

	Link to Final Agency Decision
	OAH 2-1004-17534-2

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

In the Matter of Dale C. Dodge Jr., and Verity Title & Abstract	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above-entitled matter came on before Administrative Law Judge Raymond R. Krause (“ALJ”) on November 2, 2006 for a prehearing conference. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Notice of Prehearing Conference, and Order to Show Cause dated September 26, 2006.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101, appeared on behalf of the Department of Commerce (the Department). The Respondents, Dale C. Dodge, Jr. and Verity Title & Abstract, did not appear in person or by counsel. The record closed upon the Respondents’ default on November 2, 2006.

STATEMENT OF THE ISSUES

1. Whether demonstrated untrustworthiness, incompetence and financial irresponsibility in violation of Minn. Stat. § 45.027, subd.7(a)(1)(4) (2004), constitutes grounds for disciplinary action in this case.
2. Whether improperly converted and withheld funds in their insurance agency business in violation of Minn. Stat. § 60K.43, subd.1(4), constitutes grounds for disciplinary action in this case.
3. Whether commission of fraudulent and deceptive practices in violation of Minn. Stat. § 60K.43, subd. 1(8), constitutes grounds for disciplinary action in this case.
4. Whether failure to keep proper mortgage records in violation of Minn. Stat. § 60K.43, subd. 1(17), constitutes grounds for disciplinary action in this case.

5. Whether failure to properly remit fees in violation of Minn. Stat. § 82.24, subd. 4, constitutes grounds for disciplinary action in this case.

6. Whether improper commingling of funds in violation of Minn. Stat. § 82.50, subd.4, constitutes grounds for disciplinary action in this case.

7. Whether failure to observe high standards of commercial honor in violation of Minn. R. 2795.1000, constitutes grounds for disciplinary action in this case.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 26, 2006, a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, and Order to Show Cause was sent via first class mail to Dale C. Dodge Jr. at his last known address on file with the Department as appears from an Affidavit of Mailing on file herein. The Notice was returned and was marked "Moved-Left No Forwarding Address" by the U.S. Postal Service.

2. The Respondents did not appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Order for Prehearing Conference contained the following informational warning:

Respondents' failure to appear at the prehearing conference may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

4. Because Respondents failed to appear, they are in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Order to Show Cause are taken as true and incorporated by reference into these Findings of Fact.

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

CONCLUSIONS

1. The ALJ and the Department are authorized to consider the charges against Respondents under Minn. Stat. §§ 45.027 and 14.50.

2. Respondents received due, proper and timely notice of the charges against them, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Department and the ALJ.

3. The Department has complied with all relevant substantive and 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 pleading may be taken as true or deemed proved without further evidence.

5. The Respondents are in default herein as a result of the failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent's various acts and omissions as related in the Notice of and Order for Hearing, Order for Prehearing Conference, and Order to Show Cause constitute violations of Minn. Stat. §§ 45.027, subd. 7(a)(1)(4), 60K.43, subd. 1(4), 60K.43, subd. 1(8), 60K.43, subd. 1(17), 82.24, subd.4, 82.50, subd. 4, and Minn. R. 2795.100.

7. The Department has the authority to impose discipline pursuant to Minn. Stat. § 45.027.

8. Disciplinary action against the Respondents is warranted and in the public interest.

Based upon these Conclusions the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the Department take adverse action against Respondents' licenses and take appropriate disciplinary action.

Dated: November 8, 2006

/s/Raymond R. Krause
RAYMOND R. KRAUSE
Administrative Law Judge

Reported: no tape default

NOTICE

This report is a recommendation, not a final decision. The Department will make the final decision after a review of the record. The Department may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Department 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 Department. Parties should contact the Department to learn the procedure for filing exceptions or presenting argument.

If the Department 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 Department, or upon the expiration of the deadline for doing so. The Department must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, 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.

R. R. K.