

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

Cause Number: 14623-AG16-0314-045

IN THE MATTER OF)
)
Rhonda Smiley)
19539 Prairie Crossing Drive)
Noblesville, IN 46062)
Respondent)
)
Type of Agency Action: Enforcement)
)
Indiana Insurance License)
Number: 943074)

FILED
MAY 12 2017
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On April 7, 2017, the Administrative Law Judge, Reuben B. Hill, 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 her counsel of record.

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

3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Findings of Fact, Conclusions of Law and 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 license is placed on probation for a period of two (2) years.
2. Respondent is to pay a fine in the amount of Two hundred (\$200.00) dollars within thirty (30) days.

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 12 day of May, 2017.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

John Tompkins
LAW OFFICE OF JOHN L. TOMPKINS
608 East Market Street
Indianapolis, IN 46204

Cathleen Nine-Altevogt, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

STATE OF INDIANA)
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BEFORE THE INDIANA
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Cause Number: 14623-AG16-0314-045

IN THE MATTER OF

Rhonda Smiley
19539 Prairie Crossing Drive
Noblesville, IN 46062

Respondent

Type of Agency Action: Enforcement

Indiana Insurance License
Number: 943074

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STATE OF INDIANA
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NOTICE OF FILING OF RECOMMENDED ORDER

The parties of this action are hereby notified that the Administrative Law Judge's Recommended Order is 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 ultimate authority for the Final Order, the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.



Reuben B. Hill
Administrative Law Judge

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)

Rhonda Smiley)
19539 Prairie Crossing Drive)
Noblesville, IN 6062)

Respondent)

Type of Agency Action: Enforcement)

Indiana Insurance License)
Number: 943074)

FILED

APR 07 2017

STATE OF INDIANA
DEPT. OF INSURANCE

CAUSE NO.: 14623-AG16-0314-045

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND RECOMMENDED ORDER

Administrative Law Judge Reuben B. Hill ("ALJ"), having heard, reviewed and considered all of the evidence, will now render a decision concerning the Statement of Charges filed against licensed insurance producer of Rhonda Smiley ("Respondent"). This matter came on to be heard by the ALJ on January 11, 2017. The hearing was conducted at the Indiana Department of Insurance at 311 West Washington Street, Indianapolis, Indiana.

The Enforcement Division of the Indiana Department of Insurance ("Department") was represented by counsel, Cathleen Nine-Altevogt. Respondent was represented by counsel, John Tompkins. Evidence was heard and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the ALJ now makes the following Findings of Fact, Conclusions of Law, and issues the Recommended Order.

FINDINGS OF FACT

1. On August 23, 2016, the Enforcement Division of the Department filed a Statement of Charges against Respondent and requested that a hearing be set in the matter.
2. On May 28, 2015, Respondent was charged with the following felonies: kidnapping, criminal confinement, and criminal recklessness; Respondent was also charged with misdemeanor intimidation and domestic battery in Hamilton Superior Court in Hamilton County, Indiana.
3. Respondent, via her criminal attorney, reported the pending criminal proceeding to the Department in a letter dated September 22, 2015.
4. Respondent admitted that she was late in reporting her criminal proceeding to the Department.
5. Respondent believed that her attorney had timely reported the proceeding to the Department, but he testified that he failed to do so.
6. On February 5, 2016, Respondent signed a plea agreement in her criminal matter.
7. On March 7, 2016, a Sentencing Order was filed and Respondent was convicted of Class A Misdemeanor Intimidation in Hamilton Superior Court.
8. Respondent asserted that certain allegations contained in the probable cause affidavit that she threatened to run over her ex-husband with a vehicle and threatened to kidnap their daughter are inaccurate.
9. Respondent admitted to throwing a shoe at her husband during the argument.
10. Respondent's ex-husband was not arrested in connection with the incident.

11. Respondent was placed on probation for 259 days.
12. Respondent stated that she has completed her probation but she did not provide documentation of completion.
13. Following the incident, Respondent went to St. Vincent's Stress Center on an outpatient basis and attended divorce counseling through her church.
14. Indiana Code 27-1-15.6-12(b)(8) is a cause of action allowing the Commissioner to penalize an insurance producer licensee for "Using Fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere".
15. Respondent argued that this cause of action is inappropriate in her case because the conduct leading to her conviction was not in the conduct of business but was instead a personal matter.
16. The Department argued that Respondent's conviction of intimidation demonstrated using coercive practices and that "in the conduct of business' language does not apply to coercive practices because the "conduct of business' language only applies to conduct involving financial irresponsibility.

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.
3. Indiana Code 27-1-15.6-12(b) states that the Commissioner may discipline a licensee for a number of causes.

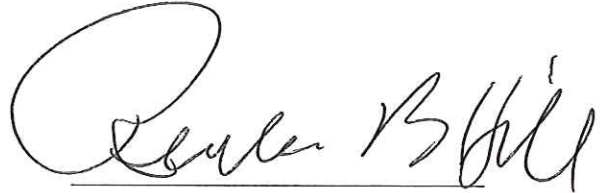
4. Specifically, Indiana Code 27-1-15.6-12(b)(8) is a cause of action stating that the Commissioner may discipline a licensee for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
5. Respondent's conviction of misdemeanor intimidation, on its face, demonstrates coercive conduct in violation of Indiana Code 27-1-15.6-12(b)(8).
6. Indiana Code 27-1-15.6-12(b)(2)(A) also provides a specific cause of action for licensees who violate an insurance law.
7. The insurance law that Respondent violated is Indiana Code 27-1-15.6-17(b) which states that within 30 days of an initial pretrial hearing date a licensee must report to the commissioner any criminal prosecution initiated in any jurisdiction.
8. Respondent admitted to violating Indiana Code 27-1-15.6-12(b)(2)(A) by her late reporting of her criminal proceeding contrary to Indiana Code 27-1-15.6-17(b).
9. Pursuant to Indiana Code 4-21.5-3-14(c), the Department met its burden to show that Respondent's license should be placed on probation and fined due to her misdemeanor conviction of intimidation and the late reporting of her criminal proceeding.
10. Probation and a fine are appropriate in this instance because Respondent believed her attorney had timely reported the criminal proceeding to the Department, and Respondent has received treatment and counseling because of the incident leading to her conviction.
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. That Respondent's license be placed on probation for a period of two (2) years and order the Respondent pay a fine in the amount of Two Hundred and Fifty Dollars (\$250.00).

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 7th day of April, 2017.



Reuben B. Hill, Esq.
Administrative Law Judge

Distribution:

John Tompkins
Law Office of John L. Tompkins
608 East Market Street
Indianapolis, IN 46204

Cathleen Nine-Altevogt, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
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BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 14623-AG16-0314-045

IN THE MATTER OF:

Rhonda L. Smiley
19539 Prairie Crossing Dr.
Noblesville, IN 46062

Producer's License No. 943074

Respondent.

FILED

AUG 23 2016

STATE OF INDIANA
DEPT. OF INSURANCE

STATEMENT OF CHARGES

The Enforcement Division of the Indiana Department of Insurance ("Department"), pursuant to Indiana Code §§ 4-21.5-1 and 27-1-15.6 *et seq.*, files its Statement of Charges against Rhonda L. Smiley ("Respondent"), a resident insurance producer licensed in the State of Indiana, as follows:

FACTS

1. Respondent is a resident insurance producer, holding license number 943074.
2. On March 07, 2016, in the Hamilton County, Indiana Superior Court, Respondent was convicted of Intimidation, a Class A Misdemeanor.
3. On May 28, 2015, Respondent attended a pretrial hearing on the matter.
4. Respondent failed to timely report her criminal proceedings to the Department.
5. Indiana Code §27-1-15.6-12(b) states that the Commissioner of the Indiana Department of Insurance, (the "Commissioner"), may levy a civil penalty and/or revoke an insurance producer's license for any of an enumerated list of factors.

6. Indiana Code §27-1-15.6-12(b)(8), states that if a producer uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere it is grounds for administrative action.
7. Indiana Code §27-1-15.6-17(b) states not more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction.
8. Indiana Code §27-1-15.6-12(b)(2)(A) states that violating an insurance law of Indiana or another state is also grounds for administrative action. Indiana Code §27-1-15.6-17(b) is an insurance law.

CHARGES

COUNT I

9. Averments 1 through 8 are repeated as if fully incorporated by reference herein.
10. Respondent was convicted of Intimidation, a Class A Misdemeanor.
11. Respondent's conduct is subject to administrative action under Indiana Code § 27-1-15.6-12(b)(8).

COUNT II

12. Averments 1 through 11 are repeated as if fully incorporated by reference herein.
13. Respondent failed to notify the Department of her criminal proceedings within thirty (30) days of the pretrial hearing date.
14. Respondent's conduct is in violation of Indiana Code § 27-1-15.6-17(b).
15. Respondent's conduct is subject to administrative action under Indiana Code § 27-1-15.6-12(b)(2)(A).

16. Indiana Code 27-1-15.6-12(f) states that in addition to denial, suspension, or revocation, the Commissioner may impose a civil penalty up to ten thousand dollars (\$10,000) for violation of Indiana Code 27-1-15.6-12.

WHEREFORE, the Enforcement Division of the Indiana Department of Insurance, by counsel, Cathleen Nine-Altevogt, requests that the Commissioner issue an order that states:

- (1) Respondent's resident producer's license is revoked;
- (2) Respondent shall pay a civil penalty in the amount of five hundred dollars (\$500.00);
- (3) Set this matter for hearing pursuant to Indiana Code 4-21.5;
- (4) All other relief necessary and proper upon the premise.

Respectfully submitted,



Cathleen Nine-Altevogt, Attorney #32706-49
Enforcement Division

Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, IN 46204-2787
Phone: (317) 234-5887
Facsimile: (317) 234-2103

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the following Respondent by United States certified first class mail, postage prepaid, this 23rd day of 2016, 2016.


Cathleen Nine-Altevogt, Attorney

Rhonda L. Smiley
19539 Prairie Crossing Dr.
Noblesville, IN 46062

Certified Mail Receipt: 91 7190 0005 2720 0062 7411