DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In re:	)	**DIFP No. 110927705C**
	)	
Mark James Strong	)	**AHC No. 12-0744 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, hereby issue the following findings of fact, conclusions of law, and order of discipline:

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, 375, and 384 RSMo, include supervision, regulation and discipline of insurance producers and surplus lines insurance producers.

2. The Department issued Mark James Strong ("Strong") a non-resident insurance producer license (No. 0138633) on December 11, 1987, which expired on December 11, 2011.

3. The Department issued Strong a surplus lines producer license (No. 0138633) on May 3, 2004, which expired on May 3, 2012.

4. The Director filed a Complaint with the Administrative Hearing Commission ("Commission") on May 4, 2012, seeking a finding that cause existed for disciplining Strong's insurance producer license pursuant to § 375.141.1(2), (8), and (9) RSMo (Supp. 2011),[1] and Strong's surplus lines producer license pursuant to § 384.065(4), (6), and (7) because Strong failed to file surplus lines reports, Strong's license was revoked in four states, Strong failed to report those four administrative actions, and Strong failed to respond to inquiries. *Director of Dep't of Ins., Fin. Insts. & Prof'l Reg'n v. Mark James Strong,* No. 12-0744 DI (Mo. Admin. Hrg. Comm'n).

5. On June 15, 2012, Strong was served with a copy of the Complaint. Strong never filed an answer or otherwise responded to the Complaint.

6. On August 16, 2012, the Commission issued an Amended Default Decision in accordance with 1 CSR 15-3.380(7) against Strong establishing that the Director has cause to discipline Strong under § 375.141.1(2), (8), and (9) and under § 384.065(4), (6), and (7) (as pled by the Director in his Complaint before the Commission):

a. Cause exists to discipline Strong's insurance producer license pursuant to § 375.141.1(2) and his surplus lines producer license pursuant to § 384.065(7)[2] because Strong violated an insurance law, namely § 384.057.2, when he failed to file a surplus lines quarterly statement within 45 days of the end of the calendar quarter. (Complaint Count I.)

b. Cause exists to discipline Strong's insurance producer license pursuant to § 375.141.1(2) and his surplus lines producer license pursuant to

1 All statutory references are to the RSMo (Supp. 2011) unless otherwise indicated.

2 The same conduct also subjects Strong's surplus lines producer license to discipline pursuant to § 384.065(4) and (6).

§ 384.065(7)[3] because Strong violated an insurance law, namely § 384.057.1, when he failed to file an annual Surplus Lines Tax Report by March 2, 2012. (Complaint Count II.)

c. Cause exists to discipline Strong's insurance producer license pursuant to § 375.141.1(2) and his surplus lines producer license pursuant to § 384.065(7) because Strong violated an insurance law, namely § 375.141.6, when he failed to report four administrative actions taken against him in other jurisdictions within 30 days of the final dispositions of the matters. Each failure to report an administrative action is a separate violation of § 375.141.6 and separate cause to discipline Strong's licenses pursuant to § 375.141.1(2). (Complaint Count III.)

d. Cause exists to discipline Strong's insurance producer license pursuant to § 375.141.1(2) and his surplus lines producer license pursuant to § 384.065(7) because Strong violated the insurance laws of Kentucky, Washington, South Dakota, and Illinois. (Complaint Count IV.)

e. Cause exists to discipline Strong's insurance producer license pursuant to § 375.141.1(2) and his surplus lines producer license pursuant to § 384.065(7) because Strong violated a Missouri insurance regulation, namely 20 CSR 100-4.100(2)(A), by failing to respond to the April 4, 2011, May 16, 2011, and April 25, 2012 Division inquiries within 20 days and never demonstrating a reasonable justification for a delayed response to the inquiries. (Complaint Count V.)

f. Cause exists to discipline Strong's insurance producer license pursuant to § 375.141.1(8) and his surplus lines producer license pursuant to § 384.065(7) because the Illinois Department of Insurance found Strong "demonstrated incompetence, untrustworthiness and financial irresponsibility, in the conduct of business" when Strong "improperly withheld money required to be held in a fiduciary capacity." *In the Matter of the Revocation of Licensing Authority of: Geo F. Brown & Sons Inc. and Mark J. Strong.* (Complaint Count VI.)

g. Cause exists to discipline Strong's insurance producer license pursuant to § 375.141.1(9) and his surplus lines producer license pursuant to § 384.065(7) because Strong had his insurance producer license or its equivalent denied or revoked in Kentucky, Washington, South Dakota, and Illinois, each of which is a separate and sufficient ground to discipline Strong's licenses in Missouri. (Complaint Count VII.)

h. Strong's surplus lines producer license is subject to discipline pursuant to

3 The same conduct also subjects Strong's surplus lines producer license to discipline pursuant to § 384.065(4) and (6).

§ 384.065(4) because Strong failed to file two reports, a quarterly report and an Annual Surplus Lines Tax Report as required by § 384.057. (Complaint Count VIII.)

i. Strong's surplus lines producer license is subject to discipline pursuant to § 384.065(6), because Strong violated a provision of the Missouri Surplus Lines Law, §§ 384.011 to 384.071, namely § 384.057, when he failed to file a two reports. (Complaint Count IX.)

7. On September 13, 2012, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

8. The Director served the Notice of Hearing upon Strong by certified mail and first class mail, which set the disciplinary hearing for 1:30 p.m., October 11, 2012, in the offices of the Department, 301 West High Street, Room 530, Jefferson City, Missouri. Someone other than Strong signed for the certified mail sent to Strong at 5868 N. Forest Glen Avenue Chicago, Illinois 60646-6651. The Notice of Hearing sent to Strong by first class mail was not returned as undeliverable.

9. On October 11, 2012, the Director, through his hearing officer, Mary S. Erickson, held the disciplinary hearing. Neither Strong nor anyone representing him appeared at the disciplinary hearing. Tamara Kopp appeared as counsel for the Department's Consumer Affairs Division ("Division"). *Disciplinary Hearing Transcript ("Tr."), 5.*

10. The hearing officer admitted into evidence the Division's Exhibits 1-9, as follows:

a. Exhibit 1, Affidavit of Licensure. *Tr. 11.*

b. Exhibit 2, Certified Copy of *In the Matter of Mark James Strong Geo. F. Brown & Sons, Inc. and Mark James Strong* ("Kentucky Administrative Action"). *Id.*

c. Exhibit 3, Certified Copy of *In the Matter J. Strong, Licensee,* No. 10-0153 ("Washington Administrative Action"). *Id.*

d. Exhibit 4, Certified Copy of *In the Matter of Mark J. Strong, Licensee*, INS

10-12 ("South Dakota Administrative Action"). *Id.*

e. Exhibit 5, Certified Copy of *In the Matter of the Revocation of Licensing Authority of: Geo F. Brown & Sons Inc. and Mark J. Strong* ("Illinois Administrative Action"). *Id.*

f. Exhibit 6, Affidavit of Karen Crutchfield. *Id.*

g. Exhibit 6A, April 4, 2011 Letter to Strong. *Id.*

h. Exhibit 6B, May 16, 2011 Letter to Strong. *Id.*

i. Exhibit 6C, April 25, 2012 Letter to Strong. *Id.*

j. Exhibit 7, Affidavit of Lillian Overbey. *Id.*

k. Exhibit 8, Certified AHC record. *Tr. 16.*

l. Exhibit 9, Notice of Hearing. *Id.*

11. The Division presented testimony by Lillian Overbey, Taxation Manager for the Department. *Tr. 11-15.* Overbey testified that Strong owes surplus lines taxes to the State of Missouri for tax year 2010, and he has made no efforts to pay the overdue amount owed. *Tr. 13.*

12. At the hearing, the Division, through counsel, recommended that Strong's licenses be revoked. *Tr. 16-17.*

13. The Director hereby adopts and incorporates the August 16, 2012 Amended Default Decision of the 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. Mark James Strong,* No. 12-0744 DI (Mo. Admin. Hrg. Comm'n Aug. 16, 2012).

14. Because the Commission did not make specific findings of fact in its Amended Default Decision, the facts as pled in the Complaint before the Commission are deemed as true to support the finding that cause to discipline exists.

15. Furthermore, the Director makes the following findings of fact based upon the

evidence presented at the disciplinary hearing:

a. The following administrative actions were taken against Strong in other jurisdictions during the time Strong was licensed as an insurance producer and surplus lines insurance producer in Missouri:

   i. On June 17, 2010, in its Order Revoking License, the Kentucky Department of Insurance ("Kentucky") revoked Strong's Kentucky insurance licenses because Strong failed to file his surplus lines annual statement in violation of KRS 91A.080, KRS 304.10-180, and 806 KAR 2:095, and failed to pay a civil penalty in violation of 304.9-440 and KRS 304.99-020. *Ex 2, In the Matter of Mark James Strong Geo. F. Brown & Sons, Inc. and Mark James Strong.*

   ii. On August 13, 2010, in its Order Revoking License, the Washington Office of Insurance Commissioner ("Washington") revoked Strong's licenses effective September 2, 2010. Washington revoked Strong's licensees because Strong violated RCW 48.17.597 by failing to report the Kentucky Administrative Action and RCW 48.17.475 by failing to respond to Washington's letters. *Ex. 3, In the Matter J. Strong, Licensee,* No. 10-0153.

   iii. On September 8, 2010, in its Final Decision, the South Dakota Department of Revenue and Regulation Division of Insurance ("South Dakota") revoked Strong's South Dakota non-resident insurance producer license because Strong failed to respond to a South Dakota inquiry in violation of SDCL 58-33-66(1) and because Strong failed to report an administrative action in violation of SDCL 58-30-193. *Ex. 4, In the Matter of Mark J. Strong, Licensee*, INS 10-12.

   iv. On October 7, 2010, in its Order of Revocation, the Illinois Department of Insurance ("Illinois") revoked the license of Mark J. Strong and the business entity license of Geo F. Brown & Sons Inc. and found the business entity and licensee "demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business." Strong's and the business entity improperly withheld premiums in violation of 215 ILCS 5/500-115(a), issued unlawful disbursements from Premium Fund Trust Accounts ("PFTA") in violation of 50 Ill. Adm. Code 3113.40(h), did not support all of the commissions transferred through wire transfers withdrawals with written records in violation of 50 Ill. Adm. Code 3113.50(e)(6), failed to maintain a positive running balance on the PFTA statements or in the check stubs or disbursements register after each deposit or disbursement entry in violation of 50 Ill. Adm. Code 3113.50(h), failed to maintain prior written authorization of the insurer

on whose behalf funds are to be held in violation of 50 Ill. Adm. Code 3113.40(k), maintained two different cash receipt registers but did not maintain the minimum detail required for the cash receipts register for the PFTAs in violation of 50 Adm. Code 3113.50(d), and maintained four fiduciary accounts that were not all designated as a PFTA on the bank records and those words were not displayed on the face of the checks in violation of 50 Ill. Adm. Code 3113.40(b). *Ex. 5, In the Matter of the Revocation of Licensing Authority of: Geo F. Brown & Sons Inc. and Mark J. Strong.*

b. Strong never reported the Kentucky, Washington, South Dakota or Illinois administrative actions to the Director. *Ex. 6, Affidavit of Karen Crutchfield, ¶4.*

c. Strong was required to file a surplus lines quarterly statement within 45 days of the end of the calendar quarter for fourth quarter 2010. *See* § 384.057.2. When Strong failed to make the required filing, due by February 15, 2011, the Department mailed Strong several notices. *Ex. 7, Affidavit of Lillian Overbey, ¶¶4-5.*

d. Strong owes surplus lines taxes to the State of Missouri for tax year 2010, and he has made no efforts to pay the overdue amount owed. *Tr. 13.*

e. Strong failed to respond to the Department's notices and never filed the required surplus lines quarterly statement for fourth quarter 2010. *Ex. 7, ¶6.*

f. When Strong did not respond, the file was referred to the Division for further investigation. *Ex. 7, ¶7.*

g. On or about April 4, 2011, the Division sent Strong written correspondence by certified mail to the mailing address on record with the Department as well as to his residence and business address on record with the Department and requested that Strong respond to the Division and indicate why he had failed to respond to correspondence from the Department regarding his quarterly filing and requesting he explain and provide copies of the revocations from Illinois, South Dakota, Washington, and Kentucky. *Ex. 6, ¶¶5-6; Ex. 6A, April 4, 2011 Letter to Strong.*

h. The Division's April 4, 2011 correspondence to Strong's mailing address was returned to the Department as refused, however, the correspondence sent to his residence and business, was not returned to the Department as undeliverable. *Ex. 6, ¶7.*

i. Strong failed to respond to the Division's April 4, 2011 correspondence or contact the Division to demonstrate a reasonable justification for a delayed response. *Ex. 6, ¶8.*

j. On or about May 16, 2011, the Division sent Strong written correspondence by first class U.S. mail to the mailing address of record as well as to his residence and business address of record with the Department and requested that Strong respond to the Division and indicate why he had failed to respond to correspondence from the Department and requesting he explain and provide copies of the revocations from Illinois, South Dakota, Washington, and Kentucky. *Ex. 6, ¶¶9-10; Ex. 6B, May 16, 2011 Letter to Strong.*

k. The Division's May 16, 2011 correspondence was not returned to the Department as undeliverable. *Ex. 6, ¶11.*

l. Strong failed to respond to the Division's May 16, 2011 correspondence or contact the Division to demonstrate a reasonable justification for a delayed response. *Ex. 6, ¶12.*

m. Strong failed to file his annual Surplus Lines Tax Report by March 2, 2012, as required by § 384.057.1. *Ex. 7, ¶8.*

n. On April 25, 2012, the Division sent Strong written correspondence by first class U.S. mail and certified mail to the residential and business address of record with the Department and requested that Strong respond to the Division to explain why he had not filed the Surplus Lines Tax Report by March 2012. *Ex. 6, ¶¶13-14; Ex. 6C, April 25, 2012 Letter to Strong.*

o. The Division's April 25, 2012 correspondence was not returned to the Department as undeliverable. *Ex. 6, ¶15.*

p. Strong failed to respond to the Division's April 25, 2012 correspondence or contact the Division to demonstrate a reasonable justification for a delayed response. *Ex. 6, ¶16.*

16. After the disciplinary hearing, the Division submitted proposed findings of fact, conclusions of law and order of discipline.

Conclusions of Law

17. Section 621.110 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. . . .

18. 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 Reg'n for the Healing Arts,* 161 S.W.3d 358, 364-65 (Mo. banc 2005), *overruled on other grounds, Albanna v. Board of Reg'n for the Healing Arts,* 293 S.W.3d 423, 428 n.2 (Mo. banc 2009).

19. 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.

20. Section 375.141 provides, in 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;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

* * *

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.

* * *

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.

21. Section 384.065 provides, in relevant part:

The director may suspend, revoke, or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under the applicable provisions of this state's laws upon any one or more of the following grounds:

* * *

(4) Failure to make and file required reports;

* * *

(6) Violation of any provision of sections 384.011 to 384.071; or

(7) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under section 375.141.

22. *Alea London Ltd. v. Bono-Soltysiak Enters.*, 186 S.W.3d 403, 407 n.1 (Mo. App. E.D. 2006) discusses surplus lines as follows:

> A surplus lines insurer is a "non-admitted insurer" within the meaning of § 384.015[.] Non-admitted insurers are not licensed to do business in Missouri. Surplus lines insurance has been described as a "last resort for the placement of liability or property insurance on unusual risks." Eric Mills Holmes & Mark S. Rhodes, *Holmes' Appleman on Insurance 2d Treatise Guide,* § 2.17 at 325–26 (1996).

23. The Missouri Surplus Lines Law, Chapter 384 RSMo, subjects the surplus lines industry to regulation by the Department. Surplus lines insurance producers generally accept premium payments on behalf of non-admitted insurance companies,[4] and then pay a 5% premium tax to the Missouri Department of Revenue based on the amount of premiums the producer collects.[5]

24. Surplus lines insurance producers may also be licensed as insurance producers and are regulated as both surplus lines producers under Chapter 384 and insurance producers under Chapters 374 and 375. *See generally Chapters 374, 375, and 384.*

25. Section 384.057 requires that surplus lines licensees file an annual Surplus Lines Tax Report and a quarterly statement, and further provides:

> 1. Before March second of each year, each surplus lines broker shall report under oath to the director on forms prescribed by him or her a statement showing, with respect to the year ending the immediately preceding December thirty-first for nonadmitted insurance where the home state of the insured is this state:
>
> (1) The gross amounts charged for surplus lines insurance, exclusive of sums collected for the payment of federal, state or local taxes;

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4 Section 384.041 RSMo 2000.

5 Sections 384.057 and 384.061; Section 384.059 RSMo 2000.

> (2) The amount of net premiums with respect to the insurance. For the purpose of this section, "net premiums" means the gross amount of charges for surplus lines insurance, exclusive of sums collected for the payment of federal, state and local taxes, less returned premiums.
>
> 2. No later than within forty-five days after the end of each calendar quarter ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first each surplus lines broker shall report under oath to the director on forms prescribed by him or her a statement showing, with respect to each respective calendar quarter for nonadmitted insurance where the home state of the insured is this state:
>
> (1) The gross amounts charged for surplus lines insurance, exclusive of sums collected for the payment of federal, state, or local taxes;
>
> (2) The amount of net premiums with respect to the insurance. For the purpose of this section, "net premiums" means the gross amount of charges for surplus lines insurance, exclusive of sums collected for the payment of federal, state, and local taxes, less returned premiums.

26. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division provides:

> (A) 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.

27. The Director has discretion to discipline Strong's licenses, including the discretion to revoke such licenses. §§ 374.051.2, 375.141.1, 384.065, and 621.110.

28. 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).

29. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, is not to punish licensees, but to protect the public, *id.*, the purpose of § 384.065 is not to

punish surplus lines insurance producers, but to protect the public.

30. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).

31. Section 384.065(7) authorizes discipline of surplus lines insurance producers for any reason set forth in § 375.141.

32. Based on the nature and severity of the aforementioned conduct, including Strong's disregard for the authority of the Director, sufficient grounds exist for revoking Strong's insurance producer license pursuant to § 375.141.1(2), (8), and (9), and Strong's surplus lines producer license pursuant to § 384.065(4), (6), and (7).

ORDER

Based on the foregoing findings and conclusions, the non-resident insurance producer license (No. 0138633) of **Mark James Strong** is hereby **REVOKED**.

Based on the foregoing findings and conclusions, the surplus lines producer license (No. 0138633) of **Mark James Strong** is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 21ST **DAY OF** NOVEMBER**, 2012.**

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

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November 2012, a copy of the foregoing Findings of Fact, Conclusions of Law and Order of Discipline, was served by certified mail through the United States Postal Service, postage prepaid, signature required, to the following:

Mark James Strong
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Chicago, IL 60646-6651

Certified No. 7009 3410 0001 9255 5832

Mark James Strong
C/O B. Pitcher
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Lemont, IL 60439-4045

Certified No. 7009 3410 0001 8931 3766

And by hand-delivery to:

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