

SENATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

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

HEARING NO. 04-HR-0923

DAVID D. POST
13144 MUSKEGON
CHICAGO, ILLINOIS 60633

FINAL ORDER

I, Deirdre K. Manna, Illinois Acting 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, Deirdre K. Manna, Acting Director of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV of the Illinois Insurance Code (215 ILCS 5/401 et seq.) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et seq.).

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.).

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DIVISION OF INSURANCE
SPRINGFIELD

NOW IT IS THEREFORE ORDERED THAT:

- 1) The Illinois Public Insurance Adjuster's License of the Respondent, David D. Post, is revoked;
- 2) The Respondent, David D. Post, shall pay as costs of this proceeding the sum of \$193.00, directly to the Illinois Department of Financial and Professional Regulation, Division of Insurance, 320 W. Washington, 4th Floor, Springfield, Illinois 62767, within 35 days of the date of this Order.

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

DIVISION OF INSURANCE

Date:

February 16, 2005



DEIRDRE K. MANNA

Acting Director of Insurance

STATUTE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF THE
REVOCATION OF LICENSING
AUTHORITY OF:

HEARING NO. 04-HR-0923

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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 Acting Director of Insurance.

FINDINGS OF FACT

- 1) On August 31, the Illinois Acting Director of Insurance, Deirdre K. Manna (Acting Director) issued an Order of Revocation revoking the Illinois Public Insurance Adjuster's License of David D. Post (Respondent) (Hearing Officer Exhibit # 2B).
- 2) On September 29, 2004 the Illinois Department of Financial and Professional Regulation, Division of Insurance (Division) received a Request for Hearing on the revocation from the Respondent (Hearing Officer Exhibit # 2A).
- 3) On October 14, 2004 the Acting Director issued a Notice of Hearing in this matter pursuant to the Respondent's Request for Hearing, setting a hearing date and location of November 23, 2004 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 of Insurance on October 22, 2004 (see the United States Postal Service Domestic Return Receipt Card attached to Hearing Officer Exhibit # 2).
- 5) Morton P. Kamins filed an Appearance in this matter on behalf of the Division (Hearing Officer Exhibit # 2).
- 6) Timothy M. Cena was appointed as Hearing Officer in this matter by order of the Acting Director on October 14, 2004 (Hearing Officer Exhibit # 1).
- 7) The Hearing in this matter was convened on November 23, 2004 at 10:00 a.m. at the Division's Offices in Chicago, Illinois at which time were present: Timothy M. Cena, Hearing Officer; Morton P. Kamins, on behalf of the Division; and Ron Masino and Richard Nitka, both employees of the Division. The Respondent was not present at the Hearing. Neither Mr. Kamins nor the Hearing Officer had had any direct contact with the Respondent concerning his attendance at the proceeding after the Notice of Hearing was issued by the Acting Director.
- 8) Ronald Masino, an investigator for the Division, testified on behalf of the Division in this matter as follows:
 - a) He has been employed with the Division for 12 years and investigates allegations of violations of the Illinois Insurance Code;
 - b) In February of 2004, he was assigned a file to investigate allegations of wrongdoing against the Respondent;
 - c) His investigation indicated that the Respondent's Illinois Public Insurance Adjuster's License had been revoked by the Director of Insurance on November 5, 1999. A Division investigation at that time had indicated that the Respondent had defrauded two Illinois insurance consumers out of approximately \$140,000.00 in insurance claim money paid to the consumers by insurance companies for the consumer's fire losses.
 - d) On February 28, 2001 the Respondent was indicted for the above referenced fraud in Case # 01 CR 5824 in the Circuit Court of Cook County, County Department, Criminal Division on two felony counts of Theft and two felony counts of Forgery (see Division Exhibit # 3);
 - e) As a result of the Indictment, the Respondent was either found guilty of or pled guilty to one misdemeanor count of Theft and was sentenced to one year probation and ordered to pay restitution to the victims of his fraud in the amount of \$18,000.00 and \$3,600.00

(see the November 6, 2003 Order of Judge John Kirby in Case # 01 CR 5824 which is the last page of Division Exhibit # 1);

- f) On April 23, 2003 the Respondent submitted to the Division a Public Adjuster's License Application and a Public Adjuster Renewal Application. On the renewal application the Respondent answered the Question # 2: "Have you been refused a license to act as a public adjuster, agent, broker, producer or solicitor, or has a license to act as such ever been denied, suspended or revoked or surrendered for regulatory reasons in any state either as an individual or as a member of a firm?", in the negative. The Respondent also answered the same question in the negative in his Renewal Application signed on February 5, 2004 and received by the Division on March 4, 2004 (see Division Exhibit # 2).
- 9) McGee Court Reporting Services transcribed the proceeding in this matter and charged the Division \$193.00 for the court reporter's attendance and the transcript of the proceeding (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 Acting Director of Insurance.

- 1) Timothy M. Cena, was properly appointed as Hearing Officer in this matter by the Acting Director pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Acting Director has jurisdiction over the subject matter and the parties to this proceeding pursuant to Sections 401, 402, 403 and 512.61 of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403 and 5/512.61).
- 3) The purpose of this proceeding is to determine the Respondent's suitability to hold an Illinois Public Insurance Adjuster's License and to determine whether the Acting Director's Order revoking said license should stand.

In its Notice of Hearing and Order of Revocation, the Division alleged that the Respondent incorrectly answered licensing questions on his April 23, 2003 and February 5, 2004 Public Insurance Adjuster Licensing Renewal Applications regarding whether he had ever been refused a license as a public adjuster or ever had had his public adjuster's license revoked. The Division further alleged that by such acts the Respondent obtained his licenses by misrepresentation which are grounds for the revocation of his license.

The Division also alleged that the Respondent was convicted of a misdemeanor directly related to his activities as a public adjuster. The Division further alleged that

by such acts the Respondent has used fraudulent and dishonest practices and he has demonstrated untrustworthiness and financial irresponsibility which are grounds for the revocation of his license.

Section 512.61 of the Illinois Insurance Code provides, in part, as follows

- (a) Any license issued under this Article may, after notice to the license and hearing as provided by Section 402 (215 ILCS 5/402), be suspended or revoked, and any application for a license may be denied, if the director finds that the holder of or applicant for a license has: . . .
 - (2) intentionally made a material misstatement in an application for a license as a Public Insurance Adjuster; or
 - (3) obtained or attempted to obtain a license as a Public Insurance Adjuster through misrepresentation or fraud or . . .
 - (6) used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the transaction of business as a Public Insurance Adjuster; and . . .

The evidence presented in this matter by the Division clearly indicates that the Respondent made a material misstatement in both his 2003 and 2004 Public Insurance Adjuster's License Renewal Applications when he incorrectly stated on the applications that his license had never been revoked. Further, the evidence indicates that because of this misstatement the Respondent obtained his license through misrepresentation or fraud.

The Department also presented evidence indicating that in November of 2003 the Respondent was convicted of misdemeanor theft and that said theft was related to his public insurance adjuster business. The Hearing Officer concludes that by being convicted of theft directly relating to the operation of his public insurance adjusters business the Respondent has used fraudulent, coercive or dishonest practices and has demonstrated incompetence, untrustworthiness or financial irresponsibility.

The Respondent did not appear and present evidence at the hearing. This Record, therefore contains no evidence in mitigation of the Respondent's violations of the Illinois Insurance Code.

Therefore the Hearing Officer concludes that the Respondent has violated Sections 512.61 (a)(2) and (a)(6) of the Illinois Insurance Code (215 ILCS 5/512.61 (a)(2) and (a)(6) and that the Acting Director properly and correctly revoked the Respondent's Public Insurance Adjuster's License pursuant to those Sections.

Finally, the Hearing Officer concludes that the Respondent should be assessed the costs of this proceeding which consists of the fees charged to the Division by the court reporting firm which prepared the transcript of the proceeding. The Hearing Officer bases this conclusion on the following: the Respondent requested that a Hearing be held; the Respondent stood to benefit from a favorable ruling in the matter; and finally that Respondent chose not to appear at the Hearing.

RECOMMENDATIONS

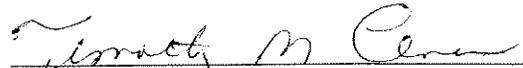
Based upon the above stated Findings of Fact, Conclusions of Law and the entire Record in this matter the Hearing Officer offers the following Recommendations to the Director of Insurance:

- 1) That the Respondent's Public Insurance Adjuster's License be revoked;
and
- 2) That the costs of this proceeding be assessed against the Respondent.

Respectfully submitted

Date:

1/31/05



Timothy M. Cena
Hearing Officer