

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 0714-AG08-0424-116

IN THE MATTER OF:

Tyler Clidienst,)
1641 North CR 175 East)
Sullivan, IN 47882)
Respondent/Producer)
License No. 495070)
)
)
Type of Agency Action: Enforcement)

FILED

JUN 03 2009

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER
DENYING TITLE DIVISION'S OBJECTION AND
AFFIRMING ALJ's FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

The Commissioner of the Indiana Department of Insurance, James Atterholt, having read and reviewed the Administrative Law Judge (ALJ) John Kissling's Findings of Fact, Conclusions of Law, and Recommended Order, Title Division's Objections to Recommended Order of April 9, 2009, and now being duly advised in the premises **DENIES** said Objection pursuant to Indiana Code 4-21.5-3-29, and as ultimate authority in this case issues this Final Order **AFFIRMING** ALJ Kissling's Findings of Fact, Conclusions of Law, and Recommended Order of April 9, 2009.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner incorporates ALJ Kissling's Findings of Fact and Conclusions of Law in this Final Order.

ORDER

The Commissioner now Orders:

1. Respondent's insurance license **495070** is suspended for a period of one (1) year from the date of this Final Order. At any time after the end of the suspension period, if Respondent qualifies with all requirements for licensure and has timely paid the fine in #2 below, his license may be reinstated but subject to a one (1) year probationary period beginning on the date of reinstatement.
2. Respondent shall pay a civil penalty to the Indiana Department of Insurance in the amount of five hundred (\$500.00) dollars within twenty (20) days of the issuance of this Final Order.

ALL OF WHICH IS ORDERED by the Commissioner this 3 day of June, 2009.


James Atterholt, Commissioner
Indiana Department of Insurance

Distribution:

Kathy Hulbert, Contract Counsel for the
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204

Thomas W. Farlow
Counsel for Respondent
Frost Brown Todd, LLC
201 N. Illinois Street, Suite 1000
PO Box 44961
Indianapolis, IN 46244-0961

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OBJECTIONS TO RECOMMENDED ORDER OF APRIL 9, 2009.

The Title Insurance Division ("Division"), by counsel, Kathy Carr Hulbert, having reviewed the Recommended Order, now files its objections to same. The Division does not object to the Findings of Fact or the Conclusions of Law in the Recommended Order and ONLY objects to the Order language in the document.

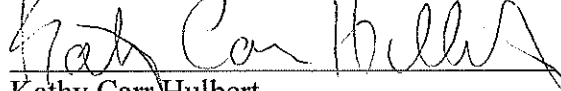
The Division respectfully requests that the Commissioner enter a Final Order consistent with the following:

ORDER

1. Respondent's insurance license **495070** be permanently revoked.
2. Respondent be ordered to remit \$1,426.17 in restitution to Edward Griffin for the reimbursement of the check addressed to Edward Griffin disbursed from the closing that Respondent gave to Shawn Gurly at the real estate closing within 20 days of the issuance of the final order.

3. Respondent be ordered to pay a civil penalty to the Indiana Department of Insurance in the amount of \$1,000.00 within 20 days of the issuance of the final order.

Respectfully submitted,

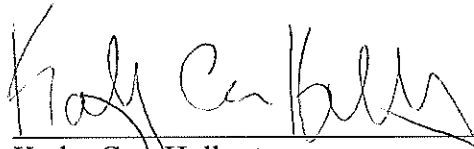


Kathy Carr Hulbert
Attorney No. 23529-49A

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Objections has been served upon the Respondent's counsel by mailing a copy of the same by First Class U.S. Mail, postage prepaid, this 27th day of April, 2009.

Thomas W. Farlow
Counsel for Respondent
Frost Brown Todd, LLC
201 N. Illinois Street, Suite 1000
PO Box 44961
Indianapolis IN 46244-0961



Kathy Carr Hulbert
Attorney No. 23529-49A

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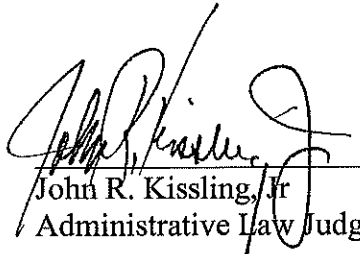
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STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF FILING OF RECOMMENDED ORDER

The parties to this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order are deemed filed as of this date.

To preserve an objection to this Order for judicial review, you, the Petitioner, must object to the Order in a writing that: 1) identifies the basis of your objection with reasonable particularity; and 2) is filed with the ultimate authority for the Final Order, James Atterholt, Commissioner of the Department of Insurance, within eighteen (18) days from the date stamped on this Order.


John R. Kissling, Jr.
Administrative Law Judge

Distribution:

Kathy Hulbert, Contract Counsel for the
Indiana Department of Insurance
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Indianapolis, Indiana 46240

Thomas W. Farlow
Counsel for Respondent
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**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

Administrative Law Judge, John R. Kissling, Jr., having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent, Tyler Clidienst. This matter came to be heard by John R. Kissling, Jr., designated Administrative Law Judge, on the 14th day of January, 2009 at 10:00 AM.

The Indiana Department of Insurance was represented by counsel, Kathy Hulbert. Respondent was present and represented by counsel, Thomas W. Farlow. Witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the Administrative Law Judge now makes the following Findings of Fact, Conclusions of Law, and issues his Recommended Order.

FINDINGS OF FACT

1. Respondent Tyler Clidienst ("Clidienst") is a licensed insurance producer in the State of Indiana, holding license number 495070.
2. Clidienst was an employee of Hoosier Title Incorporated ("Hoosier Title"), located in Sullivan, Indiana.
3. Clidienst acted as a closer on behalf of Hoosier Title during his employment.
4. On or about January 7, 2008, Clidienst conducted a closing for a purchase transaction regarding real property located at 3265 Private Road 810 North, Brazil, Indiana 47834 ("Private Road").
5. The seller of Private Road was Shawn Gurley and the buyer was Edward Griffin.
6. Mr. Gurley told Respondent he had authority to execute his father's signature and would provide a written power of attorney but failed to do so.
7. Mr. Griffin did not attend the closing or execute any documents. Instead, his son John Gurley (and husband of the seller) executed the documents on behalf of Mr. Griffin without a specific power of attorney giving John Gurley the authority to do so.
8. Clidienst permitted John Gurley to sign the loan documents without first receiving a power of attorney and also notarized documents signed by Mr. Gurley in the name of Mr. Griffin without first obtaining a written power of attorney.
9. The complainant, Edward Griffin, reported at a later date that he did not authorize Mr. Gurley to sign his name with respect to the purchase of the home located at 3265 West Private Road 810 North, Brazil, Indiana 47834, which actually belongs to his son, John Gurley, nor did he provide a power of attorney to Mr. Gurley.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.

3. The Commissioner has the discretionary authority to permanently revoke the Respondent's license to sell insurance, to fine Respondent, and to order restitution.

4. The Department has met its burden in showing by a preponderance of the evidence that Respondent's conduct is contrary to Indiana Insurance Code provisions codified in IC §27-1-15.6-12(b)(8), however, only partially as this court does not conclude that the Respondent used fraudulent, coercive, or dishonest practices or financial irresponsibility in his conduct. The convenience of signing contracts is aided by the legally-available tools of notarization and power of attorney. In this case, the Respondent demonstrated a disregard of the proper use of these tools, the practice of which can bring into question the legality and enforceability of the very contracts he is paid to execute with authenticity, accuracy and precision. It is the conclusion of this court that the Respondent demonstrated untrustworthiness and incompetence by not requiring that John Gurley first produce a power of attorney authorizing him to act on behalf of Edward Griffin and, in the same transaction, by notarizing the documents signed by John Gurley in the name of Edward Griffin.

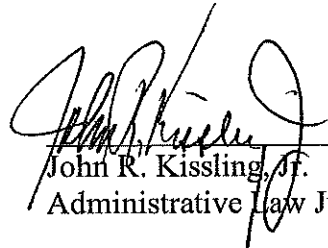
5. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

RECOMMENDED ORDER

With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. Respondent's insurance license **495070** is suspended for a period of one (1) year from the date of the Commissioner's Final Order. At any time after the end of the suspension period, if Respondent qualifies with all requirements for licensure and has timely paid the fine in #2 below, his license may be reinstated but subject to a one (1) year probationary period beginning on the date of reinstatement.
2. Respondent be ordered to pay a civil penalty to the Indiana Department of Insurance in the amount of five hundred (\$500.00) within twenty (20) days of the issuance of the Commissioner's Final Order.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 9th day of April, 2009.


John R. Kissling, Jr.
Administrative Law Judge

Distribution:

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Indiana Department of Insurance
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Thomas W. Farlow
Counsel for Respondent
Frost Brown Todd, LLC
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