

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

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| In the Matter of the Insurance<br>Producer's License of David A.<br>Skjerven | <b>FINDINGS OF FACT,<br/>CONCLUSIONS AND<br/>RECOMMENDATION</b> |
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This matter was scheduled originally for hearing on December 12, 2006. Pursuant to the request of David Skjerven (Licensee/Respondent) the matter was continued to allow him time to consult with an attorney. The matter was scheduled subsequently to be heard on March 13, 2007 and, after that, to be heard on May 25, 2007. No hearing was held because, prior to its convening as scheduled on May 25, 2007, the Respondent stipulated not to contest the allegations in the Statement of Charges, but reserved his right to submit argument to the Commissioner as to the appropriate disciplinary sanctions.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (Department).

David A. Skjerven, 360 Red Butte Drive, Sedona, AZ 86351, appeared on his own behalf.

### STATEMENT OF THE ISSUE

Whether the summary suspension imposed on November 14, 2006 should be continued, and further disciplinary action should be taken against the Licensee/Respondent for violating a Consent Order, in violation of Minn. Stat. § 45.027, subds. 7(2) and 7(4), for demonstrating untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 45.027, subd. 7(4), for improper withholding, misappropriation or conversion of money received in the course of doing insurance business, in violation of Minn. Stat. § 60K43, subd. 1(4), for committing fraudulent, coercive or dishonest practices and demonstrating untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 60K.43, subd. 1(8), for engaging in unfair methods and deceptive acts and practices in violation of Minn. Stat. § 72A.19, subd. 1, for having had an insurance producer's license subjected to discipline in another jurisdiction, in violation of Minn. Stat. § 60K.43, subd. 1(9) and Minn. R. 2795.0700, subp. 2, for failing to notify the Department of Commerce of his residency in Arizona while holding a Minnesota resident insurance producer's license, in violation of Minn. Stat. §§ 60K.37, subd. 1 and 60K.39, subd. 3, for soliciting or accepting loans under dishonest, unfair or unconscionable circumstances in the course of his

insurance business in violation of Minn. R. 2795.0300, subps. 1 and 2A, 2B, 2I and 2J, for failure to observe a high standard of commercial honor and just and equitable principles of trade in his insurance business in violation of Minn. R. 2795.1000, and for failure to report administrative actions in violation of Minn. Stat. § 60K.54, subd. 1?

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

### **FINDINGS OF FACT**

1. The Licensee/Respondent holds a Minnesota Resident Insurance Producer's License with the Department, No. 78964. He also held a securities salesperson's license, No. 1414499, authorizing sales in Minnesota, Arizona, North Dakota and Colorado. Those licenses terminated effective September 14, 2004.

2. The Licensee held a non-resident insurance salesperson's license with the State of North Dakota, which was revoked on October 5, 2006. He also had an insurance salesperson's license in the State of Colorado, which expired in 1993.

3. On February 5, 2005, the Licensee signed a Consent Order with the North Dakota Securities Department, executed by that Department on February 15, 2005. The Order prohibited him from engaging in offering securities in North Dakota which were not registered or exempt from registration, from transacting securities business in North Dakota without a registration or an exemption from registration, and from engaging in any fraudulent conduct in North Dakota.

4. The North Dakota Consent Order also required the Licensee to pay restitution to a North Dakota resident with whom he had transacted securities business and to pay a civil penalty of \$10,000. Mr. Skjerven did not disclose the existence of this Consent Order to the Minnesota Department of Commerce.

5. On August 31, 2006, the North Dakota Securities Department issued a Cease and Desist Order against the Licensee, based upon allegations that he had sold unregistered securities to several North Dakota residents, that he had sold securities without a registration or an exemption from registration, and that he had committed fraud in connection with the sale of securities.

6. The North Dakota Insurance Department issued a complaint and an Order to Cease and Desist on September 18, 2006, alleging the following against the Licensee: (1) that he accepted in excess of \$61,000 from a North Dakota resident with whom he had done insurance business and subsequently misappropriated the funds for his own personal use, and; (2) that he had accepted \$20,000 from another North Dakota resident with whom he had done

insurance business and converted the funds to his own use; and (3) that he accepted over \$820,000 from a Colorado couple with whom he had done insurance business and converted that money to his own use; and (4) that he had accepted over \$193,000 from another North Dakota resident and converted the money to his own use.

7. Based on the allegations noted in the preceding Finding, the Licensee entered into a Consent Order with the North Dakota Department on October 5, 2006, agreeing to the revocation of his North Dakota non-resident insurance license.

8. The Licensee did not disclose the North Dakota Orders noted above to the Minnesota Department of Commerce.

9. The North Dakota Department of Securities has reported to the Department complaints against the Licensee/Respondent from a Minnesota couple. The Department investigated, which investigation revealed that the Licensee accepted in excess of \$90,000 from the couple for purposes of obtaining investments, converted the money to his own use, and has not refunded any of the money to the complainants. The Department reported also that a brother of the female complainant invested \$140,000 with the Licensee, but has been unable to obtain a refund of any of that money.

10. The North Dakota Department of Securities also forwarded a complaint by a separate Minnesota resident. The Department's investigation into that complaint revealed that the resident provided over \$85,000 to the Respondent for purposes of obtaining investments from the Respondent's company, David A. Skjerven and Associates, of Fargo, North Dakota.

11. The complainant noted in the preceding Finding attempted to withdraw money from his account at David A. Skjerven and Associates, but learned that the office had closed and that Mr. Skjerven had relocated to Arizona. That complainant has been unable to obtain any of the money he invested.

12. There are at least two judgments against the Licensee in the State of Minnesota, both docketed in Becker County. The first is for \$3,457.50 in favor of Premier Electric Services. The second is for \$12,066.67, in favor of Lee Miller, d/b/a Jungle Construction.

13. The Licensee/Respondent currently resides in Arizona. He did not disclose his residence in Arizona to the Department.

14. Pursuant to the Stipulation of the parties, the allegations contained in the Statement of Charges are taken as true and incorporated by reference into these Findings of Fact. Any such allegations not noted specifically in the above Findings are taken as true and incorporated by reference into these Findings of Fact.

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

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against the Licensee/Respondent under Minn. Stat. §§ 14.50, 45.027, 60K.43, and 72A.19.

2. This matter is properly before the Administrative Law Judge and the Commissioner. The Department has complied with all procedural requirements.

3. It is appropriate to take disciplinary action against the Respondent for violation of a Consent Order, for demonstrating untrustworthiness and financial irresponsibility, for improper withholding, misappropriation and conversion of money received in the course of doing insurance business, for committing fraudulent, coercive or dishonest practices and demonstrating untrustworthiness and financial irresponsibility, for engaging in unfair methods and deceptive acts and practices, for having had an insurance producer's license subjected to discipline, for failing to notify the Department of his Arizona residency while holding a Minnesota Resident Insurance Producer's License, for failing to observe a high standard of commercial honor and just and equitable principles of trade in his insurance business, and for failure to report administrative actions. These activities constitute violations, respectively, of Minn. Stat. §§ 45.027, subds. 7(2) and 7(4), 60K.43, subd. 1(4), 60K.43, subd. 1(8), 72A.19, subd. 1, 60K.43, subd. 1(9) and Minn. R. 2795.0700, subp. 2, 60K.37, subd. 1 and 60K.39, subd. 3, 60K.54, subd. 1, and Minn. R. Parts 2795.0700, subp. 2, and 2795.1000.

4. The imposition of appropriate disciplinary action against the Licensee/Respondent is in the public interest, within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner take appropriate disciplinary action against the Insurance Producer License of David A. Skjerven.

Dated: October 4, 2007

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: No hearing convened.

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the 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, ATTN: Sue Jensen, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 within 10 days to learn the procedure for filing exceptions or presenting argument.

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. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. 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.

## **MEMORANDUM**

Prior to the convening of the hearing, the Licensee/Respondent stipulated not to contest the allegations in the Statement of Charges, but to reserve his right to submit argument to the Commissioner as to the appropriate sanction. Based on that Stipulation, the Findings and Conclusions in the Report were modeled on the allegations contained in the Statement of Charges issued November 14, 2006.

It is assumed Mr. Skjerven will contact Deputy Commissioner Murphy for further consideration of this matter within the ten-day exception period noted above. Due to the Stipulation reserving to the Respondent his right to argue the appropriate level of discipline, no Conclusion or Recommendation is made by the ALJ on whether the Summary Suspension of Mr. Skjerven's license should continue, pending a final decision by the Commissioner.

**R. C. L.**