DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	**DIFP Case No. 13-1028572C**
Valore Title, LLC,	)	
	)	**AHC Case No. 14-1315 DI**
Respondent.	)	

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 (the "Department"), whose duties, pursuant to Chapters 374, 375, and 381, RSMo, include the supervision, regulation, and discipline of insurance companies, agencies, and producers licensed to operate and conduct business in the State of Missouri.

2. The Department first issued Respondent Valore Title, LLC ("Valore") a business entity insurance producer license (#8022348) on January 2, 2007. That license expired on January 2, 2015.

3. On August 5, 2014, the Director filed a Complaint with the Missouri Administrative Hearing Commission ("Commission"), seeking a finding that cause existed to discipline Valore's business entity insurance producer license pursuant to § 375.141.1(2) and (8), RSMo (Supp. 2013).[1] *Dir. of Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Valore Title, LLC*, No. 14-1315 DI (Mo. Admin. Hrg. Comm'n, April 10, 2015).

4. Valore and its registered agent were each served with a copy of the Complaint by certified mail on August 29, 2014, but Valore did not file an answer. *Id.*

5. On December 24, 2014, the Director filed a Motion for Summary Decision and Suggestions in Support thereof, seeking the Commission's order finding cause to discipline Valore's business entity insurance producer license pursuant to § 375.141.1(2) and (8). *Id.* Valore did not file a response to the Director's motion. *Id.*

6. On April 10, 2015, the Commission issued its Decision granting the Director's Motion for Summary Decision. The Commission found cause to discipline Valore's business entity insurance producer license pursuant to § 375.141.1(2) and (8). *Id.*

7. In support of its finding of cause to discipline Valore's license, the Commission found the following facts:

a. The Director issued a business entity insurance producer license to Valore on January 2, 2007.

b. In June 2011, Donna Allen ("Allen") of Alliant National Title Insurance Company ("Alliant") notified the Director that it was terminating its agency relationship with Valore because of Alliant's audit findings as to Valore's escrow account management. Alliant indicated that there were concerns about the integrity of Valore's escrow procedures and accounting. Allen provided a copy of

[1] All statutory references are to RSMo (Supp. 2013) unless otherwise indicated.

her audit findings to the Director.

c. On June 22, 2011, Larry Leppard, with the Department's Consumer Affairs Division ("Division"), sent an inquiry letter to Valore. The letter sought an explanation regarding the Alliant audit findings and asked Valore to identify its new underwriter and to provide a copy of the agency agreement with that new underwriter.

d. The June 22, 2011 Division inquiry letter provided a July 13, 2011 response date.

e. The June 22, 2011 inquiry letter was not returned to the Division as undeliverable, but Valore did not respond to it.

f. On December 10, 2012, Leppard sent another Division inquiry letter to Valore explaining that the Department had received Valore's license renewal application, but that the Department could not process it until Valore responded to the earlier, June 22, 2011 inquiry letter.

g. The December 10, 2012 Division inquiry letter provided a December 31, 2012 response date.

h. Kris Plumhoff ("Plumhoff"), President of Valore, responded to the June 22, 2011 inquiry letter on January 28, 2013. Plumhoff indicated that Westcor Land Title, Inc. ("Westcor") was the new underwriter for Valore and that Valore had obtained the services of an outside reconciliation service provider, Escrow Pros, to help with its escrow accounting.

i. On January 31, 2013, Leppard sent another inquiry letter to Valore asking for additional information about Valore's escrow accounting and reconciliation process and requesting reconciliation documents related to the account. Leppard

also asked for contact information for Westcor and Escrow Pros, and a copy of Valore's agency agreement with Westcor.

j. The January 31, 2013 inquiry letter provided a response deadline of February 21, 2013, but Valore did not timely respond.

k. On March 4, 2013, Plumhoff sent Leppard escrow reconciliation documents from Escrow Accounting Solutions, Inc. via e-mail. Plumhoff also provided account records from the Bank of Kansas City for the month of December 2012.

l. The records from the Bank of Kansas City show that Valore paid $653.67 to American Express from its escrow account on December 3, 2012. The payment did not relate to any title transaction that Valore handled and there were no written escrow instructions pertaining to the disbursement of that money.

m. In June 2013, Westcor conducted an on-site audit of Valore and its accounts. Westcor found that Valore did not have enough money on account to pay title insurance premiums that Valore owed to Westcor, and that Valore was required to hold in trust for Westcor.

n. In particular, Valore paid Westcor $1,788.39 from its operating account to pay premium owed to Westcor for the month of April 2013. But Valore could not pay premium due to Westcor for May and June 2013, because Valore did not have sufficient funds to do so.

o. Westcor entered into a mutual termination agreement with Valore because of the problems noted in the audit, and Westcor reported the audit findings to the Department on July 1, 2013.

p. On October 2, 2013, Valore entered into a consent order with the Texas Commissioner of Insurance. That decision became a final administrative action on that same date.

q. Valore did not report the final Texas administrative action to the Director within 30 days.

Id.

8. Based on these factual findings, the Commission found cause to discipline Valore's business entity insurance producer license pursuant to:

a. Section 375.141.1(2) for violating 20 CSR 100-4.100(2)(A) by failing to timely and adequately respond to Division inquiries;

b. Section 375.141.1(2) for violating § 381.022.3(3) when Valore paid American Express out of its escrow account although the payment was unrelated to any title transaction and there were no written instructions providing for its remittance;

c. Section 375.141.1(2) for violating § 375.051.1 by failing to hold funds in a trust or fiduciary capacity because Valore owed premiums to its underwriter, Westcor, but it did not have sufficient funds in either its premium or operating accounts to pay the premiums owed;

d. Section 375.141.1(2) for violating § 375.141.6 because Valore failed to report a final administrative action against it in the State of Texas; and

e. Section 375.141.1(8) for demonstrating incompetence, untrustworthiness, and financial irresponsibility in the conduct of business by making payments from its escrow account unrelated to specific written escrow instructions and by having insufficient funds in its bank accounts such that it was unable to meet its fiduciary

obligation and remit premiums to an insurer.

9. On May 14, 2015, the Commission certified the record of its proceedings to the Director pursuant to § 621.110.

10. On May 26, 2015, the Director sent Valore a Notice of Hearing via certified mail through the United States Postal Service, signature required, and by U.S. regular first class mail, to Kris Plumhoff, President, Valore Title, 15308 W. 92nd Place, Lenexa, Kansas 66219, and to Valore Title LLC, c/o Incorp Services, Inc., 2847 S. Ingram Mill Road, Suite A-100, Springfield, Missouri 65804, setting the disciplinary hearing for June 17, 2015. The notices sent by regular mail were not returned as undeliverable. On May 28, 2015, Lenny Cooper signed the United States Postal Service Form 3811 (commonly known as the "green card") for the certified mail delivery to Incorp Services, Inc. The certified mail delivery to Plumhoff, President of Valore, was signed by "Julie Plumhoff," and the Department received that signed green card back on June 2, 2015.

11. On June 17, 2015, the Director, through his hearing officer Mark J. Rachel, held the disciplinary hearing. Disciplinary Hearing Transcript ("Tr.") at 1 – 2. No one appeared on behalf of Valore. Tr. 3. Cheryl C. Nield, representing the Division, recommended that Valore's business entity insurance producer license be revoked. Tr. 5 – 9.

12. At the hearing, the hearing officer admitted and took official notice of the Notice of Hearing, the certified mail receipts, and the signed "green cards" as Exhibit 1. Tr. 3 – 5. The hearing officer also took official notice of the Commission's record of proceedings and admitted it into evidence as Exhibit 2. Tr. 4 – 5.

13. The Director hereby incorporates the Commission's April 10, 2015 Decision referenced herein and does hereby find in accordance with the same. *Dir. of Dep't of Ins., Fin. Insts. & Prof'l Regis'n vs. Valore Title, LLC*, No. 14-1315 DI (Mo. Admin. Hrg. Comm'n, April 10, 2015).

CONCLUSIONS OF LAW

14. 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.

15. When an agency seeks to discipline a license, the Commission finds the predicate facts as to whether cause exists for the discipline, and then the agency exercises final decision-making authority concerning the discipline to be imposed. *State Bd. of Regis'n for the Healing Arts v. Trueblood,* 368 S.W.3d 259, 267-68 (Mo. App. W.D. 2012).

16. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

> 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.

17. Section 375.141 states, 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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> * * *
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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; [or]
>
> * * *
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> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]
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> 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.
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> * * *
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> 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.

18. Section 381.022.3(3) states, in relevant part:

> It is unlawful for any person to:
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> * * *
>
> Use such escrow funds for any purpose other than to fulfill the terms of the individual written escrow instructions after the necessary conditions of the written escrow instructions have been met[.]

19. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs Division, states, in relevant part:

> 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.

20. Under Missouri law, when a letter is duly mailed by first class mail, there is a rebuttable presumption that the letter was delivered to the addressee in the due course of the mails. *Hughes v. Estes*, 793 S.W.2d 206, 209 (Mo. App. S.D. 1990).

21. "The principal purpose of § 375.141 is not to punish licensees or applicants, but to protect the public." *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

22. The Director has the discretion to discipline Valore's business entity insurance producer license, including the discretion to revoke that license. Sections 374.051.2, 375.141.1 and .4, and 621.110.

23. Valore violated insurance laws and regulations and, thus, grounds exist to discipline Valore's business entity insurance producer license under § 375.141.1(2). Valore's underwriter notified the Director regarding irregularities in Valore's escrow and accounting practices and provided a copy of the underwriter's audit. The Division asked Valore about this, multiple times and through multiple inquiry letters. Valore's responses were non-existent, late, or inadequate. Valore failed to timely respond to various Division inquiry letters in a substantive way such that any concerns regarding Valore's escrow and accounting practices might be allayed. Indeed, those concerns were legitimate; Valore paid American Express out of its escrow account, even though that payment was unrelated to a title transaction and even though Valore had no written instructions for remittance of that money in that way. Further, Valore failed to hold money in a fiduciary capacity for an insurance company because premiums were due to its underwriter but Valore's accounts had insufficient funds to cover such premium payments. Finally, Valore failed to report to the Director a final administrative action against it in Texas.

24. Valore's escrow and accounting irregularities demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business, grounds for discipline under § 375.141.1(8). Valore paid a non-title-related American Express bill with escrow funds from other customers – customers who had a right to expect that their money would be put to their purposes, not to the payment of Valore's bills. Valore also had insufficient funds in its accounts, which rendered it unable to pay premiums to an insurance company and meet its fiduciary obligations.

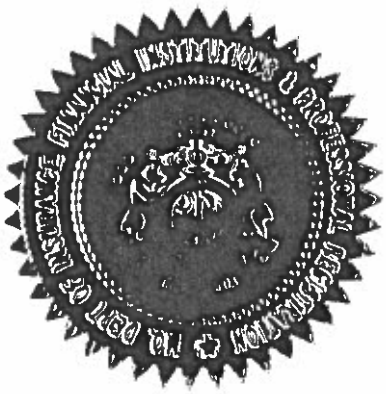
25. Based upon Valore's escrow and accounting difficulties, including improper non-escrow-related payments and insufficient funds demonstrating a failure to hold insurance company money in a fiduciary capacity; based upon Valore's failure to report a Texas administrative action; and based upon Valore's delinquent and spotty responses to numerous Division inquiries, sufficient grounds exist to revoke Valore's business entity insurance producer license under § 375.141.1(2) and (8).

26. This Order is in the public interest.

ORDER

Based on the evidence presented, the business entity insurance producer license of **Valore Title, LLC** (License No. 8022348) is hereby **REVOKED**.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 28th DAY OF August**, 2015.**



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

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2015, a copy of the foregoing Findings of Fact, Conclusions of Law, and Order of Discipline was served upon the Respondent in this matter by UPS, signature required service, at the following addresses:

Valore Title, LLC
c/o Incorp Services, Inc.
2847 South Ingram Mill Road, Suite A-100
Springfield, Missouri 65804-4006

No. 1Z0R15W84299365355

and

Kris Plumhoff, President
Valore Title, LLC
15308 West 92nd Place
Lenexa, Kansas 66219-1948

No. 1Z0R15W84296636960

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