petitioner Walker's insurance producer license is affirmed.

So Ordered:

Dated: 12/29/08



Judge John A. Ross, Circuit Judge
Division 15