

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Insurance Producer's License of Chad M. Semling, License No. IN20359851	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above-entitled matter came on for a hearing before Administrative Law Judge Linda F. Close (the ALJ), on July 21, 2006, at the Office of Administrative Hearings, 100 Washington Ave. S., Minneapolis MN 55401-2138. The hearing was held pursuant to a Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, Statement of Charges, and Notice of Appearance (Notice of and Order for Hearing) dated June 29, 2006.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota St. #1200, St. Paul, MN 55102-2130, appeared on behalf of the Department of Commerce (Department). The Respondent, Chad M. Semling, (Respondent), 51 West 4th Street, Winona, MN 55987 did not appear in person or by counsel.¹ The record closed on August 1, 2006, when the Department's affidavit in support of its motion for default was received on August 9, 2006.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under 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 Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, to learn the procedure for filing exceptions or presenting argument.

¹ See Findings of Fact No. 3.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under 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. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, the agency must return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

STATEMENT OF THE ISSUES

1. By converting client funds intended as payment for an annuity, has Respondent demonstrated untrustworthiness in violation of Minn. Stat. §§ 45.027, subd. 7(4) and 60K.43, subd. 1(4), (8)?

2. By preparing false insurance statements, has Respondent misrepresented the terms of actual or proposed insurance contracts or applications, in violation of Minn. Stat. § 60K.43, subd. 1(5)?

Based on all of the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 30, 2006, a copy of the Notice of and Order for Hearing was sent to Chad M. Semling, 51 West 4th Street, Winona, MN 55987, as appears from an Affidavit of Service by Mail on file herein. The address was the address that the Respondent had most recently provided to the Department in connection with his licensure in the State of Minnesota. The U.S. Postal Service did not return that Notice to the Department as undelivered or undeliverable.²

2. The Notice of and Order for Hearing scheduled a hearing for July 21, 2006 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Ave., Minneapolis, MN 55401-2138.

3. Respondent did not appear at the July 21, 2006, hearing, did not obtain the Administrative Law Judge's prior approval to be absent from the

² See Affidavit of Jean-Anne Gates.

hearing, did not file a Notice of Appearance, and did not request that the hearing be rescheduled or any other relief from attending it.

4. The Notice of and Order for Hearing contained the following informational warning:

Respondent's failure to appear at the contested case hearing and/or prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed action may be upheld.

5. Because Respondent failed to appear at the hearing, he is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are taken as true and are incorporated into these Findings of Fact.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce (Commissioner) are authorized to consider the charges against Respondent pursuant to Minn. Stat. §§ 45.027, 60K.43, and 14.50.

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in the Notice of and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of his failure, without the ALJ's prior consent, to appear at the scheduled hearing.

6. By converting client funds intended as payment for an annuity, Respondent has demonstrated untrustworthiness in violation of Minn. Stat. §§ 45.027, subd. 7(4) and 60K.43, subd. 1(4), (8).

7. By preparing false insurance statements, Respondent misrepresented the terms of actual or proposed insurance contracts or applications, in violation of Minn. Stat. § 60K.43, subd. 1(5).

8. Minn. Stat. §§ 45.027 and 60K.43 empower the Commissioner to take disciplinary action against the Respondent, as a result of the Respondent's violations of those statutes.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take such disciplinary action against the Respondent as he considers appropriate under the circumstances.

Dated: August 11, 2006

s/Linda F. Close

LINDA F. CLOSE

Administrative Law Judge

Reported: Default