

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 10816-AG12-0110-

007

IN THE MATTER OF:

Troy Collier

Respondent

3600 E. Waterview Drive
Muncie, IN 47302

Producer License Number: 771538

Type of Agency Action: Enforcement

FILED

MAY 04 2012

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On March 30, 2012, the Administrative Law Judge (ALJ) Debra M. Webb filed her 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 Respondents address.

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

3. Neither party has filed an objection.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full ALJ Webb's Findings of Fact, Conclusions of Law, and Recommended Order. The Commissioner of Insurance, now issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Respondent's producer license is permanently revoked.
2. Respondent shall pay a fine in the amount of ten thousand dollars (\$10,000.00) within ninety (90) days.

ALL OF WHICH IS ORDERED by the Commissioner this 4th day of May,
2012.



Stephen W. Robertson
Commissioner

Distribution:

Nick Mann, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

Troy Collier
3600 E Waterview Drive
Muncie, IN 47302

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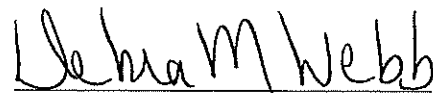
MAR 30 2012

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, Stephen W. Robertson, Commissioner of the Department of Insurance, within fifteen (15) days from the date of service of this Order.



Debra M. Webb
Administrative Law Judge

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STATE OF INDIANA
DEPT. OF INSURANCE

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

Administrative Law Judge Debra M. Webb, having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent Troy Collier (“Respondent”), which came to be heard on February 15, 2012 at approximately 10:06 A.M. at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana 46202.

The Indiana Department of Insurance (the “Department”) was represented by counsel, Nikolas P. Mann. Respondent did not appear personally or 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 a Recommended Order as follows:

FINDINGS OF FACT

1. Respondent resides at 3600 E. Waterview Drive, Muncie, Indiana 47302. Exhibit A at p. 1; Exhibit B at p. 1.
2. Respondent holds resident producer license number 771538. Exhibit A at p. 1.
3. On November 15, 2011, the Department received notification from Respondent's employer, Western & Southern Life Insurance Company ("Western & Southern"), that Respondent had been terminated for "commission of any felony or other serious offense, whether or not conviction results... any other conduct which impairs your ability to represent Western & Southern to the public." Exhibit D.
4. The termination letter states that Respondent was terminated because "several felony charges [were] filed against [him] on October 6, 2011." Exhibit D at p. 2. The charges arose from unauthorized use of funds/credit cards while an employee of the Eastern Indiana Development District ("EIDD"). *See* Hearing Transcript, February 15, 2012, at p. 7:17-24; Exhibit E. EIDD is a non-profit organization which aids local, county and state agencies with economic development, in a five-county area of eastern Indiana. Exhibit H at p. 1; Exhibit K at p. 2. Receipt of this termination letter initiated the Department's investigation of Respondent's conduct. Transcript at p. 16: 16-19.
5. On October 13, 2011, Respondent appeared at an initial hearing in Henry County Circuit Court II and entered a plea of not guilty in response to the charges against him. Exhibit G.
6. As of the date of the administrative hearing, a jury trial was scheduled for May 1,

- 2012 on Respondent's criminal charges. Exhibit R at p. 2.
7. Respondent has not provided the Department with any information on his initial hearing or any other stage of his pending criminal charges; however, Mr. Scott Pinkerton, an investigator for the Henry County Prosecutor's Office, has provided copies of all documents made publicly available in Respondent's criminal case. Transcript at pp. 23-24; Exhibit I. One such document is an Order for Probable Cause. Exhibit J.
 8. On October 4, 2011, Henry County Circuit Court II filed an Order for Probable Cause which ordered the arrest of Respondent for the following crimes: (1) Corrupt Business Influence, a class C felony; (2) one count of theft, a class C felony; and (3) five counts of theft, a class D felony. Exhibit J at p. 1.
 9. The Indiana State Police were first made aware of Respondent's conduct in a January 3, 2011 meeting with the Executive Director and the Director of Agribusiness and Economic Development of EIDD. Exhibit K at p. 2. At that meeting, the EIDD employees explained that they were recently contacted by the Internal Revenue Service and advised that EIDD had not paid federal income tax withholding for approximately two (2) years. Exhibit K at p. 3. During this time, Respondent was the EIDD Associate Director and Financial Officer and as such was responsible for sending federal income tax withholdings to the Internal Revenue Service. *Id.* EIDD employees relayed to the Indiana State Police other financial concerns tied to Respondent's misuse of company funds. *Id.* A police investigation ensued. *Id.* at p. 4.
 10. The aforementioned criminal charges resulted from Respondent's failure to send

withheld federal income tax to the Internal Revenue Service on behalf of EIDD and the misuse of EIDD funds.

- a. As part of his work duties, Respondent had access to EIDD's checking account, credit cards and other finances. Exhibit M at p. 1.
- b. Respondent made thirty seven (37) unauthorized payments with EIDD's funds to pay Respondent's personal expenses, specifically, a Capital One credit card. *Id.*; Transcript at p. 32:12-15; Exhibit M at p. 3. Respondent made unauthorized payments to his personal Capital One credit card account in the total amount of twenty six thousand three hundred dollars (\$26,300.00). Exhibit M at p. 8.
- c. In addition, Respondent spent nine thousand five hundred dollars and sixty seven cents (\$9,500.67) at the electronics store Best Buy over a two year period, without approval from EIDD. Exhibit O at pp. 11-12. These transactions were charged to an EIDD credit card. Exhibit O at p. 12.
- d. Respondent also increased the credit limits available for three EIDD credit cards. Exhibit L at p. 4. One EIDD employee had an EIDD credit card with an approved maximum limit of five thousand dollars (\$5,000.00). Exhibit L at p. 4. Without any authorization from EIDD, the limit had been increased and reached a balance of twenty thousand dollars (\$20,000.00). *Id.*
- e. Two other employees, including Respondent, had separate EIDD credit cards with approved limits of five hundred dollars (\$500.00), to be used for EIDD business. *Id.* Without any authorization from EIDD, the limit on both cards

was increased to five thousand dollars (\$5,000.00) and reached a balance close to that amount. *Id.*

- f. Additionally, while he had access to EIDD's finances, Respondent gave himself an unauthorized ten thousand dollar (\$10,000.00) pay raise in 2010. Exhibit L at p. 4.
- g. On February 23, 2011, Respondent voluntarily discussed these allegations with the Indiana State Police. Exhibit L at p. 1.
- h. During this discussion, Respondent acknowledged that he had not paid federal withholding tax on behalf of EIDD. Exhibit L at p. 2. Respondent has not made any payment towards the tax owed, but claims he attempted to establish a payment plan with a revenue officer. Exhibit L at p. 2.
- i. Respondent told the interviewing police officer that "he got the stupid idea to open some credit cards in EIDD's name and use them to establish business" but that "it got out of hand and was a mess." He admitted to doing "stuff that was unethical" Exhibit L at pp. 1-2.
- j. Whatever his initial reasoning may have been, Respondent admitted to using EIDD funds for personal purchases of electronics. Exhibit L at p. 6. Among these Best Buy purchases were a BluRay DVD player and a surround system, for which he paid approximately one thousand dollars (\$1,000.00). Exhibit L at p. 6.
- k. Regarding the three (3) aforementioned credit cards that had limits increased, Respondent admitted to doing so without the approval of EIDD. Exhibit L at

- p. 4.
1. When the conversation turned to the items purchased and credited to EIDD accounts, Respondent explained that he used the funds to pay for "stuff for his house" and a four hundred dollars (\$400.00) a month pornography habit. *Id.* at p. 6.
 - m. Respondent has indicated that he has nine (9) different personal credit cards and owes a total balance of almost eighty thousand dollars (\$80,000.00) on these cards. Exhibit L at p. 5-6.
 - n. An audit of both EIDD and Respondent's finances, revealed that Respondent's actions resulted in EIDD's loss of one hundred fifty thousand four hundred forty seven dollars and seventy three cents (\$150,447.73). Exhibit Q at p. 1. Respondent, in one form or another, "repaid" EIDD in the amount of forty seven thousand five hundred fifty dollars (\$47,550.00). Exhibit Q at p. 1.
 - o. Thus, the total loss EIDD has suffered by means of Check Fraud or Credit Card Fraud amounts to one hundred two thousand eight hundred ninety seven dollars and seventy three cents (\$102,897.73). *Id.*
 11. Despite extensive efforts by the Department to contact Respondent, he has chosen not to participate in this administrative action.
 - a. After receiving the notification of termination from Western & Southern, Mr. David Cuthbert, the investigator assigned to Respondent's case, took several approaches in attempting to contact Respondent. Transcript at pp. 12-13. Mr.

Cuthbert testified that the Department has made every effort to contact Respondent. Transcript at p. 13-15.

b. Respondent failed to claim or respond to any mail delivered to the address listed on his producer license application.

1. On January 11, 2012, a Notice of Hearing and Statement of Charges were sent via certified mail to the address listed on his producer license application. Transcript at p. 14: 20-23. These documents were returned as unclaimed. *Id.*

2. A copy of the Notice of Hearing and Statement of Charges were then sent via regular mail on January 31, 2012, and were not returned as undeliverable. Transcript at pp. 14-15.

3. The address listed on Respondent's producer license application is the same address relied on by the Court in the aforementioned felony charges. Exhibit B at p. 1; Exhibit F at p. 1; Exhibit L at p.

1.

c. Mr. Cuthbert's attempts to reach Respondent by phone were also unsuccessful.

1. On November 30, 2011, Mr. Cuthbert spoke with Respondent's counsel, Mr. Craig Parker. Transcript at p. 13:2-11. Mr. Parker stated that he would discuss the matter with Respondent. Transcript at p. 13:8-11.

2. After a December 6, 2011 follow-up phone call in which Mr.

Parker stated he had not had an opportunity to discuss any issues with his client, Mr. Cuthbert learned that Mr. Parker would not represent Respondent in this matter. Transcript at p. 13:12-17. Instead, Mr. Parker's representation was limited to Respondent's criminal proceedings and that Respondent could be contacted directly. *Id.*

3. That day, Mr. Cuthbert left a voicemail on the telephone number Respondent listed on his producer license application. Transcript at p. 13: 21-25.
4. On January 10, 2012, Mr. Cuthbert, having not received any communication from Respondent, again attempted to call the number listed on Respondent's producer application. Transcript at p. 14:1-4. This time, Mr. Cuthbert was unable to leave a voicemail because the number was directed to a fax machine. *Id.*
5. On February 13, 2012, Mr. Cuthbert was able to leave a voicemail at the number Respondent listed on his producer application; however, the Department never received any return communication. Transcript at p. 14: 4-7.

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 accordance with the Administrative Orders and Procedures

Act of the Indiana Code.

3. The Commissioner has the discretionary authority to revoke the Respondent's license to sell insurance and to levy a fine against Respondent.
4. The Department is not required to satisfy a burden of beyond reasonable doubt on Respondent's pending criminal matters.
5. 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 to include revocation of license is in order.
6. Respondent's conduct has grossly deviated from the standard insurance producers are held to by Indiana insurance law. Specifically, Respondent has failed to notify the Department of a criminal prosecution against him within the required time frame as well as used fraudulent or dishonest practices demonstrating his untrustworthiness and the charges Respondent faces are severe and indicative of conduct that puts Indiana consumers at risk.
7. Respondent acted in a manner contrary to Indiana Code § 27-1-15.6-17(b) by failing to notify the Department of a criminal prosecution within thirty (30) days of an October 13, 2011 initial hearing.
8. Respondent acted in a manner contrary to Indiana Code § 27-1-15.6-12(b)(8) by using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in Indiana, to wit, through the unauthorized use of his employer's assets to fund personal expenses.

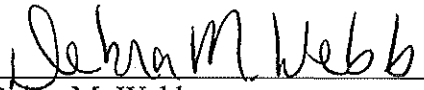
9. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

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 be permanently revoked.
2. Respondent be required to pay a fine in the amount of ten thousand dollars (\$10,000.00) within ninety (90) days of the Final Order.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 30th day of March, 2012.



Debra M. Webb
Administrative Law Judge

Distribution:

Nikolas P. Mann, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, Indiana 46240

Troy Collier
3600 E Waterview Drive
Muncie, IN 47302

STATE OF INDIANA)
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BEFORE THE INDIANA
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CAUSE NUMBER:10816-AG12-0110-007

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Producer License Number: 771538)
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Type of Action: Enforcement)

FILED
JAN 11 2012
STATE OF INDIANA
DEPT. OF INSURANCE

STATEMENT OF CHARGES

The Enforcement Division of the Indiana Department of Insurance (the “Department”), pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code Section 4-21.5-1 *et seq.*, and the Agent Licensing provisions, Indiana Code Section 27-1-15.6 *et seq.*, files charges against Troy Collier (“Respondent”), a resident insurance producer licensed in the State of Indiana:

FACTS

1. Respondent Troy Collier is a resident of Indiana.
2. Respondent holds Indiana resident insurance producer license number 771538.
3. Respondent was terminated for cause by Western & Southern Life Insurance Company, effective November 9, 2011. Western & Southern notified the Department of the termination in accordance with Indiana Code.

4. Respondent was arrested by the Indiana State Police on October 6, 2011. Respondent was subsequently charged with: Corrupt Business Influence, a class C felony; Theft, a class C felony; and 5 counts of Theft, a class D felony in the Henry County (Indiana) Circuit Court No.2, under cause number 33C02-1110-FC-0022.
5. The criminal complaint alleges that Mr. Collier exerted unauthorized control over funds and property under his control when he was employed by the Eastern Indiana Development District (EIDD). The State alleges that the value of the property and funds is in excess of One Hundred Thousand Dollars (\$100,000.00).
6. EIDD is a designated Economic Development District and Regional Planning Agency that provides economic development marketing support as well as planning, project development, grant writing and technical assistance for local government.
7. Respondent's initial pre-trial hearing took place on October 13, 2011.
8. Respondent is required to notify the Department of his arrest within 30 days of the initial pre-trial hearing in accordance with Indiana Code § 27-1-15.6-17(b).
9. Respondent has failed to notify the Department of his arrest.

COUNT I

10. Averments 1 through 9 are repeated as if fully incorporated by reference herein.
11. Respondent failed to notify the Department of a criminal prosecution within thirty (30) days after an initial pretrial hearing date.
12. Respondent's conduct is in violation of Indiana Code 27-1-15.6-17(b).

WHEREFORE, the Department, by counsel, Nikolas P. Mann, requests that the Commissioner permanently revoke the producer license of the Respondent and impose a fine of ten thousand dollars (\$10,000.00) and all other appropriate relief.

Respectfully submitted,




Nikolas P. Mann,
Attorney No. 26665-29

Indiana Department of Insurance
Consumer Protection Unit
Suite 300
311 West Washington Street
Indianapolis, IN 46204-2787
(317) 233-4243 – telephone
(317) 232-5251 – facsimile

CERTIFICATE OF SERVICE

This is to certify that a copy of the Statement of Charges has been served upon Respondent in the captioned proceeding by depositing a copy of same in the United States mail, Certified Mail this 11th day of January, 2012.



Nikolas P. Mann,
Attorney No. 26665-29

INDIANA DEPARTMENT OF INSURANCE
Enforcement Division
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311 West Washington Street
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