

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF THE
DENIAL OF LICENSING
AUTHORITY OF:

HEARING NO. 04-HR-0869

Kevin M. Price
7415 Tiffany Drive, No. C
Orland Park, Illinois 60462

ORDER

I, Deirdre K. Manna, Acting Director of the Illinois Department of Financial and Professional Regulation, Division 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, Helen Y. Kim, heretofore 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 and that I have carefully considered the entire Record of the Hearing and the Findings of Fact, and Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made a part hereof.

I, Deirdre K. Manna, Acting Director of the Division of Insurance of the Illinois Department of Financial and Professional Regulation, 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 100/10-50 et seq.).

This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/10-50 et seq.). Further, this Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq.)

THEREFORE IT IS HEREBY ORDERED THAT:

- 1) The Respondent's request for an Illinois Insurance Producer's License is denied;
and
- 2) The Respondent, Kevin M. Price, shall pay the costs of this proceeding, within 35 days of the date of this Order, the sum of \$546.20, directly to the Illinois Division of Insurance, 320 West Washington Street, Springfield, Illinois 62767.

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

DIVISION OF INSURANCE

DATE: March 17, 2005

Deirdre K. Manna
DEIRDRE K. MANNA
Acting Director of Insurance

SENATE OF ILLINOIS



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

Now comes Helen Y. Kim, Hearing Officer, in the above-captioned matter, and hereby offers her Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On September 10, 2004 the Acting Director of Insurance, Deirdre K. Manna (Director), issued a Letter of Denial denying the Illinois Producer's License of Kevin M. Price (Respondent) (Hearing Officer Exhibit #4)
- 2) On September 14, 2004 the Illinois Division of Insurance (Division or Department) received a Request for Hearing from the Respondent. (Hearing Officer Exhibit #3)
- 3) On October 4, 2004 the Director issued a Notice of Hearing in this matter setting a Hearing date and location of November 4, 2004 at the Department's Offices in Chicago, Illinois. (Hearing Officer Exhibit #2)

- 4) Morton P. Kamins filed a Notice of Appearance as Counsel for the Division in this matter. (Hearing Officer Exhibit #2)
- 5) William P. McGowen III filed a Notice of Appearance as Counsel for the Respondent. (Hearing Officer Exhibit #5)
- 6) Helen Y. Kim was appointed Hearing Officer in this matter by the Director on October 4, 2004. (Hearing Officer Exhibit #1)
- 7) On November 4, 2004 the Respondent submitted an Oral and Written Motion to Continue the Hearing and for Discovery. (Hearing Officer Exhibit #6)
- 8) The Hearing Officer denied the Respondent's motion and the Hearing in this matter was convened at the Division's Offices in Chicago, Illinois at 10:00 a.m. on November 4, 2004 at which time were present Helen Y. Kim, Hearing Officer; Morton P. Kamins, on behalf of the Division; Kevin M. Price, Respondent; William P. McGowen III, on behalf of the Respondent; Wanda Worthy and Richard Nitka, with the Division of Insurance. (R. 2)
- 9) The purpose of this proceeding was to determine the Respondent's eligibility to hold an Illinois Insurance Producer's License and to determine whether the Director's Letter of Denial of the Respondent's license should stand.
- 10) Wanda Worthy with the Division of Insurance, testified in this matter as follows: (R. 18-38)
 - a) She has been employed with the Division for three years and nine months as an investigator/examiner of insurance agents and agencies;
 - b) She was assigned to work on the Respondent's file in April 2004 based on the denial of the Respondent's insurance application;
 - c) The Respondent's insurance application was [first] denied on May 22, 2000. The letter ordered the Respondent to pay \$86,414.80 to Bituminous Insurance Company [hereinafter Bituminous] within 30 days of the date of mailing; the Respondent was also assessed a civil penalty in the amount of \$5,000. (Department Exhibit #1) The Respondent did not pay these amounts within the 30 days;
 - d) A second letter of denial, dated September 10, 2004, was sent to the Respondent (Department Exhibit #6). In Paragraph A, it indicated that on January 13, 2004 the Division received payment in full for the civil forfeiture and that on January 30, 2004 Bituminous sent the Division a letter stating that they received a payment of \$25,000 from the Respondent in satisfaction of the \$86,414.80 debt owed;
 - e) Paragraph B of the letter of denial indicates that the Respondent's license was canceled on November 17, 1999 and that on December 7, 1999 the Respondent was

informed that he should not write any business due to his failure to renew his license and complete his continuing education requirements. (Department Exhibit #2);

f) The Respondent was first licensed on November 17, 1988 and it expired on November 17, 1999. (Department Exhibit #3); and

g) She discovered 14 policies showing that the Respondent was acting as an insurance producer after his license expired on November 17, 1999 (Department Group Exhibit #4).

16) On Cross Examination Witness Worthy testified as follows (R. 38-64):

a) A certificate of authenticity is not attached to [licensee data record] Department Exhibit #3. It is an internal document from the database that is operated in Springfield. She does not know who maintains the database or who inputs the data;

b) She is thorough when she does an examination; she tries to find whatever violations may or may not exist with the individual being investigated;

c) The Respondent was examined on August 10 through August 12, 1999 and February 2 through February 4, 2000. Department Exhibit #1 does not make any comments with respect to the Respondent selling insurance without a license;

d) The Respondent submitted renewal applications on November 22, 1999 and December 15, 1999 (see Department Exhibit #1). She agrees that a letter indicating that the license was denied would be sent certified mail; she does not know if such a letter is in the file;

e) She does not know how many other licensed producers worked with the Respondent at the time policies in [Department] Group Exhibit #4 were found;

f) She does not know Tracy Stewart, Mike Carr or Tom O'Connor. She does not know whether these individuals are licensed producers nor did she contact any of them with respect to the fourteen policies;

g) She contacted TransAmerica and possibly two other insurance companies;

h) A Department letter indicates that the Respondent's license was denied effective June 21, 2000 (Respondent Exhibit #1);

i) The Respondent paid the civil forfeiture to the Department on January 13, 2004. (Department Exhibit #2) She did not take any steps to determine the Respondent's financial ability to pay the civil forfeiture prior to January 13, 2004;

j) She did not make any determinations about the Respondent's ability to pay Bituminous any time prior to the date it was actually paid. She did not have any

conversations with Bituminous individuals regarding the settlement of the financial obligation, whether Bituminous thought that some of the \$86,000 was able to be collected directly from clients or whether how much of the outstanding receivables of Bituminous clients they were able to obtain money back;

k) She was assigned to start her investigation in April 2004;

l) The Respondent submitted his application in July 2003;

m) During the six-month period between the time the Respondent submitted his application to when the Department received the civil forfeiture in January 2004, the Department did not deny the Respondent's application;

n) She did not contact any of the companies indicated on the policies (Department Group Exhibit #4);

o) She believes that the Respondent is liable if he received commissions from the policies because it was his agency, K. Price Inc. She did not determine whether commissions were received and she did not investigate the license status of K. Price Inc.; and

p) She had input in writing Part B of Department's Exhibit #2. She concluded that the Respondent's license was non-renewed on November 17, 1999 based on Department's Exhibit #3;

17) Kevin Price, the Respondent, testified on his own behalf as follows (R. 65-80):

a) He has been licensed as a producer since 1988. He began the insurance business by doing customer service related work. In 1989 he worked strictly in sales with Columbian Agency until 1997, specializing in construction and dump truck work with policies ranging from \$200 to \$700,000. During his tenure at Columbian Agency he earned from \$60,000 to \$180,000, placing in excess of 2500 policies;

b) He went to Horton Insurance Agency after Columbian and worked there until June 1998. After he left Horton he purchased his clientele from Columbian for \$170,000 to start his own agency;

c) As a producer his job was to sell insurance, entertain clients, and do service work. He never entered into the accounting or marketing field. He learned that you have to wear numerous hats while owning your own agency;

d) He was examined by the Department from August 10 - 12, 1999 and from February 2-4, 2000. As a result of the examination he received a letter on or about May 22, 2000 from the Department informing him that his license was being denied (Department Exhibit #1);

e) As of May 2000 he put a lot of his personal money into the business but had a problem collecting premiums from the insureds. He still has over \$200,000 of outstanding receivables;

f) The denial of his license in 2000 effectively put him out of business. When he began his agency he had a net worth of five million, which is now lost along with his ability for employment;

g) He used his retirement funds for his business and therefore had no ability to pay either Bituminous or the civil forfeiture penalty;

h) Since his denial [in 2000] he made numerous calls to Bituminous's Branch Manager, Dan Noe, reassuring him that they would get paid. He was able to negotiate a satisfaction of money owed;

i) On December 17, 2003 he received a letter from Jamie Tripp, an examiner with the Department (Respondent Exhibit #2), informing him to address various issues before he can obtain his license. Correspondence was exchanged between himself and Mr. Tripp (Respondent Exhibits #2 and #3);

j) After a meeting at the Department in Springfield in January 2000, on the advice of his attorney, he never sold or produced insurance policies after that date as an individual;

k) From January 2000, Tracy Stewart, a licensed producer working with him, produced and sold all the policies;

l) Mr. Tripp informed him that his license was denied on approximately February 3, 2004, after he paid the civil forfeiture and Bituminous;

m) Bituminous was able to collect a portion of the \$86,414 owed to their satisfaction;

n) Prior to May 2000 he did not receive anything from the Department indicating that his license was denied, revoked, nonexistent or invalid;

o) With respect to the Department's Group Exhibit #4, Tracey Stewart sold those policies; and

p) During the course of Ms. Worthy's investigation she never provided him with any evidence or proof that his license was canceled on November 17, 1999.

18) On Cross Examination, the Respondent testified as follows (R. 81-97):

a) His license was never revoked by the Department;

b) He did not at any time voluntarily give up his license;

- c) The correspondence from Jamie Tripp did not indicate that he would be granted a license if he complied with the various issues that needed to be addressed (Respondent Exhibit #2);
 - d) He officially closed his business approximately November 1, 2000, about two weeks after Tracy Stewart received a letter (Respondent Exhibit #1) pertaining to his agency. Approximately one year later he applied for a license, but during that time he did not operate as an insurance producer. However his agency, K. Price, Inc. located in Manteno Illinois, was operating with a total of five employees, including Ms. Stewart;
 - e) During his last year of operation he lost a lot of clients and he generated well under a million dollars in premiums;
 - f) From December 1999 through November 1, 2000 he drew about \$12,000 in income from the agency;
 - g) Since November 2000 he has driven a truck but has basically been unemployed for the last two years,
 - h) He currently lives with a companion in Orland Park, Illinois;
 - i) He has been married once before and has two children, ages thirteen and fifteen. The children do not reside with him but he does support them;
 - j) The money he owed Bituminous was a result of forwarding the premium payments to Bituminous but being unable to get reimbursed by his clients; and
 - k) He repaid Bituminous \$25,000 in settlement for his debt and issued a check to the Director of Insurance for \$5,000 on or around January 8, 2004.
- 19) Upon Re-Direct, the Respondent testified that he had no reason to believe that his November 1999 application was not going to be approved at that time (R. 98).
- 20) Upon Re-Cross, the Respondent testified that if he is granted a license he does not plan to reopen an agency. He just wants to work for a firm where he can own and have equity in his own book of business (R. 99-100).
- 21) Upon Examination by the Hearing Officer the Respondent testified in this matter as follows (R. 100-101):
- a) He has been continually licensed with no lapses since approximately 1988;
 - b) He never notified the Department of his difficulties in repaying Bituminous; and
 - c) When he received his Letter of Denial in 2000 he did not request a hearing.

- 22) McGee Court Reporting Services, recorded the testimony taken in this proceeding and charged the Department \$546.20 for the court reporter's attendance and one copy of the proceedings.

CONCLUSIONS OF LAW

Based on the above-listed 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) Helen Y. Kim was duly appointed 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 the parties in 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 purpose of this proceeding was to determine the Respondent's eligibility to hold an Illinois Insurance Producer's License and to determine whether the Director's Letter of Denial denying the Respondent's application for said license should stand.

In the Letter of Denial and Notice of Hearing in this matter the Department alleges that the Respondent failed to comply with the requirements of a Letter of Denial issued by the Director on May 22, 2000; specifically that the Respondent must pay a civil forfeiture in the amount of \$5000.00 to the Department and remit \$86,414.80 to Bituminous Insurance Company within thirty (30) days of the date of the mailing. The Department also alleges that the Respondent placed fourteen (14) insurance policies after his license was canceled on November 17, 1999. The Department alleges that these violations are grounds for denial pursuant to Section 500-15 and Sections 500-70(a)(2) and (a)(8) of the Illinois Insurance Code (215 ILCS 5/500-15 and 215 ILCS 5/500-70).

Section 500-15 provides:

- (a) A person may not sell, solicit, or negotiate insurance in this State for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Article

Section 500-70(a) provides, inter alia:

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 reasons:

- (2) violating any insurance laws, or violating any rule, subpoena, or order of the Director or of another state's insurance commissioner;

- (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 and testimony in this matter clearly indicate that the Respondent failed to comply with the requirements of the May 22, 2000 Letter of Denial (Department Exhibit #1). The Respondent failed to repay Bituminous \$86,414.80 and to pay a civil penalty of \$5000 to the Department within 30 days of the date of the letter as required. The Respondent did not comply with his obligation to the Department until January 13, 2004 and furthermore, Bituminous never received the full amount owed but rather, on January 30, 2004 Bituminous informed the Department that they received \$25,000 from the Respondent in satisfaction of the entire debt.

The Respondent did not deny that he failed to meet his financial obligations but testified that he had difficulties with collecting premiums from insureds. He was also under the misguided impression that the Department should have considered and inquired into his financial ability to pay the debt and civil forfeiture, yet also admitting that he never expressed these difficulties to anyone at the Department. It was the sole responsibility of the Respondent to fulfill his obligations and this began when he agreed, on January 26, 2000, to pay Dun & Bradstreet \$3000 each month for the debt owed to Bituminous (Department Exhibit #1). The Respondent remitted only one payment in February 2000 which resulted in the Department ordering the Respondent, in its May 22, 2000 Letter of Denial, to remit the remaining balance in full to Bituminous. The fact that the civil forfeiture was eventually paid in full, albeit four years later, and that Bituminous accepted an amount less than what was owed, in the Hearing Officer's opinion, in no way mitigate against the Respondent's violation of the Director's orders and it clearly does not speak well for establishing his competence, trustworthiness and financial responsibility.

The evidence further indicates that the Respondent's license expired or canceled on November 17, 1999 (Department Exhibit #3). In support the Department presented an internal document that indicates the Respondent's license expired on November 17, 1999 for failure to non-renew (Department Exhibit #3). The Respondent's objection to the admission of this document is noted, however, the Hearing Officer takes official notice of this document pursuant to Part 2402.220 of Title 50 of the Illinois Administrative Code. Furthermore, the expiration or cancellation of the Respondent's license was corroborated by the Respondent in a letter dated December 21, 2003, wherein the Respondent admits to giving up his license in 1999 to Department staff, Jamie Tripp (Respondent Exhibit #2). The evidence also indicates that the Respondent's license was denied effective June 21, 2000 (*see* Respondent Exhibit #1), apparently causing some confusion for the Respondent regarding the status of his license. The expiration or cancellation of license is not equivalent with the denial. To clarify, the Respondent submitted his renewal application on November 23, 1999, approximately five days after his license had already canceled for failure to non-renew (Department Exhibit #3). This application for license was then denied in the May 22, 2000 Letter of Denial with an effective date of June 21, 2000;

thirty (30) days from the date of the letter to give the applicant an opportunity to request a hearing in the matter, an option the Respondent chose not to exercise.

The Department produced fourteen insurance policies in support of its allegation that the Respondent was acting as an insurance producer after his license had expired on November 17, 1999. The Respondent denied placing any of these policies and testified that Tracy Stewart, a former employee was responsible. The Respondent further added that he did not produce any policies after January 2000. Although the evidence does not support Department's allegation that the Respondent placed all fourteen policies, it does reveal that two policies were produced by the Respondent; each attached with a facsimile from the Respondent to Trans-Com GA, requesting coverage for the insureds, Atlantic Western Express and Tillinghast Transport, Inc., on February 2 and February 11, 2000 respectively (Department Group Exhibit #4).

The Hearing Officer concludes that the Respondent clearly violated the orders in the Director's May 22, 2000 Letter of Denial and that the Respondent was acting as an insurance producer without a valid license as alleged in the current letter of denial. These actions are indicative of incompetence, untrustworthiness and financial irresponsibility and a denial was well within the Director of Insurance's statutory authority. There is no evidence in this record to cause the Director to overturn her decision in this matter.

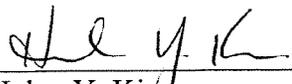
RECOMMENDATIONS

Based upon the above-listed 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 Respondent's request for a license be denied; and
- 2) That the Respondent be assessed the costs of the proceedings.

Respectfully submitted,

Date: 3/10/2005



Helen Y. Kim
Hearing Officer