

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

JUN 07 2016

ADMINISTRATIVE HEARING
COMMISSION

DIRECTOR, Department of Insurance,)
Financial Institutions and Professional)
Registration, State of Missouri,)

Petitioner,)

v.)

Case No.

BRANDON GENE FRANCISCO,)

Respondent.)

Serve:)

Brandon Gene Francisco)
122 Meador Drive)
Noel, Missouri 64854-9121)

COMPLAINT

JOHN M. HUFF, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists to discipline the resident insurance producer license of Respondent Brandon Gene Francisco, alleging as follows:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (“Director” of the “Department”) whose duties, pursuant to Chapters 374 and 375 RSMo¹ include the supervision, regulation, and discipline of insurance producers in the State of Missouri.

2. On July 24, 2000, the Department issued to Respondent Brandon Gene Francisco (“Francisco”) a resident insurance producer license, number 0112407, which was renewed most

¹ All civil statutory references are to the 2000 Missouri Revised Statutes, as updated by the 2013 RSMo Supplement, unless otherwise noted.

recently on December 22, 2014 and is currently set to expire on July 24, 2016.

3. The Administrative Hearing Commission has jurisdiction in this matter pursuant to § 621.045.

4. For ease of reference, the Counts alleged by the Director in this Complaint against the insurance producer license of Francisco may be summarized as follows:

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COUNT I
Having Been Convicted of a Felony

5. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

6. Section 375.141.1 provides, in relevant part:

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:

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

7. On May 23, 2016, the McDonald County Circuit Court convicted Francisco, based on his guilty plea, of “Fraud/Misrepresentation In Connection With Offer/Sale/Solicitation/Negotiation Of Insurance[,]” an unclassified felony,² in violation of § 375.144. *State v. Brandon Gene Francisco*, McDonald Co. Cir. Ct., Case No. 15MC-CR00674-01 (“*State v. Francisco*”). The court sentenced Francisco to seven (7) years’ incarceration with the Missouri Department of Corrections, suspended the execution of sentence, placed Francisco on supervised probation, and ordered Francisco to pay \$16,960.00 in restitution (\$500.00 monthly beginning May 25, 2016). *Id.*

8. By his guilty plea, Francisco admitted the conduct with which he was charged in *State v. Francisco*, specifically that he “accepted insurance premiums from Mary Rosenbohm in the amount of \$6,400 and did not secure the insurance policy promised with the purpose of committing a fraud or deceit upon Mary Rosenbohm” (“Rosenbohm”). Information (filed May

² Punishable under § 375.146 by “imprison[ment] not more than ten years[;]” *cf.* § 556.016.2 (a “crime is a ‘felony’ if ... persons convicted thereof may be sentenced to death or imprisonment for a term which is in excess of one year”).

23, 2016), *Id.*³

9. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(6) because he was convicted of a felony, specifically Fraud/Misrepresentation In Connection With Offer/Sale/Solicitation/Negotiation Of Insurance. *Id.*

COUNT II
Violation of § 375.144

10. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3, 7, and 8.

11. Section 375.141.1 provides, in relevant part:

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[.]

12. Section 375.144 provides:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

- (1) Employ any deception, device, scheme, or artifice to defraud;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

13. Section 375.144 is an insurance law.

³ "A plea of guilty voluntarily and understandingly made is conclusive as to the guilt of the accused, [and] admits all of the facts charged[.]" *Robinson v. State*, 491 S.W.2d 314, 315 (Mo. banc 1973).

14. The Information filed in *State v. Francisco* charged that Francisco in violation of Section 375.144, RSMo, committed the felony of prohibited acts in connection with the offer, sale, solicitation, or negotiations of insurance, punishable upon conviction under Section 375.146, RSMo in that on or about August 2013, in the County of McDonald, State of Missouri, the defendant accepted insurance premiums from Mary Rosenbohm in the amount of \$6,400⁴ and did not secure the insurance policy promised with the purpose of committing a fraud or deceit upon Mary Rosenbohm.

15. By his guilty plea, Francisco admitted the above recitation, including that he acted “in violation of Section 375.144, RSMo[.]”

16. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law, specifically § 375.144.

COUNT III
Improperly Withholding, Misappropriating, or Converting
the First Rosenbohm Check Proceeds

17. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3, 7, and 8.

18. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

19. On or about August 30, 2013, Rosenbohm applied for a homeowners’ insurance policy from Twin City Fire Insurance Company (“Twin City Fire”) through Francisco.

20. On or about August 30, 2013, Rosenbohm signed and gave to Francisco a check,

⁴ Cf. §§ 20 and 31, *infra*.

serial number 4940, payable to “Francisco Insurance” in the amount of \$2,156.50 (the “first Rosenbohm check”) as payment for premium(s) for the homeowners’ insurance policy for which she had applied.

21. On August 30, 2013, Francisco endorsed the first Rosenbohm check “Francisco Ins” and deposited \$1,856.50 of the proceeds into his business checking account,⁵ while receiving the remaining \$300.00 in cash.

22. Twin City Fire attempted to collect half of the proceeds of the first Rosenbohm check from Francisco on or about September 11, 2013 by sweeping Francisco’s business checking account.

23. Francisco testified: “Sweep. The way I define sweep is when the insurance company takes money out of the account because you set it up to do that.”⁶

24. Twin City Fire’s attempted sweep of Francisco’s business checking account for the first Rosenbohm check proceeds failed because the account had insufficient funds to pay.

25. Twin City Fire ultimately declined Rosenbohm’s homeowners’ insurance policy application after inspection of her property due to the nature of its construction as a “full log” residence.

26. Francisco never returned to Rosenbohm any portion of the first Rosenbohm check for \$2,156.50.

27. Twin City Fire never received any portion of the first Rosenbohm check proceeds from Francisco.

28. Based upon the foregoing, cause exists to discipline Francisco’s resident

⁵ The account was held for “Brandon Francisco DBA Francisco Insurance” by Arvest Bank.

⁶ See also *Med. Shoppe Int’l, Inc. v. Director of Revenue*, 156 S.W.3d 333 (Mo. banc 2005) (deciding tax consequences of “money swept from [plaintiff’s] accounts on a daily basis through an agreement”); *Chance Mgmt., Inc. v. South Dakota*, 97 F.3d 1107, 1109 (8th Cir. 1996) (“The state bills the operators for its portion of the revenue, receiving payment by electronically sweeping the operators’ bank accounts.”).

insurance producer license pursuant to § 375.141.1(4) because he improperly withheld, misappropriated, or converted the first Rosenbohm check proceeds, which was money received in the course of doing insurance business.

COUNT IV
Improperly Withholding, Misappropriating, or Converting
the Second Rosenbohm Check

29. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3, 7, 8, and 19 through 27.

30. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

31. On or about July 17, 2014, Rosenbohm gave Francisco a check, serial number 5041, payable to “Francisco Insurance” in the amount of \$4,300.00, as payment of premium(s) for the homeowners’ insurance policy she thought Francisco had obtained for her from Twin City Fire (the “second Rosenbohm check”).

32. Twin City Fire did not issue the requested policy.

33. Francisco never returned the second Rosenbohm check or any portion of its \$4,300.00 proceeds to Rosenbohm.

34. Francisco never remitted the second Rosenbohm check or any portion of its proceeds to Twin City Fire.

35. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(4) because he improperly withheld, misappropriated, or converted the second Rosenbohm check, which was money or property

received in the course of doing insurance business.

COUNT V

Violation of § 375.144(2) by Misrepresentation, Concealment, or Suppression of a Material Fact Regarding Mary Rosenbohm or Twin City Fire Insurance Company

36. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3, 7, 8, 19 through 27, and 31 through 34.

37. Section 375.141.1 provides, in relevant part:

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[.]

38. Section 375.144 provides, in relevant part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

* * *

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression[.]

39. Section 375.144 is an insurance law.

40. On or about March 30, 2015, Francisco submitted to Twin City Fire a homeowners' insurance policy application purportedly on behalf of Rosenbohm, but without her knowledge or authorization.

41. Rosenbohm believed, based on Francisco's representations, that she already had a homeowners' insurance policy in force with Twin City Fire.

42. Twin City Fire again denied yearly coverage due to the "full log" construction of Rosenbohm's property, as determined by its previous 2013 inspection. Twin City Fire had sent Francisco notice of the prior 2013 denial on or about October 18, 2013.

43. Whether a person is actually seeking an insurance policy from an insurer is a material fact; insurance policies are fundamentally contracts, and there can be no binding agreement without the intent of one party.

44. Rosenbohm did not authorize or intend for Francisco to submit a homeowners' insurance policy application to Twin City Fire on or about March 30, 2015.

45. By submitting to Twin City Fire a homeowners' insurance policy application purportedly on behalf of Rosenbohm,

- a. Francisco made a misrepresentation of a material fact to Twin City Fire by indicating that Rosenbohm was actually seeking again to acquire homeowners' insurance from Twin City Fire, when in fact she was not;
- b. Francisco concealed from Twin City Fire the material fact that Rosenbohm was not actually seeking again to acquire homeowners' insurance from Twin City Fire;
- c. Francisco concealed from Rosenbohm the material fact that he had submitted a homeowners' insurance policy application on her behalf to Twin City Fire on or about March 30, 2015;
- d. Francisco suppressed from Twin City Fire the material fact that Rosenbohm was not actually seeking again to acquire homeowners' insurance from Twin City Fire; or
- e. Francisco suppressed from Rosenbohm the material fact that he had submitted a homeowners' insurance policy application on her behalf to Twin City Fire on or about March 30, 2015.

46. Based upon the foregoing, cause exists to discipline Francisco's resident

insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law, specifically § 375.144(2).

COUNT VI
Violation of § 375.144(4) by Engaging in Any Act, Practice, or Course of Business
Which Operated as a Fraud or Deceit Regarding Mary Rosenbohm
or Twin City Fire Insurance Company

47. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3, 7, 8, 19 through 27, 31 through 34, and 40 through 44.

48. Section 375.141.1 provides, in relevant part:

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[.]

49. Section 375.144 provides, in relevant part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

* * *

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

50. Section 375.144 is an insurance law.

51. On or about March 30, 2015, Francisco submitted to Twin City Fire a homeowners' insurance policy application purportedly on behalf of Rosenbohm, but without her knowledge or authorization.

52. Rosenbohm believed, based on Francisco's representations, that she already had a homeowners' insurance policy in force with Twin City Fire.

53. Twin City Fire again denied yearly coverage due to the "full log" construction of Rosenbohm's property, as determined by its previous 2013 inspection. Twin City Fire had sent

Francisco notice of the prior 2013 denial on or about October 18, 2013.

54. Rosenbohm did not authorize or intend for Francisco to submit a homeowners' insurance policy application to Twin City Fire on or about March 30, 2015.

55. By submitting to Twin City Fire a homeowners' insurance policy application purportedly on behalf of Rosenbohm, Francisco engaged in an act which operated as a fraud or deceit upon Twin City Fire or Rosenbohm.

56. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law, specifically § 375.144(4).

COUNT VII
Intentionally Misrepresenting the Terms of an Application for Insurance

57. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3, 7, 8, 19 through 27, 31 through 34, 40 through 44, and 51 through 54.

58. Section 375.141.1 provides, in relevant part:

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:

* * *

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance[.]

59. Francisco's submission of a homeowners' insurance policy application purportedly on behalf of Rosenbohm on or about March 30, 2015 was both unauthorized by Rosenbohm and, as Francisco should have known from the insurer's previous underwriting determination, futile because the insurer had already declined to provide coverage due to the nature of the property's construction.

60. Francisco intentionally misrepresented to Twin City Fire the terms of the March

30, 2015 application for insurance by indicating that Rosenbohm was eligible for and sought the specified homeowners' insurance coverage.

61. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(5) because he intentionally misrepresented to Twin City Fire the terms of the March 30, 2015 insurance policy application.

COUNT VIII
Improperly Withholding, Misappropriating, or Converting
4M Service, Inc.'s Insurance Premium Payments

62. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

63. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

64. From January 2012 through October 2014, 4M Service, Inc. regularly paid Francisco for commercial insurance coverage of its shop and vehicles, generally \$300.00 to \$350.00 per month by checks payable to "Francisco Insurance[.]"

65. 4M Service, Inc. did not receive the insurance coverage for which it paid Francisco because he improperly withheld, misappropriated, or converted the checks 4M Service, Inc. gave him as payment for insurance coverage.

66. Francisco did not forward the premium payments by 4M Service, Inc. to an insurer.

67. Francisco did not procure or bind the policy or insurance requested by 4M Service, Inc..

68. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(4) because he improperly withheld, misappropriated, or converted 4M Service, Inc.'s checks, which were money or property received in the course of doing insurance business.

69. Each time Francisco improperly withheld, misappropriated, or converted one of 4M Service, Inc.'s checks for insurance coverage constitutes a separate and sufficient cause to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(4).

COUNT IX
Violation of § 375.144(2) by Misrepresentation, Concealment, or Suppression
of a Material Fact Regarding 4M Service, Inc.

70. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3 and 64 through 67.

71. Section 375.141.1 provides, in relevant part:

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[.]

72. Section 375.144 provides, in relevant part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

* * *

(2) As to any material fact, make or use any misrepresentation, concealment, or suppression[.]

73. Section 375.144 is an insurance law.

74. Francisco misrepresented, concealed, or suppressed a material fact in connection with the offer, sale, solicitation, or negotiation of insurance, directly or indirectly, when:

- a. Francisco had not been properly forwarding the provided money to an insurer on 4M Service, Inc.'s behalf;
- b. Francisco had not procured or bound the policy or insurance requested by 4M Service, Inc.; or
- c. Francisco led 4M Service, Inc. to reasonably rely on his representations that 4M Service, Inc. had insurance coverage when in fact Francisco had not procured insurance coverage for 4M Service, Inc.

75. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law, specifically § 375.144(2).

76. Each violation of § 375.144(2) constitutes a separate and sufficient cause to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2).

COUNT X
Violation of § 375.144(4) by Engaging in Any Act, Practice, or Course of Business Which Operated as a Fraud or Deceit Regarding 4M Service, Inc.

77. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3 and 64 through 67.

78. Section 375.141.1 provides, in relevant part:

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[.]

79. Section 375.144 provides, in relevant part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

* * *

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

80. Section 375.144 is an insurance law.

81. When Francisco regularly received and endorsed checks from 4M Service, Inc. for payments of insurance premiums, he engaged in an act, a practice, or a course of business which operated as a fraud or deceit upon 4M Service, Inc. by inducing it to make additional payments for insurance it believed Francisco had obtained on its behalf.

82. Francisco regularly received 4M Service, Inc.'s insurance premium checks in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly.

83. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law, specifically § 375.144(4).

84. Each violation of § 375.144(4) constitutes a separate and sufficient cause to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2).

COUNT XI
Improperly Withholding the First Adamson Check

85. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

86. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

87. On or about May 11, 2009, Bobbie Adamson gave Francisco a personal check,

serial number 996, payable to “Francisco Ins[urance]” in the amount of \$417.80, for payment of an insurance premium (the “first Adamson check”) for insurance for Bobbie and Leon Adamson.

88. More than four years later on December 13, 2013, Francisco presented the first Adamson check for payment and deposited \$42.80 of the proceeds in his business checking account while receiving the remaining \$375.00 as cash.

89. When asked why he presented the first Adamson check so much later than he received it, Francisco testified,⁷ “Probably because it was setting in my desk.”

90. Instead of promptly forwarding the first Adamson check or its proceeds to an insurer on behalf of Bobbie and Leon Adamson to pay for insurance coverage, Francisco retained the first Adamson check for more than four years.

91. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(4) because he improperly withheld the first Adamson check, which was money or property received in the course of doing insurance business.

COUNT XII
Improperly Misappropriating or Converting the First Adamson Check Proceeds

92. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3 and 87 through 90.

93. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

⁷ Francisco testified under oath pursuant to a November 25, 2014 subpoena issued by the Director, as authorized by § 374.190. *See infra*, ¶¶ 139-141.

94. On or about May 11, 2009, Bobbie Adamson gave Francisco a personal check, serial number 996, payable to “Francisco Ins[urance]” in the amount of \$417.80, for payment of an insurance premium (the “first Adamson check”) for insurance for Bobbie and Leon Adamson.

95. Francisco caused the first Adamson check to be honored by way of electronic funds transfer (“EFT”) but nonetheless presented it for payment a second time, years later and without the authorization or consent of the Adamsons.

96. Francisco testified to his understanding that an “EFT is when you allow them *the one time* to take it out of your account.” (Emphasis added.)

97. Francisco also testified that, “If you have a policy with Hartford, you write the check to Hartford. I go in Hartford online, tell you that this is going to come out of your account automatically, give you the check back and write EFT across it.”

98. The Adamsons had an automobile insurance policy, number 37PH798346, through The Hartford, a group of affiliated insurance companies (“Hartford”), from May 2, 2011 until May 2, 2015.

99. The first Adamson check has a hand notation “EFT” (underline in original) across its front facing and near the middle.

100. The first Adamson check was dated in 2009.

101. Hartford’s records indicate that the first payment on the Adamsons’ automobile insurance policy was made by EFT on or about May 4, 2011.

102. On December 13, 2013, Francisco presented the first Adamson check for payment and deposited \$42.80 of the proceeds in his business checking account while receiving the remaining \$375.00 as cash.

103. Therefore, by presenting the first Adamson check for payment on December 13,

2013, Francisco misappropriated or converted money belonging to the Adamsons.

104. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(4) because he improperly misappropriated or converted the first Adamson check proceeds, which were money or property received in the course of doing insurance business.

COUNT XIII
Improperly Withholding the Second Adamson Check

105. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

106. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

107. On or about May 9, 2010, Bobbie Adamson gave Francisco a personal check, serial number 1118, payable to "Safeco Insurance" in the amount of \$415.10, for payment of an insurance premium (the "second Adamson check") for insurance for Bobbie and Leon Adamson.

108. More than four years later on November 5, 2014, Francisco presented the second Adamson check for payment, endorsed it "Francisco Ins. c/o Safeco[.]" and deposited \$115.10 of the proceeds in his business checking account while receiving the remaining \$300.00 as cash.

109. Instead of promptly forwarding the second Adamson check or its proceeds to the insurer on behalf of Bobbie and Leon Adamson to pay for insurance coverage, Francisco retained the second Adamson check for more than four years.

110. Based upon the foregoing, cause exists to discipline Francisco's resident

insurance producer license pursuant to § 375.141.1(4) because he improperly withheld the second Adamson check, which was money or property received in the course of doing insurance business.

COUNT XIV
Improperly Withholding the First Killion Check

111. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

112. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

113. On or about April 1, 2008, H. Paul Killion gave Francisco a personal check, serial number 2685, payable to “Safeco Insurance/Francisco Ins” in the amount of \$561.30, for payment of an insurance premium (the “first Killion check”).

114. More than six years later on November 26, 2014, Francisco presented the first Killion check for payment.

115. Instead of promptly forwarding the first Killion check or its proceeds to the insurer on behalf of H. Paul Killion to pay for insurance coverage, Francisco retained the first Killion check for more than six years.

116. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(4) because he improperly withheld the first Killion check, which was money or property received in the course of doing insurance business.

COUNT XV
Improperly Withholding the Second Killion Check

117. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

118. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

119. On or about April 1, 2008, H. Paul Killion gave Francisco a personal check, serial number 2686, payable to “Safeco Insurance/Francisco Ins” in the amount of \$456.00, for payment of an insurance premium (the “second Killion check”).

120. More than six years later on November 26, 2014, Francisco presented the second Killion check for payment.

121. Instead of promptly forwarding the second Killion check or its proceeds to the insurer on behalf of H. Paul Killion to pay for insurance coverage, Francisco retained the second Killion check for more than six years.

122. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(4) because he improperly withheld the second Killion check, which was money or property received in the course of doing insurance business.

COUNT XVI
Improperly Withholding the Rio Alce Check

123. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

124. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

125. On or about March 30, 2009, Rio Alce, Inc. gave Francisco a business check, serial number 10244, payable to “Safeco Business Insurance” in the amount of \$802.75, for payment of an insurance premium (the “Rio Alce check”).

126. More than five years later on December 3, 2014, Francisco presented the Rio Alce check for payment and deposited \$202.75 of the proceeds in his business checking account while receiving the remaining \$600.00 as cash.

127. Instead of promptly forwarding the Rio Alce check or its proceeds to the insurer on behalf of Rio Alce, Inc. to pay for insurance coverage, Francisco retained the Rio Alce check for more than five years.

128. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(4) because he improperly withheld the Rio Alce check, which was money or property received in the course of doing insurance business.

COUNT XVII
Improperly Withholding the Salas Check

129. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

130. Section 375.141.1 provides, in relevant part:

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:

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

131. On or about April 11, 2011, Genaro Salas gave Francisco a personal check, serial number 1487, payable to “The Hartford” in the amount of \$1,246.65, for payment of an insurance premium (the “Salas check”).

132. More than three years later on December 15, 2014, Francisco presented the Salas check for payment and deposited \$946.65 of the proceeds in his business checking account while receiving the remaining \$300.00 as cash.

133. Instead of promptly forwarding the Salas check or its proceeds to the insurer on behalf of Genaro Salas and Maria Salas to pay for insurance coverage, Francisco retained the Salas check for more than three years.

134. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(4) because he improperly withheld the Salas check, which was money or property received in the course of doing insurance business.

Count XVIII
Violation of § 375.051.1 by Breach of Trust or Fiduciary Duty to Insurers

135. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 133.

136. Section 375.141.1 provides, in relevant part:

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[.]

137. Section 375.051.1 provides:

Any insurance producer who shall be appointed or who shall act on behalf of any insurance company within this state, or who shall, on behalf of any insurance company, solicit applications, deliver policies or renewal receipts and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, on behalf of any insurance company doing business in this state, shall be held responsible in a trust or fiduciary capacity to the company for any money so collected or received by him or her for the insurance company.

138. Section 375.051.1 is an insurance law.

139. On November 25, 2014, the Director issued a subpoena requiring Francisco to provide testimony on December 16, 2014 regarding his insurance business.

140. Francisco improperly managed his business checking account, into which he deposited his insurance clients' payments and from which the insurance companies "swept" the funds, testifying that he did not receive any bank statements regarding the account and "didn't ever check [the] account balance because [he] always had a buffer in there."

141. Francisco also testified that he did not in any way keep track of the "buffer" amount and admittedly "did not do a very good job of keeping that where it needed to be."

142. Francisco incurred approximately two hundred and fifty six (256) insufficient funds charges against his business checking account from January 2012 through early February 2014 when insurers attempted to collect their due premiums.

143. By failing to maintain an adequate balance in his business checking account for insurers to sweep the money collected on their behalf, and which Francisco held for them in a trust or fiduciary capacity, Francisco did not exercise a high standard of care regarding the money he received and held for the insurers.

144. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law,

specifically § 375.051.1.

145. Each instance in which Francisco breached his trust or fiduciary duty to an insurer constitutes a separate and sufficient cause for discipline pursuant to § 375.141.1(2).

Count XIX
Violation of § 375.051.2 by Breach of Trust or Fiduciary Duty to Consumers

146. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 133 and 139 through 142.

147. Section 375.141.1 provides, in relevant part:

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[.]

148. Section 375.051.2 provides:

Any insurance producer who shall act on behalf of any applicant for insurance or insured within this state, or who shall, on behalf of any applicant for insurance or insured, seek to place insurance coverage, deliver policies or renewal receipts and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, shall be held responsible in a trust or fiduciary capacity to the applicant for insurance or insured for any money so collected or received by him or her.

149. Section 375.051.2 is an insurance law.

150. By failing to timely and fully forward his clients' money to insurers on the consumers' behalf, Francisco did not exercise a high standard of care regarding the money he received from them for insurance.⁸

151. Based upon the foregoing, cause exists to discipline Francisco's resident

⁸ See *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. McCain*, Case No. 12-1831 DI, slip op. at 20 (Mo. Admin. Hrg. Comm'n Apr. 30, 2013) (applying § 375.051.2 when insurance producer failed to maintain sufficient account balance and check to insurer was dishonored for insufficient funds).

insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law, specifically § 375.051.2.

152. Each instance in which Francisco breached his trust or fiduciary duty to a consumer constitutes a separate and sufficient cause for discipline pursuant to § 375.141.1(2).

COUNT XX
Violation of a Subpoena of the Director

153. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3, 7, 8, 19 through 27, 31 through 34, 40 through 44, and 51 through 54.

154. Section 375.141.1 provides, in relevant part:

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[.]

155. On July 30, 2015, the Director issued a subpoena duces tecum requiring Francisco to produce “on or before August 17, 2015” to Special Investigator Karen Crutchfield with the Consumer Affairs Division of the Department (“Special Investigator Crutchfield” of the “Division”) “[c]opies of Mary Rosenbohm’s signed applications for a homeowner’s insurance policy submitted to the insurance company on approximately August 29, 2013, and March 30, 2015.”

156. Francisco signed for the July 30, 2015 subpoena duces tecum delivered by United States Postal Service Certified Mail to his residential address.

157. Francisco received the July 30, 2015 subpoena duces tecum.

158. Francisco never sent to Special Investigator Crutchfield a copy of Mary Rosenbohm’s application for a homeowners’ insurance policy submitted to Twin City Fire on

approximately August 29, 2013.

159. Francisco never sent to Special Investigator Crutchfield a copy of the purported Mary Rosenbohm application for a homeowners' insurance policy submitted to Twin City Fire on approximately March 30, 2015.

160. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2) because he violated the Director's July 30, 2015 subpoena duces tecum.

COUNT XXI
Violations of a Regulation of the Director by Failing to Provide
Adequate Responses to Division Inquiries

161. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 3.

162. Section 375.141.1 provides, in relevant part:

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[.]

163. Title 20 CSR 100-4.100(2)(A) provides:

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.

164. Title 20 CSR 100-4.100 is a regulation of the Director.

December 17, 2014 Inquiry

165. On December 17, 2014, Special Investigator Crutchfield of the Division sent

Francisco an inquiry letter by fist-class mail, postage prepaid, requesting information and documents related to the Division's investigation of his insurance business.

166. The inquiry letter advised Francisco that pursuant to the above-cited statute and regulation, his "adequate response [wa]s due twenty days from the postmark ... or by January 6, 2015" and that "failure to respond by the due date could be a ground for discipline of [his] license."

167. The December 17, 2014 inquiry letter was not returned to the Division as undeliverable.

168. Francisco received the Division's December 17, 2014 inquiry letter.

169. Francisco did not provide to the Division an adequate response, nor any response, to the December 17, 2014 inquiry letter.

170. The Division has received no communication or correspondence from Francisco regarding the December 17, 2014 inquiry letter.

171. Francisco has not demonstrated reasonable justification for his failure to produce the requested response to the December 17, 2014 inquiry letter.

June 10, 2015 Inquiry

172. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 8, 19 through 27, 31 through 34, 40 through 44, and 51 through 54.

173. On June 10, 2015, Special Investigator Crutchfield of the Division sent Francisco an inquiry letter by fist-class mail, postage prepaid, requesting information and documents related to the Division's investigation of Rosenbohm's complaint against him.

174. The inquiry letter advised Francisco that pursuant to the above-cited statute and regulation, his "adequate response [wa]s due twenty days from the postmark" and that "failure to

respond by the due date could be a violation of the law and a ground for discipline of [his] license.”

175. The June 10, 2015 inquiry letter was not returned to the Division as undeliverable.

176. Francisco received the Division’s June 10, 2015 inquiry letter.

177. Francisco did not provide to the Division an adequate response, nor any response, to the June 10, 2015 inquiry letter.

178. The Division has received no communication or correspondence from Francisco regarding the June 10, 2015 inquiry letter.

179. Francisco has not demonstrated reasonable justification for his failure to produce the requested response to the June 10, 2015 inquiry letter.

July 6, 2015 Inquiry

180. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 8, 19 through 27, 31 through 34, 40 through 44, 51 through 54, and 173 through 179.

181. On July 6, 2015, Special Investigator Crutchfield of the Division sent Francisco another inquiry letter by first-class mail, postage prepaid, requesting the same information and documents referenced by the June 10, 2015 inquiry letter.

182. The inquiry letter advised Francisco that pursuant to the above-cited statute and regulation, his “adequate response [wa]s due twenty days from the postmark” and that “failure to respond by the due date could be a violation of the law and a ground for discipline of [his] license.”

183. The July 6, 2015 inquiry letter was not returned to the Division as undeliverable.

184. Francisco received the Division’s July 6, 2015 inquiry letter.

185. Francisco did not provide to the Division an adequate response, nor any response,

to the July 6, 2015 inquiry letter.

186. The Division has received no communication or correspondence from Francisco regarding the July 6, 2015 inquiry letter.

187. Francisco has not demonstrated reasonable justification for his failure to produce the requested response to the July 6, 2015 inquiry letter.

November 20, 2015 Inquiry

188. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 64 through 67.

189. On November 20, 2015, Special Investigator Crutchfield of the Division sent Francisco an inquiry letter by first-class mail, postage prepaid, requesting Francisco's response to a complaint the Division received from 4M Service, Inc. against him.

190. The inquiry letter advised Francisco that pursuant to the above-cited statute and regulation, his "response [wa]s due in twenty days" and that "[f]ailure to respond could result in disciplinary action[.]"

191. The November 20, 2015 inquiry letter was not returned to the Division as undeliverable.

192. Francisco received the Division's November 20, 2015 inquiry letter.

193. Francisco did not provide to the Division an adequate response, nor any response, to the November 20, 2015 inquiry letter.

194. The Division has received no communication or correspondence from Francisco regarding the November 20, 2015 inquiry letter.

195. Francisco has not demonstrated reasonable justification for his failure to produce the requested response to the November 20, 2015 inquiry letter.

December 16, 2015 Inquiry

196. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 64 through 67 and 189 through 195.

197. On December 16, 2015, Special Investigator Crutchfield of the Division sent Francisco another inquiry letter by first-class mail, postage prepaid, requesting the same response as required by the November 20, 2015 inquiry letter.

198. The inquiry letter advised Francisco that pursuant to the above-cited statute and regulation, his “response [wa]s due in twenty days” and that “[f]ailure to respond could result in disciplinary action[.]”

199. The December 16, 2015 inquiry letter was not returned to the Division as undeliverable.

200. Francisco received the Division’s December 16, 2015 inquiry letter.

201. Francisco did not provide to the Division an adequate response, nor any response, to the December 16, 2015 inquiry letter.

202. The Division has received no communication or correspondence from Francisco regarding the December 16, 2015 inquiry letter.

203. Francisco has not demonstrated reasonable justification for his failure to produce the requested response to the December 16, 2015 inquiry letter.

204. Based upon the foregoing, cause exists to discipline Francisco’s resident insurance producer license pursuant to § 375.141.1(2) because he violated a regulation of the Director, specifically 20 CSR 100-4.100, by failing to provide an adequate response to each of the Division inquiry letters as detailed above.

205. Each Division inquiry to which Francisco did not provide an adequate response,

in violation of 20 CSR 100-4.100, constitutes a separate and sufficient cause to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(2).

COUNT XXII
Using Fraudulent or Dishonest Practices, or Demonstrated Incompetence, Untrustworthiness, or Financial Irresponsibility in the Conduct of Business

206. Petitioner realleges and expressly incorporates hereby the allegations in paragraphs 1 through 150.

207. Section 375.141.1 provides, in relevant part:

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:

* * *

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

208. Francisco used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the course of his insurance business including, but not limited to, when:

- a. Francisco improperly withheld, misappropriated, or converted the first Rosenbohm check proceeds;
- b. Francisco improperly withheld, misappropriated, or converted the second Rosenbohm check;
- c. Francisco misrepresented, concealed, or suppressed a material fact regarding Rosenbohm or Twin City Fire;
- d. Francisco engaged in an act, practice, or course of business which operated as a fraud or deceit upon Rosenbohm or Twin City Fire;

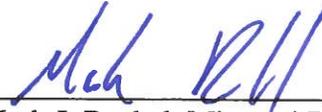
- e. Francisco improperly withheld, misappropriated, or converted 4M Service, Inc.'s insurance premium payments;
- f. Francisco misrepresented, concealed, or suppressed a material fact regarding 4M Service, Inc.;
- g. Francisco engaged in an act, practice, or course of business which operated as a fraud or deceit upon 4M Service, Inc.;
- h. Francisco improperly withheld the first Adamson check;
- i. Francisco improperly misappropriated or converted the first Adamson check proceeds;
- j. Francisco improperly withheld the second Adamson check;
- k. Francisco improperly withheld the first Killion check;
- l. Francisco improperly withheld the second Killion check;
- m. Francisco improperly withheld the Rio Alce check;
- n. Francisco improperly withheld the Salas check; and
- o. Francisco breached his trust or fiduciary obligations to numerous consumer insureds and insurers.

209. Based upon the foregoing, cause exists to discipline Francisco's resident insurance producer license pursuant to § 375.141.1(8) because he used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of his business.

WHEREFORE, the Director respectfully requests that the Administrative Hearing Commission make findings of fact and conclusions of law that cause exists to discipline the resident insurance producer license of Respondent Brandon Gene Francisco pursuant to

§ 375.141.1(2), (4), (5), (6), and (8).

Respectfully submitted,



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