

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO. 6569-AG09-1028-223

IN THE MATTER OF:

Daniel P. Braden,
Respondent.

7045 Thamesford Dr.
Fort Wayne, IN 46835

FILED

APR 19 2010

STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement
Indiana Insurance License No. 574029

FINAL ORDER

On March 15, 2010, 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 attorney, Michael E. Brown.

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:

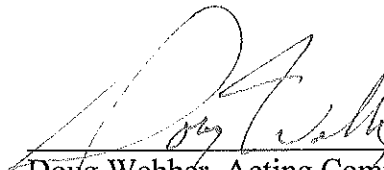
IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Respondent's Indiana resident insurance producer license, #574029, is hereby revoked for a period of one (1) year from the date of this Final Order. After one (1) year, if Respondent has timely paid the civil penalty in #2 below, he may reapply for a new insurance producer license by submitting an application for license, passing the required exam, and meeting all other qualification requirements.

2. Respondent shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00) within ninety (90) days from 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 19th day of April, 2010.


Doug Webber, Acting Commissioner
Indiana Department of Insurance

Distribution:

Michael E. Brown, Esq.
Kightlinger & Gray
151 N. Delaware St., Suite 600
Indianapolis, IN 46204

Robert L. Hummel, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

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MAR 15 2010

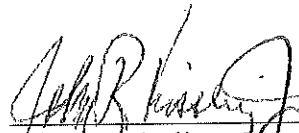
STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement
Indiana Insurance License No.: 574029

NOTICE OF FILING OF RECOMMENDED ORDER

The parties of 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 for your objection with reasonable particularity; and 2) is filed with the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.



John R. Kissling, Jr.
Administrative Law Judge

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NO: 6569-AG09-1028-223

IN THE MATTER OF:

Daniel Braden
Respondent

7045 Thamesford Drive
Fort Wayne, IN 46835

Type of Agency Action: Enforcement
Indiana Insurance License No.: 574029

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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, Jr., having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent Daniel Braden ("Respondent"), which came to be heard on December 15, 2009 in the offices of the Indiana Department of Insurance ("Department") at 311 W. Washington St., Indianapolis, IN.

The Indiana Department of Insurance was represented by counsel, Robert L. Hummel. Respondent was not present and was not represented 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 was properly notified of the hearing date and time by U.S. Certified Mail #7005 3110 0002 4438 0099. (Exhibit K).

2. Respondent is a licensed resident insurance producer, holding license number 574029.
3. Subsequent to the hearing Respondent advised he had mis-calendared the date for the hearing and requested the proceedings be re-opened so he could appear.
4. On July 2, 2008, following an administrative hearing on Respondent's license denial held on March 25, 2008, the Commissioner issued a Final Order requiring Respondent to, among other things, take responsibility to see that within ten (10) days after the end of each calendar quarter for three (3) years, his mentor at Stewart, Brimner & Company ("Stewart Brimner") submit a written probation report concerning Respondent's activities with the company and, if Respondent's employment with Stewart Brimner terminated before June 30, 2011, he was required to notify the Department within ten (10) days specifying the reason for the termination and inform the Department of his plans for future employment. *Exhibit A.*
5. Respondent's first probation report, due on July 10, 2008, was not received until August '5, 2008. *Exhibit B.*
6. Respondent's second probation report, due on October 10, 2008, was timely received. *Exhibit C.*
7. Respondent's third probation report, due on January 10, 2009, was not received until January 12, 2009. *Exhibit D.*
8. Evidence presented at the hearing showed that Respondent's fourth probation report, due on April 10, 2009, was not received until June 19, 2009, (*Exhibit F*); however, evidence discovered subsequent to the hearing showed that the probation report due on April 10, 2009 was actually timely received on April 6, 2009 but was not placed in

Respondent's file.

9. On June 2, 2009, Respondent submitted via fax an unsigned report that did not correspond to any probation report due dates. *Exhibit E*.
10. On July 29, 2009, the Department sent a letter via certified mail to Respondent informing him that any future reports not received by the due date would result in a Statement of Charges being filed and an administrative hearing. *Exhibit G*.
11. The July 29, 2009 certified letter was received and signed for by Respondent on August 3, 2009. *Exhibit H*
12. Respondent's fifth probation report, due on July 10, 2009, was not received until August 4, 2009, although it is dated July 7, 2009. *Exhibit L*
13. On November 25, 2009, the Department received a letter from Mick Stewart, President of Stewart Brimmer, stating that Respondent's employment was terminated effective September 21, 2009. *Exhibit J*.
14. No other reports were received. *Transcript, p. 16*.

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 Administrative Law Judge denied Respondent's request for an additional hearing.
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)(2)(D) which is violating a order of the Commissioner.

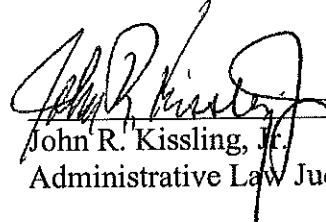
6. The Department has shown by a preponderance of the evidence that Respondent failed to see that one (1) probation report was submitted to the Department in a timely way, that one report was dated timely but was received two days late and that no report was submitted as of October 10, 2009.
7. The Department has also proven that Respondent failed to notify the Department of the termination of his employment with Stewart Brimmer within ten (10) days of the termination, as required by the Commissioner's Final Order of July 2, 2008.
8. The Department has met its burden in showing by a preponderance of the evidence that Respondent's conduct is contrary to the Indiana Insurance Code and that disciplinary action is in order.
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 Indiana resident insurance producer license number 574029 should be revoked for a period of not less than one (1) year. After one (1) year, if Respondent has timely paid the fine in # 2 below, Respondent may reapply for a new producer license by submitting an application for license, passing the required test and meeting all other qualification requirements.
2. Respondent should be ordered to pay a fine in the amount of one thousand (\$1,000.00) dollars within ninety (90) days of the Commissioner's Final Order.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to
the Commissioner this 15th day of March, 2010.


John R. Kissling, Jr.
Administrative Law Judge

Distribution:

Robert Hummel, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204

Michael E. Brown
KIGHTLINGER & GRAY, LLP
Market Square Center, Suite 600
151 North Delaware Street
Indianapolis, Indiana 46204
Telephone: (317) 638-4521
mbrown@k-glaw.com

STATE OF INDIANA)
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BEFORE THE INDIANA
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CAUSE NO. 6569-AG09-1028-223

IN THE MATTER OF:

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Type of Agency Action: Enforcement
Indiana Insurance License No. 574029

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NOV 20 2009
STATE OF INDIANA
DEPT. OF INSURANCE

AMENDED STATEMENT OF CHARGES

The Enforcement Division of the Indiana Department of Insurance ("Division"), pursuant to the Indiana Orders and Procedures Act, Ind. Code §4-21.5-1-1 *et seq.* and Ind. Code §27-1-15.6-12, hereby gives notice to Daniel P. Braden ("Respondent") of the following charges:

FACTS

1. Respondent is a licensed resident insurance producer, holding license number 574029.

2. On July 2, 2008, the Commissioner issued a Final Order granting Respondent's application for an insurance producer license subject to a probationary period of three (3) years and making it Respondent's responsibility to see that probation reports are submitted to the attention of Department Investigator Ronda Ankney by Respondent's mentor ten (10) days after the end of each calendar quarter. *See Exhibit "A" attached hereto.*

3. Respondent's first probation report, due on July 10, 2008, was not received until August 5, 2008. *See Exhibit "B" attached hereto.*

4. Respondent's second probation report, due on October 10, 2008, was timely received. *See Exhibit "C" attached hereto.*

5. Respondent's third probation report, due on January 10, 2009, was not received until January 12, 2009. *See Exhibit "D" attached hereto.*

6. On June 2, 2009, Respondent submitted via fax an unsigned report that did not correspond to any probation report due dates. *See Exhibit "E" attached hereto.*

7. Respondent's fourth probation report, due on April 10, 2009, was not received until June 19, 2009. *See Exhibit "F" attached hereto.*

8. On July 29, 2009, the Division sent a letter via certified mail to Respondent informing him that several of his probation reports were not received on time and warning him that any future reports not received by the due date would result in a Statement of Charges being filed and an administrative hearing. *See Exhibit "G" attached hereto.*

9. The July 29, 2009 certified letter was received and signed for by Respondent on August 3, 2009. *See Exhibit "H" attached hereto.*

10. Respondent's fifth probation report, due on July 10, 2009, was not received until August 4, 2009. *See Exhibit "I" attached hereto.*

11. To date, Respondent's sixth probation report, due on October 10, 2009, has not been received.

12. The July 2, 2008 Final Order also required Respondent to notify the Department within ten (10) days if his position with Stewart, Brimner & Company was terminated.

13. On November 25, 2009, the Division received a letter from Mick Stewart, President of Stewart, Brimner & Company stating that Respondent's employment was terminated effective September 21, 2009. *See Exhibit "J" attached hereto.*

14. Respondent did not notify the Department within ten (10) days that his position with Stewart, Brimner & Company had been terminated.

COUNT I

15. The Division hereby incorporates by reference paragraphs 1 through 14 of the Statement of Charges as if fully set forth herein.

16. By failing to meet his responsibility to see that probation reports were submitted in a timely manner to Department Investigator Ronda Ankney, Respondent violated the Commissioner's Final Order of July 2, 2008.

17. Respondent's conduct, as alleged herein, is a violation of Ind. Code §27-1-15.6-12(b)(2)(D).

18. Under Ind. Code §27-1-15.6-12(b), the Commissioner may 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 and renew an insurance producer license for violating an order of the Commissioner.

COUNT II

19. The Division hereby incorporates by reference paragraphs 1 through 14 of the Statement of Charges as if fully set forth herein.

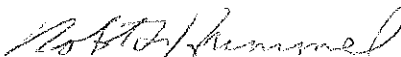
20. By failing to notify the Department within ten (10) days of the termination of his employment with Stewart, Brimner & Company, Respondent has violated the Commissioner's Final Order of July 2, 2008.

21. Respondent's conduct, as alleged herein, is a violation of Ind. Code §27-1-15.6-12(b)(2)(D).

22. Under Ind. Code §27-1-15.6-12(b), the Commissioner may 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 and renew an insurance producer license for violating an order of the Commissioner.

WHEREFORE, the Division, by its counsel, Robert L. Hummel, requests that the Commissioner permanently revoke Respondent's insurance producer license, levy a civil penalty of two thousand dollars (\$2,000.00), and all other relief just and proper in the premises.

Respectfully submitted,



Robert L. Hummel
#20936-49

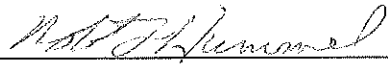
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served upon Respondent Daniel P. Braden and attorney Michael E. Brown by depositing a copy of same in the United States Mail, first class postage prepaid, this 30th day of November, 2009.

Daniel P. Braden
7045 Thamesford Dr.
Fort Wayne, IN 46835

Michael E. Brown, Esq.
Kightlinger & Gray
151 N. Delaware St., Suite 600
Indianapolis, IN 46204



Robert L. Hummel
Attorney #20936-49

Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204
317 232-5063 - telephone
317 234-5882 - facsimile

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STATE OF INDIANA
DEPT. OF INSURANCE

STATEMENT OF CHARGES

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FACTS

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3. Respondent's first probation report, due on July 10, 2008, was not received until August 5, 2008. *See Exhibit "B" attached hereto.*

4. Respondent's second probation report, due on October 10, 2008, was timely received. *See Exhibit "C" attached hereto.*

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9. The July 29, 2009 certified letter was received and signed for by Respondent on August 3, 2009. *See Exhibit "H" attached hereto.*

10. Respondent's fifth probation report, due on July 10, 2009, was not received until August 4, 2009. *See Exhibit "I" attached hereto.*

11. To date, Respondent's sixth probation report, due on October 10, 2009, has not been received.

COUNT I

12. The Division hereby incorporates by reference paragraphs 1 through 11 of the Statement of Charges as if fully set forth herein.


13. By failing to meet his responsibility to see that probation reports were submitted in a timely manner to Department Investigator Ronda Ankney, Respondent violated the Commissioner's Final Order of July 2, 2008.

14. Respondent's conduct, as alleged herein, is a violation of Ind. Code §27-1-15.6-12(b)(2)(D).

15. Under Ind. Code §27-1-15.6-12(b), the Commissioner may 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 and renew an insurance producer license for violating an order of the Commissioner.

WHEREFORE, the Division, by its counsel, Robert L. Hummel, requests that the Commissioner permanently revoke Respondent's insurance producer license, levy a civil penalty of two thousand dollars (\$2,000.00), and all other relief just and proper in the premises.

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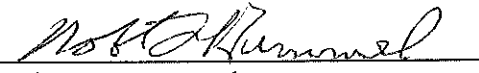
Robert L. Hummel
#20936-49

Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204
317 232-5063 - telephone
317 234-5882 - facsimile

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served upon Respondent Daniel P. Braden by depositing a copy of same in the United States Mail, first class postage prepaid, this 28th day of October, 2009.

Daniel P. Braden
7045 Thamesford Dr.
Fort Wayne, IN 46835


Robert L. Hummel
Attorney #20936-49

Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204