8-1004-10151-2

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Insurance Agent License of Jon R. Tesar.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Jon L. Lunde commencing at 9:30 a.m. on Tuesday, November 7, 1995 in the First Floor Hearing Room, at the Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101. The hearing was held pursuant to an Order to Show Cause, Order Summarily Suspending License and Notice and Order for Hearing dated October 17, 1995.

Michael A. Sindt, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Minnesota Department of Commerce (Department). The Respondent, Jon R. Tesar, was not present at the hearing and no appearance was entered on his behalf. The record closed upon the Licensee's default on November 7, 1995.

NOTICE

This Report is a recommendation, not a final decision. The Minnesota Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Gary A. Lavasseur, Deputy Commissioner, Enforcement and Licensing Divisions, Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101, Telephone (612) 296-2594 to ascertain the procedure for filing exceptions or presenting argument.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 31, 1995 a copy of the Order to Show Cause, Order Summarily Suspending License and Notice and Order for Hearing was served upon the Respondent by certified mail as appears from an affidavit of service on file herein.

2. The Order to Show Cause, Order Summarily Suspending License and Notice and Order for Hearing contained the following warning:

> If Respondent fails to attend or otherwise appear at the hearing in this matter after having been served with a copy of this Order, the allegations herein may be deemed true without further proof, Respondent shall be deemed in default and Respondent's securities agent's license (sic) may be revoked or suspended. Respondent may be censured and/or a civil penalty may be imposed upon Respondent without further proceedings.

3. The Respondent licensee did not appear at the hearing on November 7, 1995. Respondent did not have the Administrative Law Judge's consent for failing to appear, and Respondent did not make any pre-hearing request for a continuance or any other relief.

4. Jon R. Tesar, the Respondent, is currently and was at all times relevant hereto an insurance agent licensed by the Commissioner of Commerce pursuant to Minn. Stat. Chapter 60A and sections 60K.01 through 60K.19 (1994).

5. While licensed as an insurance agent, Respondent failed to forward insurance premiums taken at application and converted to his own use money from the insurer. Respondent also engaged in a pattern of behavior indicating that he is untrustworthy, financially irresponsible, and unqualified to act as an insurance agent.

6. On August 1, 1995, Respondent took an application for automobile insurance from Mr. Vincent Washington. Respondent also took receipt of $100.00 from Mr. Washington as partial payment on the automobile policy. Subsequently, Mr. Washington paid an additional $200.00 to Respondent as partial payment of the automobile policy premium.

7. The Department was contacted by Mr. Washington as a result of Mr. Washington's arrest for driving without insurance subsequent to August 11, 1995. The Department then contacted Respondent, and he agreed to meet with the Department's staff on August 29, 1995.

8. On August 29, 1995 at 2:30 p.m. Respondent met with Departmental Investigator Thomas H. Vowell. During the course of the meeting with Vowell, Respondent admitted that he had used client funds for personal use on several occasions. Respondent also admitted to Vowell that he had collected $300.00 from Mr. Washington and did not submit the application or the premiums for coverage. Respondent also told Investigator Vowell that he took money and applications from two other clients and kept the $400.00 to $600.00 which he took in premium payments.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Commerce have authority to consider the issues raised in the Order to Show Cause, Order Summarily Suspending License and Notice and Order for Hearing under Minn. Stat. §§ 14.50 and 60K.11 (1994).

2. The Respondent received timely and proper notice of the hearing and the charges against him.

3. The Department has complied with all substantive and procedural requirements of statute and rule.

4. Respondent is in default herein for purposes of Minn. Rules pt. 1400.6000 (1993) as a result of his failure, without the Administrative Law Judge's prior consent, to appear at the hearing.

5. Upon default, the allegations of or the issues set out in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence. Id.

6. Under Minn. Stat. § 60K.11, subd. 1 adverse action may be taken against an insurance agent if the agent:

> (i) does not intend to or is not in good faith carrying on the business of an insurance agent.
>
> * * *
>
> (iii) has engaged in an act or practice, whether or not such act or practice involves the business of insurance, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as an insurance agent or agency;
>
> * * *
>
> (x) has engaged in any fraudulent, coercive, deceptive, or dishonest act or practice whether or not such act or practice involves the business of insurance;
>
> (xi) has improperly withheld, misappropriated, or converted to the licensee's or applicant's own use any money belonging to a policyholder, insurer, beneficiary, or other person. . . .

7. An agent who receives funds from the client in connection with an insurance transaction receives and holds those funds in a fiduciary capacity. Minn. Rules Pt. 2795.1300 (1993).

8. The record shows that the Respondent is untrustworthy, financially irresponsible or otherwise incompetent or unqualified to act as an insurance agent; that

he engaged in a fraudulent, coercive, deceptive or dishonest act or practice; that he improperly withheld, misappropriated or converted to his own use money belonging to a policyholder, insurer, or other person; that he violated his fiduciary responsibilities as an insurance agent; and that he did not observe the high standards of commercial honor, and just and equitable principles of trade in the conduct of his insurance business, in violation of Minn. Stat. § 60K.11, subd. 1, (iii), (x), and (xi) (1994) and Minn. Rules Pt. 2795.1000 (1993).

9. Minn. Stat. § 60K.11, subd. 1 (i) is inapplicable to the facts.

10. The Commissioner is authorized by the Respondent's violation to suspend or revoke the Respondent's license, to censure him, or impose a civil penalty as provided for in Section 45.027, subd. 6.

11. Disciplinary action is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: That the Commissioner of the Minnesota Department of Commerce take adverse licensing action against the Respondent as a result of his statutory and rule violations.

Dated this 8th day of November, 1995

/s/

JON L. LUNDE
Administrative Law Judge

Reported: Default

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.