

2. Arthur acted as an agent for American Family Mutual Insurance Company (“American Family”).
3. In 2004, while acting as an agent for American Family, Arthur received a premium check from Mike Murphy for \$487. Murphy paid the premium to obtain homeowners insurance coverage with American Family, but Arthur failed to remit the money to the company.
4. In July 2005, while acting as an agent for American Family, Arthur received a premium check from Murphy for \$597. Murphy paid the premium to obtain homeowners insurance coverage with American Family, but Arthur failed to remit the money to the company.
5. On September 28, 2005, Arthur was served with a subpoena by certified mail.¹ The subpoena ordered her to appear before the Director on October 25, 2005, “to answer questions concerning homeowners insurance coverage.”²
6. Arthur did not appear at the time and place set forth in the subpoena.³

Conclusions of Law

We have jurisdiction to hear this case.⁴ The Director has the burden of proving that Arthur has committed an act for which the law allows discipline.⁵

The Director argues that there is cause for discipline under § 375.141, which provides:

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;

¹Ex. C.

²Ex. B.

³Tr. at 6-7.

⁴Section 621.045. Statutory references, unless otherwise noted, are to the 2005 Supplement to the Revised Statutes of Missouri.

⁵*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

* * *

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

Violating Law or Regulation

The Director argues that Arthur violated § 374.210.2, RSMo 2000, which states:

2. Any person who shall refuse to give such director full and truthful information, and answer in writing to any inquiry or question made in writing by the director, in regard to the business of insurance carried on by such person, or to appear and testify under oath before the director in regard to the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding three months.

The Director provided evidence that Arthur was subpoenaed to appear before the Director to discuss the business of insurance and that she failed to appear. Arthur is subject to discipline under § 375.141.1(2) for violating § 374.210.2, RSMo 2000.

Incompetence, Untrustworthiness, and Financial Irresponsibility

The Director argues that Arthur's conduct constitutes incompetence, untrustworthiness, and financial irresponsibility.

Incompetence, when referring to an occupation, relates to the failure to use "the actual ability of a person to perform in that occupation."⁶ It also refers to the lack of "disposition to use an otherwise sufficient professional ability."⁷ The definition of "trustworthy" is "worthy of confidence" or "dependable."⁸ Irresponsible means "not based on sound reasoned considerations . . . unprepared or unwilling to meet financial responsibilities."⁹

⁶Section 1.020(8), RSMo 2000.

⁷*Johnson v. Missouri Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).

⁸*Stith v. Lakin*, 129 S.W.3d 912, 918 (Mo. App., S.D. 2004).

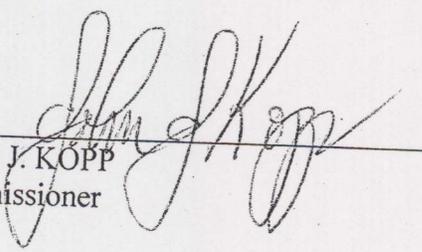
⁹WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1196 (1986).

The Director's witness testified that Arthur admitted to the conduct as set out in Findings of Fact 3, 4, and 5. By failing to pay Murphy's premium payments to American Family, Arthur exposed Murphy to potential economic harm due to lack of insurance coverage on his home. We agree that failing to remit premiums paid for insurance to the company on two occasions constitutes incompetence, untrustworthiness, and financial irresponsibility. Arthur is subject to discipline under § 375.141.1(8).

Summary

Arthur is subject to discipline under § 375.141.1(2) and (8).

SO ORDERED on January 24, 2007.



JOHN J. KÖPP
Commissioner