

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 16703-AG17-1129-222

IN THE MATTER OF:)

Carlos Benavidez)
3411 Bellisma Pl Unit 101)
Louisville, KY 40245)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 602689)

FILED

NOV 19 2018

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On August 7, 2018, 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 on Respondent by mailing the same to his address 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 Indiana nonresident producer's license is renewed and placed on probation for two (2) years.

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 19 day of November, 2018.

A handwritten signature in black ink, appearing to read "Stephen W. Robertson", is written over a horizontal line.

Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

Carlos Benavidez
3411 Bellisma Pl Unit 101
Louisville, KY 40245

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

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IN THE MATTER OF:

Carlos Benavidez
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Respondent.

Type of Agency Action: Enforcement

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STATE OF INDIANA
DEPT. OF INSURANCE


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, the Parties must object to the
order in a writing that: 1) Identifies the basis for the 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.

DATED: Aug 7, 2018

:


Reuben B. Hill
Administrative Law Judge

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)

INSURANCE PRODUCER LICENSE)
APPLICATION OF:)

Carlos Benavidez)
3411 Bellisma Pl Unit 101)
Louisville, KY 40245)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 602689)

CAUSE NO: 16703-AG17-1129-222

FILED

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STATE OF INDIANA
DEPT. OF INSURANCE

**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 matter of Carlos Benavidez ("Respondent"). This matter came on to be heard by the ALJ on May 2, 2018 at 11:00 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, Erica J. Dobbs. Applicant appeared by telephone 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’s home state is Kentucky, where his license is active and in good standing.
2. Respondent has been a licensed Non Resident Producer in Indiana since June 19, 2008.
3. Respondent suffered a two (2) month suspension and \$10,000 fine imposed by the Financial Industries Regulatory Authority (“FINRA”) from February 1, 2016 to March 31, 2016.
4. Respondent did not notify the Department of FINRA action until he filed his Non Resident Producer license renewal application on October 16, 2017.
5. Respondent submitted the documents relating to the FINRA action to the Department together with his renewal application. This included the Letter of Acceptance, Waiver, and Consent (“AWC”) he entered with FINRA on January 4, 2016. (Department’s Exhibit 3)
6. Respondent testified that he entered the AWC with FINRA on the advice of counsel to avoid the risk of greater potential consequences if he challenged the action.
7. Respondent entered the AWC without admitting or denying the allegations.
8. Respondent was working for Waddell & Reed at the time of the allegations.
9. Respondent testified that the FINRA action was the result of his brokerage team making trades based on their clients’ verbal consent as opposed to written authorization, and also

completing trades in the days following receiving clients' consent instead of the same day, in violation of FINRA's rules.

10. Respondent testified that he was not the trading manager who made the improper trades, but as a member of a three (3) person team, he shared responsibility and fault equally with regards to the FINRA allegations.
11. Respondent further testified that, while the FINRA AWC states that he backdated notes pertaining to the verbal consent received from clients, those notes were created and dated at the request of Waddell & Reed, who was the complainant in the FINRA matter.
12. Respondent testified no clients were harmed as a result of the trades, and he has not had any client or consumer complaints made against him
13. Respondent admitted four (4) exhibits on his own behalf. Respondent's Exhibit A is a letter from Respondent's wife. Respondent's Exhibits B and C are character letters from two (2) of Respondent's friends who are also clients.
14. Respondent testified he no longer works with Securities, despite having had his FINRA license restored, and focuses solely on insurance.
15. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

1. The Commissioner of the Indiana Department of Insurance ("Commissioner") 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, in part, that the Commissioner may reprimand, place an Insurance Producer on probation, or refuse to renew an Insurance Producer's License, due to a number of factors.
4. Specifically, Indiana Code 27-1-15.6-12(b)(2)(A) allows the Commissioner to refuse to renew an Insurance Producer's License for violating an insurance law.
5. Indiana Code 27-1-15.6-17(a) is an insurance law that states that a Producer shall report to the Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in Indiana not more than thirty (30) days after the final disposition of the matter.
6. Further, Indiana Code 27-1-15.6-12(b)(8) allows the Commissioner to refuse to renew an Insurance Producer's License for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
7. Respondent's failure to disclose the FINRA action against him until October, 2017, approximately twenty-one (21) months after the action was final, is a violation of Indiana Code 27-1-15.6-17(a).
8. Respondent's failure to follow FINRA rules pertaining to the form and timing of consent needed prior to making securities trades on client accounts is a violation of Indiana Code 27-1-15.6-12(b)(8).
9. Facts in mitigation include that Respondent no longer works with securities despite his FINRA license being restored, and that no customers were harmed or have made any complaints against him.

10. 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 Non Resident Producer License and, therefore, bears the burden.
11. Pursuant to Indiana Code 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Due to the foregoing mitigating factors, Respondent's license should be renewed on a probationary basis for a period of two (2) years.
12. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

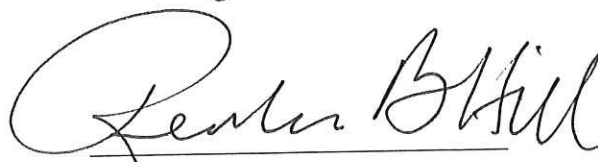
RECOMMENDED ORDER

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 Respondent's Indiana Non Resident Producer's License be renewed, and Respondent placed on **Probation** for Two (2) Years.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner of Insurance this 7th day of August, 2018



Reuben B. Hill, Esq.
Administrative Law Judge

Distribution:

Carlos Benavidez
3411 Bellisma Pl Unit 101
Louisville, KY 40245

Erica J. Dobbs, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

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STATE OF INDIANA
DEPT. OF INSURANCE

ADMINISTRATIVE ORDER
NOTICE OF NONRENEWAL OF LICENSE

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

1. Respondent is a licensed nonresident insurance producer holding license number 602689 since June 19, 2008 ("Respondent's license"). Respondent's home state is Kentucky.
2. Respondent's license expired on January 31, 2017.
3. On or about November 16, 2017 the Enforcement Division of the Indiana Department of Insurance ("Enforcement Division") received notification that on January 04, 2016 Respondent was suspended by the Financial Industry Regulatory Authority ("FINRA").
4. Respondent's FINRA suspension was due to allegations of discretionary securities transactions for approximately twenty-six (26) customer accounts without written authorization.
5. Respondent failed to timely disclose his FINRA suspension to the Department.

6. Indiana Code § 27-1-15.6-12(b)(8) provides, in part, that 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.

7. Indiana Code § 27-1-15.6-12(b)(2)(A) provides, in part, that the Commissioner may refuse to renew an insurance producer's license for violating an insurance law. Indiana Code § 27-1-15.6-17(a) is an insurance law that states that a producer shall report to the Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in Indiana not more than thirty (30) days after the final disposition of the matter.

8. 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.

9. 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, based on the foregoing, the Commissioner of Insurance hereby notifies Respondent that **his license shall not be renewed** due his FINRA suspension and his failure to timely report it to the Department.

2/9/18
Date Signed


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Calla Dain, Insurance Investigator
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Indianapolis, Indiana 46204-2787

Carlos Benavidez
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