



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

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

IN RE:

BRANDON GENE FRANCISCO,
Respondent.

)
)
) **DIFP Case No. 150213096C**
)
) **AHC Case No. 16-3009 DI**
)

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE**

Based on the competent and substantial evidence on the whole record, I, Chlora Lindley-Myers, 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. Chlora Lindley-Myers 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, RSMo (Supp. 2013),¹ include

¹ All civil statutory references are to the 2013 Supplement of the Revised Statutes of Missouri unless otherwise indicated.

the supervision, regulation, and discipline of insurance producers in 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 recently on December 22, 2014, and which expired on July 24, 2016.

3. On June 7, 2016, the Director filed a Complaint with the Administrative Hearing Commission (“Commission”) pursuant to § 621.045, seeking a finding that cause exists to discipline Francisco’s expired resident insurance producer license.

4. On June 10, 2016, the Commission served Francisco with a copy of the Director’s Complaint. Neither Francisco nor anyone on his behalf filed an answer or other responsive pleading.

5. On September 16, 2016, the Director filed a Motion for Partial Summary Decision and a Motion for Sanctions. The Commission gave Francisco until October 3, 2016 to respond to the motions; however, Francisco filed no response.

6. On October 18, 2016, the Commission issued its Decision finding cause to discipline Francisco’s expired resident insurance producer license pursuant to § 375.141.1(2), (4), (5), (6), and (8). *Director, Dep’t of Ins., Fin. Insts. & Prof’l Regis’n v. Brandon Gene Francisco*, No. 16-3009 DI (Mo. Admin. Hrg. Comm’n Oct. 18, 2016).

7. In support of its finding of cause for discipline, the Commission found the following facts, among others:

Rosenbohm Transactions

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

("Twin City Fire") through Francisco.

- b. On or about August 30, 2013, Rosenbohm signed and gave to Francisco a check, 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.
- c. 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, while receiving the remaining \$300.00 in cash.
- d. Twin City Fire attempted to collect half of the proceeds of the first Rosenbohm check from Francisco on or about September 11, 2013 by deducting money from Francisco's business checking account.
- e. Twin City Fire's attempt at collection from Francisco's business checking account for the first Rosenbohm check proceeds failed because the account had insufficient funds.
- f. 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.
- g. Francisco never returned to Rosenbohm any portion of the first Rosenbohm check for \$2,156.50.
- h. Twin City Fire never received any portion of the first Rosenbohm check proceeds from Francisco.

- i. On or about July 17, 2014, Rosenbohm gave Francisco a second check, 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").
- j. Twin City Fire did not issue the requested policy.
- k. Francisco never returned the second Rosenbohm check or refunded any portion of the \$4,300.00 face amount to Rosenbohm.
- l. Francisco never remitted the second Rosenbohm check or any portion of its proceeds to Twin City Fire.
- m. 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.
- n. Rosenbohm believed, based on Francisco's representations, that she already had a homeowners' insurance policy in force with Twin City Fire.
- o. 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.
- p. 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.

- q. 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.

Felony Conviction

- r. On May 23, 2016, Francisco was convicted based on his guilty plea in the McDonald County Circuit Court, of "Fraud/Misrepresentation in Connection with Offer/Sale/Solicitation/Negotiation of Insurance[.]" an unclassified felony, in violation of § 375.144. The court sentenced Francisco to seven years' incarceration with the Missouri Department of Corrections, suspended the execution of sentence, placed Francisco on supervised probation, and ordered him to pay \$16,960.00 in restitution.
- s. By his guilty plea, Francisco admitted the conduct with which he was charged, 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."
- t. By his guilty plea, Francisco admitted that he acted "in violation of Section 375.144[.]"

4M Service Transactions

- u. 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[.]"

- v. Francisco regularly received 4M Service, Inc.'s insurance premium checks in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly.
- w. Francisco did not forward the premium payments made by 4M Service, Inc. to an insurer.
- x. Francisco did not procure or bind the policy or insurance requested by 4M Service, Inc.
- y. 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.
- z. 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 that 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.

Adamson Transactions

- aa. On or about May 11, 2009, Bobbie Adamson gave Francisco a personal check, payable to "Francisco Ins" in the amount of \$417.80, for payment of an insurance premium (the "first Adamson check") for insurance for Bobbie and Leon Adamson.

- bb. Francisco negotiated the first Adamson check by way of electronic funds transfer ("EFT"), and the document has a hand notation "EFT" across its front facing and near the middle.
- cc. The Adamsons had an automobile insurance policy through The Hartford, a group of affiliated insurance companies ("Hartford"), from May 2, 2011 until May 2, 2015.
- dd. Although the first Adamson check was dated in 2009, Hartford's records indicate that the first payment on the Adamsons' automobile insurance policy was made by EFT on or about May 4, 2011.
- ee. Francisco did not promptly forward the first Adamson check or its proceeds to an insurer on behalf of the Adamsons to pay for insurance coverage.
- ff. More than four years after first receiving the first Adamson check, on December 13, 2013, Francisco presented it for payment a second time without the authorization or consent of the Adamsons, and deposited \$42.80 of the proceeds in his business checking account while receiving the remaining \$375.00 as cash.
- gg. On or about May 9, 2010, Bobbie Adamson gave Francisco a personal check, payable to "Safeco Insurance" in the amount of \$415.10, for payment of an insurance premium (the "second Adamson check") for insurance for the Adamsons.
- hh. 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.

- ii. 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.

Killion Transactions

- jj. 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").
- kk. More than six years later, on November 26, 2014, Francisco presented the first Killion check for payment.
- ll. Instead of promptly forwarding the first Killion check or its proceeds to the insurer on behalf of Killion to pay for insurance coverage, Francisco retained the first Killion check for more than six years.
- mm. On or about April 1, 2008, Killion gave Francisco a personal check, payable to "Safeco Insurance/Francisco Ins" in the amount of \$456.00, for payment of an insurance premium (the "second Killion check").
- nn. More than six years later, on November 26, 2014, Francisco presented the second Killion check for payment.

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

Rio Alce Transaction

- pp. On or about March 30, 2009, Rio Alce, Inc. gave Francisco a business check, payable to "Safeco Business Insurance" in the amount of \$802.75, for payment of an insurance premium (the "Rio Alce check").
- qq. 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.
- rr. 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.

Salas Transaction

- ss. On or about April 11, 2011, Genaro Salas gave Francisco a personal check, payable to "The Hartford" in the amount of \$1,246.65, for payment of an insurance premium (the "Salas check").
- tt. 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.
- uu. 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.

Director's Investigation

- vv. On November 25, 2014, the Director issued a subpoena requiring Francisco to provide testimony before the Director. Francisco testified before the Director on December 16, 2014 regarding his insurance business.
- ww. 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."
- xx. 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."
- yy. Francisco incurred approximately 256 insufficient funds charges against his business checking account from January 2012 through early February 2014 when insurers attempted to collect their due premiums.
- zz. 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.

- aaa. 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.
- bbb. 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 Division of Consumer Affairs 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."
- ccc. Francisco signed for the July 30, 2015 subpoena *duces tecum* delivered by United States Postal Service Certified Mail to his residential address.
- ddd. Francisco received the July 30, 2015 subpoena *duces tecum*.
- eee. Francisco never sent to Special Investigator Crutchfield a copy of Rosenbohm's application for a homeowners' insurance policy submitted to Twin City Fire on approximately August 29, 2013.
- fff. Francisco never sent to Special Investigator Crutchfield a copy of the purported Rosenbohm application for a homeowners' insurance policy submitted to Twin City Fire on approximately March 30, 2015.
- ggg. On December 17, 2014, June 10, 2015, July 6, 2015, November 20, 2015 and December 16, 2015, Special Investigator Crutchfield sent Francisco

inquiries by first-class mail, postage prepaid, requesting information and documents related to the Division's investigation of his insurance business.

hhh. The inquiry letters advised Francisco that his "adequate response [wa]s due twenty days from the postmark ... or by [a specified date]" and that "failure to respond by the due date could be a ground for discipline of [his] license."

iii. None of the inquiry letters were returned to the Division as undeliverable.

jjj. Francisco did not provide the Division any communication, correspondence or response, to any of the inquiry letters.

kkk. Francisco has not demonstrated reasonable justification for his failure to produce the requested response to the inquiry letters.

Id.

8. Based on the foregoing findings of fact, the Commission found and concluded that the Director is entitled to the relief sought in the Director's Complaint and that cause exists to discipline Francisco's expired resident insurance producer license pursuant to:

- a. Section 375.141.1(2) because Francisco violated insurance laws, a subpoena of the Director, and a regulation of the Director;
- b. Section 375.141.1(4) because Francisco improperly withheld, misappropriated, or converted money and checks received in the course of doing insurance business;
- c. Section 375.141.1(5) because Francisco intentionally misrepresented the terms of an insurance policy application to an insurance company;

- d. Section 375.141.1(6) because Francisco was convicted of a felony and crime involving moral turpitude; and
- e. Section 375.141.1(8) because Francisco used fraudulent or dishonest practices and demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of his business.

Id.

9. On November 22, 2016, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

10. On December 2, 2016, the Department served Francisco a Notice of Hearing to his address of record before the Commission. The Notice of Hearing set the Disciplinary Hearing for 10:00 a.m. on December 16, 2016, at the Department, 301 West High Street, Room 530, Jefferson City, Missouri.

11. On December 7, 2016, the Department served Francisco an additional copy of the Notice of Hearing by United States Postal Service first-class mail, postage prepaid, to the same address. The United States Postal Service did not return the additional copy of the Notice of Hearing to the Department as undeliverable.

12. On December 16, 2016, the Director, through her Hearing Officer Tammy S. Kearns ("Hearing Officer"), held a Disciplinary Hearing in this matter to determine the appropriate disciplinary action, if any, to be taken against Francisco's expired resident insurance producer license. *Disciplinary Hearing Transcript ("Tr.")* at 2. Neither Francisco nor anyone on his behalf appeared. Mark J. Rachel appeared on behalf of the Division. *Id.* at 2-3.

13. At the Disciplinary Hearing, the Hearing Officer took official notice of the Commission's certified record of its proceeding and admitted it into evidence as Exhibit 1. *Id.* at 3-5.

14. The Hearing Officer also took official notice of the Notices of Hearing sent to Francisco and admitted the documents collectively into evidence as Exhibit 2. *Id.* at 3-6.

15. At the Disciplinary Hearing, the Division recommended revocation of Francisco's expired resident insurance producer license. *Id.* at 4 and 6.

16. The Director hereby incorporates the Commission's October 18, 2016 Decision referenced herein and finds in accordance with the same. *Director, Dep't of Ins., Fin. Insts. & Prof'l Regis'n v. Brandon Gene Francisco*, No. 16-3009 DI (Mo. Admin. Hrg. Comm'n Oct. 18, 2016).

CONCLUSIONS OF LAW

17. Section 374.051.2 outlines the procedure to revoke or suspend an insurance producer license. That statute provides, 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.

18. 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.

19. Where 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).

20. 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 or of another insurance commissioner in any other state;

* * *

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

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

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

* * *

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

21. Section 375.144, an insurance law, 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.

22. Section 375.051 is an insurance law and provides, in relevant part:

1. 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.
2. 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.

23. Title 20 CSR 100-4.100(2)(A), a regulation of the Director, 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.

24. "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). "Missouri courts have consistently held that 'the purpose behind licensing statutes is to protect the public rather than to punish the licensed professional.'" *Garozzo v. Mo. Dep't of Ins., Fin. Insts. & Prof'l Regis'n*, 389 S.W.3d 660, 665 (Mo. banc 2013) (internal citation omitted).

25. The expiration of Francisco's resident insurance producer license does not frustrate the Director's authority to impose discipline. Section 375.141.4.

26. The Commission has the authority to conduct hearings and make findings of fact and conclusions of law that cause exists to discipline an insurance producer license. Sections 621.045 and 621.110.

27. Section 621.110 authorizes the Department to receive evidence relevant to the appropriate disciplinary action, from Francisco or any other source, including the Division.

28. The Director has the discretion to discipline Francisco's expired resident insurance producer license, including the discretion to revoke that license. Sections 374.051.2, 375.141.1, and 621.110.

29. Based on the Commission's findings of cause for discipline and the nature and severity of the conduct involved, revocation of Francisco's expired resident insurance producer license pursuant to § 375.141.1(2), (4), (5), (6), and (8) is appropriate.

30. This Order is in the public interest.

ORDER

Based on the evidence presented and the foregoing findings and conclusions, the expired resident insurance producer license of **Brandon Gene Francisco**, Number 0112407, is hereby **REVOKED**.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 11th DAY OF

July, 2017.



Chlora Lindley-Myers, Director
Missouri Department of Insurance, Financial
Institutions and Professional Registration

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2017, a true and complete copy of the foregoing was served in this matter by UPS, signature required, and by United States Postal Service certified mail, signature required, and first-class mail, postage prepaid, to the following:

Brandon Gene Francisco UPS Tracking No. 1ZOR15W84296977324
122 Meador Drive
Noel, Missouri 64854-9121

Brandon Gene Francisco USPS Certified Mail No. 7016 1370 0001 2035 9128
P.O. Box 364
Noel, Missouri 64854

Brandon Gene Francisco USPS First Class Mail
RR 1, 122
Noel, Missouri 64854

And hand delivered to: USPS First Class Mail

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