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DEPT. OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

STATE OF MISSOURI

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DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	**Case No. 101213746C**
LAM M. PHAN,	)	
	)	
Respondent.	)	

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, Ross A. Kaplan, and Respondent Lam M. Phan have reached a settlement in this matter and Respondent has consented to the issuance of this Consent Order.

Findings of Fact

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, include supervision, regulation, and discipline of insurance producers.

2. The Consumer Affairs Division of the Department ("Division") 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 originally issued Respondent Lam M. Phan ("Phan") an insurance producer license (No. 0332341) on July 12, 2004. The license is currently active.

4. On or about December 06, 2010, the Division referred Investigation File No. 94167/Tracking ID No. 115789 concerning Phan to the Director seeking to discipline Respondent Phan's insurance producer license.

5. The Division alleged the following regarding Respondent Phan:

a. On February 11, 2010, Farmers Insurance ("Farmers") terminated Phan for mishandling customers' insurance premiums and for manipulating Farmer's policy system to insure her vehicles without paying premium.

b. On June 16, 2010, in a letter to Dennis Fitzpatrick, Investigator for the Division, Phan stated:

> I had lost a significant amount of money; I don't remember the exact date. I was trying to replace the amount of money with my own money but my cash on hand was no enough to do so. That is when my deposits were running behind. I was using the current deposit to deposit for the previous one. I hoped to catch up with the shortage when I have a good month.

c. On July 12, 2010, the Commissioner of Insurance of the State of Kansas revoked Phan's nonresident insurance agent's license for improperly withholding, misappropriating, or converting money received in the course of doing insurance business and using dishonest practices and demonstrating

untrustworthiness or financial irresponsibility in the conduct of business in violation of Kansas Statute 40-4909(a). Kansas Commissioner of Insurance, *Summary Order*, August 9, 2010, Docket No. 4175—SO.

d. Phan did not report the Kansas administrative action to the Director within 30 days of its final disposition.

6. In light of these facts, Respondent Phan's insurance producer license is subject to discipline on the following grounds:

a. Improperly withholding, misappropriating or converting any moneys received in the course of doing insurance business and using dishonest practices, or demonstrating untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere in violation of Kansas Statute 40-4909(a) which is a ground to discipline under §375.141.1(2), RSMo (Supp. 2009).[1]

b. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business pursuant to §375.141.1(4).

c. Having admitted to committing any insurance unfair trade practice or fraud pursuant to §375.141.1(7). "Fraud is defined as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." *Fin. Solutions and Assocs. v. Carnahan*, 316 S.W.3d 518, 528 (Mo. App. W.D. 2010). Phan concealed from Farmers' that she had "lost a significant amount of money". This concealed, material fact induced Farmers' to act to its detriment by not

[1] All statutory references are to RSMo (Supp. 2009) unless otherwise indicated.

correcting the situation sooner or by not terminating Phan's employment sooner.

d. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere pursuant to §375.141.1(8).

e. Having an insurance producer license, or its equivalent, denied, suspended or revoked in Kansas pursuant to §375.141.1(9).

f. Failing to report to the Director the administrative action in Kansas within 30 days of the final disposition of the matter, as required by §375.141.6, which is grounds to discipline under §375.141.1(2).

7. 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;
>
> * * *
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> * * *
>
> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
>
> (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 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.

8. Kansas Statute 40-4909(a), K.S.A. (2009), provides, in relevant part:

> The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has ... (4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business... (8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere[.]

9. On or about July 05, 2011, counsel for the Division sent to Respondent Phan a settlement offer with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of documents which are the basis thereof. Counsel for the Division advised Respondent Phan that she had sixty (60) days to review the materials provided and consider the proposed settlement offer.

10. Respondent Phan acknowledges that she has been advised that she may, either at the time the settlement agreement is signed by the parties or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining Respondent's license.

11. Respondent Phan admits to the facts alleged by the Division and outlined in this Consent Order. Respondent agrees that these facts constitute grounds to discipline her insurance producer license.

12. Respondent Phan further acknowledges that she understands she has the right to consult an attorney at her own expense.

13. Except as agreed to and provided in Paragraph 10, Respondent Phan stipulates and agrees to waive any rights that she may have to a hearing before the Administrative Hearing Commission, the Director or Department, and any rights to seek judicial review or other challenge or contest the terms and conditions of this Order and forever releases and holds harmless the Department, the Director and his agents, and the Division from any and all liability and claims arising out of, pertaining to or relating to this matter.

14. 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

15. The allegations raised by the Consumer Affairs Division are grounds to discipline Respondent Phan's Missouri insurance producer license pursuant to §§375.141.1 (2), (4), (7), (8), and (9).

16. The Division is authorized to settle this matter and the Director is authorized to issue this Consent Order in the public interest pursuant to §621.045 and §536.060, RSMo (2000).

17. 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 Respondent Lam M. Phan's insurance producer license (No. 0332341) is hereby revoked.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 13th **DAY OF** SEPTEMBER**, 2011.**

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

CONSENT AND WAIVER OF HEARING

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

Lam Phan

8-01-2011

Lam M. Phan
5921 NE 42nd St.
Kansas City, Missouri 64117
Telephone: (816) 879-7269
Respondent

Date

Counsel for Respondent
Name: _____
Missouri Bar No. _____
Address: _____
_____
Phone: _____
Fax: _____

Date

Ross Kaplan

9-12-11

Ross A. Kaplan
Counsel for Consumer Affairs Division
Missouri Bar No. 62990
Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-2619
Facsimile: (573) 526-5492

Date