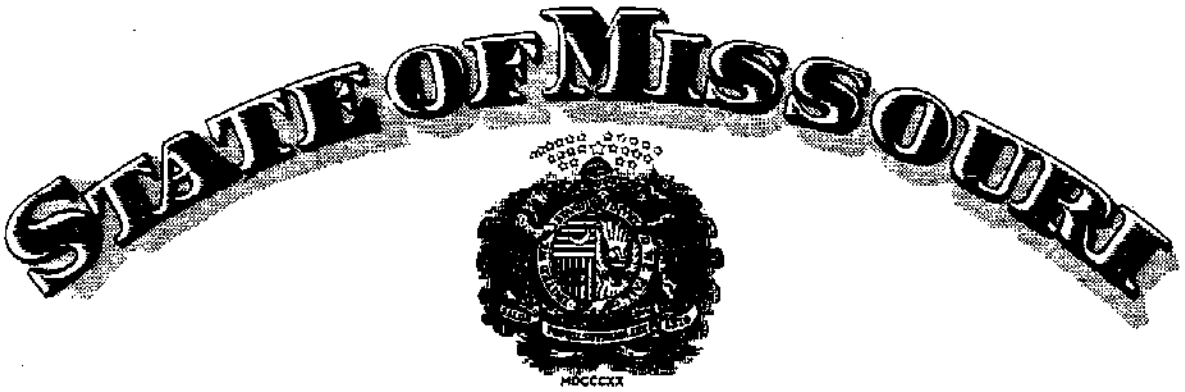

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	
BRUCE BERGEN,	)	
	)	
and	)	Case No.: 100120098C
	)	
BERGEN INSURANCE AGENCY, INC.	)	
	)	
Respondents.	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above-referenced matter for consideration and disposition. The Consumer Affairs Division, through counsel, Carolyn H. Kerr, and Respondents Bruce Bergen ("Bergen") and Bergen Insurance Agency, Inc. (the "Agency") have reached a settlement in this matter and Respondent has consented to the issuance of this Consent Order.

Findings of Fact

1. John M. Huff is the duly appointed 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 Consumer Affairs Division of the Department has the duty of conducting investigations into the unfair or unlawful acts of insurance producers and companies under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

3. The Department issued Respondent Bruce Bergen ("Bergen") a non-resident insurance producer license (No. 8012055) on December 28, 2006. Bergen's license is inactive because it expired on December 27, 2008, and Bergen did not apply for renewal.

4. The Department issued a non-resident business entity producer license (No. 8025745) to Bergen Insurance Agency, Inc. (the "Agency"), on January 31, 2009, which is active and will expire on January 30, 2013.

5. At all relevant times herein, Bergen was the owner and principal of the Agency.

6. The Department's official records list Bergen as the Owner/Officer of the Agency.

7. The Iowa Secretary of State's Office records list the Agency as an active domestic corporation incorporated in Iowa.

8. The Iowa Secretary of State's Office records list Bergen as President and Registered Agent or Reserving Party for the Agency.

9. At all relevant times herein, Bergen and the Agency were appointed with Foremost Insurance Company (NAIC #11185) and Foremost Signature Insurance Company (NAIC #41513) (together "Foremost") with the authority to solicit insurance on its behalf until October 27, 2009, when the Agency Contract with Bergen was terminated by Foremost.

10. The Department received a consumer complaint from Robyn Dittmer on April 21, 2009, alleging that Bergen failed to forward the premium that she and her husband paid to Bergen for insurance coverage from Foremost, resulting in the cancellation of the homeowners policy for their home in Ash Grove, Missouri.

11. The Consumer Affairs Division seeks to discipline Bergen's insurance producer license and the Agency's business entity producer license and alleges the following:

a. The Iowa Department of Inspections and Appeals, Division of Administrative Hearings, entered a Decision on January 16, 2009, citing Bergen with failing to respond to inquiries from the Iowa Insurance Division ("Iowa Division"), a violation of Iowa Insurance Code § 522B.11(1)(p), and imposed a civil penalty of $100.

b. Bergen committed a violation of Iowa Code §§ 522B11(1)(p) when he failed to fully cooperate with the Iowa Division's investigative request

c. Bergen did not report the administrative action taken against him by the Iowa Insurance Division to the Department within 30 days of the final disposition of the matter, as required by § 375.141.6.

d. The Iowa Division revoked Bergen's individual producer license effective November 2, 2010.

e. Special Investigator Carrie Couch mailed Bergen a letter, dated May 29, 2009, by first class mail requesting information about the Iowa disciplinary action and why he continued doing business in Missouri without a valid insurance producer license.

f. The May 29, 2009 letter was addressed to Bruce Bergen at 238 Blairs Ferry Road NE, Cedar Rapids, Iowa 52402.

g. A response to the May 29, 2009 letter was required by June 19, 2009.

h. The investigator's May 29, 2009 letter was not returned to the Department as undeliverable.

i. Bergen did not respond to the May 29, 2009 letter from the Department within 20 days from the date the letter was mailed.

j. Bergen and the Agency improperly withheld, misappropriated, or converted moneys or properties received in the course of doing the insurance business.

k. The Department received a consumer complaint from Robyn Dittmer on April 21, 2009, alleging that Bergen failed to forward the premium that she and her husband paid to Bergen for insurance coverage from Foremost, resulting in the cancellation of the homeowners policy for their home in Ash Grove, Missouri.

l. Bergen appeared before the Department on July 21, 2009, pursuant to a subpoena and testified under oath ("Subpoena Conference").

m. The Dittmers completed an application for insurance and gave Bergen a check in the amount of $4,804.70 on April 2, 2008, to obtain homeowner's coverage with Foremost. The term of the policy was April 14, 2008, through April 14, 2009.

n. At the Subpoena Conference, Bergen admitted receiving the $4,804.70 check from the Dittmers payable to "Bergen Insurance" and dated April 2, 2008.

o. Robyn Dittmer signed the check and indicated in the memo section that the check was "for house insurance for 2008."

p. At the Subpoena Conference, Bergen admitted that the $4,804.70 check was deposited into the Agency's account.

q. The back of the check indicates that deposit was made into a Wells Fargo account held by Bergen Insurance Agency, Inc.

r. Bergen and the Agency held the premium payment made by the Dittmers in trust for the Dittmers under § 375.051 and 20 CSR 700-1.140(1)(D), as it was intended by the Dittmers to be remitted to Foremost in exchange for insurance coverage on their home in Ash Grove, Missouri.

s. In the Subpoena Conference, Bergen admitted he did not submit the full amount of the $4,804.70 check to Foremost in April 2008.

t. Foremost sent a premium payment notice to Bergen "c/o Bergen Insurance Agency," indicating a "Current Amount Due" of $425.23 "or, to pay in full," the amount of $3,779.07" on the Dittmer's policy. Payment on the policy was due by June 3, 2008.

u. Foremost sent a cancellation notice to Bergen "c/o Bergen Insurance Agency" on October 14, 2008, indicating that the Dittmer's homeowner's policy was cancelled "as of 10/01/08."

v. The Dittmers did not receive notice of any delinquency in payment or notice of cancellation of the policy until April 8, 2009, when Robyn Dittmer contacted Foremost and learned that their insurance policy had been cancelled effective October 2008, based on non-payment of premium.

w. Because of Bergen's and the Agency's improper withholding, misappropriation or conversion of premium funds, the Dittmers were left without insurance coverage for a period of time.

x. In his capacity as a partner, officer, or manager for the Agency, Bergen knew he violated the laws of another state by committing a violation of Iowa Code sections 522B.11(1)(p) when he failed to fully cooperate with the Iowa Division's investigative request;

y. In his capacity as partner, officer, or manager for the Agency, Bergen knew he did not report the administrative action taken against him by the Iowa Division to the Department within 30 days of the final disposition of the matter, as required by § 375.141.6;

z. In his capacity as a partner, officer, or manager for the Agency, Bergen knew he failed to timely respond to Department inquiries as required by 20 CSR 100-4.100(2)(A); and/or

aa. In his capacity as partner, officer, or manager for the Agency, Bergen knew he improperly withheld, misappropriated, or converted moneys or properties received in the course of doing the insurance business in violation of §375.141.1(4).

bb. In Bergen's capacity as a partner, officer, or manager of the Agency, Berger was someone who knew or should have known of the actions he was committing in his capacity as an insurance producer.

cc. In his capacity as a partner, officer, or manager of the Agency acting on its behalf, either report to the Director or take adequate corrective action with regard to the aforementioned violations of the insurance laws.

dd. The Agency, through its partners, officers or managers, knew or should have known of the violations by Bergen.

ee. At no time did the Agency, through its partners, officers or managers, report Bergen's violations or take corrective actions for the violations.

12. In light of these facts, Bergen's non-resident insurance producer license is subject to discipline on the following grounds:

a. Under §375.141.1(2), RSMo (Supp. 2010),[1] the Director may revoke Bergen's insurance producer license for violating an insurance law of Iowa;

b. Under § 375.141.1(2), the Director may revoke his insurance producer license for violating any insurance laws, in that Bergen did not report the administrative action taken against him by the Iowa Division to the Department within 30 days of the final disposition of the matter,, as required by § 375.141.6;

c. Under § 375.141.1(9), the Director may revoke Bergen's insurance producer license because Bergen's insurance producer license was revoked in another state;

[1] All statutory references are to RSMo (Supp. 2010) unless otherwise indicated.

d. Under § 375.141.1(2), the Director may revoke Bergen's insurance producer license for violating any insurance laws, in that Bergen failed to timely respond to Department inquiries as required by 20 CSR 100-4.100(2)(A);

e. Under § 375.141.1(4), the Director may revoke Bergen's insurance producer license for improperly withholding, misappropriating, or converting moneys or received from the Dittmers in the course of doing the insurance business; and

f. Under § 375.141.1(8), the Director may revoke Bergen's insurance producer license because Bergen used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state relating to the Dittmers.

13. Under § 375.141.1(4), the Director may revoke the Agency's business entity license for improperly withholding, misappropriating, or converting moneys or received from the Dittmers in the course of doing the insurance business.

14. Under § 375.141.3 the Director may revoke the business entity license of Bergen Insurance Agency, Inc. because the Agency, through its partners, officers, or managers knew or should have known that one of its producers, Bergen, violated the insurance laws of Missouri as stated in Paragraph 12, above, and the violations were neither reported to the Director nor was corrective action taken.

15. Section 375.141 provides, 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;
>
> * * *
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
>
> (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]
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> * * *
>
> 3. The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.
>
> 4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.
>
> * * *

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

16. Title 20 CSR 100-4.100(2)(A) provides:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

17. Iowa Insurance Code § 522B.11(1)(p) provides, in part:

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

* * *

p. Failing or refusing to cooperate in an investigation by the commissioner.

18. Section 375.051.2 states:

Any insurance producer who shall act on behalf of any applicant for insurance or insured within this state, or who shall, on behalf of any applicant for insurance or insured, seek to place insurance coverage, deliver policies or renewal receipts and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, shall be held responsible in a trust or fiduciary capacity to the applicant for insurance or insured for any money so collected or received by him or her.

19. Title 20 CSR 700-1.140(1)(D), states as follows:

> Insurance producers shall remit all premium payments associated with a personal insurance policy to those persons entitled to them as soon as is reasonably possible after their receipt by the licensee, but in no event later than thirty (30) days after the date of receipt, provided, however, that premiums may be remitted at a later point in time if the licensee is so authorized under a written agreement between the licensee and the person legally entitled to the premiums. In no event, however, shall a licensee retain premium payments if to do so will result in the failure to obtain or continue coverage on behalf of an insured or prospective insured.

20. On or about June 20, 2011, counsel for the Consumer Affairs Division sent Bergen and Bergen Insurance Agency, Inc., a settlement offer with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of documents which are the basis thereof.

21. Bergen and Bergen Insurance Agency, Inc., acknowledge and understand that they each have the right to consult counsel at their own expense.

22. Bergen and Bergen Insurance Agency, Inc., admit to the facts alleged by the Consumer Affairs Division and outlined in this Consent Order.

23. Bergen and Bergen Insurance Agency, Inc., each agree that these facts constitute grounds to discipline Bergen's non-resident producer license and the business entity license of Bergen Insurance Agency, Inc.

24. Bergen and Bergen Insurance Agency, Inc. stipulate and agree to waive any rights that they may each have to a hearing before the Administrative Hearing Commission, the Director or Department, and any rights to seek judicial

review or other challenge or contest the terms and conditions of this 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.

25. 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.

Conclusions of Law

25. The allegations raised by the Consumer Affairs Division are grounds to discipline Bergen's non-resident insurance producer license pursuant to §§375.141.1(2), (4), (8), and (9).

26. The allegations raised by the Consumer Affairs Division are grounds to discipline the business entity license of Bergen Insurance Agency, Inc.'s pursuant to §§375.141.1(4) and .3.

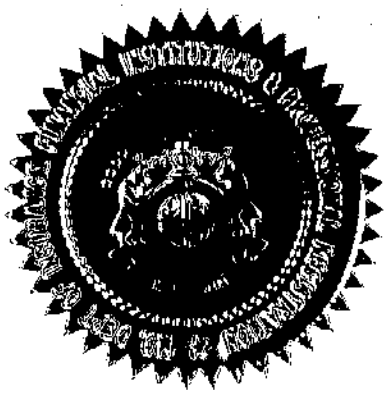
27. The Consumer Affairs Division is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to §§ 374.046 and 621.045, RSMo, and § 536.060, RSMo (2000).

28. 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 Respondent Bruce Bergen's non-resident producer license (#8012055) and the business entity license of Bergen Insurance Agency, Inc. (#8025745) are hereby revoked.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1ST DAY OF AUGUST, 2011.



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

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Respondent Bruce Bergen and Respondent Bergen Insurance Agency, Inc. have a right to a hearing, but that Respondents waived the hearing and consented to the issuance of this Consent Order.

7/19/11

Date

Bruce Bergen
3065 Baker St.
Marion, IA 52302

Bergen Insurance Agency, Inc.
3065 Baker St.
Marion, IA 52302

Respondents

Counsel for Respondents

Date

Missouri Bar No. _____

Telephone: _____
Facsimile: _____

7/28/11

Date

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