

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Insurance Agent
License, No. 64754; and Securities Agent
License, No. 2446129 of Marty R. Jones

**RECOMMENDATION ON MOTION
FOR SUMMARY DISPOSITION**

The Department of Commerce made a motion for summary disposition on April 10, 1998. Under this Office's rules,^[1] after a three-calendar-day allowance for receiving mail, Mr. Jones next had ten working days in which to submit a written response to that motion and to request a hearing on it. He did not submit a written response or request a hearing within the deadline, so the record on this motion closed on April 27, 1998. Michael J. Tostengard, Assistant Attorney General, Suite 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, is the attorney representing the Department. Marty R. Jones, 15925 Hyland Point Court, Apple Valley, Minnesota 55124, is not being represented by an attorney, but rather is representing himself.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after reviewing the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota law,^[2] the Commissioner may not make his final decision until after the parties have had access to this report for at least ten days. During that time, the Commissioner must give each party adversely affected by this report an opportunity to file objections and present argument to him. Parties should contact the office of David B. Gruenes, Commissioner, Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55155, to find out how to file objections or present argument.

After considering everything in the administrative record, the Administrative Law Judge HEREBY RECOMMENDS:

(1) That the Commissioner GRANT the Department's Motion for Summary Disposition; and

(2) That the Commissioner take disciplinary against Mr. Jones, his Insurance Agent License No. 64754, and his Securities Agent License No. 2446129 and that the Commissioner also consider imposing civil penalties.

Dated this _____ day of May, 1998.

BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

The Minnesota Department of Commerce began this contested case proceeding by issuing a Notice of and Order for Hearing, on January 30, 1998, and serving that Notice on the Respondent, Marty R. Jones. The issues here are whether Mr. Jones has committed violations of any licensing statutes and, if so, whether the Commissioner should suspend or revoke his insurance and securities agent licenses and assess a civil penalty against him.

The Notice of Hearing scheduled an evidentiary hearing in this matter for March 11, 1998. Before that, on February 5, 1998, the Department had served Mr. Jones at his last known address with a first set of requests for admissions, as allowed by this Office's rules.^[3] That request contained the following statement underlined and in boldface type:

Pursuant to Minn. R. 1400.1800 (sic), the requests for admissions shall be answered in writing within ten (10) days of receipt of this request.

On March 11, 1998, Mr. Jones appeared for the hearing without an attorney to represent him. The Department requested the Administrative Law Judge to use the time to conduct a prehearing conference, rather than an evidentiary hearing, to allow the parties to discuss unresolved discovery requests and other preliminary matters. Mr. Jones indicated that he had not received the Department's request for admissions even though it had been sent to his correct address. The Administrative Law Judge explained to Mr. Jones why he needed to answer the requests. The Department gave him another copy of the requests for admissions, and the Administrative Law Judge gave him an extension until March 21, 1998, in which to respond in writing to them. The Administrative Law Judge further explained to Mr. Jones that if the facts covered by the Department's request for admissions were not really in dispute, then there would be no need for an evidentiary hearing. The Department said it would then seek to resolve this matter by filing a motion for summary disposition, to which Mr. Jones would have an opportunity to respond. Mr. Jones never has submitted a written response to the Department's request for admissions or to its motion for summary disposition. He also has not requested the Administrative Law Judge to schedule a hearing on that motion.

The Department's Burden

In considering motions for summary disposition in administrative contested case proceedings, administrative law judges have adopted the standards developed in district court practice for considering motions for summary judgment.^[4] Like summary judgment, summary disposition is appropriate "where there is no genuine issue as to any material fact."^[5] When the party making the motion has the burden of proof, that party must initially show facts establishing that it will succeed unless the other party is able to contradict those facts. The moving party must also indicate there are no

material fact issues that the parties must prove by submitting evidence.^[6] Once the moving party has established those things, the burden of proof shifts to the party not making the motion.^[7] That party must then specifically show that some facts are in dispute that will have a bearing on the outcome and that will have to be established by evidence submitted by the parties.^[8] The party not making the motion cannot just claim there are disputed facts.^[9]

Here, although given an extension to do so, Mr. Jones has never responded in writing to the Department's request for admissions. He has also not responded in any way to the Department's motion for summary disposition or attempted to identify some material facts that are genuinely in dispute. Under this Office's rules,^[10] the Administrative Law Judge must conclude that the facts described in that request for admissions are no longer in dispute, and he will assume those facts are true in ruling on Department's motion for summary disposition.

Underlying Facts

The Department's unanswered requests for admissions establish the following undisputed facts:

Mr. Jones has been and continues to be both an insurance agent and a securities agent licensed under state law.^[11] His state license numbers are 64754 and 2446129, respectively. In the fall of 1995, Mr. Jones contacted Ms. Nancy Jo Cavanaugh to inquire whether she wished to arrange surrendering an insurance policy on the life of Leroy J. Tynan, who was seriously ill, in order to take care of his anticipated funeral and burial expenses. Mr. Jones subsequently sent Ms. Cavanaugh a cash surrender form for that life insurance policy. She signed it and returned it to Mr. Jones on October 4, 1995. On October 13, 1995, the insurance company issued a check payable to Ms. Cavanaugh for \$2,245.79, representing the cash surrender value of the policy on Mr. Tynan's life. Ms. Cavanaugh purportedly endorsed that check with her signature and with the further notation "Paid to the Order of Marty Jones." But her endorsement was forged. Mr. Jones then endorsed the check with his own signature, negotiated it, and used the funds for his own benefit.

On November 8, 1995, Mr. Jones sent Ms. Cavanaugh another cash surrender form, along with a note saying that the first form had been obsolete and asking her to sign and return the second form. She signed and returned the second form to Mr. Jones sometime in November of 1995. On December 11, 1995, the insurance company issued a second check payable to Ms. Cavanaugh for \$2,356.59, representing the cash surrender value of a second policy on Mr. Tynan's life. Ms. Cavanaugh also purportedly endorsed the second check, but again, her endorsement was forged. Mr. Jones also endorsed the second check, negotiated it, and used the funds for his own benefit.

Applicable Law

In order to protect the rights and safety of the public, the legislature has enacted statutes describing certain kinds of conduct that warrant action by the Commissioner to suspend or revoke the licenses of insurance agents.^[12] The Commissioner may also impose civil penalties on insurance agents who violate those licensing laws.^[13] Legislation also empowers the Commissioner to suspend or revoke the licenses of and to impose civil penalties on securities agents who have "violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner."^[14]

Here, by forging endorsements on insurance checks payable to Ms. Cavanaugh and by diverting funds payable to her to his own use and benefit, Mr. Jones has violated several licensing laws. For example, he has demonstrated that he "is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under authority of" the insurance and securities agent licenses granted to him by the Commissioner.^[15] He has also violated insurance agent licensing laws by misappropriating an insurance policyholder's funds, engaging in "fraudulent, coercive, or dishonest" acts or practices, and forging another's name to a document — all in violation of the law.^[16] He has violated securities agent licensing laws^[17] by committing acts constituting theft and check forgery.^[18]

Because Mr. Jones had committed multiple violations of licensing laws, the Administrative Law Judge concludes that an order directing disciplinary action against Mr. Jones' insurance and securities agent licenses would be in the public interest and that the Commissioner should consider taking such action, as well as imposing civil penalties on Mr. Jones.

B. H. J.

^[1] Minn. R. pts. 1400.6600 and 1400.6100 (1997). (Unless otherwise specified, citations to Minnesota Rules refer to the 1997 edition.)

^[2] Minn. Stat. § 14.61 (1996). (Unless otherwise specified, citations to Minnesota Statutes refer to the 1996 edition.)

^[3] Minn. R. pt. 1400.6800.

^[4] See Minn. Rules, pt. 1400.6600.

^[5] Minn. Rules, pt. 1400.5500(K); compare Minn. R. Civ. P. 56.03; Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Theile v. Stich, 425 N.W.2d 580, 583 (Minn. 1988).

^[6] Id.

^[7] Minnesota Mutual Fire and Casualty Company v. Retrum, 456 N.W.2d 719, 723 (Minn. App. 1990).

^[8] Hunt v. IBM Mid America Employees Federal, 384 N.W.2d 853, 855 (Minn. 1986).

^[9] Id.; Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1988).

^[10] Minn. R. pt. 1400.6800.

^[11] Under Minn. Stat. Ch. 60A and §§ 60K.01 — .19, as an insurance agent, and under Minn. Stat. Ch. 80A, as a securities agent.

^[12] Minn. Stat. § 45.027, subd. 6 and 7, and § 60K.11, subd. 11.

^[13] Minn. Stat. § 45.027, subd. 6.

^[14] Id. at subd. 7.

^[15] Id. at subd. 7(4) and Minn. Stat. § 60K.11, subd. 1(iii).

^[16] Minn. Stat. § 60K.11, subd. 1(v), (x) and (xii), respectively.

^[17] Minn. Stat. § 45.027, subd. 6 and 7.

^[18] Minn. Stat. § 609.52, subd. 2(2), (4) and (5), and § 609.631, subd. 1(2), respectively.