

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building – Third Floor  
Des Moines, Iowa 50319

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IN THE MATTER OF ) Docket No. 11IID002  
 )  
JOHN LEMKE, ) **DEFAULT ORDER**  
 Respondent. )

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This appeal involves two issues. The first is whether Respondent failed to inform the Insurance Division of any changes to the information required to be provided in his sales agent application within thirty days, warranting imposition of a civil fine and revocation of Respondent’s license. The second is whether Respondent failed to cooperate with an examination or investigation conducted by the Insurance Division, warranting imposition of a civil fine and revocation of Respondent’s license.

A contested case hearing was scheduled for March 10, 2011 at 9:00 a.m. Attorney Michelle Engler and Rhonda Smith appeared on behalf of the Insurance Division. Respondent John Lemke did not appear. I waited 5 minutes for Lemke to join the call before releasing Engler and Smith. I also waited an additional 10 minutes to accommodate a late call from Lemke. He did not call. Engler made a professional statement that Lemke was personally served by the sheriff in Clinton on March 1, 2011 at 9:40 a.m.

**CONCLUSIONS OF LAW**

The Insurance Commissioner has general control, supervision, and direction over all insurance business transacted in Iowa, and is responsible for enforcing Iowa laws relating to insurance.<sup>1</sup> This case involves a sales agent license issued to Lemke.

“A sales agent licensee shall inform the commissioner of any changes in the information required to be provided in the application within thirty days of the change.”<sup>2</sup> The Insurance Division has also adopted rules setting forth the grounds for discipline under Iowa Code chapter 523A.<sup>3</sup> One such ground is the “failure to submit to an examination, failure to comply with a reasonable request of an examiner, or failure to cooperate with an investigation conducted by the commissioner . . . .”<sup>4</sup>

The Insurance Commissioner may suspend, revoke, or otherwise impose disciplinary action related to any license issued under Iowa Code sections 523A.501 and 523A.502 for violating any provision of Iowa Code chapter 523A, the Insurance Division’s

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<sup>1</sup> Iowa Code § 505.8 (2011).

<sup>2</sup> Iowa Code § 523A.502(7).

<sup>3</sup> 191 IAC 105.6.

<sup>4</sup> *Id.* 105.6(7).

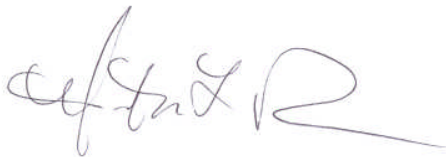
administrative rules, or an order of the Insurance Division.<sup>5</sup> If a licensee violates Iowa Code sections 523A.201, 523A.202, 523A.401, 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, or 523A.502, or any rules adopted under the listed sections, the Insurance Division may order the licensee to pay a civil penalty of not more than \$1,000 for each violation, but not exceeding an aggregate of \$10,000 during any six month period, unless the Insurance Commissioner finds the person knew or reasonably should have known that the person was in violation of the provisions or rules adopted under the provisions of the Iowa Code, warranting a greater penalty.<sup>6</sup>

Lemke received proper notice of the hearing, but did not appear. The administrative law judge may enter a default decision if a party fails to appear at a contested case hearing after receiving proper notice.<sup>7</sup> The Insurance Division seeks to revoke Lemke's sales agent license and imposition of a \$500 fine. Based upon Lemke's failure to appear at hearing after receiving proper notice, entry of default is proper.

### **ORDER**

Lemke is in default because he failed to appear at the March 8, 2011 contested case hearing. Lemke's sales agent license is hereby revoked. Lemke is assessed a \$500 civil penalty. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 10th day of March, 2011.



Heather L. Palmer  
Administrative Law Judge  
515-281-7183

cc: Christina Hazelbaker and Michelle Engler (*via electronic mail*)  
John Lemke

### **NOTICE**

A default decision becomes final agency action 15 days from the date the decision was mailed unless a motion to vacate the default decision is filed within that time period.<sup>8</sup> A motion to vacate must state all the facts upon which the moving party relies to establish good cause for failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one affidavit by a person with personal knowledge of the fact, and the affidavit must be attached to the motion.

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<sup>5</sup> Iowa Code § 523A.503.

<sup>6</sup> *Id.* § 523A.807(3)a.

<sup>7</sup> 191 IAC 3.22(1).

<sup>8</sup> *Id.* 3.22(3).