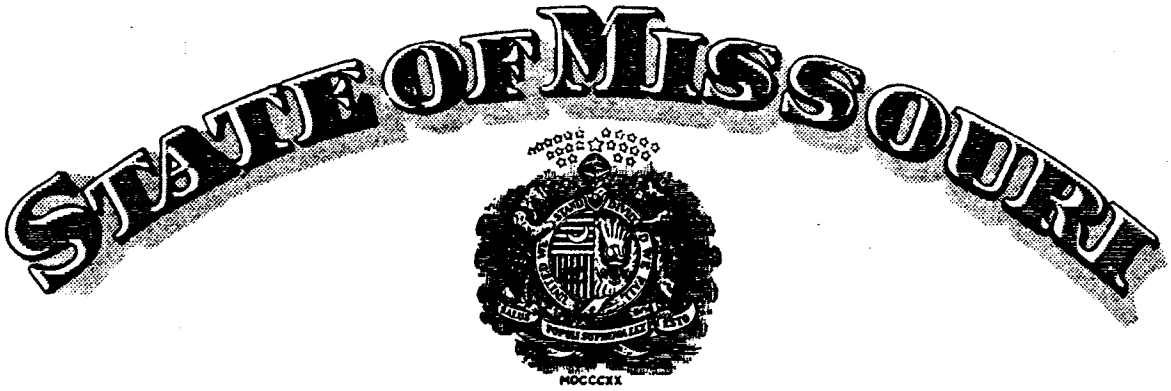


DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:	)	
	)	
NICHOLAS A. BAUMGARTNER	)	**DIFP Case No. 090206161C**
	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Tamara W. Kopp, and Nicholas A. Baumgartner have reached a settlement in this matter and have consented to the issuance of this Consent Order.

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

2. The Consumer Affairs Division has the duty of conducting investigations into the acts of insurance producers under the insurance laws of this state and is authorized

by the Director to investigate and to recommend enforcement action for violations of the insurance laws of this state.

3. Nicholas A. Baumgartner is a non-resident licensed insurance producer first licensed by the Department on May 24, 2005. (License No. PR348486). Baumgartner, whose license was set to expire on May 24, 2009, surrendered his license to the Department on or about December 11, 2008.

4. On or about February 5, 2009, the Consumer Affairs Division referred Investigation File Number 08A000953, concerning Respondent, to the Director seeking to discipline Respondent's insurance producer license.

5. The Consumer Affairs Division alleged that Baumgartner admitted to falsifying information and forging consumer signatures on insurance contract applications for personal gain. The facts are as follows:

a. In 2007, Baumgartner applied for a life insurance policy on Ms. Gina Pope without her knowledge or authorization. Baumgartner signed Ms. Pope's name to the life insurance application without her knowledge or authorization.

b. In 2007, Baumgartner applied for at least six (6) automobile insurance policies in the names of Ms. Pope and Mr. Derek Pope without their knowledge or authorization. Baumgartner signed Ms. Pope's name to the automobile insurance applications without her knowledge or authorization.

c. On or about November 13, 2007, Baumgartner went to Ms. Pope's place of business and told her that he had written a life insurance policy on her without her permission.

d. On or about December 5, 2007, Baumgartner told Randy Adair, Chief Fraud Investigator for the Kansas Insurance Department (KID), that Baumgartner had fabricated a life insurance policy on Ms. Pope in order to meet his requirements with his employer, Farmers Insurance Company. Baumgartner also admitted to Mr. Adair to falsifying five (5) other applications with Farmers in order to meet his sales obligations. Baumgartner admitted that all the applications were in the names of actual insureds and that he forged their names to the applications.

6. On or about February 19, 2008, the KID Commissioner issued a Summary Order revoking Baumgartner's Kansas insurance agent license for violating K.S.A. 40-2404(11), K.S.A. 2006 Supp. 40-4909(10), K.S.A. 40-4909(a)(8), and K.S.A. 40-2,118. Baumgartner failed to notify the Director within thirty (30) days of the final disposition of the KID Summary Order, as required by § 375.141.6, RSMo.

7. On about June 2, 2008, Baumgartner signed a Letter of Acceptance, Waiver and Consent (No. 20080119927-01) with the Financial Industry Regulatory Authority (FINRA) whereby he was barred from association with any FINRA member in any capacity.

8. Baumgartner failed to notify the Director within thirty (30) days of the final disposition of the Letter of Acceptance, Waiver and Consent, as required by § 375.141.6, RSMo.

9. On or about March 9, 2009, counsel for the Consumer Affairs Division sent a copy of the Division's investigation report to Baumgartner. The investigation report described the specific conduct for which discipline was sought and citation to the law and

rules allegedly violated, along with documents which were the basis thereof. Counsel for the Consumer Affairs Division advised Baumgartner that he had sixty (60) days review the investigation report and consider the proposed settlement offer.

10. Baumgartner has the right to consult counsel at his own expense.

11. Baumgartner has been advised that he may, either at the time the Consent Order is signed by all parties, or within fifteen (15) days thereafter, submit the Consent Order to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining Baumgartner's insurance producer license.

12. Baumgartner stipulates and agrees to waive any rights that he may have to a hearing before the Administrative Hearing Commission or the Director and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever releases and holds harmless the Department, the Director and his agents, and the Consumer Affairs Division from any and all liability and claims arising out of, pertaining to, or relating to this matter.

Conclusions of Law

13. The allegations raised by the Consumer Affairs Division, if proven, are grounds to discipline Respondent's insurance producer license.

14. The KID license revocation constitutes grounds to discipline Baumgartner's insurance producer license pursuant to § 375.141.1(9), RSMo.

15. Baumgartner's failure to notify the Director within thirty (30) days of the final disposition of the KID license revocation and FINRA Letter of Acceptance, Waiver and Consent is a violation of § 375.141.6, RSMo (Supp. 2008), and constitutes grounds to

discipline Baumgartner's insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2008).

16. Baumgartner's conduct constitutes a violation of § 375.144, RSMo, and is grounds to discipline his insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2008).

17. Baumgartner's statements to Ms. Pope and Mr. Adair constitute admissions of fraud and misrepresentations in insurance applications in violation of the Unfair Trade Practice Act, §§ 375.930 – 375.948, RSMo (2000). Further, such admissions and misrepresentations constitute grounds to discipline Baumgartner's insurance producer license pursuant to § 375.141.1(7), RSMo (Supp. 2008).

18. Baumgartner's conduct and statements to Ms. Pope and Mr. Adair constitute fraudulent, coercive, and dishonest practices, and demonstrate incompetence, untrustworthiness, and financial irresponsibility in the conduct of insurance business. Such conduct constitutes grounds to discipline Baumgartner's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008).

19. The Director is authorized to settle this matter and issue this Consent Order in the public interest pursuant to §§ 374.046, RSMo (Supp. 2008) and 374.280, RSMo (2000).

20. The Director is authorized to enforce this Consent Order and should Baumgartner fail to comply with the conditions set forth herein, the Director or his successors, without any limitation, may initiate any action authorized by law, including referral of this case to criminal prosecutors.

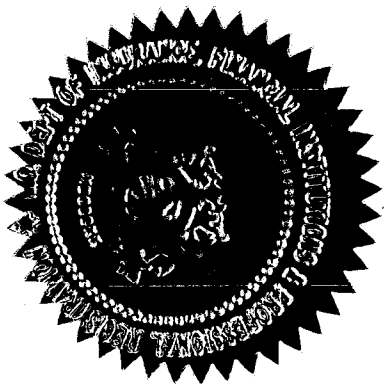
21. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

ORDER

IT IS ORDERED THAT Nicholas A. Baumgartner's insurance producer license (License No. PR348486) is hereby **REVOKED**.

EACH signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 30th DAY OF MARCH, 2009.



JOHN M. HUFF
Director, Missouri Department of Insurance, Financial Institutions & Professional Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Nicholas A. Baumgartner has the right to a hearing, but that Nicholas A. Baumgartner has waived the hearing and consented to the issuance of this Consent Order.

_____ 3/11/09
Nicholas A. Baumgartner — Date
Respondent
7708 Marty Street
Overland Park, Kansas 66204-2922

_____ _____
Counsel for Respondent (if any) — Date
Printed Name: _____
Missouri Bar No. _____
Address: _____
_____
Telephone: _____
Facsimile: _____

_____ 3-23-09
Tamara W. Kopp — Date
Counsel for Consumer Affairs Division
Missouri Bar No. 59020
Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, MO 65101
Telephone: (573) 751-2619
Facsimile: (573) 526-5492