



DEPARTMENT OF COMMERCE AND INSURANCE

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

In the Matter of:

KERRI KEMPKER,

Respondent.

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Case No. 2111041139C

CONSENT ORDER

CHLORA LINDLEY-MYERS, Director of the Missouri Department of Commerce and Insurance, takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Danielle McAfee-Thoenen, and Respondent Kerri Kempker have reached a settlement in this matter and have consented to the issuance of this Consent Order.

FINDINGS OF FACT

1. Chlora Lindley-Myers is the Director of the Missouri Department of Commerce and Insurance (the “Director” of the “Department”), whose duties, pursuant to Chapters 374, 375, and 381 RSMo,¹ include the supervision, regulation and discipline of insurance producers and business entity producers.

2. The Consumer Affairs Division (“Division”) of the Department has the duty of

¹ All civil statutory references are to the 2016 Missouri Revised Statutes unless otherwise indicated.

conducting investigations into the conduct of insurance producers and companies pursuant to the insurance laws of this state and has been authorized by the Director to investigate and initiate actions to enforce the insurance laws of Missouri, including producer license discipline.

3. The Department issued Respondent Kerri Kempker (“Kempker”) a resident insurance producer license (No. 268251) in June 1999.

4. Kempker voluntarily surrendered her resident insurance producer license to the Department on March 2, 2020, and a Voluntary License Surrender Order was entered on August 11, 2020.

5. At all times relevant to this Consent Order, Kempker was an insurance producer employed by Macon County Title & Escrow Services (“Macon County Title”).

6. Agents National Title Insurance Company (“Agents”) is a title insurance company authorized to do business in Missouri. Macon County Title was contracted with Agents to issue title insurance policies until Agents terminated the agency agreement effective July 16, 2018.

7. Alliant National Title Insurance Company (“Alliant”) is a title insurance company authorized to do business in Missouri. Macon County Title was contracted with Alliant to issue title insurance policies from May 26, 2012 until Alliant terminated the agency agreement effective May 1, 2019.

8. Kempker concedes that the Director would have sufficient evidence to prove that after July 16, 2018, Respondent continued to issue title insurance commitments and title insurance policies for approximately one (1) year that appeared to be underwritten by Agents, when in fact, Respondent had no actual authority to bind Agents.

9. Kempker concedes that the Director would have sufficient evidence to prove that Respondent collected title insurance premium and additional fees from consumers and provided

consumers title insurance commitments and title insurance policies purportedly underwritten by Agents, when in fact, Respondent had no actual authority to bind Agents.

10. Kempker concedes that the Director would have sufficient evidence to prove that after May 1, 2019, Respondent continued to issue title insurance commitments and title insurance policies for approximately eight (8) months that appeared to be underwritten by Alliant, when in fact, Respondent had no actual authority to bind Alliant.

11. Kempker concedes that the Director would have sufficient evidence to prove that Respondent collected title insurance premium and additional fees from consumers and provided consumers title insurance commitments and title insurance policies purportedly underwritten by Alliant, when in fact, Respondent had no actual authority to bind Alliant.

12. Kempker concedes that the Director would have sufficient evidence to prove that consumers have been defrauded, in that Respondent misrepresented the terms of title insurance policies when issuing title insurance commitment with the intent to issue a title insurance policy on behalf of an insurer without a valid agency contract, such that the consumers have evidence of purported title insurance coverage, but no title insurance coverage.

13. Kempker concedes that the Director would have sufficient evidence to prove that Respondent misappropriated insurance premium funds given to her to deposit and remit to Agents, in an amount exceeding \$570.00.

14. Kempker concedes that the Director would have sufficient evidence to prove that Respondent did not timely forward to Agents title insurance premiums she collected for title insurance commitments and policies purportedly underwritten by Agents.

15. Kempker concedes that the Director would have sufficient evidence to prove that Respondent misappropriated insurance premium funds given to her to deposit and remit to Alliant,

in an amount exceeding \$2000.00.

16. Kempker concedes that the Director would have sufficient evidence to prove that Respondent did not timely forward to Alliant title insurance premiums she collected for title insurance commitments and policies purportedly underwritten by Alliant.

17. Kempker concedes that the Director would have sufficient evidence to prove that Respondent applied escrow funds inconsistent with the terms of the written instructions, in that Kempker failed to issue payment in the amount of \$72,506.37 for payoff of an outstanding lien.

18. Kempker concedes that the Director would have sufficient evidence to prove that Respondent comingled escrow funds and used such escrow funds for purposes other than to fulfill the terms of the written instructions, in that Kempker failed to issue payment in the amount of \$72,506.37 for payoff of an outstanding lien.

19. Kempker concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(4) the Director has grounds to discipline Respondent's license because, by failing to timely remit title insurance premium to Agents for policies purportedly underwritten by Agents, Respondent improperly withheld, misappropriated, or converted moneys or properties received in the course of doing insurance business.

20. Kempker concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(4) the Director has grounds to discipline Respondent's license because, by failing to timely remit title insurance premium to Alliant for policies purportedly underwritten by Alliant, Respondent improperly withheld, misappropriated, or converted moneys or properties received in the course of doing insurance business.

21. Kempker concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(5) the Director has grounds to discipline Respondent's license because,

by selling title insurance policies that appeared to be underwritten by Agents, when in fact, Respondent had no authority to bind Agents, Respondent intentionally misrepresented the terms of an actual or proposed insurance contract.

22. Kempker concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(5) the Director has grounds to discipline Respondent's license because, by selling title insurance policies that appeared to be underwritten by Alliant, when in fact, Respondent had no authority to bind Alliant, Respondent intentionally misrepresented the terms of an actual or proposed insurance contract.

23. Kempker concedes that the Director would have sufficient evidence to prove that Respondent engaged in unfair trade practices under § 375.936(6), in violation of § 375.934, which constitutes grounds under § 375.141.1(2), namely "misrepresentations and false advertising of insurance policies" as defined by § 375.936(6), by misrepresenting the benefits, advantages, conditions, or terms of title insurance policies when they marketed title insurance commitments and title insurance policies that appeared to be underwritten by Agents, when in fact, Respondent had no authority to bind Agents. Such conduct also constitutes fraud upon the recipient of any title insurance commitment or title insurance policy that appeared to be underwritten by Agents, when in fact, Respondent had no authority to bind Agents.

24. Kempker concedes that the Director would have sufficient evidence to prove that Respondent engaged in unfair trade practices under § 375.936(6), in violation of § 375.934, which constitutes grounds under § 375.141.1(2), namely "misrepresentations and false advertising of insurance policies" as defined by § 375.936(6), by misrepresenting the benefits, advantages, conditions, or terms of title insurance policies when they marketed title insurance commitments and title insurance policies that appeared to be underwritten by Alliant, when in fact, Respondent

had no authority to bind Alliant. Such conduct also constitutes fraud upon the recipient of any title insurance commitment or title insurance policy that appeared to be underwritten by Alliant, when in fact, Respondent had no authority to bind Alliant.

25. Kempker concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(8) the Director has grounds to discipline Respondent's license because she used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business by providing title insurance commitments and title insurance policies that appeared to be underwritten by Agents, when in fact, Respondent had no authority to bind Agents.

26. Kempker concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(8) the Director has grounds to discipline Respondent's license because she used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business by providing title insurance commitments and title insurance policies that appeared to be underwritten by Alliant, when in fact, Respondent had no authority to bind Alliant.

27. Respondent acknowledges and understands that she has the right to consult legal counsel at her expense.

28. Respondent further acknowledges that she has been advised that she may, either at the time the Consent Order is signed by all parties, or within fifteen (15) days thereafter, submit the Consent Order to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Consent Order constitute grounds to discipline Respondent's license.

29. Except as provided in Paragraph 28, above, Respondent stipulates and agrees to waive any waivable rights that she 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 release and hold harmless the Department, the Director and his agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

30. Respondent and the Division desire to settle the allegations raised by the Division.

31. On or about April 27, 2022, counsel for the Division provided a written description of the specific conduct for which discipline was sought and a citation to the law and rules allegedly violated, together with copies of any documents upon which it based the allegations, and the Division's settlement offer, namely, this Consent Order, in accordance with § 621.045.4(1). Counsel for the Division further advised Respondent that she had sixty (60) days to review the relevant documents and consider the proposed settlement offer in accordance with § 621.045.4(2).

32. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

33. The allegations raised by the Division, and conceded herein by Respondent, are grounds to discipline Respondent's license under § 375.141.1 (2), (4), (5), (7), and (8).

34. Section 375.141 provides, in relevant part, as follows:

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;

* * *

(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;

* * *

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud; [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[.]

* * *

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.

35. Section 375.934 provides, in relevant part, as follows:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

(1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or

(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

36. Section 375.936 provides, in relevant part, as follows:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

* * *

(6) "Misrepresentations and false advertising of insurance policies",

making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustrations, circular or statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any policy;

* * *

(e) Uses any name or title of any policy or class of policies misrepresenting the true nature thereof;

(f) Is a misrepresentation for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy, including any intentional misquote of a premium rate;

(g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy[.]

37. 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. Nothing contained within this Consent Order prohibits the Director from pursuing other violations of the insurance laws and financial penalties or restitution against Respondent in a later proceeding.

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

Order

IT IS ORDERED that Kerri Kempker's insurance producer license Number 268251 is hereby REVOKED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 06th DAY OF October, 2022.




Chlora Lindley-Myers

CHLORA LINDLEY-MYERS, Director
Missouri Department of Commerce and
Insurance

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Kerri Kempker may have the right to a hearing, but that she has waived the hearing and consented to the issuance of this Consent Order.



Kerri Kempker
1203 Eastern Drive
Macon, MO 63552

9/29/22
Date

Date

Counsel for Respondent

Missouri Bar #: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____



J. Danielle McAfee-Phoenen
Missouri Bar # 63067

10/3/22
Date

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