

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF THE
REVOCATION OF THE LICENSING
AUTHORITY OF:

HEARING NO. 05-HR-0237

Thomas R. Wendt
6817 Green Road
Harvard, Illinois 60033

ORDER

I, Michael T. McRaith, Director of Insurance, hereby certify that I have read the entire Record in this matter and the hereto attached Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer, Timothy M. Cena, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the entire Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made a part hereof.

I, Michael T. McRaith, Director of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations # 1 and # 4 of the Hearing Officer but hereby expressly reject Recommendations # 2 and # 3. Based upon the Findings of Fact and Conclusions of Law I hereby conclude that the Respondent should be assessed a civil penalty in this matter in the amount of \$10,000.00; \$1,000.00 each for nine separate causes for the revocation of the Respondent's Producer's License and \$1,000.00 for failure to facilitate and aid in the investigation into this matter.

This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq.). Further, this Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq.).

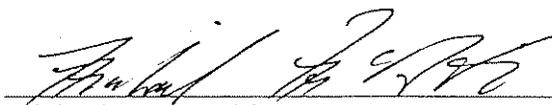
NOW IT IS THEREFORE ORDERED THAT:

- 1) The Illinois Insurance Producer's License of the Respondent, Thomas R. Wendt, is revoked; and
- 2) The Respondent, Thomas R. Wendt, shall pay within 35 days of the date of this Order as a civil penalty the sum of \$10,000.00 directly to the Illinois Department of Financial and Professional Regulation, Division of Insurance Tax and Fiscal Services Unit, 320 W. Washington, 4th Floor, Springfield, Illinois 62767; and
- 1) The Respondent, Thomas R. Wendt, shall pay within 35 days of the date of this Order, as costs of this proceeding, and in addition to the above listed civil penalty, the sum of \$275.80, directly to the Illinois Department of Financial and Professional Regulation, Division of Insurance Tax and Fiscal Services Unit, 320 W. Washington, 4th Floor, Springfield, Illinois 62767.

DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION of the State of
Illinois; FERNANDO E. GRILLO, SECRETARY

DIVISION OF INSURANCE

Date: 9-16-5



Michael T. McRaith
Director of Insurance

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF THE
REVOCATION OF LICENSING
AUTHORITY OF:

HEARING NO. 05-HR-0237

Thomas R. Wendt
6817 Green Road
Harvard, Illinois 60033

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Timothy M. Cena, Hearing Officer in the above captioned matter and hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On January 19, 2005 the then Acting Illinois Director of Insurance, Deirdre K. Manna, (Director) issued an Order of Revocation revoking the Illinois Insurance Producer's License of Thomas R. Wendt (Respondent) (Hearing Officer Exhibit 2-1).
- 2) On February 17, 2005 the Illinois Department of Financial and Professional Regulation, Division of Insurance (Division) received a Request for Hearing on the revocation order from the Respondent (Hearing Officer Exhibit # 2).
- 3) On March 18, 2005 the Director, pursuant to the Respondent's Request for Hearing issued a Notice of Hearing in this matter. The Notice set a Hearing date and location of May 12, 2005 at the Division's Offices in Chicago, Illinois (Hearing Officer Exhibit # 2).

- 4) The Notice of Hearing was received at the Respondent's address of record with the Division on March 25, 2005 (see the United States Postal Service Domestic Return Receipt Card attached to Hearing Officer Exhibit # 2).
- 5) Louis Butler filed a Notice of Appearance in this matter on behalf of the Division (Hearing Officer Exhibit # 2).
- 6) On March 18, 2005, Timothy M. Cena was appointed as Hearing Officer in this matter by order of the Director (Hearing Officer Exhibit # 1).
- 7) The Hearing in this matter was convened on May 12, 2005 at the Division's Offices in Chicago, Illinois at which time were present: Timothy M. Cena, Hearing Officer; Louis Butler, on behalf of the Division; and Richard Nitka, an employee of the Division. Neither the Respondent, or a representative of the Respondent, appeared at the proceeding. Neither the Hearing Officer nor Counsel for the Division had had any contact with the Respondent prior to the Hearing regarding his attendance at the Hearing.
- 8) The Division, based upon the Respondent's failure to appear, made an oral Motion for Default Judgment against the Respondent. In addition to the Motion for Default, the Division also requested that it be allowed to make a brief evidentiary record. The Hearing Officer allowed the Division to present testimony of Witness Tom Anderson in this matter. The Hearing Officer also hereby grants the Division's Motion for Default.
- 9) The Division also had available to testify in this matter Philip Wacniak, James Hamilton and Larry Cholewin.
- 10) Thomas E. Anderson, an Investigator for the Division of Insurance, testified on behalf of the Division in this matter as follows:
 - a) He has been employed with the Division for 17 years and his duties include performing investigations of alleged violations of the Illinois Insurance Code by licensed insurance producers;
 - b) He was assigned an investigative file on the Respondent based upon a written complaint filed with the Division from an Illinois resident;
 - c) As part of his investigation he interviewed and obtained documentation from Philip and Carol Wacniak. He received:
 - i) A purported Illinois Automobile Insurance Identification Card indicating that the Wacniaks had auto coverage with Metropolitan Casualty Insurance Company for a 1987 Chevrolet, G20 Sport van,

effective 11/15/2002 through 11/15/2003. The Metropolitan confirmed that the Card was fraudulent and that no policy of insurance had been issued (see Division Exhibit # 2);

- ii) A purported Illinois Automobile Insurance Identification Card indicating that the Wacniaks had auto coverage with Metropolitan Casualty Insurance Company for a 1985 Buick LeSabe Limited, effective 11/15/2002 through 11/15/2003. Metropolitan confirmed that the Card was fraudulent and that no policy of insurance had been issued (see Division Exhibit # 2);
- iii) A purported Illinois Automobile Insurance Card indicating that the Wacniaks had auto coverage with Constitutional Casualty Company for a 1985 Buick LaSabre, effective 9/13/2003 through 9/13/2004. Constitutional confirmed that the Card was fraudulent and the insureds had no insurance coverage (see Division Exhibit # 3);
- iv) A purported Illinois Automobile Insurance Card indicating that the Wacniaks had auto coverage with Constitutional for a 1985 Buick LaSabre, effective 8/27/2003 through 2/27/2004. The insurer indicated that the card was fraudulent and the insureds had no coverage (see Division Exhibit # 4);
- v) A purported Illinois Automobile Insurance Card indicating that the Wacniaks had auto coverage with Constitutional for a 1985 Chevrolet Sport Van, effective 8/27/2003 through 2/27/2004. The insurer indicated that the card was fraudulent and the Wacniaks had no coverage (see Division Exhibit # 5);
- vi) A purported Illinois Automobile Insurance Identification Card indicating that the Wacniaks had auto coverage with Constitutional Casualty Company for 1987 Chevy G-20, van, effective 9/13/2003 through 3/13/2004. The insurer indicated that the Card was fraudulent and the Wacniaks had no coverage (see Division Exhibit # 6);

- d) All of the Identification Cards listed in 3c above were given to the Wacnicaks by the Respondent;
- e) HRB Insurance Agency Inc. is listed on the Identification Cards as issuing all of the cards listed above.
- f) She indicated that the Respondent faxed Badger Mutual Declaration Pages (see Division Exhibits # 9 and # 11) to her home. She had paid the Respondent \$200.00 for the insurance coverages. Because she did not receive original copies of the Declaration Pages from the Respondent as requested, she contacted Badger Mutual directly and was told that the company had no record of policies issued to her and her husband and that her Declaration Pages were fraudulent. The policy numbers on the Declaration Pages belonged to a different Badger insured by the name of Stephanie Sabatino;
- g) He (witness) verified the allegations contained in Henderson's complaint letter by contacting Badger and requesting copies of the Sabatino insurance policy (see Division Exhibits # 12 and # 13);
- h) As a part of his investigation he attempted to contact the Respondent in writing on six separate occasions from November 14, 2003 through March 18, 2004 (see Division Exhibit # 13). His letters requested written explanations and supporting documentary evidence to respond to the complaint filed with the Division by Stacy Henderson. He did not receive a response to any of his written communications to the Respondent. He did speak with the Respondent on one occasion over the telephone and indicated to the Respondent the importance of cooperating with the Division's investigation but this telephonic contact did not provide the adequate information to address the allegations;
- i) The Henderson's had written a \$200.00 check made out to Badger Mutual for their insurance coverages and gave the check to the Respondent (Division Exhibit # 14);
- j) Jeanette Hamilton, President of HRB Insurance Agency, refunded to the Henderson's the \$200.00 payment that they had given to the Respondent, based upon the complaint filed by Stacy Henderson with the Division (Division Exhibit # 15).

- 11) McGee Court Reporting Services recorded the testimony taken in this matter and charged the Division \$275.80 for the court reporter's attendance and a transcript of the proceedings (Hearing Officer Exhibit # 3).

CONCLUSIONS OF LAW

Based upon the above stated Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusions of Law to the Director of Insurance.

- 1) Timothy M. Cena, was duly and properly appointed as Hearing Officer in this matter pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the subject matter and parties to this proceeding pursuant to Sections 401, 402, 403 and 500-70 of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403 and 5/500-70).
- 3) The Order of Revocation and Notice of Hearing issued by the Division in this matter allege that the Respondent provided multiple fraudulent automobile insurance identification cards to an Illinois resident purporting to indicate that the resident's automobiles were covered by insurance when in fact no legitimate insurance had been procured by the Respondent on behalf of the resident. The Division alleges that by engaging in such activities the Respondent has intentionally misrepresented the terms of a proposed insurance contract and that further the Respondent's Illinois Insurance Producer's License should therefore be revoked pursuant to Sections 500-70(a)(5) and (a)(8) of the Illinois Insurance Code.

The Division also alleged that the Respondent issued to Illinois residents multiple fraudulent insurance policy declaration pages based upon the residents' applications for insurance coverage with the Respondent. The Division alleges that the Respondent, by issuing declaration pages indicating to the insureds that their coverage had been placed with insurance companies when, in fact, such coverage had not been placed, is an intentional misrepresentation of the terms of an insurance contract and that the Respondent's license should therefore be revoked pursuant to Sections 500-70 (a) (5) and (a) (8) of the Insurance Code.

And finally, the Division alleged that the Respondent received a payment of \$200.00 for the placement of one of the fraudulent coverages mentioned above, but did not transfer the payment to an insurance company, rather, misappropriating the funds for his own use. The Division alleges that by engaging in such misappropriation, the Respondent's producer's license can and should be revoked pursuant to Section 500-70(a)(4) of the Insurance Code.

Sections 500-70 (a) (2), (a) (4), (a) (5) and (a) (8) provide as follows.

- “(a) The Director may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license or may levy a civil penalty in accordance with this Section or take any combination of actions, for any one or more of the following: . . .
- (2) violating any insurance laws, or violating any rule, subpoena, or order of the Director or of another state’s insurance commissioner;
 - (4) improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
 - (5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance; . . .
 - (8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere; . . .”

The evidence presented by the Division indicates that the Respondent presented six fraudulent Illinois Automobile Insurance Identification Cards to Illinois resident Phillip and Carol Wacniak. In one instance the Respondent also submitted to the Wacniaks, with their identification card, a fraudulent declaration page containing a non-existent insurance policy number. By providing these documents to the purported insureds, the Respondent caused the insureds to believe that they had insurance coverage in force for their automobile for a period of approximately 16 months when in fact no coverage existed. The Hearing Officer concludes that these seven transfers of fraudulent insurance documents constitute seven separate and distinct instances of the Respondent intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance. The Hearing Officer also concludes that by such acts the Respondent has used fraudulent, coercive or dishonest practices and has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State.

The evidence also indicates that the Respondent completed applications for auto and homeowners insurance for Illinois residents Stacy and Mark Henderson. The Respondent provided to the Hendersons declaration pages for both applications indicating that the policies of insurance were in force when in fact no coverage existed. The fraudulent declaration pages contained policy numbers from legitimate insurance policies issued to other insureds of the insurance companies.

The Hearing Officer concludes that the issuance of two fraudulent declaration pages constitute separate and distinct instances of the Respondent intentionally misrepresenting the terms of an actual or proposed insurance

contract or application for insurance. The Hearing Officer further concludes that by such acts the Respondent has used fraudulent, coercive or dishonest practices or has demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State.

The evidence also indicates that the Respondent failed to facilitate and aid the Director in his investigation into this matter. The evidence indicates that six letters were sent to the Respondent asking for explanations, documents or other forms of assistance in this matter from the Respondent. The Hearing Officer therefore concludes that the Respondent violated Section 500-110 of the Illinois Insurance Code by failing to facilitate and aid the Director in his investigation. The Hearing Officer further concludes that the Respondent, by failing to facilitate and aid the Director in his investigation, has used dishonest practices, and demonstrated incompetence and untrustworthiness in the conduct of business in this State.

Based upon the above the Hearing Officer concludes that the Director has properly and correctly revoked the Respondent's insurance producer's license for nine violations of the Illinois Insurance Code pursuant to Sections 500-70(a)(2), (a)(4), (a)(5) and (a)(6) of the Code. The Hearing Officer also concludes that the Director should assess a significant civil penalty against the Respondent in this matter. Section 500-70(d) provides that the Director may, in addition to the revocation of a license impose a civil penalty of up to \$10,000 for each cause of revocation, not to exceed a total of \$100,000. The Respondent's violations of Illinois Insurance Law are serious and demonstrate a pattern and practice of not only violating the law, but also of placing his insurance clients in a potentially devastating financial situation due to their unknowing lack of legitimate automobile and homeowner's insurance. The Respondent's clients thought that they had protected themselves through the purchase of insurance through the Respondent when, in fact, because of the Respondent's actions they had no protection whatsoever. And finally the Hearing Officer concludes that the Respondent should be assessed the costs of this proceeding. The costs of the proceeding consist of the fees of the court reporting firm that prepared the transcript of the administrative hearing. Costs may be assessed against the Respondent pursuant to Section 408 of the Code and 50 Ill. Adm. Code 2402.270.

RECOMMENDATIONS

Based upon the above-stated Findings of Fact, Conclusions of Law and the entire Record in this matter the Hearing Officer offers the following Recommendations to the Director of Insurance:

- 1) That the Respondent's Illinois Insurance Producer's License be revoked; and

- 2) That the Respondent be assessed a \$5,000 fine for each of the nine causes for revocation listed above for a total of \$45,000.00; and
- 3) That the Respondent be fined \$5,000.00 for his failure to facilitate and aid the Director in his investigation in this matter; and
- 4) That the Respondent be assessed the costs of this proceeding in the amount of \$275.80.

Respectfully submitted,

Date: _____

7/18/05



Timothy M. Cena
Hearing Officer