

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 7461-AG09-0121-012

IN THE MATTER OF:)

John A. Brito)
Respondent)

19 Lutz Ave.)
Dayton, OH 45420)

FILED

SEP 03 2009

Indiana Non-Resident License No.: 468595

STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement

FINAL ORDER
GRANTING RESPONDENT'S OBJECTION IN PART
AND MODIFYING ALJ's FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

The Commissioner of the Indiana Department of Insurance, Carol Cutter, having read and reviewed the Administrative Law Judge (ALJ) John Kissling's Findings of Fact, Conclusions of Law, and Recommended Order and Respondent's Response, and now being duly advised in the premises **GRANTS** said Objection in part pursuant to Indiana Code 4-21.5-3-29, and as ultimate authority in this case issues this Final Order **MODIFYING** ALJ Kissling's Findings of Fact, Conclusions of Law, and Recommended Order of July 7, 2009 by eliminating Respondent's fine and restitution.

GRANT OF RESPONDENT'S OBJECTION

The Commissioner incorporates ALJ Kissling's Findings of Fact and Conclusions of Law in this Final Order and grants the following objections:

1. Respondent shall not pay restitution to Nationwide in the amount of \$22,738.00.
2. Respondent shall not pay a fine in the amount of \$5,000.00.

ORDER

The Commissioner now Orders:

1. The Indiana Non-Resident Insurance Producer license of Respondent shall be permanently revoked.

ALL OF WHICH IS ORDERED by the Commissioner this 3^d day of September, 2009.



Carol Cutter
Commissioner, IDOI

Copies to:

Nikolas P. Mann
INDIANA DEPARTMENT OF INSURANCE
311 West Washington Street, Suite 300
Indianapolis, Indiana 46204

John A. Brito
19 LUTZ AVENUE
Dayton, OH 45420

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STATE OF INDIANA
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Type of Agency Action: Enforcement

**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 John A. Brito ("Respondent"), which came to be heard on the 14th day of April, 2009 at 10:03 a.m. in the second floor conference room at the offices of the Indiana Department of Insurance ("Department"), 311 W. Washington St., Indianapolis, Indiana.

The Indiana Department of Insurance was represented by counsel, Nick Mann. Respondent was present and unrepresented by counsel. 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 and Conclusions of Law, and issues his Recommended Order as follows:

FINDINGS OF FACT

1. Respondent has an non-resident producer license, license number 468595.
2. Respondent was sent notification of the hearing date and time by U.S. Certified Mail #7004 1160 0000 3840 6372.
3. On September 16, 2008, the Department received notice from Donna Suren, supervisor of Central Licensing for Nationwide Mutual Insurance Co. ("Nationwide"), that Respondent was terminated for cause, effective August 14, 2008. Respondent has misappropriated funds. (Exhibit 1).
4. The Department sent the complaint by certified mail from Nationwide to Respondent for a response. The mail was returned as undeliverable the forwarding order had expired. The postmaster was contacted to obtain a new address and the effective date of change, a second copy was forwarded to the new address it was returned also. An address was finally obtained and service was made to Respondent. (Transcript pg. 10).
5. Testimony was given from Scott Whitaker, director of compliance with Nationwide. Mr. Whitaker's responsibilities are the fiduciary audits for the exclusive agents with Nationwide. Mr. Whitaker provided the documentation relative to Respondent failing sweeps and not reimbursing THI or Nationwide for that premium amount.
(Transcript pgs. 15 & 16).
6. Respondent received a letter from Bill Irwin, sales manager of Nationwide, notifying of the cancellation of his agent agreement due to violations of his fiduciary obligations.
(Exhibit 2).

7. On May 20, 2008, an audit was conducted on Respondent's agency at the request of Mr. Irwin. The auditor reviewed remittance and deposits for Nationwide and THI for the period of March 2008 through April 2008. It revealed sixteen (16) over deposits, ten (10) short deposits, and seven (7) late deposits of one (1) - two (2) days, for the Nationwide premium trust account. The THI premium account revealed twelve (12) late deposits of one (1) - three (3) days, five (5) short deposits and three (3) over deposits. (Exhibit 3).
8. Respondent received a letter from sales manager, Mr. Irwin stating that he owed Nationwide twenty thousand seven hundred eighty-eight dollars and five cents (\$20, 788.05) from his premium fund accounts. The letter stated a cashier check in the amount needed to be in by that afternoon or Respondent would be suspended immediately of the sales and servicing of Nationwide and all affiliated companies. (Exhibit B).
9. Respondent as of August 12, 2008 owes Nationwide for premiums collected a total of twenty-two thousand seven hundred thirty-eight dollars (\$22,738.00). (Transcript pg. 28).

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 revoke the Respondent's license to sell insurance and to fine Respondent.

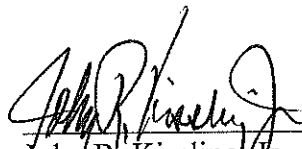
4. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.
5. Respondent violated Indiana Code §27-1-15.6-12(b)(4) with the misappropriation of premium funds.
6. Respondent violated Indiana Code §27-1-15.6-7(h) for not reporting a address change to the Department.
7. Findings of Fact that can be adopted as Conclusions 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. The Indiana Non-Resident Insurance Producer license of Respondent shall be permanently revoked.
2. Respondent shall pay restitution to Nationwide in the amount of twenty-two thousand seven hundred thirty-eight dollars (\$22,738.00) within sixty (60) days of the Commissioner's Final Order.
3. Respondent shall pay a fine in the amount of five thousand dollars (\$5,000.00) within sixty (60) days of the Commissioner's Final Order.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 7TH day of July, 2009.



John R. Kissling, Jr.
Administrative Law Judge

Distribution:

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