

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

In the Matter of the Insurance
Producer's License of Christopher
Boudreau, License No. 6931874

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

This matter is pending before Administrative Law Judge Barbara L. Neilson. A hearing was scheduled to be held at the Office of Administrative Hearings in St. Paul, Minnesota, on Tuesday, February 9, 2010. On Monday, February 8, 2010, counsel for the parties notified the Administrative Law Judge that they had reached a stipulation under which the Respondent does not admit but will not contest the allegations set forth in the Amended Statement of Charges and reserves the right to make argument to the Commissioner regarding the appropriate sanction to be imposed against him. As a result, the February 9, 2010, hearing was cancelled and the OAH record was deemed closed on February 8, 2010.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Department of Commerce (Department). Bruce M. Rivers, Attorney at Law, 100 North Sixth Street, Suite 208, Minneapolis, MN 55403, appeared on behalf of Christopher Boudreau (Respondent).

STATEMENT OF ISSUES

Should the Commissioner take disciplinary action against the Respondent for violations of Minn. Stat. §§ 45.027, subd. 7(a)(3) and (4); 60K.43, subd. 1(1), (4), and (8); and 60K.54, subd. 2 (2008)?

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

FINDINGS OF FACT

1. The Respondent is a licensed insurance producer (License No. 20276964).

2. On January 20, 2009, the Commissioner of Commerce issued a Notice and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges in this matter. The Notice and Order for Hearing initially

scheduled a hearing to take place on February 18, 2009. At the request of the Respondent, the hearing was subsequently continued several times.¹

3. On September 14, 2009, the Commissioner issued an Amended Statement of Charges in this matter.

4. As amended, the Statement of Charges alleges that the Respondent was employed by Federated Mutual Insurance Company as a field marketing projects analyst until approximately July 2008, when he tendered his resignation and accepted a position with an insurance broker who competed with Federated. The Amended Statement of Charges alleges that Federated conducted an investigation and discovered that the Respondent had used a Federated laptop computer to email large quantities (4,625 files) of Federated's confidential client information to his personal email address.

5. As a result, the Amended Statement of Charges alleges that Federated brought an action against the Respondent alleging breach of contract, misappropriation of trade secrets, conversion, civil theft, breach of duty of loyalty, and unjust enrichment. The Department contends that the Respondent or his attorney asserted the Fifth Amendment privilege at least 88 times in response to questions asked during an evidentiary hearing for a temporary restraining order held on August 4, 2008, and the Court drew a negative inference and found that the Respondent had in fact misappropriated trade secrets. The Department alleges that a computer specialist retained by the Respondent also acknowledged that the Respondent had emailed confidential information to his account.

6. The Amended Statement of Charges alleges that the Respondent was subsequently charged in Steele County, Minnesota, with theft, theft of trade secrets, and computer theft, and that he did not notify the Department of these charges within thirty days.

7. The Amended Statement of Charges further alleges that the Respondent had been charged with public nuisance and theft in Dakota County in 2000 and was convicted of the public nuisance charge, but answered "no" in response to a question on his 2001 Minnesota Insurance Producer's License application asking if he had ever been charged with or convicted of or been indicted for or entered a plea to any criminal offense (felony, gross misdemeanor, or misdemeanor) other than traffic violations.

8. Finally, the Amended Statement of Charges alleges that the Respondent falsely testified under oath during an omnibus hearing held on June 25, 2009, and was charged in Steele County with felony perjury.

9. The Respondent has reached a stipulation with the Department. Under the stipulation, the Respondent does not admit the allegations contained in the Amended Statement of Charges but will not contest those allegations. The parties also

¹ See correspondence from the ALJ to counsel dated February 11, 2009, March 9, 2009, June 17, 2009, and November 13, 2009.

stipulated that the Respondent reserves the right to make argument to the Commissioner regarding the appropriate sanction to be imposed against him.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction herein pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. The Notice of Hearing was proper, and the Department has fulfilled all procedural requirements.

3. The Commissioner may deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the Commissioner, or censure that person, if the Commissioner finds that the order is in the public interest; the person has provided false, misleading, or incomplete information to the Commissioner; or the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.²

4. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty for any one or more of the following causes: providing incorrect, misleading, incomplete, or materially untrue information in the licensing application; improperly withholding, misappropriating, or converting any money or properties received in the course of doing insurance business; or using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, whether or not involving the business of insurance in this state or elsewhere.³

5. Insurance producers must report any criminal prosecution taken in any jurisdiction to the Commissioner within 30 days of the initial pretrial hearing date. The report must include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.⁴

6. By providing false information in his license application, misappropriating confidential client information, failing to notify the Department of criminal charges within 30 days, failing to respond to the Department's request for information concerning his criminal history, and committing perjury, the Respondent has provided false, misleading, or incomplete information to the Commissioner; has improperly misappropriated the confidential client information of Federated; and has engaged in acts that demonstrate

² Minn. Stat. § 45.027, subd. 7(a)(3) and (4) (2008).

³ Minn. Stat. § 60K.43, subd. 1(1), (4), and (8) (2008).

⁴ Minn. Stat. § 60K.54, subd. 2.

that he is dishonest, untrustworthy, and incompetent to act under the authority or license granted by the Commissioner, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3) and (4); 60K.43, subds. 1(1), (4), and (8); and 60K.54, subd. 2 (2008).

7. Discipline of the Respondent's insurance producer's license is in the public interest.

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

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against the Respondent's Insurance Producer's License.

Dated: February 9, 2010.

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

(No digital recording.)

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 Emmanuel Munson-Regala, Deputy Commissioner, Attn: Sue Jensen, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, 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.