

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

In the Matter of the Insurance Producer
License of Robert William Epps, Sr.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman on November 12, 2009, at the Saint Paul offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Thomas M. Kelly and Gretchen Lander, Kelly & Jacobson, appeared on behalf of the Respondent Robert William Epps, Sr. (Respondent). The hearing record closed following the adjournment of the evidentiary hearing.

STATEMENT OF THE ISSUES

1. Did the Respondent, Mr. Epps, fail to pay state income tax and thereby demonstrate that he is incompetent, untrustworthy, financially irresponsible or otherwise unqualified to act as Resident Insurance Producer?
2. Did Mr. Epps solicit and sell unapproved annuity contracts in violation of Minn. Stat. § 60A.08, subd. 4, and 60A.43, subd. 1(2) (2008)?
3. Did the Respondent, Mr. Epps, submit false insurance applications and thereby demonstrate that he is incompetent, untrustworthy, financially irresponsible or otherwise unqualified to act as Resident Insurance Producer?

The Administrative Law Judge concludes that as a result of Mr. Epps' acknowledged failures to timely remit state income taxes, his knowing sale of insurance products that were not approved for sale in Minnesota and his submission of false insurance applications to the Department, the imposition of regulatory discipline is appropriate.

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

FINDINGS OF FACT

1. On May 31, 1981, the Department issued to Mr. Epps a Resident Insurance Producer License. This license is numbered 673741.¹

2. On or about September 15, 2005, Respondent solicited and sold an annuity contract to D.B, a Minnesotan residing in Cannon Falls. The particular type of annuity that was purchased was not approved for sale in the State of Minnesota. The type of annuity contract had been approved for sale in Wisconsin. On the annuity application Mr. Epps represented that the sale was completed in Bay City, Wisconsin, notwithstanding the fact that the sale occurred within Minnesota.²

3. On or about August 11, 2006, Respondent solicited and sold an annuity contract to T.H., a Minnesotan residing in Lake City. The particular type of annuity that was purchased was not approved for sale in the State of Minnesota. The type of annuity contract had been approved for sale in Wisconsin. On the annuity application Mr. Epps represented that the sale was completed in Bay City, Wisconsin, notwithstanding the fact that the sale occurred within Minnesota.³

4. Mr. Epps acknowledges that he solicited and sold two contracts for annuity products that had not earlier been approved for sale in Minnesota. Further, Mr. Epps acknowledges that at the time these transactions were undertaken, he knew that the products he offered could not be lawfully sold in Minnesota.⁴

5. Mr. Epps acknowledges that on two occasions he submitted an insurance application that falsely stated a particular sale had occurred in Bay City, Wisconsin, when in fact, the transaction had occurred in Minnesota.⁵

6. For the tax years 2003, 2004, 2005, and 2006, Mr. Epps failed to timely file obligatory state tax returns.⁶

7. For the tax years 2003, 2004, 2005, and 2006, Mr. Epps failed to timely pay state income tax that was due and owing.⁷

8. Mr. Epps has held himself out and acted as a tax preparer. Since 1980, Mr. Epps has prepared approximately 600 tax returns per year as a tax preparer.⁸

¹ *Notice and Order for Hearing, Order for Summary Suspension and Statement of Charges*, OAH Docket No. 8-1004-20744-2 at 2 ("Statement of Charges"); Testimony of Robert William Epps, Sr.

² Statement of Charges, at 3; Test. of R.W. Epps, Sr.

³ Statement of Charges, at 3-4; Test. of R.W. Epps, Sr.

⁴ Test. of R.W. Epps, Sr.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

9. Mr. Epps timely submitted a tax return for the 2008 tax year and is current on his state tax obligations.⁹

10. On August 4, 2008, Mr. Epps was criminally charged with the failure to file tax returns and to timely render tax payments, under Minn. Stat. § 289A.63, subdivisions 1(a) and 1(b) (2008).¹⁰

11. On June 26, 2009, Mr. Epps pleaded guilty to one count of negligently failing to file tax returns. Respondent received a stay of imposition of the sentence for this crime on condition that he serve two years of probation, complete 200 hours of community service and pay a \$283 fine.¹¹

12. Mr. Epps acknowledges that he failed to pay state income tax that was due and owing, in violation of Minn. Stat. § 60K.43, subd. 1(14) (2008).¹²

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter 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 for presenting this matter for a decision.

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 and 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.¹³

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 of the following causes:

⁸ *Id.*

⁹ *Id.*

¹⁰ *State v. Epps*, Docket No. 25-CR-08-3259 (Goodhue County District Court, 2008); Test. of R.W. Epps, Sr.

¹¹ Affidavit of Christopher Kaisershot, Attachment 1 (August 14, 2009); Test. of R.W. Epps, Sr.

¹² Test. of R.W. Epps, Sr.

¹³ See, Minn. Stat. § 45.017, subd. 7(a)(4) (2008).

- (a) violating any insurance laws, including chapter 45 or chapters 60A to 72A, or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;
- (b) misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (c) having pled guilty, with or without explicitly admitting guilt, pled nolo contendere, or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct; or,
- (d) failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.¹⁴

4. Mr. Epps' failure to pay state income tax for a period of four years demonstrates that he is not qualified to act as Resident Insurance Producer, in violation of Minn. Stat. § 60K.43, subd. 1(8) and 1(14) (2008).

5. Mr. Epps' solicitation and sale of unapproved annuity contracts violated Minn. Stat. § 60A.08, subd. 4, and 60A.43, subd. 1(2) (2008).

6. Mr. Epps' submission of false insurance applications demonstrates that he is not qualified to act as Resident Insurance Producer, in violation of Minn. Stat. § 60K.43, subd. 1(2) (2008).¹⁵

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

¹⁴ See, Minn. Stat. § 60K.43, subdivisions 1(2), 1(5), 1(6), and 1(14) (2008).

¹⁵ See *also*, Minn. Stat. §§ 72A.04 and 72A.20 (18)(b) (2008).

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner impose discipline upon the Resident Insurance Producer's license of Robert William Epps, Sr.

Dated: December 11, 2009

/s/ Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digital Recording
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota 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 Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about 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. 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

At the advent of the evidentiary hearing, the parties arrived at an important stipulation. In return for Mr. Epps acknowledging the conduct which underlies the Department's charges against him, he would be permitted to offer sworn testimony into the record in support of his forthcoming request, to be made directly to the Commissioner, for imposition of a modest set of regulatory penalties.

Mr. Epps acknowledges the conduct which underlies the Department's charges against him. In his testimony, Mr. Epps averred that his failure to timely remit income taxes and to observe the Department's rules on product sales, followed from depression and the strain from financially strapped businesses, a disintegrating marriage and bouts of debilitating back pain. Mr. Epps asserts further that despite his pyramiding personal challenges, these misfortunes never burdened his clients. He testified that he faithfully, accurately and timely prepared payroll and tax materials for all of his clients and has never drawn a single complaint. He likewise notes that his annuity clients were not disadvantaged by either of the unpermitted sales – and appear to be satisfied with the insurance products that they received

As the parties agree, whether and how these circumstances should relate to the imposition of regulatory discipline is a matter that is best addressed by the Commissioner in the first instance.

E. L. L.