

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	
)	Division Case No. 112825
KYLE T MARKER,)	
)	DEFAULT ORDER, FINDINGS OF
)	FACT, CONCLUSIONS OF LAW
)	AND ORDER
)	
Respondent)	

The Commissioner has taken up for consideration the Division’s motion for default order, filed on June 9, 2022, by Ms. Johanna Nagel as the attorney representing the Iowa Insurance Division (“Division”). Marker did not file an answer to the statement of charges or provide a timely response to the Division’s motion for default, so the Division’s motion for default was sustained and the Commissioner entered judgment in favor of the Division against Marker in an interlocutory order of default on July 12, 2022.

At the hearing on monetary relief on October 4, 2022, the Division appeared by counsel. Marker appeared *pro se* by telephone.

NOW THEREFORE, Douglas Ommen, Iowa Insurance Commissioner, being fully informed of the matter, issues the following default order, findings of facts, conclusions of law, and orders:

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code chapter 522B—Licensing of Insurance Producers pursuant to Iowa Code § 505.8.
2. Kyle Marker (“Marker”) is an individual with a last-known residence address of 1729 200th Street, Clarion, Iowa 50525 and a last-known mailing address of PO Box 311, Eagle Grove, Iowa 50533.

3. Marker is and has been licensed in the state of Iowa as a resident insurance producer since September 10, 2012. He is licensed under National Producer Number 16779604.
4. Pursuant to Iowa Code § 505.28, Marker consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by chapter 522B.
5. From on or about November 2021 to present, Marker engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of his insurance producer license; cease and desist orders; and civil penalties or other relief under Iowa Code chapters 505, 507B, 522B, and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

1. Marker applied for a resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a uniform application for individual producer license (“Uniform Application”). In submitting the Uniform Application, Marker designated the Commissioner as an agent for service of process.
2. The Division issued Marker a license as a resident insurance producer on September 10, 2012, and assigned to him National Producer Number 16779604.
3. Marker worked as an independent producer for State Farm Mutual Automobile Insurance Company (“State Farm”) from approximately October 1, 2016, until he was terminated for cause on or about November 18, 2021.
4. State Farm recommended Marker’s appointment be terminated because of his pattern of not following company policies from August 2017 to October 2021 and for submitting falsified photos to his State Farm Agency Administration Leader.
5. Marker resigned during the course of State Farm’s investigation.

6. State Farm terminated Marker's appointment for cause on or about November 18, 2021, for falsifying photos and a pattern of violating company guidelines and policies.
7. After receiving notice of the termination, the Division opened an investigation into the circumstances of the termination. On November 29, 2021, after receiving State Farm's notice of Marker's termination for cause, a Division investigator emailed Marker a request for information using the email addresses provided by Marker and noted in his licensing file (kyle@justdialkyle.com and marker.kyle@gmail.com).
8. On December 1, 2021, Marker telephoned the Division and spoke with the Division investigator regarding the Division's request for information. Marker stated that he was not terminated for cause, but had instead, resigned from State Farm. The Division investigator informed Marker that State Farm provided notice to the Division that State Farm terminated him for cause upon conclusion of its investigation, despite Marker resigning during the course of the investigation, and that Marker still needed to provide a complete response to the Division's request for information.
9. On December 14, 2021, the response due date, Marker emailed the Division investigator requesting information and to request a short extension.
10. Marker was granted an extension and told to provide a full and complete response by noon on December 17, 2021.
11. Marker failed to provide a response by the new due date and instead emailed the Division investigator at the end of business on December 17th and said that he would provide a complete response the following Monday.
12. Marker failed to provide a response the following Monday, nor did he respond to the Division's email dated December 21, 2021, stating that no response had been received.

13. On January 27, 2022, the Division investigator sent Marker a request for information to his home by certified mail. The letter gave Marker an additional 15 days to provide a response to the request for information.
14. On February 4, 2022, the certified letter was successfully delivered and signed for by Marker.
15. The Division received no communication in response to the January 27th request for information.
16. Marker failed to cooperate with an investigation by the Division regarding his termination for cause.
17. Although Marker acknowledged receipt of the Division's initial request for information, he failed to provide a complete response to the request despite being granted two extensions of time to do so.
18. Additionally, Marker failed to provide a complete response to the January request for information delivered to him by certified mail. Marker did not contact the Division after receiving the January request for information.
19. The Division filed a statement of charges against Marker on May 18, 2022, alleging violations of law and grounds for license discipline under Iowa Code chapter 522B.
20. Pursuant to Marker's consent to service of process, the Commissioner was served with the statement of charges on May 18, 2022. A notice of hearing was issued by the Commissioner on May 18, 2022.
21. In accordance with Iowa Administrative Code rule 191—3.5, the statement of charges and notice of hearing were mailed by restricted, certified mail to the last-known residence and mailing addresses provided by Marker and noted in his licensing record.

22. The statement of charges and notice of hearing sent by restricted, certified mail to Marker's mailing address of record was successfully delivered on May 24, 2022.
23. Under Marker's consent to service of process and mailing of the notice of hearing and statement of charges by restricted, certified mail, delivery was accomplished and Marker was properly served as required by Iowa Administrative Code rule 191—3.5(1).
24. Marker did not file an answer to the statement of charges as required by Iowa Administrative Code rule 191—3.5(3).
25. The Commissioner may enter a default decision if a party fails to appear or participate in a contested case proceeding pursuant to Iowa Administrative Code rule 191—3.22(1).
26. The Division filed a motion for default on June 9, 2022.
27. The motion for default was sent via first class mail to Marker's last-known mailing address of PO Box 311, Eagle Grove, Iowa 50533 and by e-mail to Marker's last-known email address.
28. Marker failed to respond to the Division's motion for default within ten days as required by Iowa Administrative Code rule 191—3.15(2) and an interlocutory default was entered with judgment in favor of the Division and against Marker on July 12, 2022.
29. At the hearing on monetary relief, Marker testified that he had been unresponsive to the investigation due to severe depression resulting from the termination by State Farm. We find that Marker did not establish cause to vacate the finding of default.
30. Marker failed to participate in the contested case proceeding and remains in default. All allegations in the statement of charges have been deemed admitted.

III. CONCLUSIONS OF LAW

31. Under Iowa Code § 522B.11(1)(p), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for failing or refusing to cooperate in an investigation.
32. Marker failed to cooperate with an investigation by the Division regarding his termination for cause.
33. Although Marker acknowledged receipt of the Division's initial request for information, he failed to provide a complete response to the request despite being granted two extensions of time to do so.
34. Additionally, Marker failed to provide a complete response to the January request for information delivered to him by certified mail. Marker did not contact the Division after receiving the January request for information.
35. Marker's acts and practices have been in violation of Iowa Code § 522B.11(1)(p) subjecting Marker to probation, suspension, or revocation of Marker's insurance producer license, the imposition of a civil penalty, an order requiring Marker to cease and desist from engaging in such acts or practices, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 522B.11, 522B.17, and 505.8.
36. Penalties for violations of Iowa Code § 522B.11(1)(p) may be assessed pursuant to Iowa Code 507B. Iowa Code 507B.7(1)(a) permits an order to pay a civil penalty of up to \$1000 per violation or a civil penalty up to \$5000 per violation if the person knew or should have known that they were in violation of the law. Marker committed two violations of law.
37. The Division has proven that the investigative and prosecution costs exceeded \$455.

VI. ORDERS

WHEREFORE, IT IS ORDERED, pursuant to the powers granted to the Commissioner of Insurance by Iowa Code chapters 507B and 522B:

- A. Marker's resident insurance producer license is immediately suspended pursuant to Iowa Code §§ 507B.7 and 522B.11;
- B. Marker is prohibited from selling, soliciting, or negotiating insurance and transacting any insurance business in this state pursuant to Iowa Code § 505.8(10) during his license suspension;
- C. Marker shall remain suspended, and shall not be reinstated or renewed, unless Marker cooperates in the investigation of the Division by providing all requested information; makes payment of all amounts owed under this judgment; and provides sufficient evidence to conclude that he was not responsible for the alleged conduct due to disability and has re-established competence to fulfill his obligations and duties as a licensed insurance producer.
- D. Marker shall, within 30 days of this Order, pay as costs of investigation and prosecution the amount of \$500.00, made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8, 507B.7, 522B.11, and 522B.17; and
- E. These orders may be enforced under Iowa Code chapters 507B and 522B, including but not limited to Iowa Code § 507B.8 and 522B.17(3), and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid penalties and other ordered monetary amount.

SO ORDERED on this 5th day of October, 2022.



Douglas Ommen
Iowa Insurance Commissioner

Copies of this order shall be sent by both certified and first-class mail to:

Kyle T Marker
PO Box 311
Eagle Grove, IA 50533
Marker.kyle@gmail.com
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on October 6, 2022.

By: First Class Mail Personal Service
 Restricted certified mail, return receipt Email, by consent
 Certified mail, return receipt _____

Signature: _____

Hilary Foster

Brooke Hohn
Brooke Hohn

NOTICE OF FINAL ORDER

A default decision becomes final agency action 15 days from the date of the decision was mailed unless a motion to vacate the default decision is filed within that time period. 191 IAC 3.22(3). 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.

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that acting as an insurance producer, as defined in Iowa Code Chapter 522B, in violation of this Order, is a felony under Iowa Code § 507 A. 10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

YOU ARE ALSO NOTIFIED that if you violate this Order, you may be subject to administrative and civil penalties pursuant to Iowa Code § 522B. 17(3). The Commissioner may petition the district court to hold a hearing to enforce the order as certified by the Commissioner. The district court may assess a civil penalty against you in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE REGARDING REISSUANCE

When this Order becomes final, your insurance producer license will become inactive due to revocation. While your license is inactive, you are prohibited from conducting the business of insurance. Your license will not be active until the Division makes the determination to reissue your insurance producer license by order pursuant to Iowa Administrative Code 191-10.10.

Reissuance of your insurance producer license is subject to the discretion of the Commissioner. Additionally, it will not be granted unless and until you have complied with the terms of this Order, made the appropriate Application for Reissuance with the Division, and paid all applicable fees. If applicable, you may also be required to apply for licensure through the National Insurance Producer Registry (NIPR) and pay all applicable fees.

NOTICE OF FINAL ORDER IMPACT

A final order of license probation, suspension, or revocation or a cease and desist order may adversely affect other existing business or professional licenses and may result in license revocation or disciplinary action.

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.