

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE

CAUSE NUMBER:15483-AD17-0530-057

IN THE MATTER OF:

Samuel A. Best  
Respondent

977 N. Mill Run  
Greenfield, IN 46140

License Number: 2430350

**FILED**

FEB 26 2018

STATE OF INDIANA  
DEPT. OF INSURANCE

FINAL ORDER

On December 13, 2017, the Administrative Law Judge (“ALJ”), Reuben B. Hill, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served ALJ Hill’s Findings of Fact, Conclusions of Law, and Recommended Order and Notice of Filing Recommended Order on Respondent by mailing the same to Respondent.
2. The Department has complied with the notice requirements of Ind. Code § 4-21.5-3-17.
3. On December 28, 2017, the Department filed a timely objection with the Commissioner regarding the Administrative Law Judge’s Findings of Fact, Conclusions of Law and Recommended Order.
4. The ultimate authority shall issue a final order affirming, modifying, or dissolving the administrative law judge’s order under Ind. Code § 4-21.5-3-29.

Therefore, the Commissioner of Insurance, being fully advised, now hereby modifies the Administrative Law Judge’s Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Findings of Fact, Conclusions of Law, and Final Order:

### FINDINGS OF FACT

1. The Administrative Law Judge's Findings of Fact paragraphs one (1) through seven (7), paragraphs nine (9) through eleven (11), and paragraph fourteen (14), are hereby adopted.
2. The "Findings of Fact" section of the Recommended Order in paragraph eight (8) states, "The evidence submitted at the hearing to pursue the revocation of Respondent's insurance producer license was initiated by the company through their attorney Easter & Cavosie." This is an incorrect statement of the administrative action being taken and the burden of persuasion. The administrative action being taken against Respondent by the Department is a nonrenewal of Respondent's license, not a revocation of Respondent's license.
3. The "Findings of Fact" section of the Recommended Order in paragraph twelve (12) states, "Such information would be acceptable at this hearing if only one of the Company's partners or even their accountants were present to testify at the aforementioned hearing." Ind. Code § 4-21.5-3-25(b) states "the administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts." Respondent was present at the hearing and therefore able to respond to the Department's questions regarding his termination and provide testimony on behalf of himself regarding his termination. Therefore, it is irrelevant that persons from the Company were not called to testify and this fact should not be considered in making the ultimate decision.
4. The "Findings of Fact" section of the Recommended Order in paragraph thirteen (13) states, "Such information was at least hearsay on hearsay, but certainly insufficient enough to support the Commissioner's decision to take such drastic measures at to revoke the

Respondent's insurance producer license." This is an incorrect statement of the administrative action being taken and the burden of persuasion. The administrative action being taken against Respondent by the Department is a nonrenewal of Respondent's license, not a revocation of Respondent's license. Ind. Code § 4-21.5-3-26(a) states, in part, "the administrative law judge may admit hearsay evidence, and if not objected to, the hearsay evidence may form the basis for the order." Respondent was present at the hearing and able to respond to the administrative action being taken against him by the Department. Department's Exhibits 1 through 6 were admitted into evidence without objection from Respondent. Therefore, the Department's exhibits were sufficient to form the basis for the Department's decision to non-renew Respondent's producer license.

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge's Conclusions of Law paragraphs one (1) through eight (8) and paragraph ten (10) are hereby adopted.
2. The "Conclusions of Law" section of the Recommended Order in paragraph nine (9) states, "Pursuant to Indiana Code § 27-1-15.6-12(d), the hearing was held to determine the reasonableness of the Commissioner's decision. Respondent presented sufficient credible evidence at hearing to suggest that the decision to refuse to renew his Insurance Producer License would not be reasonable." Respondent replied "no" when asked about the allegations resulting in his termination, and submitted one document, a Settlement and Share Transfer Agreement, which was never admitted into evidence at hearing. However, this Agreement is not relevant to the violations asserted by the Department. The Agreement is a resolution to claims asserted by Respondent and the company as a result of Respondent's termination. The resolution in the Agreement is

an exchange of Respondent's entire interest in his shares for a settlement sum, but it does not resolve the reasons for Respondent's termination. The Department maintains that Respondent did not meet his burden during the hearing and the Commissioner's decision to refuse to renew Respondent's license was reasonable.

**FINAL ORDER**

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. That the refusal to renew Respondent's resident insurance producer license be affirmed and Respondent shall be barred from reapplying for licensure.

ALL OF WHICH IS ORDERED by the Commissioner this <sup>26<sup>th</sup></sup> day of February, 2018.

  
Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Distribution:

Samuel A Best  
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Claire Szpara, Attorney  
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311 W. Washington St., Suite 103  
Indianapolis, IN 46204

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DEC 28 2017  
STATE OF INDIANA  
DEPT. OF INSURANCE

**OBJECTIONS TO RECOMMENDED ORDER**

Comes now the Enforcement Division of the Indiana Department of Insurance (“Department”) by counsel, Claire Szpara, to object to the Administrative Law Judge’s Findings of Fact, Conclusions of Law and Recommended Order (“Recommended Order”) filed on December 13, 2017, and in support of such objections shows the Commissioner the following:

1. On August 17, 2017, a hearing was held at the Department to determine whether the Administrative Order Notice of Nonrenewal of License of Samuel Best’s (“Respondent”) insurance producer license was reasonable.
2. On December 13, 2017, the Administrative Law Judge filed his Findings of Fact, Conclusions of Law, and Recommended Order (“Recommended Order”) in this matter.
3. The Department objects to the Recommended Order Findings of Fact paragraphs eight (8), twelve (12), and thirteen (13).
4. The “Findings of Fact” section of the Recommended Order in paragraph eight (8) states, “The evidence submitted at the hearing to pursue the revocation of

Respondent's insurance producer license was initiated by the company through their attorney Easter & Cavosie."

5. The administrative action taken by the Department against Respondent was for the nonrenewal of Respondent's license, not a revocation of the license. To the extent the Administrative Law Judge states the incorrect administrative action being taken, the Department objects.

6. The "Findings of Fact" section of the Recommended Order in paragraph twelve (12) states, "Such information would be acceptable at this hearing if only one of the Company's partners or even their accountants were present to testify at the aforementioned hearing."

7. Indiana Code § 4-21.5-3-25(b) states "the administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts." Respondent was present at the hearing and therefore able to respond to the Department's questions regarding his termination. To the extent the Administrative Law Judge critiques the information presented by the Department at the hearing, the Department objects.

8. The "Findings of Fact" section of the Recommended Order in paragraph thirteen (13) states, "Such information was at least hearsay on hearsay, but certainly insufficient enough to support the Commissioner's decision to take such drastic measures as to revoke the Respondent's insurance producer license."

9. The administrative action taken by the Department against Respondent was for the nonrenewal of Respondent's license, not a revocation of the license. To the extent

the Administrative Law Judge states the incorrect administrative action being taken, the Department objects.

10. Respondent was present at the hearing and able to respond to the administrative actions being taken against him by the Department. When asked about the allegations resulting in his termination, Respondent simply stated "no." Respondent submitted one document, a Settlement and Share Transfer Agreement, which was never admitted into evidence at the hearing. However, this Agreement is not relevant to the violations asserted by the Department. The Agreement is a resolution to claims asserted by Respondent and the company as a result of Respondent's termination. The resolution in the Agreement is an exchange of Respondent's entire interest in his shares for a settlement sum, but it does not resolve the reasons for Respondent's termination. To the extent the Administrative Law Judge considers the Department's evidence insufficient, the Department objects.

11. Indiana Code § 4-21.5-3-26(a) states, in part, the administrative law judge may admit hearsay evidence, and if not objected to, the hearsay evidence may form the basis for the order. Department's Exhibits 1 through 6 were admitted into evidence without objection from Respondent. Therefore, the Department's exhibits were sufficient to form the basis of the Department's decision to non-renew Respondent's producer license. To the extent the Administrative Law Judge failed to consider the Department's evidence contrary to Indiana Code § 4-21.5-3-26(a), the Department objects.

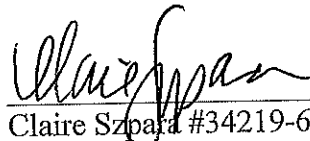
12. The Recommended Order states, pursuant to Indiana Code § 4-21.5-3-14(c), the person requesting an agency take action has the burden of persuasion and the burden of going forward. The Department maintains that Respondent did not meet his burden

during the hearing and the Commissioner's decision to refuse to renew Respondent's license is reasonable.

13. This Objection is being filed with the Commissioner within eighteen (18) days from the date of the filing of the Recommended Order.

WHEREFORE, the Department's Enforcement Division by its counsel, initiates this objection to the Recommended Order proposed by the Administrative Law Judge and respectfully requests that the Commissioner adopt Findings of Fact and Conclusions of Law consistent with these objections.

Respectfully submitted,



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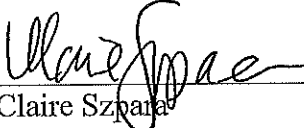
Claire Szpara #34219-64  
Attorney, Department of Insurance



**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Objections has been served upon the Applicant by mailing a copy of the same by First Class U.S. Mail, postage prepaid, this 28 day of December, 2017.

Samuel Best  
977 N Mill Run  
Greenfield, IN 46140

  
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Claire Szpara  
Attorney No. 34219-64

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311 W. Washington St., Suite 300  
Indianapolis, IN 46204

STATE OF INDIANA )  
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**FILED**

DEC 13 2017

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**STATE OF INDIANA  
DEPT. OF INSURANCE**

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

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Administrative Law Judge Reuben B. Hill (“ALJ”), having heard, reviewed and considered all of the evidence, will now render a decision concerning the matter of Samuel Best (“Applicant”). This matter came on to be heard by the ALJ on, August 17, 2017 at 10:00 a.m. 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, Claire Szpara. Applicant appeared in person and without counsel. 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. Respondent has been a Resident Producer holding license number 2430350 since July 26, 1994. His license expired December 2016.
2. On or about June 23, 2016, the Department received notice from Easter & Cavosie, who represent Springer & Best Insurance Corp. (“Springer”), that Respondent had been terminated for cause from the company in May 2016. Respondent had been a forty-nine percent (49%) shareholder in his company prior to his termination.
3. Springer alleged Respondent breached his obligations under the Shareholder Agreement by failing to conduct himself in an ethical, competent, and professional manner by making misrepresentations to insureds and paying insured’s policy premium out of company funds in exchange for cash payments (Department’s Exhibit 2).
4. Springer further alleged Respondent engaged in paying himself too much in commissions, paying for personal expenses with company credit, and misappropriating company funds. Between 2014 and 2015, Springer alleged Respondent made around Seventeen Thousand Dollars (\$17,000) extra in commission (Department’s Exhibits 3 and 4).
5. Respondent testified that all of the allegations Springer made were false and that he did nothing wrong.
6. Respondent submitted a Settlement and Share Transfer Agreement (“Agreement”) as an exhibit at the hearing. While the Agreement is not particularly relevant to the violations asserted by the Department, it is a resolution to all claims asserted by the Company as a result of Respondent’s termination. The resolution in the Agreement is in exchange of

Respondent's entire interest in his shares for a settlement sum, and does seem to resolve the reasons for Respondent's termination.

7. The Settlement Agreement appears to resolve all issues arising out of their business relationship.
8. The evidence submitted at the hearing to pursue the revocation of the Respondent's Insurance Producer License was initiated by the Company through their attorney Easter & Cavosie.
9. All information presented to the Hearing Officer was acquired from other outside sources, other than the principles themselves.
10. The Company acquired the services of an accounting agency to obtain the information presented by Mr. Charles B. Daugherty in his letter to the Commissioner on June 23, 2016, much of such information was acquired from other parties not called as witnesses to confront the Respondent.
11. It appears that all information acquired by the Company was sufficient to justify their actions.
12. Such information would be acceptable at this hearing if only one of the Company's Partners or even their accountants were present to testify at the aforementioned hearing.
13. Such information was at least hearsay on hearsay, but certainly insufficient enough to support the Commissioner's decision to take such drastic measures as to revoke the Respondent's Insurance Producer License.
14. The Settlement Agreement presented at the hearing appeared to resolve all issues between the parties.

## 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 refuse to renew an Insurance Producer License due to a number of factors.
4. Specifically, Indiana Code 27-1-15.6-12(b)(4) allows the Commissioner to refuse to renew an Insurance Producer License for improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.
5. Specifically, Indiana Code 27-1-15.6-12(b)(8) allows the Commissioner to refuse to renew an Insurance Producer License for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
6. Applicant's termination for cause for allegedly making misrepresentations to insureds, paying insureds' policy premium out of Company funds in exchange for cash payments, and paying himself too much commission, is evidence of misappropriating and converting monies received in the course of doing insurance
7. business, as well as dishonest practices and demonstrating untrustworthiness or financial irresponsibility in the conduct of business in Indiana.

8. Indiana Code 4-21.5-3-14(c) states that the person requesting an agency take action has the burden of persuasion and the burden of going forward. Respondent is requesting that the Department renew his Resident Producer License and, therefore, bears the burden.
9. Pursuant to Indiana Code 27-1-15.6-12(d), the hearing was held to determine the reasonableness of the Commissioner's decision. Respondent presented sufficient credible evidence at the hearing to suggest that the decision to refuse to renew his Insurance Producer License would not be reasonable.
10. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

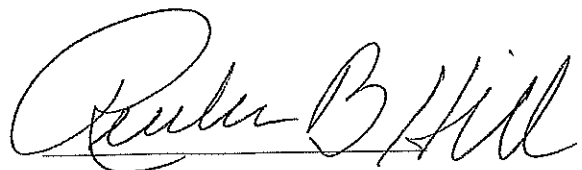
**RECOMMENDED ORDER**

IT IS THEREFORE RECOMMENDED:

In consideration of the foregoing 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 the refusal to renew Respondent's Resident Insurance Producer License **NOT** be affirmed, and for other relief that may be proper in the premises.

**ALL OF WHICH IS ADOPTED** by the Administrative Law Judge and recommended to the **Commissioner of Insurance** this 13 day of December, 2017.



Reuben B. Hill, Esq.  
Administrative Law Judge

Distribution:

Samuel A. Best  
977 N. Mill Run  
Greenfield, Indiana 46140

Claire Szpara, Attorney  
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Type of Agency Action: Enforcement )

Indiana Insurance License No. 2430350 )

**FILED**

JUN 16 2017

STATE OF INDIANA  
DEPT. OF INSURANCE

**ADMINISTRATIVE ORDER**  
**NOTICE OF NONRENEWAL OF LICENSE**

The Indiana Department of Insurance (“Department”), pursuant to Indiana Code § 4-21.5 *et seq.*, and Indiana Code § 27-1-15.6-12, hereby gives notice to Samuel Best, (“Respondent”) of the following Administrative Order:

1. Respondent is a licensed resident insurance producer, holding license number 2430350 since July 26, 1994.

2. On or about June 23, 2016 the Department received notification Respondent had been terminated for cause from Springer & Best Insurance Corp for the failure to conduct himself in an ethical, competent, and professional manner in the conduct of business.

3. Respondent breached his obligations under the Shareholder Agreement with Springer & Best Insurance Corp., who allege Respondent had been misappropriating funds since 2014 by paying himself too much in commissions.



4. Pursuant to Indiana Code § 27-1-15.6-12(b)(4), the Commissioner may refuse to renew an insurance producer license for improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.

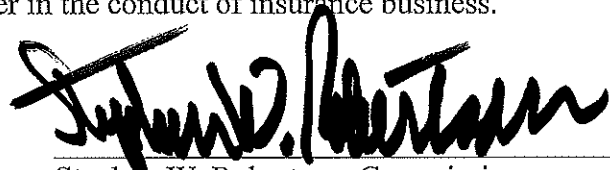
5. Pursuant to Indiana Code § 27-1-15.6-12(b)(8), the Commissioner may refuse to renew an insurance producer license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

6. Indiana Code § 27-1-15.6-12(d) requires the Commissioner to notify a licensee of the reason for the nonrenewal of his license. This Order serves as that notice.

7. The Commissioner further notifies Respondent that, pursuant to Indiana Code § 27-1-15.6-12(d), Respondent may, within sixty-three (63) days of the mailing of this Order, make a written demand upon the Commissioner for a hearing to determine the reasonableness of this action. Such a hearing shall be held within thirty (30) days from the date of receipt of Respondent's written demand.

WHEREFORE, the Commissioner of Insurance hereby notifies Respondent that **his license shall not be renewed** for allegedly misappropriating funds and failing to conduct himself in an ethical, competent, and professional manner in the conduct of insurance business.

6-16-17  
Date Signed

  
\_\_\_\_\_  
Stephen W. Robertson, Commissioner  
Indiana Department of Insurance

Distribution:

Melissa Higgins, Insurance Investigator  
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