



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

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

In re:)
)
STEVEN KERBEL,) **Case No. 13-1120591C**
)
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, Tammy S. Kearns and Kelly A. Hopper, and Respondent Steven Kerbel, through counsel, Mark G.R. Warren, 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,¹ include supervision, regulation, and discipline of insurance producers.

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

¹ All statutory references are to the 2012 Supplement to the Revised Statutes of Missouri unless otherwise noted.

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 Steven Kerbel ("Kerbel") a non-resident insurance producer license (License No. 0414402) on March 28, 2008, which he subsequently renewed, and which expired on March 28, 2014.

4. The Department issued Rio National Insurance Services, Inc. ("Rio National") a business entity producer license (License No. 8024927) on August 29, 2008, which was subsequently renewed, and which is set to expire on August 29, 2014.

5. Rio National, at all times relevant, did not possess a valid certificate of authority as a third-party administrator ("administrator") issued by the Director, as required by § 376.1092 RSMo 2000.

6. According to Department records, Kerbel is listed as the President and designated responsible licensed producer of Rio National.

7. As the President and designated responsible producer of Rio National, Kerbel "may be found to be materially aiding any acts in violation of law engaged in by an unlicensed individual under the supervision of that insurance producer." 20 CSR 700-1.020(4)(B).

8. Kerbel also owns Rio Claims Services, Inc. ("Rio Claims").

9. Rio Claims, at all times relevant, was not licensed as a business entity producer in Missouri under § 375.015, nor did it possess a valid certificate of authority as an administrator issued by the Director under § 376.1092 RSMo 2000.

10. Rio National and Rio Claims entered into a Program Administration Agreement ("Agreement") with Pride National Insurance Company ("Pride") that recognized Rio National as the general agent of Pride and Rio Claims as the administrator of Pride claims.

11. Rio National and Rio Claims, through Kerbel as President and signatory for both companies, agreed to the following in the Agreement:

a. Rio National's authority under the Agreement included production, underwriting, accounting, and claims handling.

b. Rio National's authority under the Agreement included receipt of premiums and retention of commissions out of such collected premiums.

c. Rio National was required to accept and maintain all premiums collected and other funds relating to business written under the Agreement as a fiduciary for Pride.

d. Under the Agreement, Rio National was required not to commingle any premium or escrow funds with its corporate accounts or other funds held by Rio National in any other capacity.

e. Rio National agreed that all premiums and other funds collected by Rio National on behalf of Pride under the Agreement could be used solely for purposes expressly stated in the Agreement.

f. Rio Claims was authorized to settle all claims arising from business placed with Pride under the Agreement in accordance with established Pride procedures and applicable regulatory authority.

g. Rio Claims was authorized under the Agreement to set loss reserves for Pride on any policy.

h. Rio Claims was responsible for the safekeeping of all drafts on Pride used for settling claims.

12. Kerbel signed the Agreement on behalf of Rio National as its President.

13. Kerbel signed the Agreement on behalf of Rio Claims as its President.

14. The Division seeks to discipline Kerbel's non-resident insurance producer license and alleges the following:

a. As owner and President of both Rio National and Rio Claims, and as signatory to the Agreement on behalf of both companies, Kerbel supervised, directed, and was responsible for the conduct of Rio National, Rio Claims, and his respective employees.

b. As owner and President of both Rio National and Rio Claims, and as signatory to the Agreement on behalf of both companies, Kerbel had authority over, firsthand knowledge of, and/or was responsible for the production, underwriting, accounting, claims handling, and receipt of premium performed by Rio National and Rio Claims pursuant to the Agreement.

c. As a licensed insurance producer, and as signatory to the Agreement on behalf of both companies, Kerbel knew or should have known that the duties performed by both Rio National and Rio Claims pursuant to the Agreement could only legally be performed in Missouri by an administrator with a valid certificate of authority as an administrator issued by the Director, as required by § 376.1092 RSMo 2000.

d. As owner and President of both Rio National and Rio Claims, Kerbel knew that neither company possessed a valid certificate of authority as an administrator issued by the Director, as required by § 376.1092 RSMo 2000.

e. Kerbel knew or should have known that employees of Rio National and/or Rio Claims failed to promptly acknowledge communications from insureds when they failed to answer phone calls and failed to return calls from insureds who had not received claims checks that were due to them.

f. Kerbel directed employees of Rio National and/or Rio Claims to hold claims checks or had knowledge that his employees held claims checks for several weeks, and sometimes several months, after liability had become clear and the checks had been written out to the insureds.

g. Kerbel authorized the use of money in the claims account for purposes other than paying claims, including but not limited to, the purchase of postage stamps, payroll, and an office dinner party.

15. In light of these facts, Kerbel's non-resident insurance producer license is subject to discipline pursuant to:

a. Section 375.141.1(2) because Kerbel violated an insurance law, namely § 375.1007(2), when Kerbel, either personally or through his employees, on numerous occasions failed to acknowledge with reasonable promptness pertinent communications with respect to claims arising under Pride's policies administered by Kerbel and his companies. Specifically, Kerbel and his employees acting at his discretion and/or under his authority, failed to answer phone calls and failed to return calls from insureds who had not received claims checks that were due to them. Such violations were committed in conscious disregard of §§ 375.1000 to 375.1018 or, in the alternative, was committed with such frequency to indicate a general business practice to engage in that type of conduct, as required by § 375.1005(1) and (2).

b. Section 375.141.1(2) because Kerbel violated an insurance law, namely § 375.1007(3), when Kerbel, either personally or through his employees, failed to adopt and implement reasonable standards for the settlement of claims arising under its policies which is evidenced by Kerbel directing his employees to hold claims checks or knowing

that his employees held claims checks for several weeks, and sometimes several months, after liability had become clear and the checks had been written out to the insureds. Such violations were committed in conscious disregard of §§ 375.1000 to 375.1018 or, in the alternative, were committed with such frequency to indicate a general business practice to engage in that type of conduct, as required by § 375.1005(1) and (2).

c. Section 375.141.1(2) because Kerbel violated an insurance law, namely § 375.1007(4), when Kerbel, either personally or through his employees, failed to attempt in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability had become reasonably clear which is evidenced by Kerbel directing his employees to hold claims checks or knowing that his employees held claims checks for several weeks, and sometimes several months, after liability had become clear and the checks had been written out to the insureds. Such violations were committed in conscious disregard of §§ 375.1000 to 375.1018 or, in the alternative, were committed with such frequency to indicate a general business practice to engage in that type of conduct, as required by § 375.1005(1) and (2).

d. Section 375.141.1(2) because Kerbel violated an insurance law, namely § 376.1092 RSMo 2000, when Rio National and/or Rio Claims, under Kerbel's control, acted as, offered to act as, or held themselves out to be administrators without valid certificates of authority as administrators issued by the Director.

e. Section 375.141.1(4) because Kerbel improperly withheld money received in the course of doing insurance business when Kerbel directed his employees to hold claims checks or had knowledge that his employees held claims checks for several weeks,

and sometimes several months, after liability had become clear and the checks had been written out to the insureds.

f. Section 375.141.1(4) because Kerbel improperly withheld money received in the course of doing insurance business when Kerbel authorized the use of money in the claims account for purposes other than paying claims.

g. Section 375.141.1(8) because Kerbel demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business when Kerbel authorized the use of money in the claims account for purposes other than paying claims.

h. Section 374.141.1(8) because Kerbel demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business for each of the unlawful actions alleged in paragraph 15, subparagraphs a. through f.

16. Kerbel and the Division desire to settle the allegations raised by the Division.

17. On or about March 19, 2014, 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 initial settlement offer, in accordance with § 621.045.4(1). Counsel for the Division further advised Kerbel that he had sixty (60) days to review the relevant documents and consider the proposed settlement offer in accordance with § 621.045.4(2).

18. Kerbel acknowledges and understands that he has the right to consult an attorney at his own expense and is represented by Mark G.R. Warren.

19. Kerbel further 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 Kerbel's insurance producer license.

20. Except as provided in paragraph 19 above, Kerbel 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.

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

22. Kerbel, by signing this Consent Order, admits only for the purposes of settlement and review pursuant to Chapters 536 and 621, RSMo, that the facts contained in this Consent Order constitute grounds to discipline his non-resident insurance producer license pursuant to § 375.141.1(2), (4), and (8).

23. Kerbel, by signing this Consent Order, certifies that he is fully authorized, in his own capacity, to accept the terms and provisions of this Consent Order in their entirety, and agrees to be bound by the terms of this Consent Order.

24. The parties agree that neither party is the prevailing party and enter into this agreement for the purposes of settlement only, and each party will bear its own attorneys' fees and costs.

Conclusions of Law

25. 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;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

26. Section 375.1002 provides, in relevant part:

* * *

(2) "Insurer", any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters, public adjuster and third party administrators. "Insurer" shall also mean health services corporations, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans. For the purposes of sections 375.1000 to 375.1018, these foregoing entities shall be deemed to be engaged in the business of insurance. "Insurer" shall also include all companies organized, incorporated or doing business under the provisions of chapters 325, 375, 376, 377, 378, 379, 381, and 383;

(3) "Person", any natural or artificial entity, or aggregate of such entities, including, but not limited to, individuals, partnerships, associations, trusts or corporations[.]

27. Section 375.1005 provides, in relevant part:

It is an improper claims practice for any domestic, foreign or alien insurer transacting business in this state to commit any of the acts defined in section 375.1007 if:

- (1) It is committed in conscious disregard of sections 375.100 to 375.1018 or any rules promulgated under sections 375.1000 to 375.1018; or
- (2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

28. Section 375.1007 provides, in relevant part:

Any of the following acts by an insurer, if committed in violation of section 375.1005, constitutes an improper claims practice:

* * *

- (2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;
- (4) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear[.]

29. Section 376.1075 provides, in relevant part:

- (1) "Administrator", "third-party administrator" or "TPA", a person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, or residents of another state from offices in this state, in connection with life or health insurance coverage, annuities, or workers' compensation[.]²

² Subdivision (1) of section 376.1075 enumerates numerous exceptions to this definition in paragraphs (a) through (o), none of which were applicable to Rio National or Rio Claims at any time relevant to the events in this Consent Order.

30. Section 376.1092 provides, in relevant part:

1. No person shall act as, or offer to act as, or hold himself out to be an administrator in this state without a valid certificate of authority as an administrator issued by the director.

31. Title 20 CSR 700-1.020(4)(B) provides:

- (B) A licensed insurance producer may be found to be materially aiding any acts in violation of law engaged in by an unlicensed individual under the supervision of that insurance producer.

32. The allegations raised by the Division, and admitted to herein by Kerbel, are grounds to discipline Kerbel's insurance producer license pursuant to § 375.141.1(2), (4), and (8).

33. 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.

34. 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.

SETTLEMENT TERMS AND ORDER

Steven Kerbel consents to revocation of his non-resident insurance producer license (License No. 0414402) and the following special conditions:

1. Steven Kerbel shall pay the amount of twenty-five thousand dollars (\$25,000.00) as a forfeiture authorized by § 374.046.15, and pursuant to § 374.280 made payable to the State School Moneys Fund for the above-described violations, after being afforded the opportunity to consult legal counsel, in accordance with §§ 374.049.11 and 374.280.2, and Article IX, Section 7 of the Missouri Constitution.

2. Such forfeiture shall be made in two payments.

a. Steven Kerbel's first payment of fifteen thousand dollars (\$15,000.00) shall be due immediately by money order or cashier's check made payable to the State School Moneys Fund, and shall be forwarded with this executed Consent Order to the attention of Tammy Kearns, Missouri Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, Missouri 65102. Any correspondence and/or money order or cashier's checks shall reference the case name and number appearing at the top of this Consent Order.

b. Steven Kerbel's second payment of ten thousand dollars (\$10,000.00) shall be due within sixty (60) days of the effective date of this Consent Order by money order or cashier's check made payable as described in paragraph 2.a.

3. This Consent Order is effective upon execution by the Director.

4. Steven Kerbel, by signing this Consent Order, agrees to not apply for renewal of his Missouri non-resident insurance producer license, either personally or via an authorized submitter.

5. Steven Kerbel, by signing this Consent Order, agrees to never apply for a resident or non-resident insurance producer license in Missouri, either personally or via an authorized submitter.

6. Steven Kerbel, by signing this Consent Order, agrees to let Rio National Insurance Services, Inc.'s Missouri business entity producer license lapse and agrees that neither he nor any member of current ownership will apply for renewal of Rio National Insurance Services, Inc.'s Missouri business entity producer license, either personally or via an authorized submitter.

7. Steven Kerbel, by signing this Consent Order, agrees that neither he nor any other member of current ownership will ever apply for a resident or non-resident business entity producer license for Rio National Insurance Services, Inc. in Missouri, either personally or via an authorized submitter.

IT IS ORDERED THAT Steven Kerbel's non-resident insurance producer license (License No. 0414402) is hereby **REVOKED**.

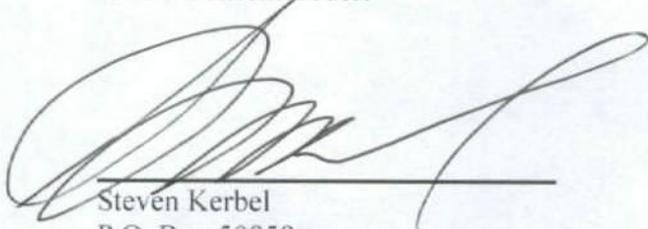
SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 25TH **DAY OF**
JULY, 2014.



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

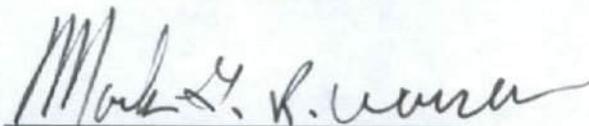
CONSENT AND WAIVER OF HEARING

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



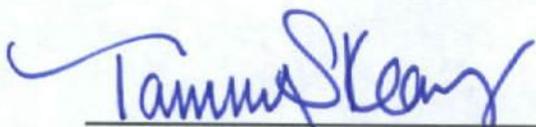
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7/22/2014
Date



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7/24/14
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7/25/14
Date