DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In re:	)	
	)	
KEVIN JAMES GUERRA,	)	**Case No. 150317026C**
	)	
Respondent.	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration, takes up the matter above for consideration and disposition. The Consumer Affairs Division, through counsel Tammy S. Kearns, and Respondent Kevin James Guerra 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 ("Director" of the "Department") whose duties, pursuant to Chapters 374 and 375 RSMo,[1] include the supervision, regulation, and discipline of insurance producers.

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

2. The Consumer Affairs Division ("Division") of the Department has the duty, charged by the insurance laws of this state, to investigate unfair or unlawful acts committed by insurance producers or companies and has been authorized by the Director to initiate this action in order to enforce the insurance laws of this state.

3. On December 5, 2013, the St. Charles County Prosecuting Attorney filed a Complaint with the court that charged Kevin James Guerra ("Guerra") with theft or stealing of at least $25,000 from Our Urgent Care, LLC. *State v. Kevin James Guerra*, St. Charles Co. Cir. Ct., Case No. 1311-CR07019-01.

4. On January 2, 2014, the Department received Guerra's Application for a Resident Insurance Producer License ("Application"). Guerra disclosed his pending criminal charge on his Application, attached a letter dated January 7, 2014 that explained the status of the charge, and provided a copy of the complaint.

5. The Department issued Guerra a resident insurance producer license (License No. 8323911) on July 28, 2014, which is set to expire on July 28, 2016.

6. On December 1, 2014, Guerra pled guilty to Theft/Stealing (Value of Property or Services Is $25,000 or More), a Class B Felony in violation of § 570.030 RSMo.[2] On April 10, 2015, the court sentenced Guerra to twelve (12) years' incarceration and one hundred twenty (120) days' shock incarceration. The court also ordered Guerra to pay $150,000.00 in restitution. *Id.*

7. After reviewing Guerra's Application, Division Special Investigator Karen Crutchfield ("Special Investigator Crutchfield") sent an inquiry letter to Guerra dated

[2] All references to criminal statutes are to the version of the statute under which each judgment was rendered.

January 17, 2014. Said letter requested additional information about Guerra's pending criminal charge.

8. Guerra responded to Special Investigator Crutchfield through an email dated February 10, 2014. Guerra stated, in relevant part, "I served as the operations director of Our Urgent Care ... [.] I was one of many person [*sic*] who deposited funds into the bank for the company."

9. Special Investigator Crutchfield sent a reply email dated February 13, 2014 requesting additional information on Guerra's pending criminal charge. Guerra did not respond to the February 13, 2014 email.

10. Special Investigator Crutchfield mailed an inquiry letter to Guerra dated March 7, 2014. Said letter contained the text of the February 13, 2014 email, which requested additional information on Guerra's pending criminal charge. The inquiry letter further requested a response by March 27, 2014 and warned Guerra that a failure to respond could result in refusal of his Application.

11. The United States Postal Service did not return the March 7, 2014 inquiry letter to the Division, and therefore, it is presumed received by Guerra.

12. Guerra did not respond to the March 7, 2014 inquiry letter nor did he demonstrate a reasonable justification for the delay.

13. Special Investigator Crutchfield mailed another inquiry letter to Guerra dated April 4, 2014. Said letter contained the text of the February 13, 2014 email, which requested additional information on Guerra's pending criminal charge. The letter further requested a response April 24, 2014 and warned Guerra that a failure to respond could result in refusal of

his Application. Two copies of said letter were sent to Guerra: one by first class mail and one by certified mail.

14. The United States Postal Service did not return the April 4, 2014 inquiry letter sent by first class mail to the Division, and therefore, it is presumed received by Guerra.

15. The April 4, 2014 inquiry letter sent by certified mail was not claimed.

16. Guerra did not respond to the April 4, 2014 inquiry letter nor did he demonstrate a reasonable justification for the delay.

17. In light of these facts, Guerra's resident insurance producer license is subject to discipline pursuant to:

a. Section 375.141.1(2) because Guerra violated Department regulation 20 CSR 100-4.100(2)(A) twice when he failed to adequately respond to the inquiry letters from the Division and failed to provide a reasonable justification for the delays.

b. Section 375.141.1(6) because Guerra has been convicted of a felony: Theft/Stealing (Value of Property or Services Is $25,000 or More), a Class B Felony. *State v. Kevin James Guerra*, St. Charles Co. Cir. Ct., Case No. 1311-CR07019-01.

c. Section 375.141.1(6) because Guerra has been convicted of a crime involving moral turpitude: Theft/Stealing (Value of Property or Services Is $25,000 or More), a Class B Felony. *Id.*

d. Section 375.141.1(8) because Guerra has used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere when he stole funds from Our Urgent Care, LLC while serving as its operations director. *Id.*

18. Guerra agrees that the facts contained in this Consent Order constitute grounds to discipline his resident insurance producer license pursuant to § 375.141.1(2), (6), and (8).

19. Guerra and the Division desire to settle the allegations raised by the Division.

20. On or about April 24, 2015, counsel for the Division, in accordance with § 621.045.4(1), provided a written description of the specific conduct for which discipline is sought; citations to the laws and rules allegedly violated; copies of documents supporting its allegations; and the Division's settlement offer, namely, this Consent Order. Counsel for the Division, in accordance with § 621.045.4(2), further advised Guerra that he had sixty (60) days to review the relevant documents and consider the proposed settlement offer.

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

22. Except as provided in paragraph 21 above, Guerra 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 this Consent Order and forever releases 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.

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

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

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

26. 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;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude; [or]
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial

> irresponsibility in the conduct of business in this state or elsewhere[.]

27. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries to 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.

28. There is a "presum[ption] that a document duly mailed has been received by the addressee." *Johnson v. March*, 376 S.W.3d 26, 31 (Mo. Ct. App. 2012) (internal citations omitted).

29. The Administrative Hearing Commission has defined moral turpitude as:

> 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. ... Theft has been held to involve moral turpitude."

Trice v. Dir. of Dep't of Ins., Fin. Insts. & Prof'l Reg'n, Mo. Admin. Hrg. Comm'n No. 10-1006 DI (Sept. 2, 2010) (quoting *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985)).

30. The allegations raised by the Division and admitted by Guerra herein are grounds to discipline Guerra's resident insurance producer license pursuant to § 375.141.1(2), (6), and (8).

31. The Director is authorized to settle this matter and issue this Consent Order pursuant to §§ 374.046, 536.060, and 621.045.

32. 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

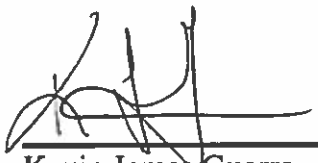
IT IS ORDERED THAT Kevin James Guerra's resident insurance producer license (License No. 8323911) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 18 DAY OF June, 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 Kevin James Guerra has the right to a hearing but that Kevin James Guerra hereby waives the hearing and consents to the issuance of this Consent Order.



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Facsimile:
Respondent

6/9/15
Date

Counsel for Respondent
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Missouri Bar No.: _____
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June 17, 2015
Date