



**DEPARTMENT OF INSURANCE, FINANCIAL  
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

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

**In re:**

**JOSEPH SHANE SCHMITZ,**

**Respondent.**

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**Case No. 130905520C**

**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, Tammy S. Kearns, and Respondent Joseph Shane Schmitz have reached a settlement in this matter and have consented to the issuance of this Consent Order.

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,<sup>1</sup> include supervision, regulation, and discipline of insurance producers.

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<sup>1</sup> All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement unless otherwise noted.

2. The Consumer Affairs Division (“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 Joseph Shane Schmitz (“Schmitz”) an individual resident insurance producer license (License No. 0185853) on October 11, 1996.

4. On April 22, 2013, Schmitz’s license was suspended for tax non-compliance pursuant to § 324.010 RSMo.

5. On October 11, 2014, Schmitz’s license expired.

6. The Division seeks to discipline Schmitz’s individual resident insurance producer license and alleges the following:

a. On August 12, 2011, the Department received notice from Ben Lamb (“Lamb”) of American Family Life Assurance Company of Columbus (“Aflac”) informing the Department of an investigation that was conducted on Schmitz. The investigation revealed the following information:

i. Between 1996 and 2007 Schmitz submitted twenty-three (23) policies<sup>2</sup> on himself to Aflac, one (1) of which was canceled before remitting any premiums to the company.

ii. Between 2008 and 2011 Schmitz submitted sixty-six (66) policies<sup>3</sup> on himself to Aflac, fifty-two (52) of which were canceled before remitting any premiums to the company.

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<sup>2</sup> Of such policies, Schmitz paid less than sixty days (60) on four (4) policies, less than ninety (90) days on four (4) policies, and more than one hundred and fifty (150) days on fourteen (14) policies.

iii. On August 3, 2011, Lamb conducted a recorded interview of Schmitz, during which Schmitz admitted to submitting the applications on himself, not paying premiums on most of the policies, and that he did so in order to obtain advanced commissions.

iv. Aflac paid Schmitz \$13,164.86 in commissions for policies on which he had paid little or no premiums.

v. Because most of the policies at issue were written in 2008 and 2009, Aflac recaptured the majority of the advanced commissions through charge backs to Schmitz's monthly statements and through charges on advanced commissions for valid policies that Schmitz had written.

b. On August 30, 2011 and on September 8, 2011, Keith Hendrickson ("Hendrickson"), formerly a Special Investigator with the Division, sent inquiry letters to Schmitz seeking an explanation regarding the allegations by Aflac.

c. On September 26, 2011, the Division received a letter from Schmitz stating, in part, as follows:

i. In the spring of 2008, Schmitz "really began to feel the loss of the override income [he had] grown accustomed to...[His] mortgage payment had fallen behind and [he] was in jeopardy of losing [his] house."

ii. A colleague had suggested Schmitz take out policies on himself, cancel them, and then re-write the policy to earn income.

iii. Schmitz wrote policies on himself during 2008 and 2009 "when everything seemed to hit rock bottom [for him] financially."

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<sup>3</sup> Of such policies, Schmitz paid less than thirty (30) days on four (4) policies, less than sixty (60) days on two (2) policies, less than ninety (90) days on five (5) policies, and more than one hundred and fifty (150) on three (3) policies.

iv. It is a common practice for Aflac employees throughout his region to write invalid policies on themselves and not pay premiums on such policies.

v. "I will take full responsibility for my actions. Yes, I wrote policies on myself to help pay bills. Yes, I did it numerous times during 2008 and 2009 during a very dark time in my life. Yes, I used poor judgment and regret what's happened."

d. On September 22, 2011, the Department received a letter from Aflac informing the Department that Aflac terminated Schmitz for cause, effective September 6, 2011, as a result of their investigation that revealed Schmitz's submissions of "invalid bogus business with no intent to pay."

e. During its investigation into Schmitz's tax compliance issues, the Division discovered the following delinquent tax obligations:

i. On August 27, 2010, the Greene County Circuit Court entered a judgment against Schmitz for unpaid taxes for the 2008 filing year as follows:

[Department of Revenue], under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of \$433.65]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

*Department of Revenue v. Joseph S. Schmitz, Green Co. Cir. Ct., Case No. 1031-MC03480.*

ii. On January 28, 2011, the Greene County Circuit Court entered a judgment against Schmitz for unpaid taxes for the 2002, 2004, 2005, 2006, and 2009 filing years as follows:

[Department of Revenue], under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to

tax, penalties, and fees have been made and become final [in the amount of \$13,490.73]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

*Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1131-MC00709.

iii. On April 6, 2012, the Greene County Circuit Court entered a judgment against Schmitz for unpaid taxes for the 2007 filing year as follows:

[Department of Revenue], under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of \$548.42]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

*Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1231-MC02253.

iv. On May 10, 2013, the Greene County Circuit Court entered a judgment against Schmitz for unpaid taxes for the 2010 and 2011 filing years as follows:

[Department of Revenue], under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of \$3,066.10]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

*Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1331-MC01143.

v. On June 6, 2014, the Greene County Circuit Court entered a judgment against Schmitz for unpaid taxes for the 2012 filing year as follows:

[Department of Revenue], under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the

amount of \$1,713.66]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

*Department of Revenue v. Joseph S. Schmitz, Green Co. Cir. Ct., Case No. 1431-MC01788.*

vi. None of the judgments in subparagraphs (i) through (v) above have been satisfied.

7. In light of these facts, Schmitz's individual resident insurance producer license is subject to discipline pursuant to:

a. Section 375.141.1(2) because Schmitz, in connection with the offer, sale, solicitation or negotiation of insurance, employed any deception, device, scheme, or artifice to defraud by submitting applications for eighty-nine (89) policies on himself in order to receive commissions, fifty-three (53) of which were canceled before any premiums were paid, thereby violating § 375.144(1), an insurance law.

b. Section 375.141.1(2) because Schmitz, in connection with the offer, sale, solicitation or negotiation of insurance, engaged in an act, practice, or course of business which operated as a fraud or deceit upon Aflac by submitting applications for eighty-nine (89) policies on himself in order to receive commissions, fifty-three (53) of which were canceled before any premiums were paid, thereby violating § 375.144(4), an insurance law.

c. Section 375.141.1(2) because Schmitz violated an insurance law, namely § 375.934, by engaging in an unfair trade practice under § 375.936(7), when he made false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person, by submitting applications for eighty-nine

(89) policies on himself, fifty-three (53) of which were canceled before any premiums were paid, in order to receive \$13,164.86 in cash incentives from Aflac. Schmitz committed such acts in conscious disregard of the law or with such frequency to indicate a general business practice to engage in that type of conduct.

d. Section 375.141.1(8) because Schmitz used fraudulent or dishonest practices or demonstrated untrustworthiness in the conduct of business by submitting applications for eighty-nine (89) policies on himself, fifty-three (53) of which were canceled before any premiums were paid, in order to receive \$13,164.86 in cash incentives from Aflac.

e. Section 375.141.1(14) because Schmitz failed to comply with an administrative or court order directing payment of state income taxes, to wit:

i. *Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1031-MC03480;

ii. *Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1131-MC00709;

iii. *Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1231-MC02253;

iv. *Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1331-MC01143; and

v. *Department of Revenue v. Joseph S. Schmitz*, Green Co. Cir. Ct., Case No. 1431-MC01788.

8. Schmitz agrees that the facts contained in this Consent Order constitute grounds to discipline his individual resident insurance producer license pursuant to § 375.141.1(2), (8), and (14).

9. Schmitz and the Division desire to settle the allegations raised by the Division.

10. On or about February 5, 2015, counsel for the Division provided a written description of the specific conduct for which discipline was sought and a citation to the law and rules allegedly violated, together with copies of any documents upon which it based the allegations, and the Division's settlement offer, namely, this Consent Order, in accordance with § 621.045.4(1). Counsel for the Division further advised Schmitz that he had sixty (60) days to review the relevant documents and consider the proposed settlement offer in accordance with § 621.045.4(2).

11. Schmitz acknowledges that he has been advised that he may, either at the time the Consent Order is signed by all parties, or within fifteen (15) days thereafter, submit the Consent Order to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Consent Order constitute grounds for discipline of Schmitz's individual resident insurance producer license.

12. Except as provided in paragraph 11 above, Schmitz stipulates and agrees to waive any rights that he may have to a hearing before the Administrative Hearing Commission or the Director and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever release and hold harmless the Department, the Director, his agents, and the Division from all liability and claims arising out of, pertaining to, or relating to this matter.

13. Schmitz acknowledges and understands that he has the right to consult an attorney at his own expense.

14. Schmitz acknowledges and understands that this Consent Order is an administrative action and will be reported by the Department to other states. Schmitz further acknowledges and understands that this administrative action should be disclosed on future applications and renewal applications in this state and in other jurisdictions and that it is his responsibility to comply with the reporting requirements of each state in which he is licensed.

15. 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**

16. 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:

\* \* \*

(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;  
[or]

\* \* \*

(14) Failing to comply with any administrative or court order directing payment of state or federal income tax.

\* \* \*

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.

17. Section 375.144 provides, in relevant part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

(1) Employ any deception, device, scheme, or artifice to defraud;

\* \* \*

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

18. Section 375.934 provides:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

(1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or

(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

19. Section 375.936 provides, in relevant part:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

\* \* \*

(7) "Misrepresentation in insurance applications", making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person[.]

20. The allegations raised by the Division, and admitted to herein by Schmitz, are grounds to discipline Schmitz's individual resident insurance producer license pursuant to § 375.141.1(2), (8), and (14).

21. The expiration of Schmitz's individual resident insurance producer license does not deprive the Director of jurisdiction to discipline Schmitz's license. Section 375.141.4.

22. The Director is authorized to settle this matter and issue this Consent Order in the public interest pursuant to §§ 374.046, 536.060, and 621.045.

23. 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** Joseph Shane Schmitz's individual resident insurance producer license (License No. 0185853) is hereby **REVOKED**.

**SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS** 26<sup>TH</sup> **DAY OF**  
FEBRUARY, 2015.



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

**CONSENT AND WAIVER OF HEARING**

The undersigned persons understand and acknowledge that Respondent Joseph Shane Schmitz has a right to a hearing, but that Joseph Shane Schmitz waived the hearing and consented to the issuance of this Consent Order.



Joseph Shane Schmitz  
2386 South April Avenue  
Springfield, Missouri 65807  
Telephone: (417) 343-4105  
Respondent

2/23/15

Date

\_\_\_\_\_  
Counsel for Respondent

Name: \_\_\_\_\_

Missouri Bar No. \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_  
Date



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2/20/15

Date