

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

In the Matter of the Resident  
Insurance Producer's License  
Application of Troy A. Schutte

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on Friday, June 1, 2007, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The hearing continued on June 14 and June 22, 2007, at the same location. The OAH record closed at the end of the hearing on June 22, 2007.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department").

Marshall Tanick, Attorney at Law, Mansfield, Tanick & Cohen, P.A., 1700 U.S. Bank Plaza South, 220 South Sixth Street, Minneapolis, MN 55402-4511, appeared on behalf of Troy Schutte ("the Respondent").

**STATEMENT OF ISSUES**

The issue in this case is whether the Department's denial of the Respondent's application for a resident insurance producer's license should be affirmed because the Respondent has:

(1) provided the Department with incorrect, misleading, or materially untrue information on his licensing application, and in response to follow up questions, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3), and 60K.43, subds. 1(1) and 1(3);

(2) pled guilty to a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including burglary and assault, in violation of Minn. Stat. §§ 60K.43, subd. 1(6); and

(3) solicited insurance and otherwise held himself out as an insurance agent, even though he was not licensed, thereby engaging in acts that demonstrate he is incompetent, untrustworthy, or otherwise unqualified to act under a license granted by the commissioner in violation of Minn. Stat. §§ 45.027, subds. 7(a)(2) and 7(a)(4), 60K.32, and 60K.43, subd. 1(8).

The Administrative Law Judge recommends that the denial of the Respondent's license application be affirmed.

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

### **FINDINGS OF FACT**

1. The Respondent, Troy Schutte, is a 27-year-old man currently employed as a sales associate at Sears in Montevideo, Minnesota.<sup>[1]</sup> He also works part-time as a custodian at his local church.<sup>[2]</sup>

2. In June of 2006, the Respondent was contacted by Deb White of Farm Bureau Financial Services (FBFS) to see if he would be interested in becoming an insurance agent. Ms. White is the FBFS agency manager for southwest Minnesota. She explained to the Respondent that he had been referred to her by someone who thought he would make a good insurance agent. After one or two meetings with Ms. White, the Respondent decided to pursue the training and coursework necessary to become an insurance agent.<sup>[3]</sup>

3. On or about August 19, 2006, the Respondent applied to the National Association of Securities Dealers (NASD) for a securities license.<sup>[4]</sup> FBFS requires that its agents become registered representatives with NASD in order to sell FBFS financial products, such as variable life insurance and mutual funds.<sup>[5]</sup> As part of the securities license application ("Form U4"), the Respondent provided responses to various criminal disclosure questions.<sup>[6]</sup> In response to the question, "Have you ever been charged with any felony?," the Respondent answered "No." In response to the question, "Have you ever been convicted of or pled guilty . . . to a misdemeanor involving investments or an investment related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?," the Respondent answered "Yes."<sup>[7]</sup>

4. Because of his affirmative response to the question above, the Respondent filled out a criminal disclosure reporting form as part of his securities license application. On that form, the Respondent disclosed that he had been charged with "3<sup>rd</sup> degree burglary." The Respondent indicated that the charge was a gross misdemeanor and not a felony. The Respondent further provided the following description of the circumstances resulting in his burglary charge and conviction:

Members of my senior class and myself decided to do a senior prank that was supposed to be only taking cardboard cut-outs from a local grocery store. Other employees found out we were planning and pizza and pop were stolen from the store. All fines and restitution were split between all involved.<sup>[8]</sup>

5. By November of 2006, the Respondent had successfully completed the FBFS insurance agent training program. The training program took place over the course of 12 days and involved coursework and examinations on such topics as property, casualty, life, accident, and health insurance.<sup>[9]</sup>

6. On November 15, 2006, at the request of the Respondent or FBFS, the Bureau of Criminal Apprehension (BCA) performed a criminal history search by Respondent's name and date of birth. The search revealed that the Respondent had two arrest records – one for 3<sup>rd</sup> Degree Burglary and one for 5<sup>th</sup> Degree Domestic Assault. The BCA attached the Respondent's arrest and conviction information to a cover letter stating that a search had been conducted and a record found.<sup>[10]</sup>

7. On December 5, 2006, the Respondent filled out and signed an Agent Application form with BlueCross BlueShield of Minnesota. In response to the application's question, "Have you ever pled guilty or no contest to, or been convicted of, an insurance crime . . . or to any criminal offense (felony, gross misdemeanor, or misdemeanor) in any municipal, county, state or federal court?," the Respondent answered "No."<sup>[11]</sup>

8. In early February 2007, the Respondent signed an Agent Contract with Farm Bureau Mutual Insurance Company and opened an office at 101 South 1<sup>st</sup> Street in Montevideo, in anticipation of becoming a FBFS insurance agent in March of 2007.<sup>[12]</sup>

9. Sometime in February or late January of 2007, FBFS printed business cards for the Respondent. Once a candidate has completed the FBFS training to become an insurance agent and the coursework required by the Department, it is the practice of FBFS to print business cards for the candidate and to assume the license application will be approved.<sup>[13]</sup> By February of 2007, the Respondent had completed his training and coursework.

10. The Respondent's business cards list his office address and phone numbers, and printed underneath his name is the title "Agent." In smaller print at the bottom of the business card it states: "Registered Representative/Securities and services offered through EquiTrust Marketing Services, LLC."<sup>[14]</sup>

11. In addition to the training program, FBFS expects its agent candidates to develop and obtain "client service folders" on about 20 prospective clients before they are hired so that they are able to start making sales as soon they start working for FBFS. As a result of this expectation, the Respondent talked generally to potential clients about their insurance and investment needs and the products offered by FBFS. The Respondent never sold any products or gave actual quotes to these potential clients, and he always informed them that he was not yet a licensed agent.<sup>[15]</sup>

12. On February 7, 2007, the Respondent applied to the Department of Commerce for a resident insurance producer's license. The Respondent checked "yes" in response to a question on the application asking whether he had ever been "charged, indicted, pleaded to, or convicted of any criminal offense in any Court" other than misdemeanor traffic violations. He also submitted a BCA form authorizing the Department of Commerce to conduct a criminal background check.<sup>[16]</sup>

13. Because the Respondent answered "yes" to the question on the license application about having criminal charges or convictions, he was required to submit (a) a written statement explaining the circumstances of each incident; (b) a copy of the charging document; (c) a copy of the official document which establishes the resolution of the charges or any final judgment; and (d) if applicable, a letter from his probation officer regarding compliance with terms of probation.<sup>[17]</sup>

14. On February 9, 2007, the Respondent faxed to the Department documentation regarding his criminal conviction in 1998 on a burglary charge. The fax included the first and third page of the four-page criminal complaint that was filed against him on August 31, 1998, a letter from the Lac Qui Parle County Court Administrator dated December 5, 2006, a copy of his certified record of conviction, the cover letter from the BCA regarding the 11/15/06 criminal background search it performed on Respondent's name and date of birth, and a copy of the criminal disclosure reporting form that the Respondent filled out and submitted to NASD as part of his securities license application.<sup>[18]</sup>

15. The Department reviewed the Respondent's application for a resident insurance producer's license and the documentation he submitted relating to his conviction.<sup>[19]</sup> As part of the review, Department investigator Cameron Jenkins conducted a criminal background search on the Respondent's name. The search resulted in a number of criminal offenses. However, all but the burglary and one misdemeanor domestic assault charge were not attributable to the Respondent.<sup>[20]</sup>

16. On March 9, 2007, the Respondent called Mr. Jenkins to check on the status of his application. During their conversation, the Respondent described his role in the 1998 burglary at Dean's Country Foods store as follows:

"There were going to be Star Wars cut-out figures that the guy had and we ended up getting caught up in the moment. We started grabbing pizzas and pops and stuff like that, and just took it way beyond what – we know we shouldn't have been there in the first place so we just took it way beyond what we had planned ..."<sup>[21]</sup>

17. The second page of the August 1998 criminal complaint that was issued against the Respondent provides factual details relating to Respondent's

role in the burglary at Dean's Country Foods store. The Respondent did not include this page with the copy of the complaint he submitted to the Department. The description of the Respondent's conduct on page 2 of the criminal complaint differs significantly from the version of events the Respondent provided to the NASD on the U4 disclosure form and described to Mr. Jenkins.<sup>[22]</sup> According to the criminal complaint, the Respondent and two friends entered a Dean's Country Foods Store in Dawson, Minnesota after business hours and stole grocery items valued at approximately \$711. The Respondent was an employee of the store at the time. The Complaint alleges that during an interview with the police, the Respondent admitted to being involved in two burglaries of Dean's Country Foods Store and to disposing of the stolen goods in a ditch outside of Dawson. The police recovered two boxes and several plastic bags filled with grocery items and cigarettes in a ditch about a mile east of Dawson. In connection with the burglaries, the Respondent was charged with four felonies: two counts of felony third degree burglary, one count of felony theft of property, and one count of felony receiving stolen property. On September 8, 1998, the Respondent pled guilty to the amended charge of third degree burglary as a gross misdemeanor and the remaining charges were dismissed. During the plea hearing, the Respondent admitted that the information contained in the Complaint was accurate as stated, and he further admitted that he had gone into the Dean's Country Foods Store with the intention of stealing grocery items and tobacco products. Respondent was sentenced to a stay of imposition of sentence for five years. He was placed on probation for five years with the condition that he serve 60 days in jail, pay a fine of \$900, pay restitution of \$711, and have no contact with the victim. Respondent was discharged from probation on June 7, 2000.<sup>[23]</sup>

18. During their March 9, 2007 telephone conversation, Mr. Jenkins asked the Respondent if the 1998 third degree burglary charge was his only criminal offense. The Respondent answered "yes." Mr. Jenkins then informed the Respondent that he had discovered that Respondent had a fifth degree assault charge from October of 2002. After first asking Mr. Jenkins what county had issued the charge, the Respondent explained that he had been charged with domestic assault after he and his wife got into an argument during a difficult time early in their marriage.<sup>[24]</sup> The Respondent stated, however, that his wife eventually admitted she had made up the allegations in order to try and win him back.<sup>[25]</sup> He also maintained that the judge had assured him that the assault charge would not be put on his record.<sup>[26]</sup>

19. On March 9, 2007, the Respondent sent court documents to Mr. Jenkins relating to his October 2002 domestic assault charge. In a cover letter to Mr. Jenkins, the Respondent apologized for not disclosing the assault charge on his license application and explained that he was under the impression that he was not obligated to do so. The Respondent further described the circumstances surrounding the assault charge. According to the Respondent, he and his wife had argued after a party. They were both intoxicated and he pushed her away

after she attempted to prevent him from walking away from her. The Respondent noted that he and his wife have since reconciled and that there have been no further similar incidents.<sup>[27]</sup>

20. According to the documentation Respondent submitted, the Respondent's wife, Alicia Schutte, called the Chippewa County Sheriff's Department on the morning of October 5, 2002, to report that the Respondent had assaulted her the night before. A police officer and deputy sheriff responded to the call and interviewed Ms. Schutte. According to the deputy sheriff's report, Ms. Schutte stated that the Respondent had hit her after they got into a verbal argument following a party. The deputy sheriff noted in the report that Ms. Schutte's right eye was bruised and that she had a swollen cut lower lip. As a result of this report, the Respondent was arrested and charged with misdemeanor fifth degree domestic assault. In a statement he gave to the sheriff's deputy, the Respondent admitted that he had shoved his wife several times during their argument, but he stated that he "did not think that he had hit [her]." On October 7, 2002, the Respondent pled guilty to fifth degree domestic assault. He was sentenced to a Stay of Adjudication on November 18, 2002, and placed on probation for one year on the condition that he pay a \$100 fine, have no same or similar violations, and complete an anger management program. On April 22, 2003, the Respondent was discharged from probation after having satisfied the above conditions.<sup>[28]</sup>

21. By letter dated March 19, 2007, NASD notified EquiTrust Marketing Services, which is affiliated with FBFS, that the Respondent's securities license application was subject to a disqualification because of his burglary conviction.<sup>[29]</sup>

22. Scott Yerington, FBFS' Regional Vice President for Minnesota, was aware of the Respondent's burglary conviction and was satisfied with the explanation the Respondent had given FBFS about the circumstances of the offense. Mr. Yerington believed that Respondent's conviction would not "be an issue" and he was comfortable with hiring the Respondent once his license application was approved. Mr. Yerington did not become aware of Respondent's domestic assault charge until after his license application was denied by the Department.<sup>[30]</sup>

23. By letter dated March 26, 2007, Vicki Fasse of EquiTrust Financial Services notified the Respondent that his registration with EquiTrust Marketing Services had been terminated. The reason given for his termination was "shouldn't have been contracted/registered."<sup>[31]</sup>

24. By letter dated March 28, 2007, Mr. Jenkins informed the Respondent that the Department had reviewed his application and determined that it should be denied based primarily on his criminal history, and his provision of incorrect, misleading, incomplete, or materially untrue information in the licensing application by not disclosing his guilty plea to the domestic assault

offense in violation of Minn. Stat. §§ 45.027, subd. 7(3), and 60K.43, subd. 1(1). Mr. Jenkins also notified the Respondent of his right to request a hearing.<sup>[32]</sup>

25. By letter dated March 28, 2007, Alicia Schutte asked Mr. Jenkins to reconsider his decision to deny her husband's license application. Ms. Schutte stated that her husband was innocent of the domestic assault charge and that she, and not her husband, had caused the injuries to her face noted in the police report. Ms. Schutte stated that her husband is an honest and hard-working person, who has overcome his past mistakes and wishes only to succeed in an insurance career and provide for his family.<sup>[33]</sup>

26. By letter dated April 6, 2007, the Respondent appealed the Department's decision to deny his license application and requested a hearing.<sup>[34]</sup>

27. The Department issued a Notice of and Order for Hearing, Order to Show Cause, and Statement of Charges on April 19, 2007. The hearing was scheduled for May 8, 2007, but was later continued to June 1, 2007.

28. On April 18, 2007, the Department served the Respondent with an administrative subpoena request for documents and other information related to this case. Among other things, the Department asked for phone logs, bank account statements, and advertisements relating to the business of insurance. In response to this request, the Respondent stated that he has not opened an office and therefore does not have any phone logs and did not do any advertising.<sup>[35]</sup>

29. On April 27, 2007, Mr. Jenkins called the telephone number that was listed on the Respondent's FBFS business card and heard the following recorded message:

Hi. You've reached Troy Schutte with Farm Bureau Financial Services. I'm away from my desk or out of the office at this time. If you want to leave your name, number and detailed message, I will get back to you as quickly as possible. If you need to get a hold of me right away, you can reach me by cell at 320-226-8441. Thank you and have a great day.<sup>[36]</sup>

30. When asked during the hearing about the pages missing from the 1998 criminal complaint that he provided to the Department, the Respondent testified that he was aware of the missing pages and that he went back to the Lac Qui Parle "three or four times" and attempted to get the complete complaint and more documents, but that the partial version of the complaint was all that the courthouse had.<sup>[37]</sup>

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

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minnesota Statutes §§ 14.50 and 45.027, subd. 7.

2. The 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. The burden of proof in this proceeding is on the Respondent to show by a preponderance of the evidence that he should be granted a license.<sup>[38]</sup>

5. The Respondent failed to disclose on his license application his misdemeanor domestic assault charge and submitted incomplete and misleading information regarding his burglary conviction to the Department. By doing so, the Respondent provided the Department with incorrect, misleading, incomplete, or materially untrue information on his licensing application, and in response to follow-up questions, in violation of Minnesota Statutes §§ 45.027, subd. 7(a)(3), and 60K.43, subds. 1(1) and 1(3).

6. The Commissioner of Commerce may deny an application for a resident insurance producer's license if the applicant provides incorrect, misleading, incomplete, or materially untrue information in the licensing application.<sup>[39]</sup>

7. The Respondent pled guilty to crimes involving moral turpitude (gross misdemeanor burglary and misdemeanor domestic assault) in violation of Minnesota Statutes § 60K.43, subd. 1(6).

8. The Commissioner of Commerce may deny an application for a resident insurance producer's license if the Commissioner finds that it is in the public interest to do so and the applicant has pled guilty or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct.<sup>[40]</sup>

9. Minn. Stat. § 45.027, subd. 10, specifies that "Chapter 364 [relating to rehabilitation of those convicted of crimes] does not apply to an applicant for a license . . . where the underlying conduct on which the conviction is based would be grounds for denial of the license."

10. The underlying conduct on which the Respondent's conviction of third degree burglary was based demonstrates that the Respondent is

untrustworthy or otherwise incompetent or unqualified to act as an insurance producer, and that it would be in the public interest to deny the Respondent's license application. To the extent that the application denial is based upon the Respondent's prior criminal conviction, that conviction relates directly to the occupation for which the license is sought under Minn. Stat. § 364.03, subds. 1 and 2, due to the nature of the crime and the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation. The occupation of a resident insurance producer (agent) requires trustworthiness, especially in matters involving the handling of client properties and money. Burglary involves illegal entry and theft of property, which are acts demonstrating untrustworthiness and inability or lack of fitness to handle the money and property of others.

11. The Department failed to establish that the Respondent solicited insurance and otherwise held himself out as an insurance agent, even though he was not licensed, thereby engaging in acts that demonstrate he is incompetent, untrustworthy, or otherwise qualified to act under a license granted by the commissioner in violation of Minn. Stat. §§ 45.027, subds. 7(a)(2) and 7(a)(4), 60K.32, and 60K.43, subd. 1(8).

13. An Order denying the Respondent's insurance producer's license application would be in the public interest.

14. These Conclusions are reached for the reasons discussed in the Memorandum below. The Memorandum is incorporated into these Conclusions.

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

### **RECOMMENDATION**

IT IS RECOMMENDED that the Department's denial of Troy Schutte's application for a resident insurance producer's license be AFFIRMED.

Dated: July 23, 2007

/s/ Richard C. Luis

---

RICHARD C. LUIS

Administrative Law Judge

Reported: Digital recording (no transcript).



## MEMORANDUM

The Respondent argues that since his conviction for burglary in 1998 and his plea of guilty to domestic assault in 2002, he has changed his life and become a hard-working, responsible and trustworthy employee, husband and father. He asserts that he has taken full responsibility for his past mistakes and has remained law-abiding since 2002. Respondent maintains that he is sufficiently rehabilitated and should be found fit to be licensed as a resident insurance producer.

Respondent contends that he fully disclosed the burglary incident on his application and that he honestly believed that he did not have to disclose the domestic assault charge because of his sentence to a stay of adjudication. According to the Respondent, he was told by the judge and his lawyer at the time of the sentencing that so long as he successfully completed the conditions of his probation and remained law abiding for one year, the charge would not show up on his record and would be treated “as if it had never happened.” The Respondent points out that once Mr. Jenkins notified him that the assault charge was on his record, he was forthcoming about the incident and provided Mr. Jenkins with an explanation and the relevant court documents. The Respondent asserts that he simply misunderstood what a “stay of adjudication” meant and argues that this misunderstanding, which resulted in his non-disclosure on the application, should not be held against him.

Finally, the Respondent argues that he did not solicit insurance business or otherwise hold himself out as an insurance agent while his application was pending as alleged by the Department. The Respondent contends that he gathered information from people to fill out “Client Service Folders” as directed by FBFS, but that he never gave these people quotes or sold them products and that he always told them he was not yet licensed as an agent.

Based on all of these reasons, the Respondent argues that he should benefit from the rehabilitation policy set forth at Minn. Stat. § 364.03, subd. 1, which provides that notwithstanding any other statutory provision to the contrary, “no person shall be . . . disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the . . . occupation for which the license is sought.” In determining whether a conviction directly relates to the occupation for which the license is sought, the licensing authority must consider the following factors:

- (a) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (b) the relationship of the crime or crimes to the purposes of regulating . . . the occupation for which the license is sought;
- (c) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the . . . occupation.<sup>[41]</sup>

As an initial matter, the Administrative Law Judge finds that the Department failed to support its allegation that the Respondent solicited insurance business or otherwise held himself out as an insurance agent while unlicensed in violation of Minn. Stat. §§ 45.027, subds. 7(a)(2) and 7(a)(4), 60K.32, and 60K.43, subd. 1(8). Instead, the record demonstrated only that the Respondent gathered personal information from people in anticipation of becoming licensed. There was no evidence to suggest that the Respondent gave quotes, sold products, handed out his business cards, or otherwise held himself out to be a licensed insurance agent.

However, the record amply demonstrates that the Respondent provided the Department with incorrect, misleading or materially untrue information on his licensing application and in response to follow-up questions. Specifically, the Respondent provided misleading information regarding the true nature of the circumstances surrounding his 3<sup>rd</sup> degree burglary conviction. The Respondent described the burglary as a high school prank that got out of hand when, in fact, the Respondent admitted at his plea hearing that he broke into the store with the intent of stealing grocery items and tobacco products. The Respondent further admitted to being involved with two burglaries of the store and of disposing of the stolen items in a ditch outside of town. In addition, the Respondent failed to disclose his 5<sup>th</sup> degree domestic assault charge and plea on his application, even though the application asks whether the applicant has ever been “charged” with or “pleaded to” any criminal offense. The Respondent’s submission of incorrect and misleading information on his application is grounds for the Commissioner to deny his application.

Finally, assuming Minn. Stat. § 364.03 to be applicable here, the Department has demonstrated that the Respondent’s burglary conviction directly relates to licensure as an insurance agent.<sup>[42]</sup> The crime of burglary for which the Respondent was convicted was a substantial theft from his employer and was an abuse of a position of trust. A licensed insurance agent is in a similar position of trust because he or she is advising people on how best to insure those things that matter most – life, health, property, and home. Such agents are also routinely entrusted with clients’ money. As a result, the ALJ concludes that Minn. Stat. § 364.03 does not apply in this case, by operation of Minn. Stat. § 45.027, subd. 10, because the crime for which the Respondent was convicted directly relates to the occupation of insurance producer. Yet even if that were not the case, it is noted that the Respondent has not demonstrated “competent evidence of sufficient rehabilitation and present fitness to perform the duties of the . . . occupation for which the license is sought.”<sup>[43]</sup> The misleading and incomplete information he submitted to the Department in connection with his license application demonstrates a lack of honesty and continued untrustworthiness that make him presently unfit to perform the duties of an insurance producer.

It is appropriate to deny the Respondent’s license application.

**RCL**

## NOTICE

This Report is a recommendation, not a final decision. The Commissioner 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 the office of the Commissioner of Commerce, 85<sup>th</sup> Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, for information about the procedure for filing exceptions or presenting argument.

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. 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.

---

<sup>[1]</sup> Ex. 3a.

<sup>[2]</sup> Testimony of Reverend Thomas Flaherty.

<sup>[3]</sup> Testimony of Schutte.

<sup>[4]</sup> Exs. 2 and 18.

<sup>[5]</sup> Testimony of Scott Yerington.

<sup>[6]</sup> Exs. 2, 10g, and 18.

<sup>[7]</sup> Exs. 10g and 18 at 5 (responses to questions 14A(1)(b) and 14B(1)(a) of Form U4).

<sup>[8]</sup> Ex. 2 at p. 7; Ex. 10g at p. 2; Ex. 12 at p. 5.

<sup>[9]</sup> Testimony of Schutte.

<sup>[10]</sup> Ex. 5.

<sup>[11]</sup> Ex. 10 d.

<sup>[12]</sup> Ex. 10a (The contract was never executed by an authorized representative of FBFS).

<sup>[13]</sup> Testimony of Scott Yerington.

<sup>[14]</sup> Ex. 4.

<sup>[15]</sup> Exs. 3c, 10k and 10j; Testimony of Schutte, Yerington, and Sumner.

<sup>[16]</sup> Ex. 1.

<sup>[17]</sup> Ex. 1.

<sup>[18]</sup> Ex. 2.

<sup>[19]</sup> Testimony of Jenkins: Exs. 1 and 2.

<sup>[20]</sup> The other criminal offenses appear to be attributable to the Respondent's twin brother Travis. According to the Respondent, Travis gave police the Respondent's name instead of his own when he was arrested for a number of different crimes during 2000-2004.

- [\[21\]](#) Ex. 3a (transcript of 3-9-07 telephone conversation.)
- [\[22\]](#) See Finding 30.
- [\[23\]](#) Exs. 2, 20 and 21.
- [\[24\]](#) Ex. 3a.
- [\[25\]](#) Ex. 3a.
- [\[26\]](#) Exs. 3b and 3e; Testimony of Jenkins.
- [\[27\]](#) Ex. 5, p. 2.
- [\[28\]](#) Ex. 5.
- [\[29\]](#) Ex. 10h.
- [\[30\]](#) Testimony of Scott Yerington.
- [\[31\]](#) Ex. 10i.
- [\[32\]](#) Ex. 7; Testimony of Cameron Jenkins.
- [\[33\]](#) Ex. 6.
- [\[34\]](#) Ex. 8.
- [\[35\]](#) Ex. 12.
- [\[36\]](#) Ex. 13a.
- [\[37\]](#) Testimony of Schutte; Exs. 2 and 20.
- [\[38\]](#) Minn. R. 1400.7300, subp 5.
- [\[39\]](#) Minn. Stat. § 60K.43, subd. 1(1).
- [\[40\]](#) Minn. Stat. § 60K.43, subd. 1(6).
- [\[41\]](#) Minn. Stat. § 364.03, subd. 2.
- [\[42\]](#) See Minn. Stat. § 45.027, subd. 10 and Conclusion 9.
- [\[43\]](#) Minn. Stat. § 364.03, subd. 3.