

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 7965-AG09-0304-052

IN THE MATTER OF:)
)
Carl E. Greeno, Jr.)
Respondent)
)
3009 N. Washington St.)
Kokomo, IN 46901)
)
License Number: 447695)
)
Type of Agency Action: Enforcement)

FILED
MAR 24 2010
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On February 12, 2010, the Administrative Law Judge, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

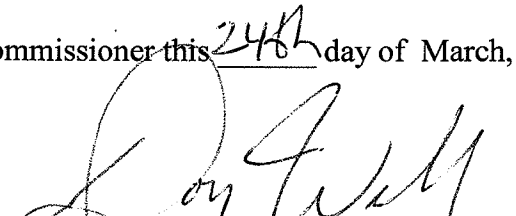
1. The Department served Findings of Fact, Conclusions of law, and Recommended order and Notice of Filing Recommended Order on Respondent by mailing the same to his attorney of record.
2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.
3. Respondent has not filed an 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, by the Commissioner of Insurance:

1. Respondent's producer license is hereby permanently revoked.
2. Respondent shall pay a fine in the amount of one thousand five hundred (\$1,500.00) dollars for each of the five counts. Total fine: Seven thousand five hundred (\$7,500.00) dollars within ninety (90) days of the Final Order.

ALL OF WHICH IS ORDERED by the Commissioner this 24th day of March, 2010.


Doug Webber, Acting Commissioner
Indiana Department of Insurance

Copies to:

Nick Mann
Indiana Department of Insurance
311 W. Washington Street
Suite 300
Indianapolis, Indiana 46204

Rodney V. Shrock, Attorney
2705 S. Berkeley Rd., Suite 4C
Kokomo, IN 46902

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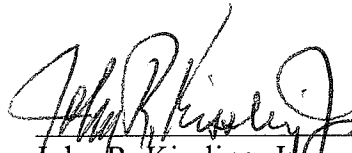
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FEB 12 2010
STATE OF INDIANA
DEPT. OF INSURANCE

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 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, Carol Cutter, Commissioner of the Department of Insurance, within fifteen (15) days from the date stamped on this Order.


John R. Kissling, Jr.
Administrative Law Judge

Distribution:

Nikolas P. Mann, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, Indiana 46204

Rodney V. Shrock, Attorney
2705 S. Berkeley Rd., Suite 4C
Kokomo, IN 46902

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

The Administrative Law Judge, having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent Carl E. Greeno, Jr. ("Respondent"), which came to be heard on November 18, 2009 at approximately 10:12 a.m. at the Indiana Department of Insurance, 311 West Washington St, Indianapolis, Indiana 46204.

The Indiana Department of Insurance was represented by counsel, Nikolas P. Mann. Respondent was present and represented by counsel, Rodney V. Shrock. 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 is a licensed resident insurance producer, duly licensed by the State of Indiana,

holding license number 447695, effective December 17, 2003.

2. Respondent held a resident insurance producer license from June of 1992 to June of 1996. The license expired for non-payment of renewal fee in July of 1996. (See Transcript at 35).

3. Respondent participated in the Pathfinder Pre-Licensing Education Course and was granted a certificate of completion on November 13, 2003. (See Exhibit A).

4. Respondent took the Producer Property & Casualty exam on December 1, 2003. Respondent received a passing score of 74%. (See Exhibit A). Despite Respondent's testimony, there is no evidence that the exam was read to Respondent or administered in any manner different from that which is typical and there is no evidence of doctor's notes, forms, or any other document requesting that the test be read to Respondent. (See Transcript at 30, 37, 85-88).

5. The course and exam were necessary because Respondent was applying for a new license, as opposed to simply renewing the previous license. (See Transcript at 17-18).

6. There is no evidence of any administrative action or hearing regarding Respondent's license prior to this matter. (See Transcript at 18-19, 36).

7. On December 4, 2003, Respondent completed and signed the NAIC Insurance Application, Section 37, which states in part that the Applicant certifies, under the penalty of perjury, that all information submitted in the application is true and complete. (See Exhibit A).

8. Respondent answered "no" to question #1 in Section 36 of the NAIC application that asks if the Applicant has ever been convicted of committing a crime. (See Exhibit A; Transcript at 17). Despite Respondent's testimony that he did not understand the question because of his alleged ADD condition, he failed to have the question read to him to ensure he understood it. (See Transcript at 113-114).

9. Joette Sullivan, Administrative Assistant to Chet Pietras, Deputy Commissioner of Licensing for the Department of Insurance, testified that Respondent's application packet was received by the Department on December 9, 2003, but was returned to Respondent because of a problem with the pre-licensing course certificate of completion. (See Exhibit A; Transcript at 38-39).
10. The application was again received by the Department on December 16, 2003, which explains the two different "received" stamps on Exhibit A. (See Transcript at 38-40). The application packet contained only the application, Certificate of Completion, Examination Score Report and the \$40.00 licensing fee. (See Exhibit A; Transcript at 35-40).
11. Respondent maintains without evidence to the contrary that he included with the application a letter of recommendation from Gary F. Conwell, Chief Adult Probation Officer for the Howard County Adult Probation Department, and a chronological case summary ("CCS") of his criminal case. (See Exhibit 1; Transcript at 88-89).
12. Ms. Sullivan testified she reviewed Respondent's original application packet which was retained by the Licensing Division. She stated neither Mr. Conwell's letter nor the CCS was included with Respondent's application packet. (See Exhibit A; Transcript at 36). Mr. Conwell does not recall whether he gave the letter to Respondent or sent it directly to the Department and, in any event, does not know whether it was included in the application packet. (Transcript at 71-72).
13. Ms. Sullivan further testified that had the additional documentation been received, regardless of the "no" answer to question #1, the application would have been forwarded to the Department's Enforcement Division for additional review. However, there is no record of this being done. (See Transcript at 36-37).
14. Respondent was issued an Indiana resident producer license number 447695, effective

December 17, 2003, while fully acknowledging that he expected some type of follow up from the Department regarding 1033 consent, even though without an affirmative answer to question #1 regarding prior criminal convictions there would have been no need for Department follow up. (See Transcript at 117-118).

15. Thereafter, the Department received an anonymous call reporting that Respondent had previous felony convictions. An investigation was initiated by Ronda Ankney, Investigator for the Department, beginning on or about March 2, 2009. (See Transcript at 14-22).

16. On March 22, 1996, Respondent in fact pled guilty to two counts of dealing in cocaine or narcotic drugs, both Class B Felonies. Respondent was sentenced to serve nine (9) years, eleven (11) months and twenty-nine (29) days in the Indiana Department of Corrections. (See Exhibit B). Respondent did not timely disclose his criminal convictions to the Department prior to the lapse of his previous license in July of 1996. (See Transcript at 32-34).

17. Respondent has not requested or received consent from the Commissioner, in accordance with 18 U.S.C. 1033, the Federal Violent Crime Control and Law Enforcement Act of 1994, to engage in the business of insurance in Indiana. (See Transcript 22-23, 116-118).

18. On March 27, 2007, Respondent bound liability insurance coverage for Cook & Cook, Inc. ("Cook"), a proposed construction business owned by Aaron and Arnold ("Arnie") Cook. Respondent provided Cook a certificate of liability insurance showing coverage provided through Pekin Insurance Company ("Pekin") under policy number CL03270708, with an effective date of March 27, 2007, and an expiration date of March 27, 2008. (See Exhibit C; Transcript at 41-44). Arnie Cook initiated the policy by paying Respondent \$256.00 (two months premium). (See Transcript at 43).

19. On or about May 25, 2007, Pekin sent a Notice of Policy Termination (“Notice”) to Cook and to Respondent. The Notice stated the policy would cancel for non-payment of premium on June 4, 2007. The Notice was received by Greeno Insurance, Inc. as indicated by a “received” stamp on the document dated May 29, 2007. (See Exhibit D).
20. Arnie Cook testified he and Aaron intentionally allowed the policy to lapse for non-payment of premium on June 4, 2007, even after having received a Notice of Termination from Pekin on or about May 25, 2007. Mr. Cook stated he and Aaron had decided not to pursue doing business as Cook & Cook, Inc. and no longer needed the coverage. (See Exhibit D; Transcript at 44-46).
21. On June 28, 2007, Pekin sent a Notice of Earned Premium Due to Cook indicating the account would be assigned to a collection agency if payment of \$128.00 was not received by July 13, 2007. The Notice was received by Greeno Insurance, Inc. as indicated by a “received” stamp on the document dated July 2, 2007. (See Exhibit E).
22. On July 23, 2007, Respondent produced and signed a certificate of liability insurance for the policy issued to Cook forty-nine (49) days after the policy had been cancelled for non-payment. (See Exhibits D and F).
23. Arnie Cook testified he did not request the July 23, 2007 certificate and was not aware of its existence until it was presented to him as an exhibit in a civil case. (See Transcript at 49-50).
24. Respondent testified he prepared the July 23, 2007 certificate to include with a hand-written letter he sent to Cook to notify him of the cancellation of the policy on July 23, 2007. (See Exhibit 2; Transcript at 122-128). Respondent acknowledges that the July 23, 2007 document is a certificate of liability insurance, not a cancellation notice. (See Transcript at 122-123).
25. Arnie Cook testified that he did not receive the July 23, 2007 letter from Respondent. (See

Transcript at 54).

26. Respondent admits that it is not competent to send out a dated certificate of liability insurance when no coverage is in effect on that date. (See Transcript at 124-125). He further admits that it was his routine business practice to print off certificates of liability insurance and mail them with letters to customers in the hope of keeping the business. (See Transcript at 127-128).

27. Respondent testified that inputting information onto an insurance application from a customer, including vehicle identification numbers (VINs), in order to provide appropriate coverage is not a problem, but understanding question #1 on the license application was a problem. (See Transcript at 134-135).

28. In the box designated "certificate holder" on the certificate of liability insurance in question, Respondent put "Ask for Carl, Jr., Greeno Insurance." (See Transcript at 143-145).

29. Respondent signed his name on the application in question as the applicant instead of as the agent. (See Transcript at 148-149).

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 and to fine Respondent.

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 and that disciplinary action to include

revocation of license is in order.

5. Respondent's conduct is contrary to Indiana Code 27-1-15.6-12(b)(8) by demonstrating incompetence and untrustworthiness in the conduct of business. Specifically, Respondent (1) issued a certificate of liability insurance for a policy Respondent knew, or should have known, had been cancelled for non-payment of premium; (2) routinely sent out certificates of liability insurance to serve as notices of cancellation in the hope of retaining business; and (3) put his own contact information in the box marked certificate holder, all of which is subject to disciplinary action including, but not limited to, fines and revocation of license.

6. Respondent acted in a manner contrary to Indiana Code 27-1-15.6-12(b)(5) by intentionally misrepresenting the terms of an actual or proposed insurance contract by issuing a certificate of liability insurance for a policy Respondent knew, or should have known, had been cancelled for non-payment of premium and as such is subject to disciplinary action including, but not limited to, fines and revocation of license.

7. Respondent's conduct is contrary to Indiana Code 27-1-15.6-6(a) and Indiana Code 27-1-15.6-12(b)(3) by fraudulently misrepresenting the statements made in his application, particularly the question regarding his criminal history, and is subject to disciplinary action including, but not limited to, fines and revocation of license.

8. Respondent's convictions for Felony Dealing in Cocaine or Narcotic Drugs on March 22, 1996 are cause for disciplinary action in accordance with Indiana Code 27-1-15.6-12(b)(6) to include fines and revocation of license.

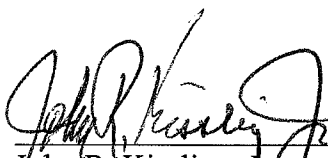
9. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

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. Respondent's producer license should be permanently revoked.
2. Respondent should be required to pay a fine in the amount of one thousand five hundred (\$1,500.00) dollars for each of the five counts. Total fine: Seven thousand five hundred (\$7,500.00) dollars.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 12th day of February, 2010.



John R. Kissling, Jr.
Administrative Law Judge

Distribution:

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