



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

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

In re:) DIFP No. 091208794C
)
JEFFREY P. DUNGAN.) AHC No. 10-1561 DI

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

Based on the competent and substantial evidence on the whole record, I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department"), hereby issue the following findings of fact, conclusions of law, and order of discipline:

Findings of Fact

1. John M. Huff is the duly appointed Director ("Director") of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department") whose duties, pursuant to Chapters 374 and 375, RSMo, include supervision, regulation and discipline of insurance producers.

2. The Department issued Respondent Jeffrey P. Dungan ("Dungan") an insurance producer license (No. 0285831) on October 21, 1987, which license, after multiple renewals,

expired on October 21, 2011.

3. The Director filed a Complaint with the Administrative Hearing Commission (“Commission”) on August 13, 2010, seeking a finding that cause existed to discipline Dungan’s insurance producer license and the business entity producer license of Dungan Insurance Group, LLC.¹

4. Dungan and Dungan Insurance Group, LLC filed their Answer to the Complaint on September 20, 2010.

5. On December 29, 2010, the Director filed a Motion for Summary Decision and Suggestions in Support as to Counts IV and VI of the Complaint.

6. After full briefing by the parties, the Commission issued an Order on August 24, 2011 granting the Motion for Summary Decision in part and finding cause to discipline the insurance producer license of Respondent Dungan under § 374.141.1(2) and (8).² In its Order, the Commission ordered the Director to provide notification as to whether he wished to proceed with the remainder of the Complaint.

7. In its Order finding cause to discipline Dungan’s insurance producer license pursuant to § 375.141.1(2) and (8), the Commission issued its Findings of Fact, which stated, in relevant part:

- a. On September 26, 2007, Dungan sold an American Family commercial insurance policy to Mullins Investments, LLC, d/b/a Wornall Place Apartments (“Wornall”).
- b. When Dungan sold the policy to Wornall, he provided Wornall with an evidence of insurance, or binder, bearing a “date issued” of October 3, 2007, “effective date” of September 26, 2007, “expiration date” of September 26,

¹ The Director later dismissed all counts in the Complaint against Dungan Insurance Group, LLC.

² All statutory references are to RSMo (Supp. 2011) unless otherwise indicated. Although the Commission referenced RSMo (Supp. 2010) in its August 24, 2011 Order, the statutes in the 2011 Supplement are identical.

2008, and a "policy number" of "TBA" (meaning "To Be Assigned").

- c. Thereafter, Dungan, or an unlicensed employee at Dungan Agency, Stephanie Walter ("Walter"), misplaced the application and the initial premium check, apparently by filing it as a part of an inactive "dead" file in a storage area in the back of the agency office. As a result, neither the Wornall application nor its check was forwarded to American Family.
- d. In the following months, Dungan, Walter, or other unlicensed employees of Dungan Agency received ten additional monthly premium checks from Wornall for the commercial insurance policy sold to Wornall by Dungan, but none of these checks was forwarded to American Family.
- e. At least six of the Wornall premium checks were attached to the unsent application and left in storage in the back of the agency or were otherwise retained at the office of Dungan Agency, and the remainder were received and held by Dungan after Walter left the Agency.
- f. On August 21, 2008, Wornall called Dungan because Wornall's mortgagee, Champion Bank, was concerned that it had not received a copy of the commercial insurance policy.
- g. In response to this call, Dungan created a second evidence of insurance ("Evidence Two") and faxed it to Champion Bank.
- h. Evidence Two indicated that coverage requested by Wornall from American Family, through Dungan, was or would be bound or issued.
- i. Evidence Two bore a "date issued" of August 21, 2008, an "effective date" of July 29, 2008, an "expiration date" of July 29, 2009, and a policy number of "24-XJ7416-01."
- j. When Dungan created Evidence Two, he approximated the dates listed and knowingly inserted a false policy number he knew did not correspond to a policy issued by American Family to Wornall.
- k. Dungan created a policy number he thought would be similar to the policy number that would be issued by American Family.
- l. Dungan inserted the approximate dates and the false policy number to create the false appearance that the application had been submitted to American Family and the policy issued.
- m. Dungan discovered the failure to submit the application and approximately six to eight unsent premium payment checks from Wornall in mid- or late summer of 2008.

- n. Upon making this discovery, Dungan did not contact Wornall or American Family to notify them of the lost application or unsent premium checks, nor did he propose to rewrite the application, but instead continued for months to receive and hold premium checks while looking for the lost application.
- o. Dungan considered rewriting the policy, but was concerned about calling Wornall and admitting the application was lost.
- p. After approximately three to five months, Dungan located the application and the unsent premium checks, but Wornall elected to place coverage through another agency.
- q. During the approximately three to five months after Dungan discovered the failure to submit the application, Walter was no longer working in Dungan's office.
- r. Dungan personally received and failed to forward premium checks from Wornall after he discovered the failure to submit the application and premium checks.
- s. When Dungan created and issued Evidence Two, he included a false policy number, which he knew did not accurately correspond with an existing policy issued by American Family to Wornall.
- t. When Dungan created and issued Evidence Two, he included the false policy number and dates in order to create the false impression to Wornall and Champion Bank that a policy had been issued by American Family to Wornall.
- u. Dungan included the false policy number to create the false impression to Wornall and Champion Bank that Dungan had properly forwarded Wornall's application and all premium checks submitted by Wornall to Dungan Agency to American Family.

8. In its Conclusions of Law, the Commission concluded that cause existed to discipline Dungan's license as follows:

- a. "In preparing Evidence Two, a binder containing false information evidencing an insurance policy that had never been issued, Dungan knowingly made misstatements and concealed material facts in the sale of an insurance policy in violation of § 375.144(2)." Because his conduct violated § 375.144(2), the Commission concluded that Dungan is subject to discipline under § 375.141.1(2).
- b. The Commission specifically rejected Dungan's argument that because no

harm to Wornall occurred as a result of Dungan's misrepresentation, there was no material misrepresentation.

- c. The Commission concluded that by failing to transmit the Wornall application and premium checks to American Family for eleven months and for "issuing a second insurance binder with a false policy number with inaccurate dates of issuance and expiration," Dungan's license is subject to discipline for using dishonest business practices and demonstrating incompetence, untrustworthiness and financial irresponsibility pursuant to § 375.141.1(8).

9. On October 25, 2011, the Director filed his Notice of Dismissal Without Prejudice as to Counts I, II, III, V, and VII, thereby dismissing the remainder of the Complaint, including all counts against Dungan Insurance Group, LLC.

10. On December 28, 2011, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

11. Thereafter, the Director served Dungan by certified mail a notice of hearing for the disciplinary hearing to be held at 1:00 p.m. on February 9, 2012, Room 530, 301 West High Street, Room 530, Jefferson City, Missouri. The certified mail receipt was signed and returned to the Director.

12. Dungan and his attorney, Lawrence W. Ferguson, appeared at the disciplinary hearing on February 9, 2012. Andrew Heitmann appeared as counsel for the Department's Consumer Affairs Division ("Division"). *Disciplinary Hearing Transcript*, ("Tr.") at page 6-7.

13. The hearing officer, Mary S. Erickson, admitted as Exhibit 1 the Commission's record of proceedings and Exhibit 2, the original Notice of Hearing. *Tr.* 8.

14. The Division called only one witness, Special Investigator Dennis Fitzpatrick, who testified, in relevant part, as follows:

- a. American Family Insurance notified the Department that Dungan had falsified insurance cards. *Tr.* 12.

- b. Dungan created an Evidence of Insurance coverage document without a corresponding policy to provide to the consumer and the financial institution with the intent to mislead and deceive. *Tr. 13.*
 - c. Dungan collected the initial premium and premium checks for ten months without forwarding them to the insurance company, for a total of between \$15,000 to \$20,000. *Id.*
 - d. When a request was made for coverage verification, Dungan created a second Evidence of Insurance coverage document without a corresponding policy and added a false policy number. *Id.*
 - e. On cross examination, Fitzpatrick testified that no policy would have been issued when the first or original Evidence of Insurance was issued. *Tr. 16.*
 - f. However, on redirect, Fitzpatrick clarified that he did not allege cause existed for discipline because of original Evidence of Insurance. *Tr. 18-19.*
15. The first or original Evidence of Insurance is not part of the Commission's record nor did either party offer it into evidence at the disciplinary hearing.
16. Jean McCarter testified on behalf of Dungan, in relevant part, as follows:
- a. McCarter had worked as an agent, district manager, and state director for American Family, and had been a direct supervisor of Dungan. *Tr. 21-23.* However, upon questioning by the Hearing Officer, McCarter testified that prior to the disciplinary hearing, McCarter had no communications or course of dealings with Dungan regarding American Family business. *Tr. 35.*
 - b. McCarter is currently employed as the state director of the Agent Support Network of America ("ASNOA"). *Tr. 21-23.* However, prior to this action, McCarter had no communications or course of dealings as an American Family executive with Dungan for American Family business. *Tr. 35.*
 - c. A captive agent sells for one insurance company only and has the authority to bind the insurance company. *Tr. 23.*
 - d. On Dungan's original form issued for the Wornall Apartments, Dungan's use of TBA, meaning "to be assigned" was appropriate and bound coverage even though no policy had yet been issued. *Tr. 24.*
 - e. McCarter testified that, based on her knowledge and experience with American Family, when Dungan located the application and the checks, the correct and right thing for him to have done was to contact the company, tell them he had the application and checks, and that coverage was bound. *Tr. 28.*

- f. McCarter agreed that putting a policy number on the second Evidence of Insurance for a policy that did not exist was not the appropriate thing to do. *Tr. 34.*
 - g. Dungan, as an agent of American Family, knew that coverage was bound and if there had been a loss, American Family would have covered the loss. *Tr. 30-32.*
 - h. When McCarter would make a recommendation for termination of an agent, she looked at the totality of the circumstances. McCarter does not believe that Dungan's actions warrant revocation. *Tr. 32-33.*
 - i. Dungan's attorney stipulated that McCarter was not employed at American Family at the time Dungan committed the acts alleged. *Tr. 33.*
17. Dungan testified, in relevant part, as follows:
- a. Dungan has been an insurance producer since he was 18 years old and that he is currently 43. *Tr. 37.* Dungan first worked as a Customer Service Representative for American Family, the first one the district manager put in place. *Tr. 38.* He worked for his father's agency for about 11 years until American Family gave Dungan his own contract in 1998. *Tr. 38-39.*
 - b. Dungan had written the policy for the Wornall Apartments for the previous owner before he had been contacted by Dow Mullins to insure the complex. *Tr. 40-41.* Dungan traveled to Kansas City, met with Mullins, and returned with the signed and completed application. *Tr. 41-21.* Dungan thereafter received Mullins' check by mail. *Id.*
 - c. Prior to his trip to Kansas City, Dungan had discussed the situation with his underwriter and knew the appropriate premium. *Tr. 42-43.*
 - d. Dungan gave the application and check to his staff member to be processed. Dungan assumed it would be processed and was not told of any problems. *Tr. 43-44.*
 - e. Dungan prepared and sent a form to Mullins verifying coverage, with "TBA", meaning to be assigned, in the policy number blank as was common. *Tr. 48.* Dungan knew that he had bound the coverage and the property would be covered for loss. *Tr. 49.*
 - f. Dungan's first clue of a problem was when he received a check in the mail from Mullins and there was no account to apply it to. *Tr. 45.* Dungan knew it was not an American Family problem and he began to search for the application which he eventually found after three months, while continuing to receive monthly checks. *Tr. 45-47.*

- g. Before he found the application, Dungan had an inquiry from the bank looking for certification of coverage. *Tr. 48*. Dungan filled out the form and did not write TBA because it had been so long and “the bank would have definitely questioned” it. Instead, Dungan just picked a number that would be similar to a policy number upon issuance. *Tr. 50*.
- h. Dungan believes that the bank informed Mullins that the policy number was incorrect. Mullins called Dungan and stated that “[i]t put him in a bad situation and he didn’t want the policy, he wanted his checks back or his money back.” *Tr. 54*. Dungan sent the checks back to Mullins. *Tr. 55*.
- i. Dungan testified he has since changed his handling procedures. If he ever had a situation like this again, he would call the underwriter, say he did not know where the application is, and ask how to resolve it. *Tr. 55-56*.
- j. On cross-examination, Dungan blamed his agency staff member for the situation but admitted that if he had contacted American Family, “[t]hey would have resolved the situation.” *Tr. 57-58*.

18. The Division recommended that Dungan’s insurance producer license be revoked. *Tr. 11; 14; 78*.

19. In his closing, Dungan’s counsel argued that there was no real harm to Mullins or American Family, and there was no loss. *Tr. 80*. Dungan’s counsel urged additional training and probation for Dungan. *Tr. 81*.

20. After a briefing schedule issued by the Hearing Officer, and several extensions requested by the parties, on June 6, 2012, the Consumer Affairs Division filed its Proposed Findings of Fact, Conclusions of Law and Order of Discipline. On August 8, 2012, Dungan filed his Proposed Findings of Fact, Conclusions of Law and Order of Discipline and his Brief in support thereof. On August 23, 2012, the Consumer Affairs Division filed its Reply.

21. The Director hereby adopts and incorporates the August 24, 2011 Order of the Administrative Hearing Commission referenced herein and does hereby find in accordance with the same. *Director of Dep’t of Ins., Fin. Insts. & Prof’l Reg’n v. Jeffrey P. Dungan*, No. 10-1561

Conclusions of Law

22. Section 621.110 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.

23. Where an agency seeks to discipline a license, the Commission “finds the predicate facts as whether cause exists” for the discipline, and then the agency “exercises final decisionmaking authority concerning the discipline to be imposed.” *Tendai v. Missouri State Bd. of Reg'n for the Healing Arts*, 161 S.W.3d 358, 364-65 (Mo. banc 2005), *overruled on other grounds*, *Albanna v. Board of Reg'n for the Healing Arts*, 293 S.W.3d 423, 428 n.2 (Mo. banc 2009).

24. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

2. 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.

25. Section 375.141 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:

* * *

(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[.]

* * *

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

26. Section 375.144 states, 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[.]

27. Pursuant to § 375.141 and 621.110, the Director has the discretion to discipline Dungan's insurance producer license, including the discretion to revoke such license.

28. The Director specifically adopts the Commission's conclusions of law in its Order

and makes the following additional conclusions of law based upon the evidence presented at the disciplinary hearing.

29. Dungan's core assertion that leniency in discipline is warranted rests on his contention that coverage existed and American Family would have paid on any loss at the Wornall Apartments during the time that the application and Mullins's checks were lost at Dungan's agency. The Director does not find this contention persuasive, because it does not address the substance of the violations that occurred and, as the Commission's concluded, "it provides no exoneration for a licensee simply because his conduct fails to do palpable harm to his client."

30. McCarter's leading testimony is equally unpersuasive. Her belief as to whether there would have been coverage and whether she would have recommended American Family's termination of Dungan as an agent are undercut by the fact that McCarter was not employed by American Family at the time of the misrepresentations and deceptions by Dungan. More persuasive is her opinion that Dungan's actions regarding the second Evidence of Insurance were inappropriate.

31. Rather than contact American Family as soon as he realized a problem with the application and after receiving checks month after month, Dungan failed to act as a responsible insurance producer in the state of Missouri.

32. Furthermore, when someone else realized a problem existed, again, rather than contact American Family, Dungan engaged in deception by creating the second Evidence of Insurance with a fake policy number to buy Dungan time to obtain an actual policy and policy number from American Family to give to the bank and Mullins.

33. Finally, in determining the level of discipline to be issued, the Director specifically notes that Dungan's counsel's closing argument supports revocation: "Revocation should be reserved for people who are dishonest, who are stealing or cheating, who are lying to further their own ends. It shouldn't be for somebody who is just trying to get people off his back until he can get things straightened out." *Tr. 81.*

34. The Director concludes that Dungan engaged in dishonest acts and lied to prevent personal embarrassment and the discovery of his incompetence, untrustworthiness, and financial irresponsibility. Dungan did not just commit a single act of misrepresentation, incompetence, and financial irresponsibility: Dungan had months to "get things straightened out" after he realized he had the application and checks and before the bank asked for the evidence of insurance.

35. Based on the nature and severity of the aforementioned conduct, sufficient grounds exist for revoking the insurance producer license of Dungan pursuant to §§ 375.141.1(2) and (8).

ORDER

Based on the foregoing findings and conclusions, the insurance producer license of Jeffrey P. Dungan (License (No. 0285831) is hereby REVOKED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 28th DAY OF MAY, 2013.




John M. Huff, Director

CERTIFICATE OF SERVICE

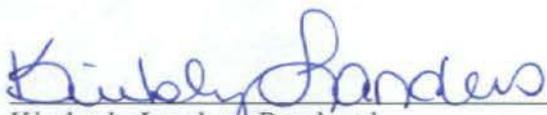
I hereby certify that on this 28th day of May, 2013, a copy of the foregoing Findings of Fact, Conclusions of Law and Order of Discipline was served by certified mail, No. 7009-3410-0001-8931-4862, to the following:

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Attorney for Respondent Jeffrey P. Dungan

And by hand-delivery to:

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