

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
)
Jacob J. Sachs)
)
)
Petitioner)
)
Type of Agency Action:Enforcement)
)

FILED

APR 20 2023

**STATE OF INDIANA
DEPT. OF INSURANCE**

CAUSE NO.: DOI-2201-000116
20486-PA22-0104-001

FINAL ORDER

On February 8, 2023, the Administrative Law Judge, Brian D Hahn, filed his Findings of Fact, Conclusions of Law and Non-Final Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Non-Final Order and Notice of Filing Non-Final Order on Petitioner by emailing the same to his Counsels email address.

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 Non-Final 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 Non-Final Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Denial of Petitioner's resident application to renew his nonresident public adjuster certificate of authority under number 3625453 is AFFIRMED.

Under Ind. Code §4-21.5-5-5, Petitioner 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 20 day of April, 2023.


Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

J. Mark McKinzie, by e-mail at mmckinzie@rbelaw.com

Samantha Aldridge, Attorney
Indiana Department of Insurance
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Indianapolis, IN 46204
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NON-FINAL ORDER

Pursuant to IC 4-21.5 this order is not final and shall be presented to the ultimate authority for issuance of a final order.



FILED: February 8, 2023

**STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

Administrative Cause No.: DOI-2201-000116
Underlying/State Agency Action No.: 20486-PA22-0104-001

FINAL AGENCY AUTHORITY: Commissioner of the Department of Insurance

Jacob J. Sachs,
Petitioner,

v.

Indiana Department of Insurance,
Respondent.

Type of Agency Action: Enforcement

License Number: 3625453

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND NON-FINAL ORDER**

An evidentiary hearing was held on this matter on August 11, 2022, at 1:00 P.M. EST via telephonic conference. Administrative Law Judge ("ALJ") Brian D. Hahn, having heard, reviewed, and considered all of the evidence, now renders a decision concerning the appeal of Jacob J. Sachs ("Petitioner").

Petitioner appeared with counsel, J. Mark McKinzie. The Indiana Department of Insurance ("Respondent") was represented by counsel, Samantha Aldridge.

Petitioner was duly sworn and testified. Petitioner offered one (1) exhibits, identified as Petitioner's Exhibit ("PX") 1, which is a seven (7) page printout of IC 21-1-27, *et seq.* admitted by stipulation.

Respondent called Calla Dain, Senior Investigator for the Indiana Department of Insurance Enforcement Unit, who was duly sworn as a witness, and offered five (5) exhibits that were admitted into the record and identified as Respondent's Exhibits ("RX") 1 through 5.

- RX 1 is a two (2) page document pertaining to a complaint submitted by Mike Struebing with Liberty Mutual Insurance on April 5, 2021 regarding an assertion of Jacob Sachs not being a licensed public adjuster in the State of Indiana on August 14, 2020.
 - Admitted by stipulation.
- RX 2 is a one (1) page document entitled Notification Letter signed by Jerold McKenney authorizing Jacob Sachs to represent his interests regarding a property insurance claim 042320770-01 with a date of loss of April 6, 2020.
 - Admitted by stipulation.
- RX 3 consists of eight (8) pages documenting an email exchange chain between Jacob Sachs and Adam Lange with Liberty Mutual pertaining to claim 042398105-01 involving a loss submitted by Michael Obuch.
 - Admitted by stipulation.
- RX 4 consists of five (5) pages documenting an email exchange chain between Michael Struebing with Liberty Mutual Insurance Special Investigations Unit and Andrew Steward with the Indiana Department of Insurance.
 - Admitted by stipulation.
- RX 5 consists of three (3) pages and is a document entitled Administrative Order and Notice of Nonrenewal of Certificate of Authority dated January 20, 2022.
 - Admitted by stipulation.

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

FINDINGS OF FACT¹

1. At all relevant times, Petitioner was a resident of Minnesota holding valid public adjuster licenses in the following states: 1.) Minnesota; 2.) Tennessee; 3.) North Carolina; 4.) Wisconsin; 5.) Iowa; and 6.) Colorado (Petitioner Testimony).
2. Petitioner was referred four Indiana clients from a contractor with whom Petitioner has a long-standing professional relationship. (Petitioner Testimony; RX 2)
3. In the year 2020, Petitioner represented Indiana resident Jerold McKenney, with respect to a property insurance claim for a property located at 211 Bays Drive in Noblesville, Indiana pertaining to a loss dated April 6, 2020. (RX 2; Petitioner Testimony)
4. On or about September 9, 2020, Petitioner represented Indiana resident Michael Obuch for a property claim in the State of Indiana. (RX 3; Petitioner Testimony; Dain Testimony)
5. Petitioner became a certified nonresident public adjuster holding certification number 3625453 on January 12, 2021. (Petitioner Testimony; RX 5)
6. The email correspondence from Petitioner to the Liberty Mutual Insurance Senior Field Claim Resolution Specialist, Adam Lange, between September 9, 2020 to September 15, 2020 pertaining to the insurance claim 042398105-01 of Michael Obuch used an email address of info@publicadjusters.llc. (RX 3; Dain Testimony)
7. On or about April 5, 2021, the Department was notified by Liberty Mutual Insurance Company that Respondent acted as a public adjuster for two (2) insurance claims filed by Liberty Mutual Insurance Company policyholders in Indiana in April 2020 and September 2020. (RX 1; Dain Testimony)
8. Petitioner's Indiana public adjuster certificate of authority expired on December 31, 2021. (RX 5; Dain Testimony)
9. The Commissioner entered her Preliminary Administrative Order and Notice of Nonrenewal of Certificate of Authority on January 20, 2022, due to Petitioner acting as a public adjuster in Indiana without certification. (RX 5; Dain Testimony)

¹ Findings of fact that can be construed as conclusions of law and conclusions of law that can be construed as findings of fact are hereby incorporated herein as such by reference.

CONCLUSIONS OF LAW

1. The Office of Administrative Law Proceedings (“OALP”) has jurisdiction over both the subject matter and the parties to this action and the Commissioner of the Department of Insurance (“Commissioner”) has final authority. See IC § 27-1-15.6-12(d); IC § 4-15-10.5-12; IC § 4-15-10.5-13.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, IC § 4-21.5-3. IC § 27-1-15.6-12(d).
3. Petitioner appeals Respondent’s decision to deny Petitioner a Nonresident Public Adjuster Certificate of Authority.
4. The Commissioner may refuse to renew a public adjuster’s certificate of authority for violating an insurance law. IC § 27-1-27-7.1(b)(2).
5. IC § 27-1-27-2(a), is an insurance law, which provides as follows:

No individual or corporation shall act within Indiana as a public adjuster, or receive, directly or indirectly, compensation or reward for services rendered in the adjustment of any claim or claims under the types of insurance policies set forth in section 1(a) [IC 27-1-27-1(a)] of this chapter, unless he, or it, is the holder of a certificate of authority to act as such public adjuster issued by the commissioner of insurance of the state of Indiana pursuant to this chapter.
6. IC § 27-1-27-1(a), defines “Public Adjuster” in relevant part, as follows:

The term “public adjuster” shall include every individual or corporation who, or which, for compensation or reward, renders advice or assistance to the insured in the adjustment of a claim or claims for loss or damages under any policy of insurance covering real or personal property **and any person or corporation who, or which, advertises, solicits business, or holds itself out to the public as an adjuster of such claims.** (Emphasis added)
7. The person requesting an agency act has the burden of persuasion and the burden of going forward. IC § 4-21.5-3-14(c). Petitioner requests that the Department issue a renewed public adjuster’s certificate, therefore Petitioner bears the burden of proof.
8. Proceedings held before an ALJ are *de novo*, which means the ALJ does not—and may not—defer to an agency’s initial determination. IC § 4-21.5-3-14(d); *Ind. Dep’t of Natural*

Res. v. United Refuse Co., Inc., 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as factfinder, the ALJ must independently weigh the evidence in the record and may base findings and conclusions only upon that record. *Id.* At a minimum, the ALJ's findings "...must be based upon the kind of evidence that is substantial and reliable." Indiana Code § 4-21.5-3-27(d). "[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision..." *St. Charles Tower, Inc. v. Bd. of Zoning Appeals*, 873 N.E.2d 598, 601 (Ind. 2007).

9. A hearing was held to determine the reasonableness of the Commissioner's decision pursuant to Indiana Code § 27-1-15.6-12(d).
10. Petitioner argues that he did not meet the definition of a public adjuster under IC § IC 27-1-27-1(a) claiming that he never received any monetary compensation for his services on behalf Indiana residents and therefore could not have violated the provisions of IC § 27-1-27-2(a).
11. When construing a statute, courts are guided by several rules of statutory construction. First, when a statute is clear and unambiguous on its face, courts are directed not to interpret the statute. *State v. Livengood by Livengood*, 688 N.E.2d 189, 193 (Ind.Ct.App.1997). Rather, a court is to give the statute its plain and clear meaning. *Skrzypczak v. State Farm Mut. Auto. Ins.*, 668 N.E.2d 291, 295 (Ind.Ct.App.1996). Additionally, when construing a statute, the legislature's definition of a word binds the court. When the legislature has not defined a word, a court is to give the word its common and ordinary meaning. *Id.* In determining the plain and ordinary meaning of words, courts may properly consult English language dictionaries. *Ashlin Transp. Servs., Inc. v. Indiana Unemployment Ins. Bd.*, 637 N.E.2d 162, 167 (Ind.Ct.App.1994).
12. The provisions in IC § 27-1-27-1(a) are clear and unambiguous and no party asserted anything to the contrary.
13. In the present matter, it is immaterial for the determination of the ultimate outcome on Petitioner's appeal whether he received compensation or reward.² Petitioner's position

²The term "reward" is not defined in Title 27 of the Indiana Code and no relevant cases interpreting its meaning in the present context were found or cited by the parties. Regardless, it was not necessary for the determination of the present matter whether the "or" between "compensation" and "reward" found in IC § 27-1-27-1(a) was meant in

regarding the definition of “public adjuster” is too narrow of a reading of the provisions of IC § 27-1-27-1(a). Petitioner’s assertion fails to consider the previously highlighted portion of the statute wherein it provides that the definition also encompasses within the definition of public adjuster “...**any person or corporation who, or which, advertises, solicits business, or holds itself out to the public as an adjuster of such claims.**” The facts establish that Petitioner solicited business in Indiana as an adjuster by agreeing to accept referrals from a contractor with whom he had a previous relationship. While not necessary for the determination of this matter, Petitioner’s agreement to take on the claims of the Indiana residents can be reasonably viewed as one of maintaining and cultivating a current business relationship with the hope to secure potential future benefit, or in another word, reward.

14. The testimony and exhibits admitted into evidence establish that Petitioner held himself out to the public as an adjuster. Regardless of whether Petitioner received monetary remuneration for his services is immaterial as he falls under the definition of a public adjuster by his actions and correspondence seeking to settle claims, all of which would reasonably place others on notice that he is acting as a public adjuster.
15. Based upon the foregoing, Petitioner has not met his burden of proving that the Commissioner’s decision not to renew his public adjuster certificate was unreasonable.

NON-FINAL ORDER

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 the Department of Insurance** that the denial of Mr. Sach’s application to renew his nonresident public adjuster certificate of authority under number 3625453 be **AFFIRMED**.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner of the Department of Insurance on February 8, 2023. In accordance with Ind. Code

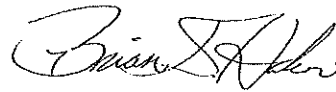
the conjunctive or disjunctive or whether the definition of “reward” also encompassed non-monetary consideration as a full reading of the statute was dispositive without resorting to statutory construction interpretation.

§ 4-15-10.5-12(b), the OALP's order disposing of this matter is not final. This non-final order is subject to review by the Commissioner of Insurance.

This matter is now before the ultimate authority, the Commissioner of Insurance who has the final authority over this matter and shall review this order and issue a final order to all parties.

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the objection with reasonable particularity; and 2) Is filed with the ultimate authority, the Commissioner of the Department of Insurance, within fifteen (15) days from the date of this Order. Indiana Code 4-21.5-3-29. For provisions on how to compute days see Ind. Code § 4-21.5-3-2.

Any questions regarding this matter may now be directed to Dawn Bopp at dbopp@idoi.in.gov.



Brian D. Hahn, Administrative Law Judge
Office of Administrative Law Proceedings

Distributed to Parties:

Jacob J. Sachs – Petitioner, served upon counsel, J. Mark McKinzie, by E-Mail at mmckinzie@rbelaw.com

Indiana Department of Insurance – Respondent, served upon counsel, Samantha Aldridge, by E-Mail at saldrige@idoi.in.gov

Additional Distribution to Non-Party:

IDOI Commissioner – Ultimate Authority and served by Dawn Bopp at DBopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 20486-PA22-0104-001

IN THE MATTER OF:)

Jacob J. Sachs)
8617 W Point Douglas Rd. S, Ste. 150)
Cottage Grove, MN 55016)

Respondent.)

Type of Agency Action: Enforcement)

Certification Number: 3625453)

FILED

JAN 20 2022

STATE OF INDIANA
DEPT. OF INSURANCE

**ADMINISTRATIVE ORDER AND
NOTICE OF NONRENEWAL OF CERTIFICATE OF AUTHORITY**

The Indiana Department of Insurance (“Department”), pursuant to Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.*, and Indiana Code § 27-1-27-7.1, hereby gives notice to Jacob J. Sachs, (“Respondent”) of the following Administrative Order:

1. Respondent is a certified nonresident public adjuster holding certification number 3625453 since January 13, 2021 (“Respondent’s certificate of authority”).
2. Respondent’s certificate of authority expired on December 31, 2021.
3. On or about April 8, 2021, the Department was notified by Liberty Mutual Insurance Company that Respondent acted as a public adjuster for two (2) insurance claims filed by Liberty Mutual Insurance Company policyholders in Indiana in April 2020 and September 2020.
4. Indiana Code § 27-1-27-7.1(b)(2) provides, in part, that the Commissioner may refuse to renew a public adjuster’s certificate of authority for violating an insurance law.

5. Indiana Code § 27-1-27-2(a), is an insurance law, which states in part, that no individual shall act within Indiana as a public adjuster unless he is the holder of a certificate of authority to act as such public adjuster issued by the Commissioner of insurance of the state of Indiana.


6. Indiana Code § 27-1-27-7.1(c) requires the Commissioner to notify a certificate holder of the reason for the nonrenewal of his certificate of authority. This Order serves as that notice.

7. The Commissioner further notifies Respondent that, pursuant to Indiana Code § 27-1-27-7.1(c), Respondent may, within thirty (30) days of the receiving 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 twenty (20) days from the date of receipt of Respondent's written demand.

8. This is considered an agency action. This action has been initiated by the aforementioned authority. If you choose to appeal this agency action, the State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter, and subsequently you will be contacted by the OALP with more information to begin the administrative process.

WHEREFORE, based on the foregoing, the Commissioner of Insurance hereby notifies Respondent that **his certificate of authority shall not be renewed** due to acting as a public adjuster in Indiana without certification.

1/20/22
Date Signed



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution:

Victoria Hastings, Attorney
ATTN: Calla Dain, Insurance Investigator
Indiana Department of Insurance
311 West Washington St., Suite 103
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Jacob J. Sachs
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