

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF )  
INSURANCE, FINANCIAL )  
INSTITUTIONS AND PROFESSIONAL )  
REGISTRATION, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
JOHN T. BINGAMAN, )  
 )  
Respondent. )

No. 14-1463 DI

**DECISION**

We grant the motion for partial summary decision of the Director of the Department of Insurance, Financial Institutions and Professional Registration (the “Director” and the “Department”). John T. Bingaman is subject to discipline because he violated the insurance laws of other states, failed to report administrative actions taken against his insurance licenses issued by other states, failed to report his criminal prosecution, failed to respond to inquiries by the Department’s Consumer Affairs Division, and his insurance producer license was revoked by other states. We grant the Director’s motion for sanctions and , on our own motion, conclude that Bingaman is subject to discipline for the use of fraudulent or dishonest practices demonstrating untrustworthiness or financial irresponsibility. Accordingly, we enter a decision for the Director.

## Procedure

The Director filed a complaint on September 2, 2014, asking this Commission to find that cause exists to discipline Bingaman's insurance producer license. On September 6, 2014, Bingaman was served by certified mail with a copy of the complaint and our notice of complaint/notice of hearing. On November 24, 2014, the Director filed a motion for sanctions pursuant to 1 CSR 15-3.380(7) and 1 CSR 15-3.425.<sup>1</sup> The basis for the request for sanctions was Bingaman's failure to file an answer or other responsive pleading to the Director's complaint.

On November 26, 2014, we gave notice to Bingaman that he had until December 1, 2014 to respond to the motion. On December 3, 2014, on our own motion, we extended the time in which Bingaman was allowed to respond until December 12, 2014. He did not respond.

On December 1, 2014, the Director propounded his first request for admissions upon Bingaman, who did not respond to the request. Under Supreme Court Rule 59.01, made applicable to this Commission by 1 CSR 15-3.420, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required. *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985). Such a deemed admission can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law." *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App. W.D. 1986). That rule applies to all parties, including those acting pro se. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App. W.D. 1983). Section 536.073 RSMo 2000 and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

In the motion for sanctions, the Director asked that we take action adverse to Bingaman's interests by finding that, by failing to answer or otherwise respond to the complaint,

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<sup>1</sup>All references to the CSR are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

Bingaman admits the allegations in the complaint and waives any defenses thereto. We grant this request, in part.

On January 16, 2015, the Director filed a motion for partial summary decision. Attached to the motion are several exhibits, including certified court records, affidavits, and the unanswered request for admissions the Director sent Bingaman on December 1, 2014. We gave Bingaman until February 4, 2015, to respond, but he did not respond.

Pursuant to § 536.073.3<sup>2</sup> and 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Department establishes facts that Bingaman does not dispute and entitle the Department to a favorable decision. The following facts as established by the Department's exhibits, as well as those matters admitted through Bingaman's own failure to respond, are therefore undisputed.

### **Findings of Fact**

1. The Department issued Bingaman a non-resident insurance producer license on August 17, 2011. Through renewal, Bingaman has kept the license current and active.
2. Bingaman is a resident of Benton, Arkansas.
3. On September 12, 2013, Bingaman pled guilty to the felonies of conspiracy to commit wire fraud in violation of 18 U.S.C. §§ 1343 and 1349 and conspiracy to commit money laundering in violation of 18 U.S.C. §§ 1956(h) and 1957 in the United States District Court, District of New Jersey in cause number 1:13-cr-00598-JBS. Bingaman has not yet been sentenced<sup>3</sup>.
4. Bingaman's signed plea agreement stated that he purchased three real properties; that he and others falsified Uniform Residential Loan Applications in order to secure loans in excess

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<sup>2</sup>Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

<sup>3</sup> As of the date of our decision herein, Bingaman awaits sentencing by the federal district court in New Jersey.

of \$1.6 million; that he and others caused wire transfers of money into escrow accounts of co-conspirators; and that he received illegal kickbacks in the amount of \$241,789.98 for taking part in the conspiracy.

5. The plea agreement Bingaman entered into on September 12, 2013 also stipulated that he obtained fraudulent mortgages on the following properties, in the following amounts, on or about the following closing dates:

216 East Denver Avenue, Unit 216, Wildwood Crest, New Jersey, \$590,363.80, January 30, 2008

618 West Burk Avenue, Unit 201, Wildwood, New Jersey, \$500,697.85, May 11, 2007

5501 Atlantic Avenue, Unit 205, Wildwood Crest, New Jersey, \$534,327.20, June 20, 2007

6. Bingaman did not report his ongoing federal criminal prosecution to the Department.

7. On November 1, 2013 and December 13, 2013, an investigator for the Consumer Affairs Division of the Department mailed Bingaman a letter requesting certified copies of court documents from his criminal case.

8. Neither of these letters was returned as undeliverable and Bingaman failed to respond to them.

9. On November 8, 2013, the Kansas Commissioner of Insurance issued a summary order revoking Bingaman's non-resident insurance agent's license in an action known as *In the Matter of the Kansas Nonresident Insurance Agent's License of John T. Bingaman, NPN 15802631* (#4615-SO). The order became final on November 26, 2013.

10. Bingaman failed to report the Kansas revocation order to the Department within 30 days.

11. On November 19, 2013, Bingaman entered a consent order with the Arkansas Commissioner of Insurance in which he admitted to not timely reporting his guilty plea to the

federal felonies and agreed to voluntarily surrender his Arkansas resident insurance producer license. The Arkansas order, *Arkansas Insurance Department Order No. 2013-108, In the Matter of John Bingaman*, was effective immediately.

12. Bingaman did not report the surrender of his Arkansas license to the Director.

13. On January 23, 2014, the Mississippi Commissioner of Insurance revoked Bingaman's Mississippi insurance producer license in an action known as *In the Matter of John T. Bingaman: Action Against Insurance Producer License No. 10223429*.

14. Bingaman did not report the revocation of his Mississippi license to the Department.

15. Bingaman was served with a copy of the Director's complaint and our notice of complaint/notice of hearing on September 6, 2014.<sup>4</sup>

### **Conclusions of Law**

We have jurisdiction to hear the Director's complaint. Section 621.045. The Director bears the burden of proving cause exists to impose discipline by a preponderance of the evidence. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Kerwin*, 375 S.W.3d at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

Because Bingaman failed to respond to the complaint, to the Director's motion for sanctions, and to the motion for partial summary decision, we have deemed the facts as pled in the complaint admitted. Further, we note that under 1 CSR 15-3.425(3), we are to determine whether and to what degree to impose sanctions based upon the facts of each case. The facts demonstrate that Bingaman decided not to cooperate with or be heard by the Director regarding

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<sup>4</sup> Pursuant to § 536.070(6), we take notice of the contents of our file, which includes the original certified mail receipt returned to us by the US Postal Service after delivery, which was signed by John T. Bingaman on the date indicated.

the ongoing criminal prosecution. Further, Bingaman decided not to participate and be heard in the Director's pursuit of authority to discipline Bingaman's Missouri insurance producer license. Therefore we find, pursuant to 1 CSR 15-3.380(7)(C) and (D), that Bingaman has defaulted on the issue of whether the Director has cause for discipline. The Director's further support for finding cause exists to discipline Bingaman's Missouri license, as set forth in the motion for partial summary decision, is incorporated in the discussion below.

Although Bingaman's deemed admissions include statements to the effect that the facts authorize discipline, statutes and case law instruct us that we must "separately and independently" determine whether such facts constitute cause for discipline. *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App. E.D. 1988). Therefore, we independently assess whether the facts admitted, and supported by the Director's evidence, allow discipline under the law cited.

The Director asserts there is cause for discipline under § 375.141.1, which states:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

\* \* \*

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

\* \* \*

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

Section 375.141 goes on to provide as follows:

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. The report shall include a copy of the order or other relevant legal document.

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

The Director also relies on 20 CSR 100-4.100(2)(A), *Required Response to Inquiries by the Consumer Affairs Division*, which provides in relevant part:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

We examine, in turn, the grounds for discipline set out in each count of the complaint, and the facts as established by the record.

Counts I, II and III—failing to report administrative actions / violation of insurance law

Under § 375.141.1(2), a licensee is subject to discipline if he has violated an insurance law. In accordance with § 375.141.6, an insurance law, Bingaman was required to report each of the administrative actions taken against him in another jurisdiction within thirty days of final disposition. In support of the motion for summary decision, the Director included certified copies of the final orders of the insurance authorities in Kansas, Arkansas, and Mississippi. All three had been final well in excess of thirty days. In failing to timely (or ever) report the

administrative actions brought against him in Kansas (Count I), Arkansas (Count II), and Mississippi (Count III) to the Director, Bingaman has committed three violations of an insurance law and is therefore subject to discipline pursuant to § 375.141.1(2).

Count IV—failure to report felony prosecution  
/violation of insurance law

In accordance with § 375.141.7, an insurance law, Bingaman was required to report that he was being prosecuted for a felony within thirty days of his initial pretrial hearing date. However, Bingaman has admitted that he failed to timely report that a felony prosecution was pending, and that he had, in fact, already entered a plea of guilty to two felonies in the United States District Court for the District of New Jersey. The reporting provision also provides that the licensee must provide the Director a copy of the information or indictment and other relevant court records, but Bingaman has provided nothing. The Director appended the certified records to his motion for partial summary decision. We therefore find that Bingaman did not timely report his felony prosecution to the Director in violation of § 375.141.7 and is subject to discipline pursuant to § 375.141.1(2).

Counts V and VI—failure to respond to inquiries

Under § 375.141.1(2), a licensee is also subject to discipline if he has violated an insurance regulation. Under the Department's regulation 20 CSR 100-4.100(2)(A), every person must respond to an inquiry from the Consumer Affairs Division of the Department within twenty days. According to a custodian of records affidavit by Jodi Lehman, the Special Investigator from the Consumer Affairs Division, Bingaman has never responded to her inquiries. Bingaman responded to neither inquiry made by letters dated November 1 and December 13, 2013 and is therefore subject to discipline for violation of a regulation of the Department. We find cause for discipline pursuant to § 375.141.1(2) under Counts V and VI of the Director's complaint.

Count VII—use of fraudulent or dishonest practices  
demonstrating untrustworthiness or financial irresponsibility, §375.141.1(8)<sup>5</sup>

In order to enter the plea of guilty to conspiracy to commit wire fraud, Bingaman had to accept responsibility for devising or having the intent to devise “any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises” wherein he used wire communications to execute such a scheme. 18 U.S.C. § 1343. In order to accept criminal liability for conspiracy to commit money laundering, Bingaman had to admit that he knowingly engaged in or attempted to engage in a monetary transaction in criminally derived property with a value in excess of \$10,000. 18 U.S.C. §1957.

A guilty plea is evidence of the conduct charged and supports a finding, in a professional licensing proceeding, that the licensee has admitted to his commission of criminal actions. *Wolff v. State Bd. of Chiropractic Examiners*, 588 S.W.2d 4, 6 (Mo. App. E.D. 1979). Since a guilty plea in a criminal prosecution may be properly considered an admission against the interest of the pleader, it is proper to permit the pleader to offer an explanation when there has been no sentence imposed. *Moe v. Blue Springs Truck Lines*, 426 S.W.2d 1, 3 (Mo. 1968). Although we typically encounter reliance upon such admissions where the licensing authority is seeking authorization for discipline on the basis of criminal misconduct of the licensee, we note that the Director alleges cause for discipline under Count VII on the basis that Bingaman used fraudulent and dishonest practices and that he demonstrated untrustworthiness or financial irresponsibility in the conduct of business in New Jersey. Regardless of the distinction, we find ample evidence in the record that Bingaman has made admissions regarding the use of fraud and dishonesty in

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<sup>5</sup> Although the Director’s motion for partial summary decision does not include a request for a finding of cause pursuant to §375.141.1(8) and the allegations in Count VII of the complaint, we consider it under the previously filed motion for sanctions, which allows us to deem the allegations of the complaint admitted, and note that admission of those allegations is now supported in greater detail by the evidence offered in support of partial summary decision. We are satisfied that the Director is entitled to a favorable decision as to Count VII.

the conduct of business, and we have been offered nothing in the way of explanation by Bingaman to rebut the inference he committed the criminal acts set forth in his plea agreement.

Not only may we conclude that Bingaman has committed the conduct with which he was charged based on his admissions in pleading guilty, we may also and do draw conclusions from Bingaman's failure to respond to the Director's request for admissions. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required. *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App. W.D. 1985). Such a deemed admission can establish any fact, or "application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law." *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App. W.D. 1986). That rule applies to all parties, including those acting *pro se*. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App. W.D. 1983). Our Regulation 1 CSR 15-3.420(1) applies that rule to this case.

Bingaman's unanswered request for admissions, his plea of guilty to the felonious conduct in New Jersey, and our acceptance of his admission to these acts as a sanction for failing to respond to the Director's complaint against him provide ample basis to find he is subject to discipline under Count VII. We determine that Bingaman has admitted, among other things, to providing false information regarding his employment, assets, and income on Uniform Residential Loan Applications in order to be approved for hundreds of thousands of dollars in loan proceeds on parcels of real estate on which he was not otherwise qualified to secure a loan. Further, he has acquiesced in the assertions of the federal authorities and the Director that he illegally and fraudulently obtained loan proceeds through these fraudulent applications, which he then moved in and out of financial institutions, in furtherance of the scheme and thereby laundered illegally obtained money.

We conclude that the illegal conduct to which Bingaman pled guilty and otherwise admitted by not responding to the Director's request for admissions or his complaint, involved the use of fraudulent and dishonest practices demonstrating untrustworthiness and financial irresponsibility in the conduct of business. We therefore find that there is cause for discipline against Bingaman's license under § 375.141.1(8).

Counts VIII and IX—having an insurance  
producer license revoked in another state

Bingaman's insurance producer licenses have been revoked in Kansas and Mississippi, and he agreed to the voluntary surrender of his license from the State of Arkansas. There is cause to discipline his Missouri license under § 375.141.1(9).

**Summary**

There is cause to discipline Bingaman's insurance producer license under § 375.141.1(2), (8) and (9). The Director is entitled to the relief sought in his petition, which we hereby grant in accordance with the motion for sanctions and the motion for partial summary decision.

SO ORDERED on February 24, 2015.

*\s\ Nicole Colbert-Botchway*  
NICOLE COLBERT-BOTCHWAY  
Commissioner