

**STATE OF NORTH DAKOTA**  
**BEFORE THE INSURANCE COMMISSIONER**

**In the Matter of** )  
 )  
**Robert Schmitz,** )  
**NPN 658790,** )  
 )  
                  **and** )  
 )  
**Schmitz Insurance Agency, LLC,** )  
**NPN 8789056,** )  
 )  
                  **Respondent.** )

**CONSENT ORDER**  
**CASE NO. AG-12-368**

**TO: Robert Schmitz, Schmitz Insurance Agency, LLC and their counsel, William Brudvik, Brudvik Law Office, PC, 231 Ninth Avenue SE, P.O. Box 547, Mayville, ND 58257**

Commissioner of Insurance Adam Hamm (“Commissioner”) has determined as follows:

1. As a result of information obtained by the North Dakota Insurance Department (“Department”) regarding the conduct of Robert J. Schmitz, NPN 658790, an individual who has held a North Dakota insurance producer license at all times relevant to this proceeding, and Schmitz Insurance Agency, LLC, NPN 8789056, a North Dakota resident business entity insurance producer at all times relevant to this proceeding (collectively “Respondents”), the Commissioner has begun administrative proceedings regarding Respondents’ conduct as alleged below and regarding the imposition of a civil penalty or any other action the Commissioner deems necessary. Respondents’ conduct is alleged to be in violation of N.D.C.C. §§ 26.1-02.1-02.1, 26.1-26-15, and 26.1-26-42(6), (10), (12) and (18).

2. Employees of the North Dakota Insurance Department (“Department”) have investigated the activities of Respondents, including conducting several witness interviews and reviewing thousands of pages of documentation pertaining to the Department’s investigation.

3. N.D.C.C. § 26.1-02.1-02.1 states, in part:

A person may not commit a fraudulent insurance act.

4. N.D.C.C. § 26.1-26-15 states:

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

5. N.D.C.C. § 26.1-26-42 states, in part:

The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

...

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.

...

10. An improper withholding of, misappropriating of, or converting to one’s own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one’s insurance business.

...

12. A violation of or noncompliance with any insurance laws of this state...

...

18. The applicant or licensee knowingly fails to pay state income tax or comply with a court order directing payment of state income tax.

6. The Commissioner has come into information that alleges Respondent Robert J. Schmitz has failed to pay state income tax and federal income tax and that a tax lien was filed against Respondent by the Internal Revenue Service on or about August 30, 2010, for \$371,210 and by the North Dakota State Tax Department on or about April 27, 2011, for \$52,808. By these actions, Respondent has shown himself to be incompetent, untrustworthy, or financially irresponsible, and knowingly failing to pay state income tax.

7. The Commissioner has come into information that alleges Respondents have knowingly and intentionally engaged in deceitful and dishonest practices against residents of the State of North Dakota by accepting money and improperly converting money belonging to insurance clients, including but not limited to client R.P. Client R.P. gave a check for a premium payment for farm building and auto insurance to Respondent Robert J. Schmitz in the amount of \$1,640. The check was made out to the issuing insurer, Travelers Insurance Company, by client R.P.; however, the check was deposited into the bank account of Respondent Schmitz Insurance Agency and was never properly forwarded to Travelers Insurance Company. By these actions Respondents have also shown themselves to be incompetent, untrustworthy, or financially irresponsible, and which actions constitute a violation of N.D.C.C. § 26.1-26-42(10).

8. The Commissioner has come into information that alleges Respondents accepted premium payments from clients but failed to pay those premiums to the respective insurers in a timely fashion. Clients, including but not limited to client

C.C.S.D., received notices of cancellation due to nonpayment. Client C.C.S.D. received at least two notices of cancellation from Travelers Insurance Company on a boiler and machinery insurance policy C.C.S.D. procured through Respondents. By these actions, Respondents have shown themselves to be incompetent, untrustworthy, or financially irresponsible, and which actions constitute a violation of N.D.C.C. § 26.1-26-42(10).

9. The Commissioner has come into information that alleges Respondents provided at least one client, J.W., with improper proof of homeowners insurance information which was requested from Respondents by client J.W. Client J.W. paid Respondents \$2,296 to secure a homeowners insurance policy from Travelers Insurance Company, and subsequently requested proof of homeowners insurance information from Respondents. Respondents gave client J.W. a document which Respondents represented was proof of homeowners insurance. Client J.W. contacted issuing insurer Travelers Insurance Company regarding the proof of homeowners insurance information received from Respondents and was advised J.W. had no active homeowners insurance policy with Travelers Insurance Company and was further advised the proof of homeowners insurance information provided by Respondents was only an insurance quote, not an active homeowners insurance policy. By these actions, Respondents have shown themselves to be incompetent, untrustworthy, or financially irresponsible, and which actions constitute a fraudulent insurance act or acts in violation of N.D.C.C. § 26.1-26-42(12).

10. The Commissioner has come into information that alleges Respondents issued one or more pay checks to employees, including but not limited to M.G. and K.F., which were dishonored by Respondent's bank due to nonsufficient funds. By these

actions, Respondents have shown themselves to be incompetent, untrustworthy, or financially irresponsible.

11. The Commissioner has come into information that alleges Respondent Robert J. Schmitz was convicted of Issuing Check or Draft Without Sufficient Funds or Credit in Traill County District Court on June 26, 2008, Case No. 49-08-K-00173. By this action, Respondent Schmitz has shown himself to be incompetent, untrustworthy, or financially irresponsible.

12. Respondents' conduct constitutes violations of N.D.C.C. §§ 26.1-02.1-02.1, 26.1-26-15, and 26.1-26-42(6), (10), (12) and (18) for improperly accepting money from clients by failing to timely forward premium payments of Respondents' clients to the insurer which resulted in clients receiving notices of cancellation on their policies, providing improper proof of homeowners insurance information to a client, issuing paychecks to employees of Respondents which were dishonored by Respondents' bank due to nonsufficient funds, owing federal and state tax liens totaling \$424,018 (Respondent Robert J. Schmitz), and knowingly failing to pay state income tax (Respondent Robert J. Schmitz).

13. The conduct of Respondents described in paragraphs 6, 7, 8, 9, 10, 11 and 12 of this Consent Order caused the Department to file a Cease and Desist Order against Respondents on July 16, 2012, which Cease and Desist Order is still in place.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent Robert J. Schmitz agrees to **revocation** of his North Dakota resident insurance producer license.

2. Respondent Schmitz Insurance Agency, LLC, by and through its designated responsible licensed producer and owner Robert J. Schmitz, agrees to

**revocation** of the business entity license of Schmitz Insurance Agency, LLC and acknowledges that Schmitz Insurance Agency, LLC may not participate in the business of insurance but may continue to conduct other business **unrelated to the business of insurance.**

3. Respondents agree, upon the Commissioner's execution of this Consent Order, to withdraw their request for a hearing on the Department's Cease and Desist Order, issued on July 16, 2012, against Robert J. Schmitz and Schmitz Insurance Agency, and which matter is presently still pending before the Office of Administrative Hearings, OAH File No. 20120289. Respondents agree to make this request in writing to the Office of Administrative Hearings no later than five business days after the execution of this Consent Order by the Commissioner.

4. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED at Bismarck, North Dakota, this 12<sup>th</sup> day of March, 2013.

  
\_\_\_\_\_  
Adam Hamm  
Insurance Commissioner  
State of North Dakota

### **CONSENT TO ENTRY OF ORDER**

The undersigned, **Robert J. Schmitz and Schmitz Insurance Agency, LLC**, state that they have read the foregoing Consent Order, that they know and fully understand its contents and effect; that they have been advised of their right to a

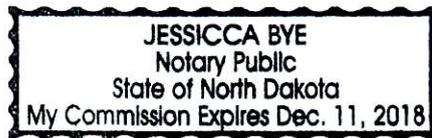
hearing in this matter, their right to be represented by legal counsel, their right to present evidence and arguments to the Commissioner, and their right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order they waive those rights in their entirety, and consent to entry of this Order by the Commissioner. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either expressed or implied.

DATED this 5<sup>th</sup> day of March, 2013.

Robert J. Schmitz  
Robert J. Schmitz

Subscribed and sworn to before me this 5<sup>th</sup> day of March, 2013.

Jessica Bye  
Notary Public



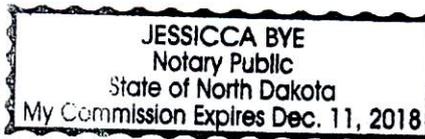
State of North Dakota  
County of Cass

My commission expires: December 11, 2018

Robert J. Schmitz  
Schmitz Insurance Agency, LLC  
By: Robert J. Schmitz  
Title: Owner

Subscribed and sworn to before me this 5<sup>th</sup> day of March, 2013.

Jessica Bye  
Notary Public



State of North Dakota  
County of Cass

My commission expires: December 11, 2018

