DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

IN RE:	)	
	)	**DIFP Case No. 150218109C**
BRYAN CARROLD BINKHOLDER,	)	
	)	**AHC Case No. 15-1363 DI**
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

Based on the competent and substantial evidence on the whole record, I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereby issue the following findings of fact, conclusions of law, and order of discipline:

FINDINGS OF FACT

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department") whose duties, pursuant to Chapters 374 and 375 RSMo (Supp. 2013)[1] include the supervision, regulation, and discipline of insurance producers in the State of Missouri.

[1] All civil statutory references are to the 2013 Supplement of the Revised Statutes of Missouri unless otherwise indicated.

2. On August 29, 1998, the Department issued Respondent Bryan Carrold Binkholder ("Binkholder") a resident insurance agent license, License Number 0257545, which he has renewed biennially and which is currently set to expire on August 29, 2016.[2]

3. On August 27, 2015, the Director filed a Complaint with the Administrative Hearing Commission ("Commission") pursuant to § 621.045, by which he sought the Commission's findings of fact and conclusions of law that cause exists to discipline Binkholder's resident insurance producer license.

4. On September 22, 2015, the Carroll County Illinois Sheriff's Department served Binkholder with a copy of the Director's Complaint and the Commission's Notice of Complaint/Notice of Hearing. Neither Binkholder nor anyone on his behalf filed an answer or other responsive pleading.

5. On January 6, 2016, the Director filed a Motion for Partial Summary Decision. The Commission gave Binkholder until January 22, 2016 to respond to the motion; however, Binkholder filed no response.

6. On February 22, 2016, the Commission issued its Decision. In its Decision, the Commission found cause to discipline Binkholder's resident insurance producer license pursuant to § 375.141.1(2), (6), and (8). *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Bryan Carrold Binkholder*, Case No. 15-1363 DI (Mo. Admin. Hrg. Comm'n Feb. 22, 2016).

7. In support of its finding of cause for discipline, the Commission found the

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2 Pursuant to L. 2001, SB 193 (91st Gen. Assem., 1st Reg. Sess.), effective January 1, 2003, the Department converted Missouri insurance agent licenses, such as that initially held by Binkholder, to insurance producer licenses. *See also* §§ 375.012.3; 375.014.4.

following facts:

a. On August 13, 2014, Binkholder was charged by indictment in the United States District Court for the Eastern District of Missouri with four counts of wire fraud, a felony, in violation of 18 U.S.C. §§ 2 and 1343 ("felony wire fraud").

b. The charging instrument detailed Binkholder's "hard money lending program," pursuant to which, using his position as a financial advisor, Binkholder told investors that they would invest money with him, and he would act as a bank and provide short-term loans to a developer for the buying, rehabilitating, and reselling of residential properties. Binkholder took in millions of dollars of investor money, made only a small number of hard money loans, and caused investors to lose more than $3,000,000.

c. On January 8, 2015, pursuant to a Guilty Plea Agreement, Binkholder admitted the conduct with which he was charged and pled guilty to the felony wire fraud charges.

d. On May 15, 2015, the United States District Court for the Eastern District of Missouri convicted Binkholder of each of the four separate felony wire fraud charges, sentencing him to 108 months in the custody of the United States Bureau of Prisons and ordering restitution in the amount of $3,655,968.89.

e. Binkholder did not report the criminal prosecution of *United States v. Binkholder*, U.S. Dist. Ct., E.D. Mo., Case No. 4:14-CR-00247 ("*U.S. v. Binkholder*"), to the Director within thirty days of his initial pretrial hearing

date and did not report it subsequent to that date.

f. Binkholder did not provide any relevant legal documents from *U.S. v. Binkholder*, such as the August 13, 2014 indictment, to the Director within thirty days of his initial pretrial hearing date and did not provide any relevant legal documents subsequent to that date.

Id.

8. Based on its findings of fact, the Commission found that cause exists to discipline Binkholder's resident insurance producer license pursuant to:

a. Section 375.141.1(2) because Binkholder violated an insurance law, specifically § 375.141.7, when Binkholder failed to report to the Director his criminal prosecution in *U.S. v. Binkholder* and failed to provide the Director with any relevant legal documents from *U.S. v. Binkholder* within thirty days of his initial pretrial hearing date;

b. Section 375.141.1(6) because Binkholder was convicted of four felonies;

c. Section 375.141.1(6) because Binkholder was convicted of four crimes that involve moral turpitude; and

d. Section 375.141.1(8) because Binkholder used fraudulent, coercive, or dishonest practices in the conduct of business.

Id.

9. On March 28, 2016, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

10. On April 5, 2016, the Department served Binkholder a Notice of Hearing by

United States Postal Service ("USPS") Certified Mail to the Administrative United States Penitentiary at 1100 One Mile Road, Thomson, Illinois 61285-7750, which had been Binkholder's address of record before the Commission. The Notice of Hearing set the Disciplinary Hearing for 10:00 a.m. on April 25, 2016, at the Department, 301 West High Street, Room 530, Jefferson City, Missouri. The USPS reported to the Department that it delivered the Notice of Hearing on April 8, 2016, upon the signature of an individual appearing to be "P. Matthew[.]"

11. On April 5, 2016, the Department served Binkholder an additional copy of the Notice of Hearing by USPS first-class mail, postage prepaid, to the same address. The USPS did not return that additional copy of the Notice of Hearing to the Department as undeliverable.

12. On April 25, 2016, the Director, through his Hearing Officer Tammy S. Kearns, held the Disciplinary Hearing in this matter to determine the appropriate disciplinary action, if any, to be taken against Binkholder's resident insurance producer license. Disciplinary Hearing Transcript ("Tr.") at 2. Neither Binkholder nor anyone representing him appeared at the Disciplinary Hearing. Tr. 2-3. Mark J. Rachel appeared on behalf of the Department's Consumer Affairs Division ("Division"). Tr. 2.

13. At the Disciplinary Hearing, the Hearing Officer took official notice of the Notices of Hearing sent to Binkholder and the related USPS delivery receipt and admitted the documents collectively into evidence as Exhibit 1. Tr. 3-5.

14. The Hearing Officer also took official notice of the Commission's certified record of its proceeding and admitted the record into evidence as Exhibit 2. Tr. 4-5.

15. At the Disciplinary Hearing, the Division recommended revocation of

Binkholder's resident insurance producer license. Tr. 6.

16. The Director hereby adopts and incorporates the Commission's February 22, 2016 Decision referenced herein and finds in accordance with the same. *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Bryan Carrold Binkholder*, No. 15-1363 DI (Mo. Admin. Hrg. Comm'n Feb. 22, 2016).

CONCLUSIONS OF LAW

17. Section 375.141, an insurance law, states in relevant part:

> 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
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> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
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> * * *
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> (6) Having been convicted of a felony or crime involving moral turpitude; [or]
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> * * *
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> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]
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> * * *
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> 7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

18. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

> If a proceeding is instituted to revoke or suspend a license of any person under section[] ... 375.141, the director shall refer the matter to the administrative hearing commission ... [which] shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

19. Section 621.110 outlines the procedure after the Commission finds cause to discipline a license and authorizes the Director to receive evidence relevant to the appropriate disciplinary action from Binkholder or any other source, including the Division. Section 621.110 states, in relevant part:

> Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee . . ., the commission shall deliver or transmit by mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. . . . Within thirty days after receipt of the record of the proceedings before the commission and the findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing[.] . . . The licensee may appear at said hearing and be represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law.

20. Accordingly, "in the case of discipline imposed upon an existing license, the relevant statutes establish a bifurcated procedure, under which the AHC finds the predicate facts

as to whether cause exists to discipline a license, and the [Director] then exercises final decisionmaking authority concerning the discipline to be imposed." *State Bd. of Regis'n for the Healing Arts v. Trueblood,* 368 S.W.3d 259, 267-68 (Mo. App. W.D. 2012) (citing § 621.110).

21. The Director has the discretion to discipline Binkholder's resident insurance producer license, including the discretion to revoke that license. Sections 374.051.2, 375.141.1, and 621.110.

22. Based on the Commission's finding of cause for discipline, the nature of Binkholder's fraudulent conduct, and the severity of his convictions, sufficient grounds exist to revoke Binkholder's resident insurance producer license pursuant to § 375.141.1(2), (6), and (8) and revocation is appropriate.

23. This Order is in the public interest.

ORDER

Based on the evidence presented and the foregoing findings and conclusions, the resident insurance producer license of **Bryan Carrold Binkholder**, License Number 0257545, is hereby **REVOKED**.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 23rd DAY OF June, 2016.

John M. Huff, Director
Missouri Department of Insurance, Financial Institutions and Professional Registration

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via United States Postal Service Signature Required and United States Postal Service First Class Mail, on this 23rd day of June, 2016 to:

Bryan Carrold Binkholder, #41868-044
Administrative United States Penitentiary
1100 One Mile Road
Thomson, Illinois 61285-7750

Tracking No. 1Z0R15W84297243249

And hand delivered to:

Mark J. Rachel
Counsel for Consumer Affairs Division
Missouri Department of Insurance, Financial
Institutions and Professional Registration

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