

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO. 6847-AG10-0204-031

IN THE MATTER OF:

James F. Clark,
Respondent.

9910 Gulfstream Ct.
Fishers, IN 46037

FILED

JUL 23 2010

STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement

Indiana Insurance License No. 2105280

FINAL ORDER

On May 24, 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 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 by the Commissioner of Insurance:

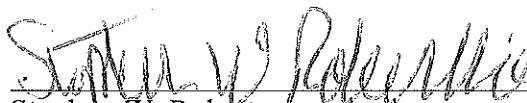
1. Respondent's Indiana insurance producer license shall continue on probation per the terms of the January 5, 2010 Final Order with probation reports being submitted by Mr. Timbrook or, if Respondent is no longer employed by Mr. Timbrook, then by Respondent himself.

2. Respondent is ordered to pay the entire five hundred dollar (\$500.00) fine imposed by the January 5, 2010 Final Order within thirty (30) days after the date of the Commissioner's Final Order.

3. Respondent is required to show the Department within thirty (30) days after the date of the Final Order that he has paid his child support arrearage in full, entered into an income withholding agreement to pay it off, or has had the arrearage expunged from his record.

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 23rd day of July, 2010.


Stephen W. Robertson,
Executive Director and
Acting Commissioner,
Indiana Department of Insurance

Distribution:

James F. Clark
9910 Gulfstream Ct.
Fishers, IN 46037

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

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO. 6847-AG10-0204-031

IN THE MATTER OF:)

James F. Clark,
Respondent.)

810 Greenlee Drive)
Indianapolis, IN 46234)

Type of Agency Action: Enforcement

Indiana Insurance License No. 2105280

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FEB 05 2010

STATE OF INDIANA
DEPT. OF INSURANCE

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 James F. Clark ("Respondent") of the following charge:

FACTS

1. Respondent is a licensed resident insurance producer, holding license number 2105280.

2. On October 20, 2009, an administrative hearing was held concerning a charge that Respondent had failed to comply with a previous Agreed Entry and Final Order.

3. On January 5, 2010, the Commissioner issued a Final Order requiring Respondent to, among other things, pay a fine of two hundred and fifty dollars (\$250.00),

half of a total fine of five hundred dollars (\$500.00), within two (2) weeks after the date of the Final Order. *See Exhibit "A" attached hereto.*

4. To date, Respondent has not paid the two hundred and fifty dollar (\$250.00) fine and more than two (2) weeks have elapsed since the date of the Commissioner's Final Order.

COUNT I

5. The Division hereby incorporates by reference paragraphs 1 through 4 of the Statement of Charges as if fully set forth herein.

6. By not paying the two hundred and fifty dollar (\$250.00) fine within two (2) weeks, Respondent violated the Commissioner's Final Order of January 5, 2010.

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

8. 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 or 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) in addition to the five hundred dollar (\$500.00) fine already imposed by the January 5, 2010 Final Order, and all other relief just and proper in the premises.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert L. Hummel", written over a horizontal line.

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

STATE OF INDIANA)
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BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO. 6847-AG10-0204-031

IN THE MATTER OF:)

James F. Clark,
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MAY 24 2010

STATE OF INDIANA
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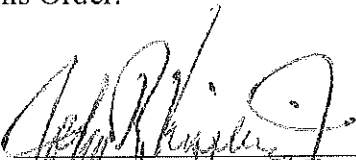
Type of Agency Action: Enforcement

Indiana Insurance License No. 2105280

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. 6847-AG10-0204-031

IN THE MATTER OF:

James F. Clark,
Respondent.

9910 Gulfstream Ct.
Fishers, IN 46037

Type of Agency Action: Enforcement

Indiana Insurance License No. 2105280

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MAY 24 2010

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 James F. Clark ("Respondent"), which came to be heard on the 11th day of March at approximately 2:14 pm at the Indiana Department of Insurance, 311 West Washington St, Indianapolis, Indiana 46202.

The Indiana Department of Insurance was represented by counsel, Robert Hummel. Respondent did appear in person 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. James F. Clark ("Respondent") is a licensed Indiana resident insurance producer, holding license number 2105280.

2. The certified mail Notice of the March 11, 2010 hearing was sent to Respondent at a former address, not his current address, but the Notice of Hearing was signed for by Respondent's former landlord, Jim Dulins. Respondent learned of the hearing date and time after telephoning the Department to ask for more time to pay the fine. *Transcript, pp. 9-10 and 28-29, Exhibits B and 2.*

3. The Commissioner's Final Order of January 5, 2010 required Respondent to, among other things, pay two hundred and fifty dollars (\$250.00) of a total fine of five hundred dollars (\$500.00) within two (2) weeks after the date of the Final Order. *Exhibit A.*

4. Respondent notified the Department of a change of address from Indianapolis to Fishers, Indiana on December 8, 2009, nearly a month prior to the issuance of the Commissioner's Final Order of January 5, 2010. *Exhibits C and 2.*

5. Respondent testified that he did not receive the January 5, 2010 Final Order. *Transcript, p. 28.*

6. Respondent testified that he did not submit a change of address with the U.S. Postal Service for his move from Indianapolis to Fishers. *Transcript, p. 39.*

7. The terms of the fine that Respondent would be required to pay were negotiated at the October 20, 2009 hearing and contained in the transcript. *Exhibit D.*

8. At the October 20, 2009 hearing, Respondent testified that "I've always been a good provider as far as child support goes." *Exhibit E.*

9. According to information from the Indiana Department of Child Services (“DCS”), as of March 4, 2010, Respondent owed twenty-two thousand five hundred and four dollars and fifty-one cents (\$22,504.51) in child support and had not made a child support payment since October 8, 2008. *Exhibit F*.

10. Respondent testified that he was ordered to pay one hundred and nineteen dollars (\$119.00) per week in child support and that the money was to be sent to DCS but he did not make those payments because of an agreement he had with his ex-wife where she would claim the children as deductions on her tax returns. *Transcript, pp. 37-38*.

11. Respondent testified that he is 100% responsible for the amount owed in child support until his ex-wife “releases me from that.” *Transcript, p. 40*.

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. The January 5, 2010 Final Order and the February 5, 2010 Notice of Hearing and Statement of Charges were not mailed to Respondent’s current address in Fishers, Indiana.

4. The Enforcement Division was not able to show that Respondent received the Final Order or the Notice of Hearing and Statement of Charges.

5. As of March 4, 2010, Respondent owes twenty-two thousand five hundred and four dollars and fifty-one cents (\$22,504.51) in child support and has not made any payments since October 2008.

6. Ind. Code §27-1-15.6-12(b)(13) states that the Commissioner may revoke or suspend an insurance producer license and impose a civil penalty for failure to comply with any administrative or court order imposing a child support obligation.

7. Respondent had an obligation to submit a change of address with the U.S. Postal Service so that his mail would be forwarded to his new address.

8. Respondent was put on notice at the October 20, 2009 hearing concerning the schedule for paying the fine and other probation requirements and had an obligation to follow-up with the Enforcement Division if he had any questions or concerns.

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

RECOMMENDED ORDER

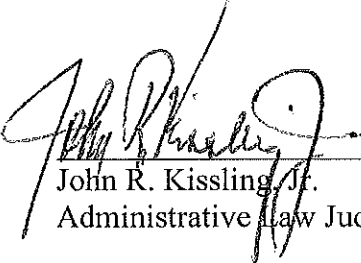
With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. Respondent's Indiana insurance producer license should continue on probation per the terms of the January 5, 2010 Final Order with probation reports being submitted by Mr. Timbrook or, if Respondent is no longer employed by Mr. Timbrook, then by Respondent himself.

2. Respondent should be required to pay the entire five hundred dollar (\$500.00) fine imposed by the January 5, 2010 Final Order within thirty (30) days after the date of the Commissioner's Final Order.

3. Respondent should be required to show the Department within thirty (30) days after the date of the Final Order that he has paid his child support arrearage in full, entered into an income withholding agreement to pay it off, or has had the arrearage expunged from his record.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 24TH day of May, 2010.



John R. Kissling, Jr.
Administrative Law Judge

Distribution:

James F. Clark
9910 Gulfstream Ct.
Fishers, IN 46037

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