DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In re:	)	**DIFP No. 14-0127124C**
	)	
JOHN T. BINGAMAN.	)	**AHC No. 14-1463 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, 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, include supervision, regulation and discipline of insurance producers.

2. The Department issued Respondent John T. Bingaman ("Bingaman") a non-

resident insurance producer license (No. 8078078) on August 17, 2011. Said license will expire on August 17, 2015.

3. On September 2, 2014, the Director filed a Complaint with the Administrative Hearing Commission ("Commission"), seeking a finding that cause existed for disciplining Bingaman's non-resident insurance producer license.

4. On September 6, 2014, the Commission served Bingaman with a copy of the Complaint. Bingaman did not file an answer or otherwise respond.

5. On November 24, 2014, the Director filed a Motion for Sanctions. The Commission gave notice to Bingaman that he may respond to the motion; however, Bingaman filed no response.

6. On January 16, 2015, the Director filed a Motion for Partial Summary Decision with the Commission. Again, the Commission gave notice to Bingaman that he may respond to the motion; however, Bingaman filed no response.

7. On February 24, 2015, the Commission issued its Decision granting the Motion for Sanctions and the Motion for Partial Summary Decision. In the Decision, the Commission found cause to discipline Bingaman's non-resident insurance producer license pursuant to § 375.141.1(2), (8), and (9) RSMo (Supp. 2013).[1] *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. John T. Bingaman*, No. 14-1463 DI (Mo. Admin. Hrg. Comm'n).

8. In support of its finding of cause for discipline, the Commission found, *inter alia,* the following facts:

a. On September 12, 2013, Bingaman pled guilty to the felonies of Conspiracy to

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

Commit Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 1349, and Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. §§ 1956(h) and 1957 in *U.S. v. John Bingaman*, U.S.D.Ct. N.J., No. 1:13-cr-00598-JBS;[2]

b. Bingaman's signed plea agreement stated that he purchased three real properties; that he and others falsified Uniform Residential Loan Applications in order to secure loans in excess of $1.6 million; that he and others caused money wire transfers into co-conspirators' escrow accounts; and that he received $241,789.98 in illegal kickbacks for taking part in the conspiracy;

c. Bingaman did not report his ongoing federal criminal prosecution to the Department;

d. Bingaman failed to respond to two inquiry letters (November 1, 2013 and December 13, 2013) from the Department's Consumer Affairs Division;

e. On November 8, 2013, the Kansas Commissioner of Insurance issued a summary order revoking Bingaman's Kansas non-resident insurance agent's license in *In the Matter of the Kansas Nonresident Insurance Agent's License of John T. Bingaman* (Docket No. 4615-SO). The order became final on November 26, 2013;

f. Bingaman failed to report the Kansas revocation order to the Department within 30 days;

g. On November 19, 2013, Bingaman entered into a consent order with the

[2] As of the date of the Commission's Decision, Bingaman had not been sentenced. Decision, p. 3, n.3.

Arkansas Commissioner of Insurance in which he admitted to not timely reporting his federal felonies and agreed to voluntarily surrender his Arkansas resident insurance producer license. The Arkansas order, *Arkansas Insurance Department Order No. 2013-108, In the Matter of John Bingaman*, was effective immediately;

h. Bingaman did not report the surrender of his Arkansas license to the Department;

i. On January 23, 2014, the Mississippi Commissioner of Insurance revoked Bingaman's Mississippi insurance producer license in *In the Matter of John T. Bingaman: Action Against Insurance Producer License No. 10223429*; and

j. Bingaman did not report the revocation of his Mississippi license to the Department.

Id.

9. Based on its findings of fact, and in granting the Director's Motion for Sanctions and Motion for Partial Summary Decision, the Commission found and concluded that the Director is entitled to the relief sought in his Complaint and that cause exists to discipline Bingaman's non-resident insurance producer license pursuant to:

a. Section 375.141.1(2), for violating § 375.141.6, by Bingaman's failure to report administrative actions taken against him by Kansas, Mississippi, and Arkansas within 30 days of the final dispositions of the actions;

b. Section 375.141.1(2), for violating § 375.141.7, by Bingaman's failure to report to the Director his criminal prosecution for two federal felonies;

c. Section 375.141.1(2), for violating 20 CSR 100-4.100(2)(A), a regulation of the Director, by Bingaman's failure to respond to two written inquiries of the Consumer Affairs Division;

d. Section 375.141.1(8), by Bingaman's "use of fraudulent or dishonest practices demonstrating untrustworthiness and financial irresponsibility in the conduct of business[;]"[3] and

e. Section 375.141.1(9), for Bingaman having his insurance producer license, or its equivalent, revoked in Kansas and Mississippi.

Id.

10. On April 1, 2015, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

11. On April 2, 2015, the Director attempted to serve Bingaman by certified mail, UPS, electronic tracking and signature required, to Bingaman's address of record, with a Notice of Hearing, which set the disciplinary hearing for 10:00 a.m., May 5, 2015, at the Department, 301 West High Street, Room 530, Jefferson City, Missouri. UPS returned the undelivered package containing the Notice of Hearing.

12. On April 9, 2015, the Director served Bingaman the Notice of Hearing by regular mail through the United States Postal Service to Bingaman's address of record. The U.S. Postal Service did not return the Notice of Hearing served by regular mail and Bingaman is presumed to have received it.

13. On May 5, 2015, the Director, through his hearing officer, Tammy Kearns, held

[3] Decision, p. 11.

the disciplinary hearing in this matter. Neither Bingaman nor anyone representing him appeared at the disciplinary hearing. Disciplinary Hearing Transcript ("Tr.") 6-7. Mary S. Erickson, representing the Consumer Affairs Division, recommended that Bingaman's non-resident insurance producer license be revoked. Tr. 6 and 10.

14. At the hearing, the hearing officer took official notice of the Commission's record of proceedings and admitted it into evidence as Exhibit 1. Tr. 7-8.

15. The hearing officer also admitted Exhibits 2 and 3; the Notice of Hearing attempted to be served by certified mail and the Notice of Hearing served by regular mail, respectively. Tr. 6-8.

16. The Director hereby adopts and incorporates the February 24, 2015 Decision of the Administrative Hearing Commission referenced herein and does hereby find in accordance with the same. *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. John T. Bingaman*, No. 14-1463 DI (Mo. Admin. Hrg. Comm'n).

Conclusions of Law

17. Section 621.110 outlines the procedure after the Commission finds cause to discipline a license. That statute provides, 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.

18. Where an agency seeks to discipline a license, the Commission finds the predicate facts as to whether cause exists for the discipline, and then the agency exercises final decision-making 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).

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

> 2. If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, the director shall refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission 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.

20. Section 375.141 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;
>
> * * *
>
> (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[.]

* * *

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.

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.

21. Regulation 20 CSR 100-4.100(2)(A) states:

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.

22. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W. 3d 896, 900 (Mo. App. 2000) (internal citations omitted).

23. The principal purpose of § 375.141 is not to punish licensees, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

24. The Director has the discretion to discipline Bingaman's non-resident insurance

producer license. §§ 374.051.2, 375.141.1, and 621.110.

25. Based on the nature and severity of the aforementioned conduct, sufficient grounds exist for revoking Bingaman's insurance producer license pursuant to § 375.141.1(2), (8), and (9).

26. This Order is in the public interest.

ORDER

Based on the evidence presented and the foregoing findings and conclusions, the non-resident insurance producer license of **John T. Bingaman** (License No. 8078078) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 30th DAY OF July, 2015.

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 Parcel Service, signature required, on this 30th day of July, 2015 to:

John T. Bingaman
3717 Legacy Village Drive
Benton, Arkansas 77201

Tracking # 1Z0R15W84297693138

And hand delivered to:

Mary S. Erickson
Counsel for Consumer Affairs Division
Missouri Department of Insurance, Financial
Institutions and Professional Registration

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