

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

**DIRECTOR OF THE DEPARTMENT)
OF INSURANCE, FINANCIAL)
INSTITUTIONS AND PROFESSIONAL)
REGISTRATION)
STATE OF MISSOURI,)
)
 Petitioner,)
)
vs.)
)
BETTY ANN BAILEY,)
)
 Respondent.)
)
Serve:)
 874 County Lane 228)
 Oronogo, Missouri 64855)**

FILED

JAN 29 2010

ADMINISTRATIVE HEARING
COMMISSION

Case No.:

COMPLAINT

The Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists to discipline the license held by Respondent Betty Ann Bailey, because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration. The Director has the duty to administer Chapters 374 and 375, RSMo, which includes the supervision, regulation, and discipline of insurance companies, agencies, and producers licensed to operate and conduct business in the State of Missouri.

2. The Department of Insurance, Financial Institutions and Professional Registration (“Department”) issued Respondent Betty Ann Bailey (“Respondent”) an

insurance producer license (No. 342600) on January 2, 1982. The Department subsequently renewed Respondent's license until it expired on February 3, 2009; Respondent has not applied to renew the license since it expired.

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2008).¹

COUNT I

4. Respondent improperly withheld, misappropriated, or converted moneys or properties received in the course of doing insurance business, which is a ground to discipline her Missouri insurance producer license pursuant to § 375.141.1(4).

5. Section 375.141.1, provides, in 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:

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

6. On November 6, 2008, Respondent pleaded guilty to and was sentenced to one year in county jail for 23 counts of Theft, in violation of K.S.A 21-3701(a)(1) Class A nonperson misdemeanor. See *State of Kansas v. Betty A. Bailey*, District Court of Cherokee County, Kansas, Case No. 08 CR 129. The theft convictions resulted from Respondent's misappropriation of premium dollars while employed with Palmer LLC, a Brooke Corporation insurance agency.

7. K.S.A. 21-3701(a)(1) provides, in part:

¹ All statutory references are to the 2008 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

(a) Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(1) Obtaining or exerting unauthorized control over property;

8. Upon entering a guilty plea to 23 counts of Theft, Respondent admitted to and affirms the following facts:

- a. On or about December 11, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$263.80; with the intent to permanently deprive the owner, to-wit: Brandon Ellison; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- b. On or about November 3, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$118.00; with the intent to permanently deprive the owner, to-wit: Charles Moreland; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- c. On or about January 3, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$78.75; with the intent to permanently

deprive the owner, to-wit: Charles Moreland; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

- d. On or about January 8, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$120.00; with the intent to permanently deprive the owner, to-wit: Charles Moreland; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- e. On or about June 11, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$114.00; with the intent to permanently deprive the owner, to-wit: Charles Moreland; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- f. On or about October 30, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$67.35; with the intent to permanently deprive the owner, to-wit: Donnie Tyree; of the possession, use or benefit

of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

- g. On or about March 22, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$217.00; with the intent to permanently deprive the owner, to-wit: Edward Semonick; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- h. On or about May 26, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$125.75; with the intent to permanently deprive the owner, to-wit: Glenda Morgan; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- i. On or about December 11, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$290.76; with the intent to permanently deprive the owner, to-wit: Jack Gearhart; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

- j. On or about November 6, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$117.50; with the intent to permanently deprive the owner, to-wit: James Ward; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- k. On or about June 8, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$159.16; with the intent to permanently deprive the owner, to-wit: Jeremy Carriger; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- l. On or about October 5, 2005, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$39.68; with the intent to permanently deprive the owner, to-wit: Kathy Leeper; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- m. On or about April 25, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or

exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$40.00; with the intent to permanently deprive the owner, to-wit: Tanya Bowin; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

- n. On or about February 5, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$36.77; with the intent to permanently deprive the owner, to-wit: Lucinda Patton; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- o. On or about November 1, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$17.00; with the intent to permanently deprive the owner, to-wit: Anna Moreland; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- p. On or about November 17, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$22.70; with the intent

to permanently deprive the owner, to-wit: Anna Moreland; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

- q. On or about February 12, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$14.00; with the intent to permanently deprive the owner, to-wit: Anna Moreland; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- r. On or about September 1, 2005, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$52.02; with the intent to permanently deprive the owner, to-wit: Patty Stacy; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- s. On or about June 10, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$40.45; with the intent to permanently deprive the owner, to-wit: Robert Erwin; of the possession, use or benefit of such

property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

- t. On or about July 5, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$45.00; with the intent to permanently deprive the owner, to-wit: Robert Erwin; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- u. On or about August 25, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$45.00; with the intent to permanently deprive the owner, to-wit: Robert Erwin; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.
- v. On or about September 20, 2006, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$394.00; with the intent to permanently deprive the owner, to-wit: Sam Delmont; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

w. On or about January 18, 2007, in Cherokee County, Kansas, Respondent, then and there being present did unlawfully and intentionally obtain or exert unauthorized control over property worth less than \$1000.00, to-wit: U.S. Currency in the amount of \$748.90; with the intent to permanently deprive the owner, to-wit: Karen Thomas; of the possession, use or benefit of such property, in violation of K.S.A. 21-3701(a)(1), Theft, a class A nonperson misdemeanor.

9. On or about November 6, 2008, the District Court of Cherokee County, Kansas sentenced Respondent to one year in county jail for each count, two counts to run consecutive and the remaining counts to run concurrently.

COUNT II

10. Respondent was convicted of crimes involving moral turpitude, 23 counts of Theft, in violation of K.S.A 21-3701(a)(1) Class A nonperson misdemeanor, each of which is a ground to discipline her Missouri insurance producer license pursuant to § 375.141.1(6).

11. Petitioner incorporates the allegations in paragraphs 4 through 8 as though fully stated herein.

12. Section 375.141.1, provides, in 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:

(6) Having been convicted of a felony or crime involving moral turpitude;

13. A crime involving moral turpitude is a crime involving “an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything ‘done contrary to justice, honesty, modesty, and good morals’.” *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

14. In *Brehe v. Mo. Dept. of Elementary & Secondary Education*, which involved an attempt to discipline a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three categories of crimes, the categories drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):

- (1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as “category 1” crimes);
- (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" (“category 2” crimes); and
- (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily (“category 3” crimes).

See *Brehe v. Mo. Dept. of Elementary & Secondary Education*, 213 S.W.3d 720, 725 (Mo. App. 2007).

15. Category 1 crimes, since they necessarily involve moral turpitude, require no analysis beyond their elements to show moral turpitude; category 3 crimes require some examination of the facts supporting the conviction in order to determine whether they involve moral turpitude. See *Brehe* at 725-727.

16. Respondent's crimes are category 1 crimes because they necessarily involve moral turpitude. See *Missouri Real Estate Commission v. Eric M. Rabicoff*, Mo. Admin. 08-1625 RE, 2009 WL 788016 (Mo.Admin.Hrg.Comm.) (analyzing K.S.A 21-3701); *In*

re Carpenter, 891 A.2d 223 (D.C. 2006) (moral turpitude is inherent in crimes which have an intent to defraud or steal); *U.S. v. Morrow*, 2005 WL 3163801 (D.D.C. June 2, 2005); and *Johnson v. Commonwealth*, 581 S.E.2d 880 (41 Va. App., 2003) (misdemeanor crimes of moral turpitude are limited to those crimes involving lying, cheating, and stealing).

COUNT III

17. Respondent's insurance producer license, or its equivalent, was revoked in the state of Kansas, which is a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(9).

18. Section 375.141.1, provides, in 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:

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

19. Respondent's employer contacted the Kansas Insurance Department regarding Respondent and concerns that several clients had given money to Respondent for insurance premiums that were not properly handled. The Kansas Insurance Department proceeded to investigate Respondent's conduct while an employee of Palmer, LLC.

20. On June 11, 2008, the Commissioner of Insurance for the Kansas Insurance Department issued an order ("Kansas Order") revoking Respondent's Kansas Nonresident Insurance Agent's License. See *In the Matter of the Kansas Nonresident*

Insurance Agent's License of Betty A. Bailey, Summary Order, Docket No. 3867-SO.

The Kansas Order is incorporated by reference.

21. The Kansas Order found:
 - a. Respondent improperly withheld, misappropriated or converted moneys or properties received in the course of doing insurance business; and
 - b. Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the state of Kansas or elsewhere.

COUNT IV

22. Respondent failed to report to the Director an administrative action taken against her in another jurisdiction within 30 days of the final disposition of the matter, which is a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(2).

23. Section 375.141.1, provides, in 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:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

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.

24. The Kansas Order constitutes an administrative action taken against a producer in another jurisdiction pursuant to § 375.141.6.

25. The Kansas Order was final on July 7, 2008.

26. Respondent failed to report the Kansas Order to the Director within 30 days of the final disposition of the matter.

COUNT V

27. Respondent failed to respond to Department inquiries as required by 20 CSR 100-4.100(2)(A), which is a ground to discipline Respondent's insurance producer license pursuant to § 375.141.1(2).

28. 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division, 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.

29. Under Missouri law, when a letter is duly mailed by first class mail, there is a rebuttable presumption that the letter was delivered to the addressee in the due course of the mails. *Hughes v. Estes*, 793 S.W.2d 206 (Mo. App. 1990).

30. On or about October 3, 2008, a Department investigator mailed Respondent a letter by first class mail inquiring about the Kansas Order and requiring a response by October 24, 2008.

31. The investigator's October 3, 2008 letter was not returned to the Department as undeliverable.

32. Respondent did not respond to the October 3, 2008 letter.

33. To date, Respondent has not contacted the Department in any way to demonstrate a reasonable justification for a delayed response to the October 3, 2008 letter.

COUNT VI

34. Respondent's theft, on 23 occasions, demonstrated fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, each of which is a ground to discipline Respondent's Missouri insurance producer license pursuant to § 374.141.1(8).

35. Section 375.141.1, provides, in 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:

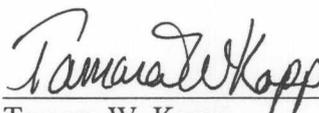
(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

36. Petitioner incorporates the facts alleged in paragraphs 6, 8a – 8w, 19-21, above.

37. Respondent stole funds in the course of doing insurance business.

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent Betty Ann Bailey's Missouri insurance producer license pursuant to §§ 375.141.1(2), (4), (6), (8), and (9), RSMo (Supp. 2008).

Respectfully submitted,



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