

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 11574-AG12-1031-111

IN THE MATTER OF: )

KEVIN JAMES )  
12148 Bay Ridge Ct. )  
Indianapolis, IN 46236 )

License No. 1439710 )

Respondent. )

FILED

SEP 06 2013

STATE OF INDIANA  
DEPT. OF INSURANCE

**FINAL ORDER AND APPROVAL**

The Enforcement Division of the Indiana Department of Insurance (the "Department"), by and through counsel, and Respondent Kevin James ("Respondent"), a licensed resident producer, signed an Agreed Entry which purports to resolve all issues involved in the above cause number, and which has been submitted to the Commissioner of the Indiana Department of Insurance (the "Commissioner") for approval.

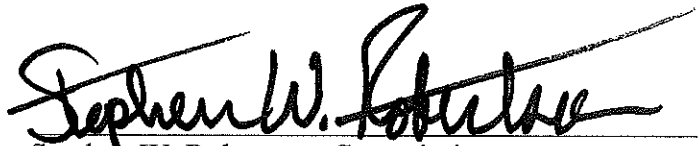
The Commissioner, after reviewing the Agreed Entry, finds it has been entered into fairly and without fraud, duress, or undue influence, and is fair and equitable between the parties. The Commissioner hereby incorporates the Agreed Entry as if fully set forth herein, and approves and adopts in full the Agreed Entry as a resolution of this matter.

IT IS THEREFORE ORDERED by the Commissioner that:

1. Respondent's license shall be suspended for nine (9) months;
2. Respondent shall pay an administrative fine in the amount of Seven Hundred Fifty Dollars and 00/100 (\$750.00) no later than ninety (90) days from today; and

3. In addition to his existing continuing education requirements, Respondent shall complete an additional six (6) hours of ethics courses no later than two (2) years from today.

ALL OF WHICH IS ORDERED this 10<sup>th</sup> day of September, 2013.

  
Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Distribution:

Michael F. Mullen  
INDIANA DEPARTMENT OF INSURANCE  
311 West Washington Street, Suite 103  
Indianapolis, Indiana 46204-2787

S. Gregory Zubek  
WHITHAM, HEBENSTREIT & ZUBEK, LLP  
151 North Delaware Street, Suite 2000  
Indianapolis, IN 46204

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STATE OF INDIANA  
DEPT. OF INSURANCE

**AGREED ENTRY**

This Agreed Entry is entered into by the Enforcement Division of the Indiana Department of Insurance ("Department"), by and through counsel, Michael F. Mullen, and Kevin James ("Respondent"), a licensed insurance producer, by and through counsel, S. Gregory Zubek, to resolve all matters in the above-captioned administrative action commenced by the Department. This Agreed Entry is subject to the review and approval of Stephen W. Robertson, Commissioner for the Indiana Department of Insurance.

WHEREAS, Respondent is a resident producer in the State of Indiana, holding license number 1439710 ("Respondent's license"); and,

WHEREAS, the Department and Respondent (collectively, the "Parties") desire to resolve their differences and settle the issues set forth in the Statement of Charges without the necessity of a hearing.

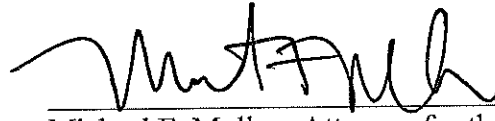
IT IS, THEREFORE, NOW AGREED by and between the Parties as follows:

1. The Commissioner has jurisdiction over the subject matter and the Respondent in this administrative action.
2. This Agreed Entry is executed voluntarily by the Parties.
3. Respondent voluntarily and freely waives the right to a public hearing on this matter.

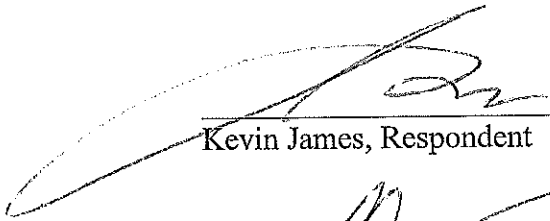
4. Respondent voluntarily and freely waives any right to petition for judicial review of this matter.
5. Respondent shall pay an administrative fine in the amount of Seven Hundred Fifty Dollars and 00/100 (\$750.00) no later than ninety (90) days after the Commissioner's Final Order adopts this Agreed Entry.
6. Respondent's license shall be suspended for a period of nine (9) months, effective the date the Commissioner issues a Final Order adopting this Agreed Entry. Respondent shall not engage in the business of insurance in Indiana while his license is suspended.
7. In addition to his existing continuing education requirements, Respondent shall complete an additional six (6) credits of ethics courses, no later than two (2) years after the Commissioner's Final Order adopts this Agreed Entry.
8. Respondent is represented by counsel, S. Gregory Zubek of Whitham, Hebenstreit & Zubek, LLP.
9. Respondent has carefully read and examined this Agreed Entry and fully understands its terms.
10. Respondent has entered into this Agreed Entry freely of his own volition and has not been subject to duress, threat, undue influence, or any form of coercion.
11. Respondent is aware that failure to comply with any term of this Agreed Entry will result in the matter being set for hearing.
12. Respondent understands that this Agreed Entry will result in a state action against his Indiana resident license, and Respondent may be required to report that action to other states where he holds or applies for professional licenses.
13. Should this Agreed Entry not be accepted by the Commissioner, it is agreed that the presentation to and consideration of this Agreed Entry by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation in or resolution of these proceedings.

14. The Department agrees to accept Respondent's compliance with the terms of this Agreed Entry as full resolution of this matter and Enforcement Case # 11719.

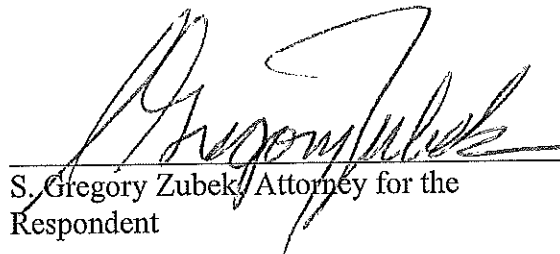
6/5/2013  
Date Signed

  
\_\_\_\_\_  
Michael F. Mullen, Attorney for the  
Indiana Department of Insurance,  
Enforcement Division

8/1/13  
Date Signed

  
\_\_\_\_\_  
Kevin James, Respondent

8/1/13  
Date Signed

  
\_\_\_\_\_  
S. Gregory Zubek, Attorney for the  
Respondent

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me a Notary Public for Madison County, State of Indiana,  
personally appeared Kevin James and being first duly sworn by me upon his oath, says that the  
facts alleged in the foregoing instrument are true. Signed and sealed this 1<sup>st</sup> day of  
August, 2013.

DeAnn C. Wehner  
Notary Signature

DeAnn C. Wehner  
Printed

My Commission Expires: 12/13/2014

County of Residence: Madison

**Return executed originals to:**  
Michael F. Mullen  
INDIANA DEPARTMENT OF INSURANCE  
Enforcement Division, Suite 103  
311 West Washington Street  
Indianapolis, IN 46204-2787

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STATE OF INDIANA  
DEPT. OF INSURANCE

**STATEMENT OF CHARGES**

The Enforcement Division of the Indiana Department of Insurance (“Department”), by undersigned counsel, pursuant to Ind. Code 4-21.5-1 *et seq.* and Ind. Code 27-1-15.6 *et seq.*, files its Statement of Charges against Kevin James (“Respondent”), as follows:

**FACTS**

1. Respondent is a licensed resident producer holding license number 1439710. The Department issued Respondent’s license in 1979.
2. During all relevant times, Respondent was appointed by American General Life Insurance Company (“American General”).
3. While an agent for American General, Respondent acted as the servicing agent for at least two annuity policies owned by Elizabeth Rajski (“Rajski”).
4. On or about June 18, 2012, Respondent facsimiled two (2) Deferred Annuity Withdrawal (“DAW”) forms to American General to request the withdraw of funds<sup>1</sup> from Rajski’s

<sup>1</sup> The two forms requested \$8,210.00 and \$6,950.00, respectively, for a total withdrawal of \$15,160.00.

annuities. The facsimile's cover sheet stated as follows: "Please rush for client. She has medical needs not covered by medical. Thank you, Kevin James" (See Attached, Exhibit A).

5. The DAW forms included a signature that appeared to be Rajski's.
6. However, Rajski did not sign the forms nor did she authorize anyone to sign them on her behalf.
7. Based upon information and belief, one of Rajski's signatures is a photocopy of the other.
8. At no time did Rajski ask Respondent to withdraw any funds from her annuities.
9. On or about June 19, 2012, American General mailed Rajski two (2) checks in the amounts of eight thousand two hundred ten and 00/100 dollars (\$8,210.00) ("Check One") and six thousand nine hundred fifty and 00/100 dollars (\$6,950.00) ("Check Two").
10. On or about June 20, 2012, Respondent called Rajski and told her to expect the checks in the mail. Respondent told Rajski the checks were a "mistake and he was coming to get them and return them to [her] accounts."
11. On or about June 21, 2012, Respondent called Rajski to inquire whether or not the checks arrived in the mail. Rajski told Respondent that they did, so Respondent went to Rajski's home to retrieve them.
12. Rajski did not sign either check prior to Respondent taking them from her.
13. On or about June 22, 2012, Rajski called American General's Consumer Affairs Department. Rajski believed that Respondent "sounded really nervous when he talked to her, so she decided to call [American General] to see what was going on." (See Attached, Exhibit B).
14. On or about June 25, 2012, Respondent forged Rajski's signature on the back of Check One and deposited the funds into his Chase Bank business account. (See Attached, Exhibit C).



15. American General's Annuity Service Center successfully placed a "stop-payment" on Check Two.

16. American General mailed Respondent a letter demanding a written response to Rajski's complaint. On or about June 30, 2012, Respondent mailed his response to American General which stated, in part, as follows:

I mistakenly [sic] asked for money from the wrong client. I caught my error the day before she was to receive the funds. I called her and explained my mistake and she was fine and would call me when it arrived. ... [W]hen I called Mrs. Rajski the next day she had received the checks[, and] she was angry and told me she did not know what to do[.] ... When I arrived she was still angry [and] after talking for a half hour or so she decided to keep part and return the rest. ... I am sorry for any confusion. I believe that her memory may not be what it was. All money is at hand, I have not attempted to steal from her. (See Attached, Exhibit D).

17. Respondent's letter became part of American General's ongoing investigation into Rajski's allegations.

18. On or about July 1, 2012, pursuant to American General's request, Rajski also provided a written statement regarding this matter. (See Attached, Exhibit E)

19. Via letter dated July 26, 2012, American General informed Rajski that it reversed Respondent's June 25<sup>th</sup> transaction and restored the value to her annuity. American General also requested that Rajski complete an Affidavit of Forgery. (See Attached, Exhibit F).

20. Rajski completed the Affidavit which stated, in part, that "the endorsement appearing on the reverse side of the Check purported to be the signature of the Payee was not written or authorized by Payee and is a forgery." (See Attached, Exhibit G).

21. Via letter dated August 15, 2012, American General informed the Department "that [it was] terminating all appointments and existing contracts with [Respondent] 'for cause,' effective July 24, 2012." (See Attached, Exhibit H).

22. In addition, the Plainfield, Indiana Police Department opened a criminal investigation into Respondent's conduct regarding the above referenced facts and circumstances, namely the alleged forgery violations.

**COUNT I**

23. Averments 1 through 22 are incorporated fully as if set forth herein.

24. Respondent forged another's name to documents related to an insurance transaction in violation of Ind. Code § 27-1-15.6-12(b)(10). Specifically, Respondent forged the signature of Elizabeth Rajski on two American General Deferred Annuity Withdrawal forms.

**COUNT II**

25. Averments 1 through 24 are incorporated fully as if set forth herein.

26. Respondent forged another's name to documents related to an insurance transaction in violation of Ind. Code § 27-1-15.6-12(b)(10). Specifically, Respondent forged the signature of Elizabeth Rajski on an annuity distribution check.

**COUNT III**

27. Averments 1 through 26 are incorporated fully as if set forth herein.

28. Respondent improperly withheld, misappropriated, or converted monies or properties received in the course of doing insurance business in violation of Ind. Code § 27-1-15.6-12(b)(4).

**COUNT IV**

29. Averments 1 through 28 are incorporated fully as if set forth herein.

30. Respondent used fraudulent, coercive, or dishonest practices in violation of Ind. Code § 27-1-15.6-12(b)(8).

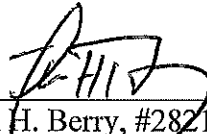
**COUNT V**

31. Averments 1 through 30 are incorporated fully as if set forth herein.

32. Respondent demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in violation of Ind. Code § 27-1-15.6-12(b)(8).

**WHEREFORE**, the Indiana Department of Insurance, by counsel, Adam H. Berry, requests that the Commissioner set this matter for a hearing, and/or issue an order permanently revoking Respondent's license, fining Respondent in the amount of ten thousand and 00/100 dollars (\$10,000.00) for each count, and granting the Department all other necessary and appropriate relief.

Respectfully submitted,



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Adam H. Berry, #28215-49  
Associate General Counsel

*Counsel for the Indiana Department of Insurance*

Adam H. Berry  
Indiana Department of Insurance  
311 West Washington Street, Suite 103  
Indianapolis, Indiana 46204-2787  
Telephone: (317) 234-8279  
Facsimile: (317) 232-5251  
ABerry@idoi.IN.gov

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing *Statement of Charges* has been served upon the below named counsel for Respondent by Certified United States mail, postage prepaid, this 13<sup>th</sup> day of December, 2012:

Rafael A. Sanchez  
Bingham, Greenebaum and Doll, LLP  
2700 Market Tower  
10 W Market St.  
Indianapolis, Indiana 46204



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Adam H. Berry