

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

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

IN RE:)
)
 DONALD J. NOVAK,) **Case No. 160621324C**
)
 Respondent.)

CONSENT ORDER

JOHN M. HUFF, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, takes up the above matter for consideration and disposition. The Consumer Affairs Division, through counsel Mark J. Rachel, and Respondent Donald J. Novak have reached a settlement in this matter and have agreed to the issuance of this Consent Order.

1. John M. Huff 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.

2. The Consumer Affairs Division (“Division”) of the Department has the duty of conducting investigations into the conduct of insurance producers pursuant to the insurance laws

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

of Missouri and has been authorized by the Director to investigate and initiate actions to enforce the insurance laws of Missouri, including insurance producer license discipline.

3. The Department issued Respondent Donald J. Novak (“Novak”) a resident insurance agent license, number 0101894, on January 4, 1991, which has been periodically renewed and is currently set to expire January 4, 2017.²

4. On or about July 28, 2011, Novak’s second cousin R.H.’s father died and R.H. inherited or otherwise took ownership of assets worth millions of dollars.³

5. R.H. became an insurance client of Novak.

6. Novak was aware that R.H. had certain mental limitations which impaired his ability to understand and appreciate financial concepts and complex transactions, and lacked the capacity to independently assess and manage his own investments.

7. On November 15, 2011, R.H. executed a power of attorney naming Novak as his attorney-in-fact and allowing Novak to directly manage R.H.’s financial affairs.

8. From 2011 into 2015, Novak schemed to convert R.H.’s assets; he used them to purchase property for himself, including automobiles, boats, and a lake house.

9. Novak, in his capacity as R.H.’s attorney-in-fact and as an insurance broker, also purchased annuities purportedly on behalf of R.H. from North American Company for Life and Health Insurance, an Iowa corporation (“North American”).

10. North American paid Novak commissions for the annuities.

11. Novak later attempted to liquidate the annuities for his own, additional benefit.

12. During both the solicitation and defunding of the annuity contracts, Novak

² Pursuant to L. 2001, SB 193 (91st Gen. Assem., 1st Reg. Sess.), effective January 1, 2003, the legislature converted Missouri insurance agent licenses to insurance producer licenses. *See also* § 375.012.3.

³ The consumer’s identity is protected by the use of initials.

misrepresented to North American R.H.'s knowledge and suitability for the products.

13. R.H. was generally unaware that Novak had been siphoning his money, or lacked the capacity to understand the significance of Novak's transactions.

14. Novak pled guilty to Wire Fraud, a Felony in violation of 18 U.S.C. § 1343 ("Wire Fraud"),⁴ and on June 15, 2016 the United States District Court for the Eastern District of Missouri convicted him in the prosecution known as *United States v. Donald Novak*, Case No. 4:16-CR-00113. The court sentenced Novak to 29 months' incarceration followed by three years' supervised release, and ordered him to pay \$1,835,196.72 in restitution to R.H.

15. Novak understands and agrees that pursuant to § 375.141.1(2) the Director may discipline Novak's resident insurance producer license because he violated an insurance law, specifically § 375.144.

16. Novak understands and agrees that pursuant to § 375.141.1(4) the Director may discipline Novak's resident insurance producer license because he improperly misappropriated or converted money or property received from R.H. in the course of doing insurance business.

17. Novak understands and agrees that pursuant to § 375.141.1(6) the Director may discipline Novak's resident insurance producer license because he has been convicted of a felony and crime involving moral turpitude, specifically Wire Fraud.

18. Novak understands and agrees that pursuant to § 375.141.1(8) the Director may discipline Novak's resident insurance producer license because he used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of his insurance business.

19. On or about October 4, 2016, counsel for the Division provided a written

⁴ All criminal statutory references are to those contained in the version of the United States Code pursuant to which each judgment was rendered.

description of the specific conduct for which discipline may be sought and a citation to the law applicable, together with copies of any documents upon which it based the allegations, and the Division's settlement offer, specifically this Consent Order, in accordance with § 621.045.4(1). Counsel for the Division further advised Novak that he had sixty (60) days to review the relevant documents and consider the proposed settlement offer in accordance with § 621.045.4(2).

20. Novak and the Division desire to settle the allegations raised by the Division.

21. Novak acknowledges and understands that he has the right to consult an attorney at his own expense regarding this matter.

22. Novak further acknowledges that he has been advised that he may, either at the time this Consent Order is signed by all parties or within fifteen (15) days thereafter, submit this Consent Order to the Administrative Hearing Commission for determination whether the facts agreed by the parties hereto constitute cause for discipline of Novak's resident insurance producer license.

23. Except as provided in paragraph 22 above, Novak stipulates and agrees to waive any waivable rights that he may have to a hearing before the Administrative Hearing Commission or the Director and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order, and forever releases and holds harmless the Department, the Director, his agents, and the Division from all liability and claims arising out of, pertaining to, or relating to this matter.

24. Novak acknowledges and understands that this Consent Order is an administrative action and will be reported by the Department to other jurisdictions. Novak further acknowledges and understands that this administrative action should be disclosed on future license applications and renewal applications in this state and elsewhere, and that it is his responsibility to comply

with the reporting requirements of each jurisdiction in which he may be licensed.

25. The signatories to this Consent Order certify by signing that they are fully authorized, in their own capacities, or by the named parties they represent, to accept the terms and provisions of this Consent Order in their entirety, and agree, in their personal or representative capacities, to be bound by the terms of this Consent Order.

CONCLUSIONS OF LAW

26. 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;

* * *

(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[.]

27. 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, conceal-

ment, 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.

28. In Missouri, "crimes that necessarily involve moral turpitude ... [include] frauds[.]" *Brehe v. Missouri Dep't of Elementary & Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007).

29. The facts hereby admitted by Novak constitute cause to discipline his resident insurance producer license pursuant to § 375.141.1(2), (4), (6), and (8).

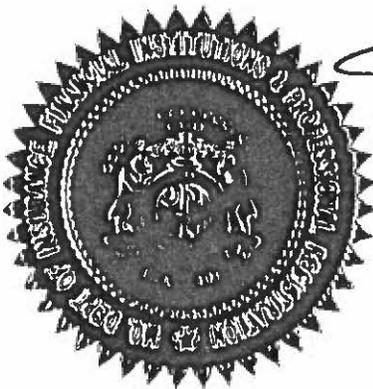
30. The Director is authorized to settle this matter and issue this Consent Order in the public interest pursuant to §§ 374.046, 536.060, and 621.045.

31. The terms set forth in this Consent Order are an appropriate disposition of this matter and issuance of this Consent Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license of Donald J. Novak, number 0101894, is hereby **REVOKED**.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 1ST DAY OF DECEMBER, 2016.



JOHN M. HUFF, Director
Missouri Department of Insurance, Financial
Institutions and Professional Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons acknowledge and understand that Donald J. Novak has the right to a hearing, but that Donald J. Novak has waived the hearing and agreed to the issuance of this Consent Order.

Donald J. Novak

Donald J. Novak, Respondent
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11/23/16
Date

Counsel for Respondent
Missouri Bar #: _____
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Date

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29 November 2016
Date