

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF  
TIMOTHY W. NEWKIRK  
ARKANSAS NON-RESIDENT  
PRODUCER LICENSE  
ARKANSAS # 269467, DOB 09/25/1979

A.I.D. # 2005-018 A

CONSENT ORDER – LICENSE SURRENDER

On this day the insurance regulatory issues as to Mr. Timothy W. Newkirk (“Newkirk” or “Respondent”), a non-resident insurance producer from Wisconsin, came before Julie Benafield Bowman, Arkansas Insurance Commissioner (“Commissioner”). The Arkansas Insurance Department (“Department”) is represented by Ms. Jean Langford, Chief Counsel, Legal Division. The Commissioner and Respondent have reached this agreement concerning Respondent’s alleged violations of Arkansas insurance laws. Respondent waives his right to an administrative hearing and voluntarily consents to the entry of this Order. The parties agree as follows:

FINDINGS OF FACT

1. Newkirk is currently licensed as a nonresident property and casualty insurance agent and producer. He holds Arkansas License # 269467.
2. On April 7, 2004, Newkirk executed a Uniform Application for Individual Insurance Producer License for Arkansas. Question #1 states: “Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?” Newkirk checked the box beside “No.” In other words, Respondent failed to disclose events and circumstances in his history, recited below.

3. On November 3, 1999, Newkirk plead guilty/no contest to a charge of Underage Consumption of Alcohol in the Circuit Court of Walworth County, Wisconsin. He received a fine and license suspension.

4. On October 12, 2000, Newkirk plead guilty/no contest to Underage Drinking-Possession in the Circuit Court of Johnson County, Wisconsin, for which he was fined.

5. On December 11, 2002, Newkirk plead guilty/no contest to Possession of Marijuana in the Circuit Court of Brown County, Wisconsin, for which he was fined.

6. On March 31, 2003, Newkirk plead guilty/no contest to Credit Card-False Statements and Theft of Movable Property valued at over \$2,500 in the Circuit Court of Brown County, Wisconsin. Both offenses are Class A misdemeanors, and Newkirk was placed on probation and imposition of his sentence was suspended (withheld) for two (2) years.

7. The Commissioner issued an emergency or summary suspension order as to Respondent, pending an Administrative Hearing at the Department on Tuesday, May 24, 2005. Any and all licenses issued by the Department to Timothy W. Newkirk as Respondent for being an insurance producer, broker, agent, agency, solicitor, or consultant in this State, were suspended pending a Hearing pursuant to the Order. A Notice of Hearing was enclosed; and as it stated, at the Hearing set for Respondent on May 24, 2005, the Department would seek to revoke all insurance licenses of Newkirk based on the above allegations.

8. Prior to the Hearing, the DOI issued an Amended Notice of Hearing ("NOH"), dated May 17, 2005, added DOI staff co-counsel to the DOI proceeding, and faxed it to Respondent's two (2) addresses; and received confirmation of

Respondent's receipt. The Amended NOH incorporated by reference the original NOH.

9. Respondent then contacted the Department in reply. He is/was then on salary (as opposed to commissions) with his insurer employer, and was considered to be "captive" as a producer for his appointing companies on DOI records for this state. He and the Wisconsin Office's in-house counsel, Mr. Paul Johnston, for AMEX Assurance Company ("AMEX"), NAIC # 27928, the primary appointing and hiring company for Respondent, confirmed that Respondent is complying and is not currently soliciting or selling Arkansas insurance policies for AMEX due to the original Arkansas suspension order terms. Respondent expressed his intention and request to address these same licensing issues first with Wisconsin, his state of residency (of all the states including Arkansas). He requested cancellation of the May 24, 2005 hearing at the DOI offices, an indefinite postponement for the administrative proceeding in this State, and also agreed with DOI staff to continued suspension of his Arkansas insurance license(s) for an indefinite period of time, pending action by and resolution with his Wisconsin home state insurance regulatory official.

10. In late September, the Department contacted the AMEX counsel's office to learn that Respondent had surrendered his producer licenses in various states, and was working for his employer to adjust California insurance claims. Respondent's office confirmed he was not working on or adjusting any Arkansas claims, and was no longer acting as a producer in the State of Arkansas. Accordingly

*the parties agree that this Consent Order for license surrender is now appropriate, rather than use of the prior version.*

CONCLUSIONS OF LAW

A. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. §23-61-103 and the authority to issue license suspensions or revocations under Ark. Code Ann. §§ 23-64-216 and 23-64-512, among other laws.

B. For failing to disclose the above-listed criminal offense on his application, Newkirk is in violation of Ark. Code Ann. §§ 23-64-512(a)(1), (3) and (8); and

C. For the conduct leading to the above-listed criminal offense, Newkirk is in violation of Ark. Code Ann. § 23-64-512(a)(8).

THEREFORE, it is hereby ordered and agreed by the parties to this Consent Order that Respondent shall surrender any and all Arkansas insurance producer licenses or any other insurance licenses, for purposes of revocation pursuant to Ark. Code Ann. §23-64-216. The Department shall immediately cancel all Respondent's insurance licenses and duplicate licenses and appointments on Department records, under the provisions of this Consent Order.

If Respondent is unable to surrender his Arkansas insurance licenses or appointments at this time, then he may present an affidavit of lost, destroyed or misplaced licenses and appointment records for Arkansas, in lieu of the actual documentation. In any event, the Department shall note all as cancelled on the Department's formal permanent licensing records. The Department shall notify all of Respondent's former appointing insurance companies and collect any former

Arkansas insurance materials and records from Respondent under the required provisions of Ark. Code Ann. §23-64-217(Supp. 2005).

IT IS SO ORDERED and AGREED this 29th day of December, 2005.

  
TIMOTHY W. NEWKIRK  
DE PERE, WISCONSIN

  
JULIE BENAFIELD BOWMAN  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS