

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 6847-AG09-0810-186

IN THE MATTER OF:)

James F. Clark,)
Respondent.)

810 Greenlee Drive)
Indianapolis, IN 46234)

Type of Agency Action: Enforcement)
Indiana Insurance License No. 2105280)

FILED

JAN 05 2010

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On November 24, 2009, the appointed Administrative Law Judge, John R. Kissling, Jr., filed his Findings of Fact, Conclusions of Law, and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of Law, and Recommended Order and Notice of Filing of Recommended Order on Respondent by mailing the same to his home address of record.

2. The Department has complied with the notice requirements of Ind. Code § 4-21.5-3-17.

3. Respondent has not filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than eighteen (18) days have elapsed.

THEREFORE, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order, and issues the following Final Order:

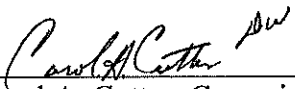
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Commissioner of Insurance:

1. Respondent's insurance license #2105280 is hereby placed on probation for a period of one (1) year beginning on the date of this Final Order.
2. Respondent's regional manager, Bobby Timbrook, is required to submit probation reports, signed by both him and Respondent, and due every ninety (90) days from the date of this Final Order during the probationary period.
3. The probation reports shall contain:
 - a. the total amount of commissions earned by Respondent for the period;
 - b. the total amount of premiums collected by Respondent for the period;
 - c. the names and addresses of all new policyholders signed up by Respondent during the period plus the names of the specific insurer the policies are with;
 - d. a written narrative by Mr. Timbrook in the form of a progress report on Respondent to include any training that Respondent has had, any positive or negative developments relating to Respondent's employment, and any disciplinary action taken against Respondent by his employer.
4. Respondent shall pay a fine of two hundred and fifty dollars (\$250.00) in addition to the two hundred and fifty dollar (\$250.00) fine imposed by the May 28, 2008 Final Order. Two hundred and fifty dollars (\$250.00) shall be due within two (2) weeks after the date of this Final Order and the other two hundred

and fifty dollars (\$250.00) shall be due within ninety (90) days after the date of this Final Order.

Under Ind. Code § 4-21.5-5-5, Respondent has the right to appeal this Final Order by filing a petition for judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS Ordered by the Commissioner this 5th day of ~~December~~^{January},
2010
2009.



Carol A. Cutter, Commissioner
Indiana Department of Insurance

Distribution:

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STATE OF INDIANA
DEPT. OF INSURANCE

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

Administrative Law Judge John R. Kissling, having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent James F. Clark ("Respondent"). This matter came to be heard on October 20, 2009, at 2:07 p.m.

The Indiana Department of Insurance ("Department") was represented by counsel, Robert L. Hummel. Respondent appeared in person but was not represented by legal counsel. Department of Insurance Investigator David Rose, Respondent, and Respondent's witness, Bobby Timbrook, 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 was properly notified of the hearing date and time by U.S. Certified Mail #7004 1160 0000 3839 8080.
2. When Respondent applied for an insurance producer license, he failed to disclose a prior administrative action taken by the Department of Insurance against him in 1990. (Exhibit D)
3. To resolve the issue of failing to notify the Department of the prior action, Respondent signed an Agreed Entry with the Department on May 19, 2008 and the Commissioner issued a Final Order on May 28, 2008. (Exhibits A and B)
4. The Agreed Entry required Respondent to pay a fine of two hundred and fifty dollars (\$250.00) within ninety (90) days after the date of the Final Order. (Exhibit B)
5. On July 1, 2009, after not receiving payment of the fine, the Department sent Respondent a letter informing him that failure to comply with the Commissioner's Final Order was grounds for permanent revocation of his license and/or an additional fine. (Exhibit C)
6. Respondent testified that he did not pay the fine imposed by the May 28, 2008 Final Order because he forgot it. (Transcript, p. 17)
7. Respondent testified that he did not receive the July 1, 2009 letter because, at the time, he was living with his mother at another address. (Transcript, pp. 20-21)
8. On November 22, 1989, a Statement of Charges was filed by the Department against Respondent for theft of employee checks and forgery. (Exhibit F)

9. An Agreed Order was entered into on April 19, 1990 imposing a probationary period of one (1) year and requiring Respondent to pay a fine of two hundred and seventy-five dollars (\$275.00) within thirty (30) days. (Exhibit H)

10. Richard VanderHorst, Respondent's former manager, paid the fine on behalf of Respondent on or about April 19, 1990. (Exhibit I, Transcript p. 32)

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 and all procedures and rules set forth by such Act have been followed in this matter.

3. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.

4. By not complying with a Commissioner's Final Order, Respondent violated Indiana insurance law, specifically Ind. Code §27-1-15.6-12(b)(2)(d).

5. The Commissioner has the discretionary authority to levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for any violation under Ind. Code §27-1-15.6-12(b).

6. Counsel for the Department has met the required burden of proof and has established by a preponderance of the evidence that disciplinary action against Respondent is in order.

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

RECOMMENDED ORDER

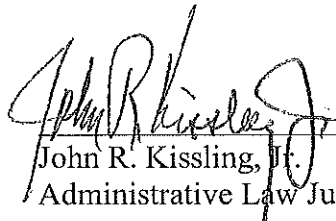
With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. Respondent's insurance license #2105280 should be placed on probation for a period of one (1) year beginning on the date of the Commissioner's Final Order. Lifting of probationary status after one (1) year will be granted if the Respondent has committed no additional offenses, requests that suspension be lifted, and can show that he timely completed paragraphs 2, 3, and 4 of this Recommended Order.
2. Respondent's regional manager, Bobby Timbrook, should be required to submit probation reports, signed by both him and Respondent, and due every ninety (90) days from the date of the Final Order during the probationary period.
3. The probation reports should contain:
 - a. the total amount of commissions earned by Respondent for the period;
 - b. the total amount of premiums collected by Respondent for the period;

- c. the names and addresses of all new policyholders signed up by Respondent during the period plus the names of the specific insurer the policies are with;
- d. a written narrative by Mr. Timbrook in the form of a progress report on Respondent to include any training that Respondent has had, any positive or negative developments relating to Respondent's employment, and any disciplinary action taken against Respondent by his employer.

4. Respondent should pay a fine of two hundred and fifty dollars (\$250.00) in addition to the two hundred and fifty dollar (\$250.00) fine imposed by the May 28, 2008 Final Order. Two hundred and fifty dollars (\$250.00) should be due within two (2) weeks after the date of the Final Order and the other two hundred and fifty dollars (\$250.00) should be due within ninety (90) days after the date of the Final Order.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 24TH day of November, 2009.


John R. Kissling, Jr.
Administrative Law Judge

Distribution:

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