

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO. 11381-AG13-0730-084

IN THE MATTER OF:)
)
Wayne A. Wheatley,)
Respondent.)
)
736 N. Emerson Avenue)
Indianapolis, IN 46219)

FILED

JAN 28 2014

STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement

Indiana Insurance License No. 1261630

FINAL ORDER

On December 5, 2013, 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. Applicant timely filed an objection with the Commissioner.


Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full ALJ Fulford'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 insurance license number 1261630 is placed on probation for a period of thirty-six (36) months.
2. During the probation period, Respondent is to report quarterly to the Department:
 - a. Any change in employment, including the date of said change, the address of the employer and a description of the new job duties; within ten (10) days of accepting any employment offer;
 - b. A list of companies for whom Respondent is soliciting and/or writing business; and
 - c. Any arrest and/or conviction for any violation of law, except minor traffic violations, within ten (10) days.
3. Respondent is to maintain his tax obligation repayment agreement.
4. If Respondent fails to submit quarterly reports or maintain his tax obligation repayment agreement, Respondent's license will be permanently revoked.
5. Respondent is to pay a fine in the amount of five hundred (\$500.00) dollars. The fine must be paid by January 1, 2015.

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 ^{28th} day of January 2014.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

Wayne Wheatley
736 N. Emerson Avenue
Indianapolis, IN 46219

Robert L. Hummel, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO. 11381-AG13-0730-084

IN THE MATTER OF:)

Wayne A. Wheatley,)
Respondent.)

921 Harbon Drive)
Franklin, IN 46131)

FILED

DEC 05 2013

**STATE OF INDIANA
DEPT. OF INSURANCE**

Type of Agency Action: Enforcement

Indiana Insurance License No. 1261630

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

Administrative Law Judge Wade D. Fulford (“ALJ Fulford”), having considered and reviewed all of the evidence, will now render a decision in the matter of Respondent, Wayne A. Wheatley (“Respondent”) under Cause No. 11381-AG13-0730-084. This matter came to be heard on September 5, 2013, at 1:08 P.M. before ALJ Fulford at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana.

The Indiana Department of Insurance (“Department”) was represented at the hearing by counsel, Robert L. Hummel. Respondent, Wayne A. Wheatley appeared in person. Service of process for the hearing was confirmed. At the hearing, a witness for the Department testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at the hearing, the Administrative Law Judge now makes the following Findings of Fact, Conclusions of Law, and Recommended Order pursuant to Ind. Code §4-21.5-3-27.

FINDINGS OF FACT

1. Wayne A. Wheatley ("Respondent") is a licensed Indiana resident insurance producer, holding license number 1261630 with a life, accident, and health qualification. *Exhibit F.*

2. Respondent was properly notified of the above hearing date and time by U.S. Mail sent to Respondent's home address.

3. Subsequent to an administrative hearing concerning Respondent's state income tax liability held on September 13, 2012, the Commissioner issued a Final Order on January 28, 2013 pursuant to Ind. Code §4-21.5-3-29. The Final Order suspended Respondent's insurance producer license until he could provide proof that he had entered into an agreement with the Indiana Department of Revenue ("DOR") to pay his outstanding state income tax liability. Upon providing proof of a payment plan, Respondent's license was put on a probationary status and during that time he was required to submit written reports concerning the status of his tax liability to Department Investigator Ronda Ankney every ninety (90) days. *Exhibit A.*

4. The Final Order further states that "Respondent's failure to comply with any of the terms of the probationary period may, after an administrative hearing, result in the permanent revocation of his insurance producer license and/or a civil penalty." *Exhibit A.*

5. Respondent entered into an agreement with DOR to pay his tax liability on March 22, 2013 and on March 27, 2013, Respondent submitted a copy of the letter confirming that agreement to the Department. The agreement provided that Respondent

pay two hundred dollars (\$200.00) per month for eighteen (18) months after which time the DOR would review the agreement. *Exhibit B.*

6. The Commissioner vacated the suspension of Respondent's license on April 3, 2013. *Exhibit C.*

7. On July 8, 2013, Respondent sent an e-mail to the Department asking about the status of his license since one of his insurance carriers told him that the license was still shown as inactive. In the Department's response to the e-mail, Respondent was asked about the current status of his income tax liability, whether he was current with the arrangement he made with DOR, and what the terms of the agreement were. Respondent did not reply. *Exhibit G.*

8. Although the suspension of Respondent's license was vacated on April 3, 2013, his license was not reactivated in the Department's database until July 9, 2013. Respondent testified that due to this delay in reactivating his license, he was terminated by one insurance company and was not appointed to represent another one due to his license still being shown as suspended until July 9, 2013. *Exhibits C and F, Transcript pp. 17-19.*

9. On July 8, 2013, the Department inquired with DOR concerning the status of Respondent's tax liability and the DOR Compliance Check Unit informed the Department that Respondent made a payment plan in March but failed to make any payments whatsoever and the balance due was over sixty-six thousand dollars (\$66,000.00). *Exhibit D.*

10. On July 24, 2013, the Department received a heavily redacted Outstanding Liability Spreadsheet from DOR summarizing Respondent's tax liability. *Exhibits E and H.*

11. On August 6, 2013, a Statement of Charges was filed against Respondent for his failure to comply with the Commissioner's Final Order of January 28, 2013.

12. On September 4, 2013, the day before the administrative hearing, information was received from DOR that Respondent's tax warrants are in a payment plan and he "just became in compliance with his payment plan." *Exhibit I.*

13. On September 4, 2013, the Department received an updated Outstanding Liability Spreadsheet for Respondent showing a total liability of sixty-five thousand six hundred and forty-three dollars and thirteen cents (\$65,643.13). *Exhibit J.*

14. Respondent has tax warrants issued against him in October, November, and December 2012, after the first administrative hearing on September 13, 2012, but those warrants reflect the same debts shown on previous DOR liability spreadsheets printed in July and September 2013. *Exhibits K, E, and J.*

15. Respondent was evicted from his rented house on Harbon Drive in Franklin in August 2013 and Respondent failed to appear for the eviction hearing. *Exhibit L.*

16. Respondent testified that his eviction was for non-payment of rent. *Transcript p. 37.*

17. Respondent testified that he did not appear in court on the eviction case because he had already vacated the house and was told by the court that it was not necessary that he attend the eviction hearing. *Transcript pp. 38-39.*

18. Respondent testified that he does not currently have an address but mail sent to the Harbon Drive address is being held at the Franklin Post Office and he picks it up every few days. *Transcript p. 19.*

19. On August 13, 2013, Respondent sent an e-mail to the Department stating that he has not made any payments toward his past due taxes as he had agreed with DOR to do. He further stated that he has recently generated some "significant sales" and that income is starting to come in. *Exhibit M.*

20. Respondent admitted that he entered into an agreement with DOR earlier this year and he paid nothing on his tax liability by the time the Department filed a Statement of Charges against him on August 6, 2013. *Transcript p. 10.*

21. Respondent testified that he did not make payments on his tax liability because his income has been very poor, that he is "in desperate financial straits." *Transcript pp. 10-11.*

22. Respondent testified that he made a payment of one thousand dollars (\$1,000.00) on his tax liability in September 2013 and has now caught up with the two hundred dollars (\$200.00) per month agreement he made with DOR that went into effect in May 2013. *Transcript p. 11.*

23. Respondent admitted that he was in violation of the agreement with DOR, as stated in the Statement of Charges, until recently. *Transcript pp. 11-12.*

24. Respondent testified that he made payment to DOR only after the Statement of Charges was filed and one (1) or two (2) days prior to the administrative hearing. *Exhibit I, Transcript p. 31.*

25. Respondent testified that he was aware of the requirement in the Commissioner's Final Order that he submit reports to Investigator Ankney but he had never been given a schedule for submitting them. He stated that he did not submit any reports because he had nothing to report. *Transcript p. 12.*

26. Respondent submitted the first page of six (6) monthly account statements for a Bluebird by American Express account in his name dated from February 19, 2013 to August 18, 2013. The statements were meant to show increasing "funds added" and "transfers in / credits" during that period with the exception of the May – June 2013 statement. *Exhibit 1.*

27. Respondent testified that the Bluebird account is the only one where his commissions from insurance sales are deposited and deposits in that account are his sole income for that period. *Transcript pp. 47-48.*

28. Respondent testified that he is trying to find a support position where he would be a W-2 employee so the tax payments can be taken out of his pay. Meanwhile, he stated that he continues to work selling long-term care and life insurance. *Transcript p. 50.*

29. Respondent testified that it would probably be impossible for him to pay all the state and federal taxes he owes. *Transcript p. 56.*

30. Respondent testified that he does not have a payment plan with the Internal Revenue Service and owes an amount in six (6) figures in federal income tax. *Transcript pp. 59-60.*

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. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.

4. Respondent owes a very sizeable amount of state income tax with liabilities going back to tax year 2000.

5. After an administrative hearing in September 2012 on this same issue of non-payment of state income tax, the Commissioner issued a Final Order in January 2013, pursuant to Ind. Code §4-21.5-3-29, ordering Respondent to enter into an agreement with DOR to pay the tax liability and to provide written reports to the Department summarizing the status of the repayment.

6. Respondent entered into a lenient agreement with DOR in March 2013 with payments of two hundred dollars (\$200.00) per month to commence on May 1, 2013. At this rate it would take more than twenty-seven (27) years for Respondent to pay his liability, not accounting for accumulating interest.

7. Respondent violated his agreement with DOR in May, June, July, and August 2013 by not sending in any payments for those months, a violation of the Commissioner's Final Order. It was not until after the Department filed a Statement of

Charges putting the Respondent's insurance producer license in jeopardy and only a day or two (2) prior to the hearing date that he finally made a payment to DOR.

8. Respondent violated the Commissioner's Final Order again by not submitting a report to Investigator Ankney by July 2, 2013.

9. The Division has met its burden of proof and shown by a preponderance of the evidence, and by Respondent's own admission, that Respondent failed to comply with the Commissioner's Final Order of January 28, 2013.

10. Ind. Code §27-1-15.6-12(b)(2)(D) gives the Commissioner the authority to revoke or suspend an insurance producer license and impose a civil penalty for violating an order of the Commissioner.

11. 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 be permanently revoked and he should be prohibited from ever applying for any license issued by the Department.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 5th day of December, 2013.



Wade D. Fulford
Administrative Law Judge

Distribution:

Wayne A. Wheatley
921 Harbon Drive
Franklin, IN 46131

Robert L. Hummel
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
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COUNTY OF MARION)

BEFORE THE INDIANA
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921 Harbon Drive)
Franklin, IN 46131)

FILED

AUG 06 2013

STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement

Indiana Insurance License No. 1261630

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 Wayne A. Wheatley (“Respondent”) of the following charges:

FACTS

1. Respondent is a licensed resident insurance producer, holding license number 1261630.
2. On September 13, 2012, an administrative hearing was held in the offices of the Indiana Department of Insurance (“Department”) relating to charges filed against Respondent for failing to pay state income tax.
3. On January 28, 2013, the Commissioner issued a Final Order suspending Respondent’s insurance producer license until he could provide proof to the Department that he had agreed to a plan with the Indiana Department of Revenue (“DOR”) to repay

his outstanding tax liability and after which his license would be on a probationary status until the tax liability was resolved. In addition, Respondent was required to submit a written report to Department Investigator Ronda Ankney every ninety (90) days after the date of the Final Order summarizing the status of the repayment agreement, the amount of tax liability currently paid, and the remaining tax liability to be paid. *See Exhibit "A" attached hereto.*

4. On March 27, 2013, Respondent submitted a letter to the Division indicating that he had reached a payment plan agreement with the DOR. *See Exhibit "B" attached hereto.*

5. On April 3, 2013, the Commissioner vacated the suspension of Respondent's insurance producer license. *See Exhibit "C" attached hereto.*

6. On July 8, 2013, the Division was informed by the DOR that Respondent had agreed to a payment plan with the DOR in March 2013 but had not paid anything and that the outstanding balance was over sixty-six thousand dollars (\$66,000.00). *See Exhibit "D" attached hereto.*

7. On July 24, 2013, the DOR provided the Division with a tax liability spreadsheet for Respondent showing a total income tax liability currently in the warrant stage of thirty-eight thousand five hundred and thirty-four dollars and seventy-nine cents (\$38,534.79). *See Exhibit "E" attached hereto.*

8. Written reports were to be submitted to the Department by Respondent and due by April 30, 2012 and July 29, 2013 but no reports have been received.

COUNT I

9. The Division hereby incorporates by reference paragraphs 1 through 8 of the Statement of Charges as if fully set forth herein.

10. Respondent failed to comply with a payment plan agreement with the DOR to pay his outstanding state income tax liability.

11. Respondent's conduct, as alleged herein, is a violation of Indiana insurance law.

12. Under Ind. Code §27-1-15.6-12(b)(14), 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 failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax.

COUNT II

13. The Division hereby incorporates by reference paragraphs 1 through 8 of the Statement of Charges as if fully set forth herein.

14. Respondent failed to comply with the Commissioner's Final Order requiring him to not only agree to a repayment plan with the DOR but to comply with that plan to resolve his income tax liability.

15. Respondent's conduct, as alleged herein, is a violation of Indiana insurance law.

16. Under Ind. Code §27-1-15.6-12(b)(2)(D), 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 III

17. The Division hereby incorporates by reference paragraphs 1 through 8 of the Statement of Charges as if fully set forth herein.


18. Respondent failed to comply with the Commissioner's Final Order by not submitting written reports concerning his income tax liability to the Division by April 30, 2013 and again by July 29, 2013.

19. Respondent's conduct, as alleged herein, is a violation of Indiana insurance law.

20. Under Ind. Code §27-1-15.6-12(b)(2)(D), 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 Department, by its counsel, Robert L. Hummel, requests that the Commissioner permanently revoke any and all insurance producer licenses held by Respondent, permanently prohibit him from obtaining any license issued by the Department, impose a civil penalty of ten thousand dollars (\$10,000.00), and all other relief just and proper in the premises.

Respectfully submitted,



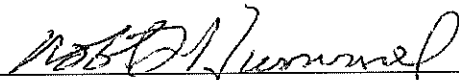
Robert L. Hummel
#20936-49

Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
317 232-5063 - telephone
317 234-2103 - facsimile

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served upon Respondent Wayne A. Wheatley by depositing a copy of same in the United States Mail, first class postage prepaid, this 31st day of July, 2013.

Wayne A. Wheatley
921 Harbon Drive
Franklin, IN 46131


Robert L. Hummel
Attorney #20936-49

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