DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In re:	)	
	)	**DIFP No. 100723535C**
JAMES A. BAYER.	)	
	)	**AHC No. 11-0142 DI**

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 ("Director" of the "Department"), hereby issue the following findings of fact, conclusions of law, and order:

Findings of Fact

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

2. The Department issued Respondent James A. Bayer ("Bayer") an insurance producer license (No. 178601) on July 1, 1976. Bayer's license is active and set to expire on

July 1, 2012.

3. The Director filed a Complaint with the Administrative Hearing Commission ("Commission") on January 24, 2011, seeking a finding that cause existed for disciplining Bayer's insurance producer license. On March 9, 2011, Bayer was served by certified mail with a copy of the Complaint, but filed no response. The Director filed an Amended Complaint on May 18, 2011, to which Bayer filed no response.

4. On July 21, 2011, the Director filed a motion for summary decision and suggestions in support.

5. The Commission gave Bayer until September 13, 2011, to respond, but he failed to respond.

6. On November 9, 2011, the Commission issued its Decision finding cause to discipline Bayer's insurance producer license pursuant to §§375.141.1(2) and (8) RSMo Supp. 2010.[1] The Commission concluded as follows:

a. Bayer solicited a loan from an insurance client, thereby violating an insurance regulation, 20 CSR 700-1.140(3), and subjecting him to discipline pursuant to §§375.141.1(2) and (8).

b. Bayer's unwillingness to function properly as an insurance producer and his disregard for accountability are evidenced by his repeatedly soliciting and obtaining loans from an insurance client. The Commission found Bayer subject to discipline for incompetence and financial irresponsibility under §375.141.1(8).

c. Bayer failed to report to the Director an administrative action taken against

Bayer by the Missouri Commissioner of Securities within 30 days of the final disposition of the matter in violation of §375.141.6, and subjecting Bayer to discipline pursuant to §375.141.1(2).

7. The Commission certified the record of its proceeding to the Director pursuant to §621.110 RSMo 2000.

8. Thereafter, the Director served Bayer by certified mail a notice of hearing to be held at 9:30 a.m. on January 3, 2012, in the offices of the Director, 301 West High Street, Room 530, Jefferson City, Missouri. The certified mail receipt was signed and returned to the Director.

9. The hearing was rescheduled to January 6, 2012 at 1:30 p.m., at Bayer's request.

10. On January 5, 2012, Bayer requested a second continuance, which the hearing officer, Mary S. Erickson, granted, rescheduling the disciplinary hearing to January 19, 2012, at 1:30 p.m.

11. Bayer and his attorney, Andrew Malloy, appeared at the disciplinary hearing on January 19, 2012. Tamara Kopp appeared as counsel for the Department's Consumer Affairs Division ("Division"). *Disciplinary Hearing Transcript, ("Tr.")* at page 4.

12. The hearing officer, Mary S. Erickson, admitted as Exhibit 1 the Commission's record of proceedings and Exhibit 2 the original Notice of Hearing. *Tr. 7-8.* The hearing officer sustained Bayer's objection to Exhibit 3, a copy of an "Order and Judgment" from *Purvis, et al., v. James A. Bayer & Associates, et al.,* St. Louis Co. Cir. Ct., No 10SL-CC00792. *Tr. 11-12.* Exhibit 3 was not entered into evidence. *Id.* Bayer also objected to Exhibit 4, an Affidavit signed by Rita E. Purvis, Vickie L. Purvis, and Janis R. Hartman, by stating that Vickie Purvis and Janis Hartman have no personal knowledge of the loan transaction between Rita Purvis and

Bayer. *Tr. 10-14.* The Division contended that Exhibit 4 was being submitted as evidence that the consumer victim requests revocation of Bayer's license and not to establish the underlying cause for discipline found by the Commission. *Tr. 9, 12-13.* Bayer's counsel conceded that Rita Purvis was competent to attest to the matters in the Exhibit 4 Affidavit. *Tr. 13-14.* The hearing officer admitted Exhibit 4 as to Rita Purvis's averments but further ruled that any statements contained in Exhibit 4 purportedly made by Vickie Purvis and Janis Hartman would not be admitted. *Tr. 14-15.*

13. Having called no witnesses, the Division's evidence consisted of Exhibits 1, 2, and 4. Bayer presented no exhibits, but testified on his own behalf in a prepared statement and then through cross examination.

14. Bayer testified that he has been in the insurance business for 37 years and has a virtually clean record. *Tr. 17:20-21.* Over a decade ago, "I was asked by the Missouri Security Exchange Commission [presumably, Bayer meant the Missouri Secretary of State, Securities Division] to discontinue involvement in two business related activities." *Tr. 18:1-5.* He has developed strong community bonds: involved with the Special Olympics; helped set up trusts for families of special needs children; elected to the Special School District Board of Education; and volunteered at various organizations. *Tr. 18.* He is a primary provider for his family, including two special needs children. *Tr. 18:25-19:2.*

15. Rita Purvis owned and operated three restaurants and, according to Bayer, is more sophisticated in understanding insurance and investments than most people. *Tr. 19:8-12.* Bayer asked Purvis if she would invest in an internet company he was starting. Bayer offered her 10% interest, and she agreed to loan Bayer a total of $29,000. *Tr. 19:13-20.* Bayer still owes $19,000

plus interest to Purvis. *Tr. 23:9-12.*

16. The Commission found that Bayer sold a variety of insurance products to Purvis beginning in 1990. *Commission's Decision,* p. 2. Bayer first asked Purvis for $19,000 in 2005. Purvis, at Bayer's request, also wrote two checks for $5,000 as loans to Bayer in September and November, 2007. *Id.* at 3. The Commission found that Bayer encouraged Purvis to withdraw money from her annuities to pay one of the checks. *Id.*

17. During his testimony, Bayer did not address or explain the loan he solicited from Purvis for Bayer's daughter's tuition. *Commission's Decision,* p. 3, ¶ 9; p. 6.

18. Bayer's testimony discussed a decade old matter with the Missouri Secretary of State, but he did not explain the 2011 Final Order to Cease and Desist and Order Imposing Civil Penalties and Awarding Costs issued by the Commissioner of Securities on April 12, 2011. *Commission's Decision,* p. 4. Bayer agreed with his attorney's statement that he is in discussions with the Secretary of State to set up a payment plan. *Tr. 24:23-25:4.* Bayer's attorney stipulated that Bayer still owes the full amount awarded in the Commissioner of Securities' Final Order. *Tr. 23:13-18.* (That amount is $12,000 for securities violations and $6,045 in costs. *Exhibit 4* attached to the Division's Motion for Summary Decision before the Administrative Hearing Commission.)

19. In the Commission's record below, the evidence shows that the Missouri Secretary of State, Securities Commissioner, issued a Final Order Cease and Desist against Bayer on April 2, 2011. *In the matter of James A. Bayer,* CRD #1011184. Bayer did not report the administrative action taken against him by another governmental agency within thirty days of the final disposition of the matter. *Commission Decision,* p. 7.

20. During cross examination, Bayer merely agreed with his attorney's statement that he is in discussions with the Secretary of State to set up a payment plan. *Tr. 24:23-25:4.* He admitted that he did not notify the Department of the final order of the Secretary of State. *Tr. 28:4-7.*

21. The Division recommended that Bayer's insurance producer license be revoked. *Tr. 15.* Bayer's counsel asserted that this was an isolated incident with a long time friend which is being pursued by Purvis's daughter and her partner. *Tr. 31:19-24.* Bayer and his attorney believe an appropriate resolution would be lengthy probationary period, a requirement for continuing education with an emphasis on ethics, in addition to the regularly required continuing education classes. *Tr. 34:8-14.*

22. The Director hereby adopts and incorporates the November 9, 2011 Decision of the Administrative Hearing Commission referenced herein and does hereby find in accordance with the same. *Director of Dep't of Ins., Fin. Insts. & Prof'l Reg'n v. James A. Bayer,* No. 11-0142 DI (Mo. Admin. Hrg. Comm'n Nov. 9, 2011).

Conclusions of Law

23. Pursuant to §375.141 RSMo Supp. 2010 and 621.110 RSMo 2000, the Director has the discretion to discipline Bayer's insurance producer license, including the discretion to revoke such license.

24. Based on the nature and severity of the aforementioned conduct, sufficient grounds exist for revoking the insurance producer license of Bayer pursuant to §§375.141.1(2) and (8).

25. The Director specifically adopts from the Commission's Decision the conclusions

of law that: Bayer obtained and attempted to solicit loans from his client, Rita Purvis, thereby violating the standards in 20 CSR 700-1.140(3), which are grounds to discipline under § 375.141.1(2); Bayer's repeated soliciting and obtaining loans from his client demonstrated incompetence and financial irresponsibility under § 375.141.1(8); and Bayer failed to report to the Department an administrative action taken against him by another governmental agency within thirty days of the final disposition of the matter, thereby violating§ 375.141.6, which is grounds to discipline under § 35.141.1(2).

26. In light of the evidence of serious misconduct presented before the Commission and the Director, and in view of Bayer's lack of efforts to repay the money owed to Purvis and to the Missouri Secretary of State, it is appropriate for the protection of the citizens of this state to revoke the insurance producer license of Bayer.

ORDER

Based on the foregoing findings and conclusions, the insurance producer license of James A. Bayer (License No. 178601) is hereby REVOKED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1ST DAY OF MAY, 2012.

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

CERTIFICATE OF SERVICE

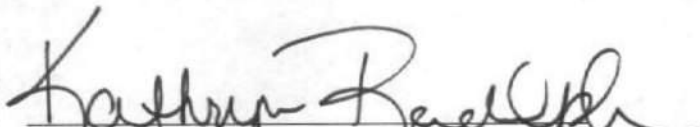
I hereby certify that on this 3rd day of May, 2012, a copy of the foregoing Findings of Fact, Conclusions of Law and Order of Discipline, was served by regular mail and certified mail, No. 7009 3410 0001 9349 2846, to the following address:

James A. Bayer
4705 Oakridge Park Drive
St. Louis, MO 63129-1788

And by U.S. Mail to:

Andrew Malloy
P.O. Box 78451
St. Louis, Missouri 63178

Counsel for James Bayer



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