



State of Missouri
Department of Insurance, Financial Institutions &
Professional Registration

IN RE:

Cesar Mendivil,

Applicant.

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) Case No. 120215184C
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ORDER REFUSING TO ISSUE NON-RESIDENT
INSURANCE PRODUCER LICENSE

On March 14, 2012, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a non-resident insurance producer license to Cesar Mendivil. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and summary order.

FACTUAL BACKGROUND

1. Cesar Mendivil ("Mendivil") is an individual residing in Texas whose residential address of record is 1910 Bennett Avenue, Unit 1, Dallas, Texas 75206.
2. On November 3, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic non-resident insurance producer application ("Application") from Mendivil.
3. On the Application, in the section titled "Background Questions," Background Question #2 asks:

Have you been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. "Involved" also means being named as a

party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. "Involved" also means having a license, or registration or application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions, in your capacity as owner, partner, officer or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

Mendivil answered "No." to Background Question #2.

4. Mendivil's response to Background Question #2 was not true because he had been involved as a party in an administrative proceeding regarding a professional or occupational license in that on May 20, 2011, the Financial Industry Regulatory Authority ("FINRA") suspended Mendivil's authority to associate with any FINRA member. On July 29, 2011, after Mendivil failed to request a termination of his suspension within three months, FINRA barred Mendivil from association with any FINRA member in any capacity.
5. On December 1, 2011, Consumer Affairs Division Investigator Lynda Kammeier sent a letter to Mendivil by regular mail to his residential address requesting more information regarding the FINRA action. The December 1 letter was not returned as undeliverable. Mendivil did not respond to the December 1 letter within 20 days of the Division mailing the letter and did not contact the Department in any way to provide a reasonable justification for a delayed response.

JURISDICTION AND STATUTORY GROUNDS FOR REFUSAL

6. Section 375.141 RSMo Supp. 2011,¹ provides in part:
 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
 - (1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;
 - (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

¹All statutory references are to the Revised Statutes of Missouri Supp. 2011 unless otherwise noted.

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

7. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division provides:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

8. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).
9. The principal purpose of §375.141 is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. 1984).
10. The Director may refuse to issue Mendivil a non-resident insurance producer license pursuant to §375.141(1) because by failing to disclose the FINRA suspension and bar on the Application, Mendivil intentionally provided materially incorrect, misleading, incomplete, or untrue information on the Application.
11. The Director may refuse to issue Mendivil a non-resident insurance producer license pursuant to §375.141(3) because by failing to disclose the FINRA suspension and bar on the Application, Mendivil attempted to obtain a license through material misrepresentation or fraud. The FINRA suspension and bar was material to the Application because it reflects negatively on Mendivil's fitness for licensure as a non-resident insurance producer.
12. The Director may refuse to issue Mendivil a non-resident insurance producer license pursuant to §375.141(2) because by failing to respond to the December 1, 2011 inquiry from the Consumer Affairs Division, Mendivil violated a Missouri insurance regulation, namely 20 CSR 100-4.100(2)(A).

13. The Director has considered Mendivil's history and all of the circumstances surrounding Mendivil's Application for licensure and exercises his discretion in refusing to issue Mendivil a non-resident insurance producer license.
14. Granting Mendivil a non-resident insurance producer license would not be in the public interest.
15. This Order is in the public interest.


ORDER

IT IS THEREFORE ORDERED that the non-resident insurance producer license application of CESAR MENDIVIL is hereby REFUSED.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 16th

DAY OF MARCH, 2012.




JOHN M. HUFF
DIRECTOR

NOTICE

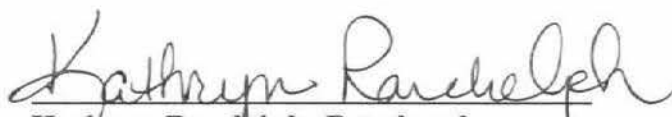
TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to §621.120, RSMo. Under 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2012, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail No. 7009 3410 0001 8931 2691 at the following address:

Cesar Mendivil
1910 Bennett Avenue, Unit 1
Dallas, Texas 75206



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