

office phone disconnected and repeated phone calls to her cell ... are never answered and voice mail messages asking her to call me ... have been ignored;" and

- d. Without being able to obtain "information she should have submitted, we are having problems with filing for FSA federal disaster loans."

6. Gilooly executed an Affidavit on August 29, 2013, alleging that "Production was imposed on my crops because Donna Masters did not turn in my production reports by the proper due date, which caused me several thousand dollars in lost revenues."

7. Masters' managing general agent, Rain & Hail, LLC ("Rain & Hail"), writing through Ace Property & Casualty Insurance Co., terminated Masters' agent and agency contract for the 2013 crop year on May 16, 2012, for cause.

False Statements

8. On or about April 25, 2012, Special Investigator Karen Crutchfield of the Consumer Affairs Division sent a letter by first class mail to Masters' address of record, 20 Windover Drive, Marion, Arkansas 72364. With the letter, Crutchfield enclosed a copy of Gilooly's Complaint and asked Masters for a "detailed letter of explanation regarding the allegations" made by Gilooly in his Complaint. Crutchfield's letter requested a response by May 16, 2012.

9. Masters responded to Crutchfield on May 16, 2012, via email, answered many of Crutchfield's questions and attached a copy of her Errors & Omissions insurance policy.

10. However, Masters made the following false statements in her May 16, 2012 email response to Crutchfield's April 25, 2012 letter:

- a. Masters stated, "In January 2012, I was notified that there was missing production," when in fact, Masters was notified on *June 15, 2011*, that there was missing production. In a letter dated June 29, 2012, from Leanne Samuelson, Division Manager for Rain & Hail, to Crutchfield, Samuelson stated as follows:

With respect to the policy of Elbert Gilooly, Ms. Masters did not enter any production into our system as she is required, nor did she timely provide a hard copy of the production report to us. We notified her of this on June 15, 2011.

- b. Masters stated, "The company does not let the Agent and/or the Underwriter email one another with questions or verifying document information," when in fact, such communication was available "with agents via [the company's] general message email accounts," according to Samuelson.

Alleged Forgery

11. On June 14, 2012, Crutchfield received a letter from Gilooly, dated June 11, 2012, and additional documentation supporting his Complaint, including several applications and reporting forms for "Multiple Peril Crop Insurance" allegedly submitted in 2010 by Masters. Gilooly stated, "As you can see, the signature on these forms does not match my signature."

12. On August 29, 2013, Gilooly executed an Affidavit indicating that he "personally examined the 2010 crop production reports" dated April 27, 2011, provided to him by Crutchfield, and that the signatures on those reports "are not my signatures. ... I did not sign any of the 2010 Reports."

Attempts to Contact Masters

13. On or about July 3, 2012, Crutchfield sent a letter by first class mail to Masters' address of record, P.O. Box 18, Marion, Arkansas 72364, asking Masters to provide answers to 11 questions regarding Gilooly's Complaint. The letter requested a response by July 25, 2012. The first class mail was not returned to the Department as undeliverable.

14. Although Masters emailed Crutchfield twice on July 23, 2012, neither email adequately responded to Crutchfield's questions and did not demonstrate a reasonable justification for a delayed response.

- a. In her first email to Crutchfield, Masters simply stated, "I do not understand what Elbert Gilooly [sic] agenda is, if he feels he has legitimate claim why he has not filed against my E&O for there [sic] determination."
- b. In her second email, Masters only says, "I offered filing on my E&O earlier in the year but I was not advised to do so. But will do so under your advisement."
- c. Neither of these emails responded adequately or at all to any of Crutchfield's questions outlined in her July 3, 2012 letter.

15. On or about July 27, 2012, Crutchfield sent another letter by first class mail to Masters' address of record, P.O. Box 18, Marion, Arkansas 72364, asking Masters to provide answers to 13 questions regarding Gilooly's Complaint. The letter requested a response by August 17, 2012. The first class mail was not returned to the Department as undeliverable. Masters did not respond with the requested information and did not contact the Department at all in any other way to demonstrate a reasonable justification for a delayed response.

16. On or about August 21, 2012, Crutchfield sent an email to Masters reminding her that she was still waiting for Masters to reply to her July 27, 2012 letter. Crutchfield attached her July 27, 2012 letter to her email, informed Masters that she had not answered the questions propounded to her in response to Crutchfield's July 3, 2012 letter, reminded Masters of her legal

obligation to respond to Departmental inquiries. Masters did not respond at all in any other way with any type of response to Crutchfield's inquiry.

17. On or about January 3, 2013, Crutchfield sent a letter by first class mail and certified mail to Masters' address of record, P.O. Box 18, Marion, Arkansas 72364, asking Masters to respond to her previous letters of July 3 and July 27, regarding Gilooly's Complaint. The letter requested a response by January 23, 2013.

- a. The first class mail was not returned to the Department as undeliverable.
- b. The PS Form 3811 (green card) sent with the certified mailing of the letter was returned to the Department with Donna Masters' signature, indicating that she received and accepted the letter.
- c. Masters did not respond to either mailing with the requested information and did not contact the Department at all in any other way to demonstrate a reasonable justification for a delayed response

Refusal to Appear at Subpoena Conference

18. The Department served a Subpoena Duces Tecum dated October 30, 2012, on Masters at the address she indicated on her Renewal Application, 20 Windover Drive, PO Box 18, Marion, AR 72364, ordering her to appear on November 20, 2012, at 9:30 a.m. before the Director "to answer questions concerning allegations in the complaint submitted to the Department by Elbert Gilooly" The Subpoena also ordered Masters to bring records including "all original 2011 production reports signed by ... Gilooly (this includes, but is not limited to, crops from 2010 to be reported on the 2011 production report)."

19. Crutchfield received an email from Masters, dated November 15, 2012, informing her that Masters "will not appear on November 20, 2012 @ 9:30 a.m. in Jefferson City, MO."

20. Masters failed or refused to appear at the subpoena conference held on November 20, 2012, in accordance with the October 30, 2012 Subpoena.

CONCLUSIONS OF LAW

21. Section 375.141, RSMo (Supp. 2013)¹ 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:

* * *

¹ All statutory references are to RSMo (Supp. 2013) unless otherwise specified.

(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;

* * *

(10) Signing the name of another to an application for insurance or to any document related to an insurance transaction without authorization[.]

22. Pursuant to § 375.018.4, Masters can apply to renew her expired license. That subsection states as follows:

[A]n individual insurance producer who allows his or her license to expire may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. The insurance producer seeking relicensing pursuant to this subsection shall provide proof that the continuing education requirements have been met and shall pay a penalty of twenty-five dollars per month that the license was expired in addition to the requisite renewal fees that would have been paid had the license been renewed in a timely manner. Nothing in this subsection shall require the director to relicense any insurance producer determined to have violated the provisions of section 375.141.

23. Section 374.210, RSMo, states, in pertinent part, as follows:

1. It is unlawful for any person in any investigation, examination, inquiry, or other proceeding under this chapter, chapter 354, and chapters 375 to 385, to:

(1) Knowingly make or cause to be made a false statement upon oath or affirmation or in any record that is submitted to the director or used in any proceeding under this chapter, chapter 354, and chapters 375 to 385; or

(2) Make any false certificate or entry or memorandum upon any of the books or papers of any insurance company, or upon any statement or exhibit offered, filed or offered to be filed in the department, or used in the course of any examination, inquiry, or investigation under this chapter, chapter 354 and chapters 375 to 385.

2. The director may also suspend, revoke or refuse any license or certificate of authority issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

24. 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.

(emphasis added.)

25. Title 20 CSR 100-4.010(1)(A) defines "adequate response" as "a written response answering each inquiry with reasonable specificity. A person's acknowledgment of the division's inquiry is not an adequate response."

26. 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. 1990).

27. Courts have defined business practices as "a succession of acts of a similar kind or in a like employment." Even if there are a relatively small number of incidents, "repeated acts of a similar nature, causing harm to the consumer" qualify as "business practices." *Davis v. Director, Missouri Dept. of Insurance*, 879 S.W.2d 556, 560 (Mo. App. W.D. 1994).

28. The principal purpose of § 375.141, RSMo 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).

CAUSE FOR ORDER REFUSING TO RENEW
NON-RESIDENT INSURANCE PRODUCER LICENSE

29. The Director may refuse to renew Masters' nonresident insurance producer license pursuant to § 375.141.1(2) because Masters violated a Missouri insurance regulation, specifically 20 CSR 100-4.100(2)(A), by failing to respond either adequately, as defined by 20 CSR 100-4.010(1)(A), or at all to Crutchfield's multiple requests for information with the requested information and answers to Crutchfield's questions. Specifically, Masters' July 23, 2012 response to Crutchfield's July 3, 2012 letter failed to adequately respond to any of

Crutchfield's questions. Masters did not respond nor did she contact the Department in any way to demonstrate a reasonable justification for a delayed response Crutchfield's July 27, 2012 letter. Each failure to either adequately respond or respond at all to Crutchfield's letters and inquiries is a separate and sufficient ground for discipline under § 375.141.1(2).

30. The Director may refuse to renew Masters' nonresident insurance producer license pursuant to § 375.141.1(2) because Masters violated a Missouri insurance law, specifically § 374.210.1(1) or, in the alternative, (2), by making or submitting false information to the Department in her May 15, 2012 response to Crutchfield's April 25, 2012 letter. Specifically, she made the following false statements:

- a. Masters stated, "In January 2012, I was notified that there was missing production," when in fact, Masters was notified on *June 15, 2011*, that there was missing production; and
- b. Masters stated, "The company does not let the Agent and/or the Underwriter email one another with questions or verifying document information," when in fact, such communication was available via the company's general message email accounts.

31. The Director may refuse to renew Masters' nonresident insurance producer license pursuant to § 375.141.1(2) because Masters violated a Missouri insurance law, specifically § 374.210.2, by failing or refusing to attend the November 20, 2012 Subpoena Conference as ordered to by the October 30, 2012 Subpoena served upon Masters.

32. The Director may refuse to renew Masters' nonresident insurance producer license pursuant to § 375.141.1(10) because she signed Gilooly's name to an application for insurance or to any document related to an insurance transaction without his authorization. Specifically, Masters forged Gilooly's name on each page of a Multiple Peril Crop Insurance Application and Reporting Form submitted on or about April 27, 2011 for Gilooly's 2010 crop production reporting year. Each time Masters signed Gilooly's name to pages on the application is a separate and sufficient ground for discipline under § 375.141.1(10).

33. The Director may refuse to renew Masters' nonresident insurance producer license pursuant to § 375.141.1(8) because Masters used dishonest practices and/or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state, based on the following facts:

- a. Masters signed Gilooly's name to an application for insurance or other document related to an insurance transaction without his authorization; and
- b. Masters failed to turn in Gilooly's 2010 crop yields to his insurer, which caused him thousands of dollars in insured losses.

34. This order is in the public interest.

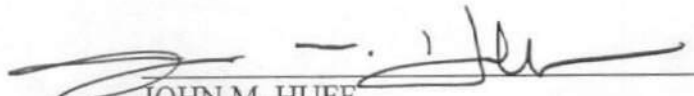
ORDER

IT IS THEREFORE ORDERED that the RENEWAL of DONNA C. MASTERS' non-resident insurance producer license (No. 0215511) is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 12TH DAY OF DECEMBER, 2013.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

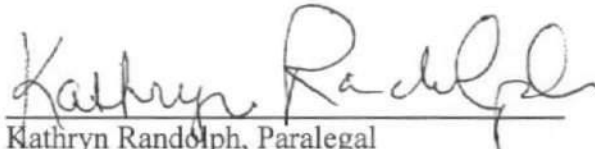
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to § 621.120 RSMo. Under 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS with signature required at the following address:

Donna C. Masters
20 Windover Drive
Marion, AR 72364

Tracking No. 1Z0R15W84298705364



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