

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 9013-AG10-0104-019

IN THE MATTER OF:)

Steven Herman)
Respondent)

2701 San Tomas Expressway)
Santa Clara, California 95050)

Type of Agency Action:)
ENFORCEMENT)

Indiana Insurance License No. 595222)

FILED

JUL 23 2010

STATE OF INDIANA
DEPT OF INSURANCE

FINAL ORDER

On May 24, 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 home address.
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. The renewal of Respondent's surplus lines insurance license number 595222 is denied. Respondent is not eligible to apply for a new surplus lines license until September 1, 2012.
2. Respondent shall pay a civil penalty in the amount of one thousand five hundred dollar (\$1,500.00) for violating Indiana Code § 27-1-15.8-4, payable within thirty (30) days from the date of the Commissioner's Final Order.
3. Respondent shall pay a civil penalty in the amount of one hundred dollar (\$100.00) for violating Indiana Code § 27-1-15. 6-7(h), payable within thirty (30) days from the date of the Commissioner's Final Order.

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

Copies to:

Laura Levenhagen, Attorney
Indiana Department of Insurance
311 West Washington St., Suite 300
Indianapolis, IN 46204

Steven Herman
2701 San Tomas Expressway
Santa Clara, California 95050

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MAY 24 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 have been 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, Doug Webber, Acting Commissioner of the Department of Insurance, within eighteen (18) days from the date of this Order.



John R. Kissling Jr.
Administrative Law Judge

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COUNTY OF MARION)

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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. (hereafter "Administrative Law Judge"), having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent Steven Herman (hereafter "Respondent"). This matter came to be heard by the Administrative Law Judge, on the 4th day of March, 2010, at 10:00 a.m., at 311 W. Washington Street, Suite 300, Indianapolis, Indiana.

The Indiana Department of Insurance was represented by counsel, Laura Levenhagen (hereafter "Department"). The Respondent was afforded an opportunity to participate in the hearing in person, but opted to participate and testify under oath telephonically from California.

Two witnesses attended in person and testified under oath for the Department, evidence was heard, and exhibits were received into evidence. Based upon the evidence presented at 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 held a licensed resident Indiana Surplus Lines License until August 31, 2009, holding license number 595222.
2. Respondent's Surplus Lines License, and Property and Casualty Producer License expired on August 31, 2009 due to Respondent's failure to renew.
3. Respondent was a licensed resident insurance surplus lines producer in the state of Indiana during the semi-annual tax filing period of January through July 2009. Hearing Transcript at pp 11 and 15.
4. At all times relevant hereto Respondent was aware that the Indiana Department of Insurance requires all surplus lines agents to complete and submit semi-annual tax filings, even when the filing is a zero filing. Hearing Transcript at pp. 11-12, 83, and Exhibits 1 and 5.
5. Respondent's surplus lines license application and producer licensing information in SIRCON both reflect a mailing address of One Quartermaster Ct., Jeffersonville, Indiana 47130, which is the address for PetFirst Healthcare, LLC. This information was provided to the Department by Respondent. Hearing Transcript at pp. 13, 81 and Exhibit 1 and 2

6. Respondent was an employee of PetFirst Healthcare, LLC until June 30, 2009 when he was terminated not for cause. Hearing Transcript at pp. 28, 47-48, and 78.
7. Respondent failed to file a complete and accurate semi-annual tax filing with the Department for the January through July 2009 period. Hearing Transcript at pp. 11, 15, 18, and Exhibit 3.
8. Brenda Lear, Surplus Lines Coordinator, Indiana Department of Insurance, sent two courtesy notices to Respondent informing him that the required filing had not been completed. The first was sent via US Mail on August 14, 2009 to the last address supplied to the Department by Respondent, One Quartermaster Ct., Jeffersonville, Indiana 47130. The second was sent via facsimile on September 30, 2009 to the last facsimile number supplied to the Department by Respondent, (812) 220-8085. Hearing Transcript at pp. 16-17, 37, 43-53, and Exhibit 3.
9. The second noticed was received by Tracy Bertram, Director of Compliance and Risk Management, PetFirst Healthcare, LLC, some time between November 2 and 11, 2009. Hearing Transcript at pp. 27-28, 48, and Exhibit 5.
10. Mr. Bertram mailed the courtesy notice and a completed semi-annual tax form to Respondent, which was received by Respondent on November 12, 2009. Hearing Transcript at pp. 29-31, 43, 50, 82, and Exhibit 5.
11. On November 16, 2009, Mr. Bertram informed Respondent via electronic mail that completing the semi-annual tax filing was Respondent's personal responsibility and not that of PetFirst Healthcare, LLC. Mr. Bertram further informed Respondent that failure to complete the filing could result in a fine.

Additionally, Mr. Bertram informed Respondent that his mailing address with the Department was listed as the address for PetFirst Healthcare, LLC, which was no longer an accurate contact address for Respondent. Hearing Transcript at pp. 31-32, 51, and Exhibit 5.

12. Respondent made no contact with the Indiana Department of Insurance, Surplus Lines Division regarding the courtesy notice informing him that he was in violation of Indiana law or his late semi-annual tax filing. Hearing Transcript at pp. 54 and 78.
13. Respondent did not submit the semi-annual filing provided to him by Mr. Bertram to the Indiana Department of Insurance, Surplus Lines Division, nor did he make any effort to complete the semi-annual filing for the January through July 2009 period until February 26, 2010. Hearing Transcript at pp. 13, 19, 21, 84-85, and Exhibit 4.
14. On January 15, 2010 the Department filed a one count Statement of Charges in the above entitled action. Hearing Transcript at p 61.
15. That Statement of Charges was sent via US Mail to the last mailing address provided to the Department by Respondent, which was the mailing address for Respondent's former employer PetFirst Healthcare, LLC. Hearing Transcript at pp. 16-17 and Exhibits 1 and 2.
16. Mr. Bertram received the Statement of Charges and contacted the Department to inform them that Respondent was no longer an employee of PetFirst Healthcare, LLC, and to provide the Department with a valid mailing address for Respondent. Hearing Transcript at pp. 32-33.

17. On January 20, 2010, the Department filed a one count Amended Statement of Charges to correct misnomer in the original Statement of Charges. Hearing Transcript at pp. 62-64.
18. The Amended Statement of Charges was served upon Respondent via US Mail to the address provided by Mr. Bertram, 2701 San Tomas Expressway, Santa Clara, California 95050. The Amended Statement of Charges was received by Respondent. Hearing Transcript at pp. 73 and 75.
19. At no time did Respondent attempt to update his mailing address and contact information with the Indiana Department of Insurance. Hearing Transcript at p. 81.
20. On March 4, 2010, an Administrative Hearing was held. The Department was represented by attorney, Laura Levenhagen. Evidence was presented through the testimony of Brenda Lear, Tracy Bertram, and Respondent, who appeared telephonically. Respondent acted as his own counsel. Hearing Transcript at p 6.
21. All exhibits entered into evidence were known to Respondent and in his possession prior to and during the hearing. Hearing Transcript at p. 9.

CONCLUSIONS OF LAW

1. The Acting Commissioner of Insurance, Doug Webber, has jurisdiction of both the subject matter and the parties to this action.
2. The hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, and all procedures and rules set forth by said Act have been followed in this matter.

3. Indiana Code § 27-1-15.8-4 requires licensed surplus lines producers to file a complete and accurate semi-annual tax report with the Department, no later than February 1 and August 1 of each year.
4. Respondent's conduct is a violation of Indiana Code § 27-1-15.8-4.
5. Indiana Code § 27-1-15.6-7(h) requires that a licensee shall inform the commissioner of a change of address not more than thirty (30) days after the change by any means acceptable to the commissioner.
6. Respondent's conduct is a violation of Indiana Code § 27-1-15.6-7(h).
7. Respondent is subject to penalties in accordance with Indiana Code § 27-1-15.6-12(b)(2)(A)
8. The Department of Insurance had, and met, the burden of proof by a preponderance of the evidence.
9. Any Finding of Fact that should have been adopted as a Conclusion of Law is now hereby adopted as such.

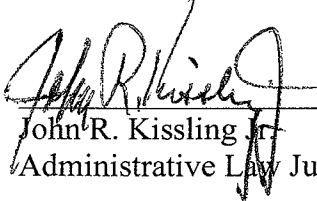
RECOMMENDED ORDER

Based upon the foregoing, the Administrative Law John R. Kissling Jr., now recommends to the Commissioner of Insurance that:

1. Respondent should be denied, till September 1, 2012, the renewal of his surplus lines insurance license no. 595222. Any application for a new surplus lines license shall be denied till September 1, 2012. Issuance of a future surplus lines license, whether new or renewal, is conditioned on payment of the fines in #2 and #3 below.

2. Respondent should be assessed a one thousand five hundred dollar (\$1,500.00) civil penalty for violating Indiana Code § 27-1-15.8-4. Fine is payable to the Indiana Department of Insurance within thirty (30) days from the date the Commissioner files a Final Order in this cause.
3. Respondent be assessed a one hundred dollar (\$100.00) civil penalty for violating Indiana Code § 27-1-15. 6-7(h), payable to the Indiana Department of Insurance within thirty (30) days from the date the Commissioner files a Final Order in this cause.

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:

Laura Levenhagen
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46240

Steven Herman
2701 San Tomas Expressway
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