DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In re:	)	
	)	DIFP No. 110718591C
JOHN S. KUHN.	)	
	)	AHC No. 11-1649 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 ("Director" of the "Department"), hereby issue the following findings of fact, conclusions of law, and order:

Findings of Fact

1. John M. Huff is the duly appointed Director ("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 Department issued Respondent John S. Kuhn ("Kuhn") an insurance producer license (No. 0102693) on January 31, 2009. Kuhn's license expired on January 30, 2011.

3. The Director filed a Complaint with the Administrative Hearing Commission ("Commission") on August 10, 2011, seeking a finding that cause existed for disciplining Kuhn's insurance producer license.

4. On September 21, 2011, Kuhn was served with a copy of the Complaint. Kuhn filed an Answer to the Complaint on October 28, 2011.

5. On October 27, 2011, the Director filed a motion for summary decision and suggestions in support. The Commission held oral argument on the Director's motion for summary decision on November 22, 2011. Counsel for the Director appeared personally, and Kuhn appeared by telephone.

6. On December 19, 2011, the Commission issued its Decision finding cause to discipline Kuhn's insurance producer license pursuant to §§ 375.141.1(2) and (7) RSMo (Supp. 2011).[1] The Commission found the following facts:

a. On May 30, 2008, Kuhn reported to the St. Peter's Police Department that his 2006 Chevy Silverado had been stolen.

b. Kuhn filed an insurance claim with American Family Insurance for the vehicle, which paid off the lien holder on June 19, 2008.

c. The Macon County sheriff's department recovered Kuhn's vehicle on January 23, 2009. Kuhn fully reimbursed American Family on or before January 29, 2009.

[1] All references are to the Revised Statutes of Missouri, Supplement 2011, unless otherwise indicated.

d. The St. Peter's Police Department contacted Kuhn in April 2009 to inquire about the matter. Kuhn admitted to hiding the vehicle and reporting it stolen in order to "get out from underneath the payment."

e. On May 1, 2009, Kuhn was charged with and subsequently pled guilty to, making a false report, a Class B misdemeanor, in St. Charles County Circuit Court. He received a suspended imposition of sentence with two years' probation.

f. Kuhn never reported to the Director the fact that he was charged with or pled guilty to, making a false report.

Commission's Decision, pp. 2-3.

7. The Commission specifically found that Kuhn did not deny most of the allegations in the Complaint. Further, it addressed Kuhn's arguments raised before the Commission:

> Kuhn argues that he is no longer working in the financial services industry and has no plans to do so again. He complains about the conduct of the Department's investigator and the handling of his case. He also states that he is willing to surrender his license, that he made full restitution to his insurance company before the St. Peters police department contacted him about the recovery of his vehicle, and that he had no idea that a misdemeanor with a suspended imposition of sentence needed to be reported, as he understood that the record in his case was sealed.
>
> Our role in this case is only to determine whether there is cause to discipline Kuhn's license, not to determine the degree of discipline. At a subsequent disciplinary hearing, Kuhn may make these arguments to the Director.

Commission's Decision, p. 2; 4-5.

8. The Commission concluded that Kuhn violated § 375.141.7, and was therefore subject to discipline under § 375.141.1(2), because Kuhn did not inform the Director when he

was charged or pled guilty to the crime of filing a false report, which is a crime of moral turpitude. *Commission's Decision, p. 4.*

9. The Commission also found cause to discipline Kuhn's insurance producer license under § 375.141.1(7) because Kuhn admitted to committing fraud when he induced the insurer to pay a claim by filing a false report. *Commission's Decision,* p. 4.

10. The Commission certified the record of its proceeding to the Director pursuant to § 621.110.

11. Thereafter, the Director served the Notice of Hearing and Order Granting Respondent's Request to Appear by Telephone upon Kuhn by certified mail and regular mail, which set the disciplinary hearing for 3:00 p.m., March 14, 2012, in the offices of the Department, 301 West High Street, Room 530, Jefferson City, Missouri. The certified mail receipt was signed and returned to the Director.

12. On February 1, 2012, the Director received Kuhn's letter expressing that the process before the Director is unnecessary and a waste of resources because he "resigned his position with Ameriprise Financial and the SEC and FINRA in February, 2011." Kuhn claimed that the investigator never sent him the paperwork to resign his license voluntarily. *Kuhn January 25, 2012 Letter to the Director.*

13. Kuhn appeared at the disciplinary hearing by telephone on March 14, 2012, *pro se*. Tamara Kopp appeared as counsel for the Department's Consumer Affairs Division ("Division").

14. The hearing officer, Mary S. Erickson, admitted the Division's Exhibit 1, the Commission's record of proceedings.

15. The Division's evidence consisted of Exhibit 1 and the testimony of EJ Jackson, Special Investigator with the Division. Jackson's testimony, both on direct and cross examination, focused upon his investigation and correspondence with Kuhn. Kuhn testified on his own behalf but did not offer any exhibits.

16. Jackson sent an email to Kuhn asking him to respond to the allegations of insurance fraud. Kuhn responded by email, but his response simply stated that he was leaving the industry. Jackson responded by advising Kuhn his response was not sufficient and requesting Kuhn provide a response to the allegations, and if he had questions, Kuhn could contact Jackson. *Disciplinary Hearing Transcript, ("Tr.") pp. 11, 13-14.*

17. Kuhn telephoned Jackson on February 9, 2011, explaining that since the money was paid back, he was leaving the industry, and he successfully completed his probation, "this was a nonissue." Jackson told Kuhn that he was still licensed by the Department and required to respond to its inquiries. Kuhn then hung up on Jackson. *Tr. 14, 23.* Jackson did not discuss a voluntary surrender of Kuhn's license in that conversation. *Tr. 14.*

18. After Kuhn hung up, Jackson tried to call Kuhn back, and when he did not reach him, Jackson left a message. Kuhn did not call Jackson back. *Tr. 14-15.*

19. Jackson later sent two subpoenas to Kuhn to appear before the Director: the first to 2220 Bay Tree Court, St. Peters, Missouri; the second to 1248 Harmony Lake in Cottleville, Missouri. The certified mailings with the subpoenas were returned, but the regular mailings were not. Kuhn did not appear at either subpoena conference. *Tr. 15-16, 18-19.*

20. In correspondence sent with the second subpoena on April 6, 2011, Jackson offered Kuhn the opportunity to voluntarily surrender his producer license. Jackson did not ever

receive a response to that correspondence. *Tr. 18.*

21. On cross examination, Jackson testified that he only spoke with Kuhn on February 9, 2011. *Tr. 23.* Later in the hearing, Kuhn testified that he would be surprised if Jackson called him less than eight to ten times. *Tr. 45.* Kuhn's statement that Jackson called or spoke with Kuhn on the telephone not less than eight to ten times is not credible.

22. Kuhn also questioned Jackson on why Jackson did not follow-up with Kuhn when Jackson did not receive the voluntary surrender back from Kuhn. *Tr. 37.* Jackson replied that previous attempts to contact Kuhn had been unsuccessful. *Tr. 37-39.* Jackson had exhausted all measures to contact Kuhn through written correspondence, email, and phone calls. *Tr. 19.*

23. Kuhn lived at 2220 Bay Tree Court address from October 2009 through August 2010, and then moved to 1248 Harmony Lake Drive, Cottleville, which has a St. Peters zip code. He still maintains that residence although he moved to his farm in Callao in spring, 2011. *Tr. 49-50.* Kuhn did not notify the Department of his change of address from Bay Tree Court. *Tr. 50.*

24. Kuhn stated under oath that he "never saw a letter from [Jackson] that I could have signed and sent back to him." *Tr. 45.*

25. Kuhn testified that he "offered a resignation" to Jackson: "I am not going to be in the industry. I would resign my . . . license. It was incumbent on him as the investigator, in my opinion, to send that out and to follow that up." *Tr. 45.*

26. At the hearing, the Division, through counsel and Special Investigator Jackson, recommended that Kuhn's insurance producer license be revoked. *Tr. 19, 55.* Jackson testified that Kuhn has been uncooperative during the investigation and "refuses to accept responsibility

for his actions." *Tr. 19.*

27. Kuhn asked for mercy and for the opportunity to "resign my position" as he believes was offered to him. *Tr. 55; see generally, Kuhn's Proposed Findings of Fact.*

28. The Director hereby adopts and incorporates the December 19, 2011 Decision of the Administrative Hearing Commission referenced herein and does hereby find in accordance with the same. *Director of Dep't of Ins., Fin. Insts. & Prof'l Reg'n v. John S. Kuhn,* No. 11-1649 DI (Mo. Admin. Hrg. Comm'n December 19, 2011).

29. After the disciplinary hearing, both parties submitted proposed findings of fact, conclusions of law and orders.

Conclusions of Law

30. 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. . . .

31. Where an agency seeks to discipline a license, the Commission "finds the predicate facts as whether cause exists" for the discipline, and then the agency "exercises final decisionmaking authority concerning the discipline to be imposed." *Tendai v. Board of Regis'n for the Healing Arts,* 161 S.W.3d 358, 364-65 (Mo. banc 2005), *overruled on other grounds, Albanna v. Board of Regis'n for the Healing Arts,* 293 S.W.3d 423, 428 n.2 (Mo. banc 2009).

32. 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.

33. Section 375.141 states, in pertinent 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;
>
> * * *
>
> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud [.]

* * *

> 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.

34. Section 375.141.4 allows the Director to revoke or suspend a license where the licensee has failed to renew his license.

35. The Director has the discretion to discipline Kuhn's insurance producer license, including the discretion to revoke such license. §§ 374.051.2, 375.141, and 621.110.

36. 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).

37. Kuhn offers no legal authority to support his argument that the Division should have followed up with him regarding the correspondence offering a voluntary surrender.

38. Kuhn's claim that Jackson should have attempted to contact Kuhn regarding the voluntary surrender rings hollow where Kuhn failed to update his address with the Department, failed to adequately respond to a Division inquiry, hung up on Jackson during the February 9, 2011 telephone conversation, and failed to respond to multiple attempts to contact Kuhn.

39. Section 375.141.1 provides that the Director may "suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one of" the listed grounds. Section 375.141.4 allows the Director to "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."

40. Section 621.110 allows the Director to receive evidence relevant to the appropriate disciplinary action. Hence, even if Kuhn had returned the voluntary surrender of his license, the Director still retains authority under § 374.141.4 to discipline a surrendered license. Therefore, the Director concludes that the evidence and arguments regarding whether Jackson should have engaged in further attempts to contact Kuhn are irrelevant to the determination of the appropriate discipline of Kuhn's insurance producer license. Even if he had surrendered his license, the Director has authority to discipline Kuhn's license.

41. Public policy supports this conclusion: § 375.141.4 prevents the tactical surrender of an insurance producer license to avoid discipline of that license.

42. Kuhn, as a licensed insurance producer, pled guilty to making a false report that his vehicle had been stolen, to "get out from underneath" his car payment. Although he repaid the insurance company for the false claim he had submitted, "[a] plea of guilty is an admission as to the facts alleged." *Wallace v. State,* 308 S.W.3d 283, 286-87 (Mo. App. S.D. 2010) (internal citation omitted). Kuhn committed fraud by filing a false police report relating to insurance. Such conduct is untenable for an insurance producer licensed by the State of Missouri.

43. Kuhn, as a licensed insurance producer, failed to report as required by law the criminal prosecution for filing a false report, a crime of moral turpitude.

44. Based on the nature and severity of the aforementioned conduct, sufficient grounds exist for revoking the insurance producer license of Kuhn pursuant to §§ 375.141.1(2) and (7).

ORDER

Based on the foregoing findings and conclusions, the insurance producer license of **John S. Kuhn** (License No. 0102693) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 7TH DAY OF JUNE, 2012.

John M. Huff, Director
Missouri Department of Insurance,
Financial Institutions and
Professional Registration

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2012, a copy of the foregoing Findings of Fact, Conclusions of Law and Order of Discipline, was served by regular mail and certified mail, No. 7009 3410 0001 8931 3247, to the following:

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And by hand-delivery to:

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