



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN RE:

Pheng Yang,

Applicant.

Serve:

626 South 9th Street
De Pere, Wisconsin 54115-3849

Case No. 111229913C

ORDER REFUSING TO ISSUE NON-RESIDENT INSURANCE PRODUCER LICENSE

On January 5, 2012, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a non-resident insurance producer license to Pheng Yang. 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. Pheng Yang ("Yang") is an individual residing in Wisconsin whose residence and mailing address is 626 South 9th Street, De Pere, Wisconsin 54115-3849. Yang's business address is 611 North Lynndale Drive, Suite L, Appleton, Wisconsin 54914.
2. On or about February 16, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic Uniform Application for Individual Insurance Producer License ("Application") from Yang.
3. In the section of the Application headed "Background Questions," Background Question #1 asks, "Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime? . . . Conviction includes, but is not limited to, having

been found guilty by verdict of a judge or jury, having entered plea of guilty or nolo contendere, or having been given probation, or suspended sentence or a fine." Yang answered "Yes" to Background Question #1. The Application also required that Yang submit a "written statement summarizing the details of each incident" that led to the affirmative answer to Background Question #1 as well as a copy of the charging document.

4. Yang's written statement did not adequately describe the incident surrounding the criminal charge in that it did not summarize the details of the incident leading to his affirmative answer to Background Question #1. Instead, Yang's explanation letter referred to a "poor decision" and expressed a desire to "educate and unravel some of the confusion that people have about life insurance" without mentioning any details related to Yang's criminal history. Additionally, Yang failed to provide a copy of the charging document with his Application.
5. Consumer Affairs Division Investigator E.J. Jackson ("Jackson") discovered that on October 15, 1999, Yang pled no contest to class D felony criminal property damage. *State of Wisconsin v. Pheng Nmi Yang*, Outagamie County Circuit Court, No. 99 CF 226. The Outagamie County Circuit Court adjudged Yang convicted and found guilty, and ordered that Yang serve five days in jail and complete two years probation.
6. On April 4, 2011, Jackson sent a letter to Yang at his mailing address with sufficient postage attached. Jackson's letter inquired into Yang's criminal history and required a response by April 25, 2011. The letter was not returned as undeliverable. Yang never provided a written response or justification for a delayed response.
7. On August 22, 2011, Jackson sent a letter to Yang at his mailing address with sufficient postage attached. Jackson's letter inquired into Yang's criminal history and required a response by September 12, 2011. The letter was not returned as undeliverable and Yang never provided a written response or justification for a delayed response.

JURISDICTION AND STATUTORY GROUNDS FOR REFUSAL

8. Section 375.141.1 RSMo Supp. 2011,¹ provides, in part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the

¹ All statutory references are to the 2011 Supplement to the Revised Statutes of Missouri, unless otherwise indicated.

following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

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

(2)(A) 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.

10. "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).
11. 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).
12. Yang may be refused an insurance producer license pursuant to §375.141.1(2), because by failing to respond to two inquiries dated April 4, 2011 and August 22, 2011, from the Consumer Affairs Division concerning his criminal history, Yang violated a Missouri insurance regulation, namely 20 CSR 100-4.100(2)(A).
13. Yang may be refused an insurance producer license pursuant to §375.141.1(6), because he was convicted of a felony. *State of Wisconsin v. Pheng Nmi Yang*, Outagamie County Circuit Court, No. 99 CF 226.
14. The Director has considered Yang's history and all of the circumstances

surrounding Yang's Application for licensure and exercises his discretion in summarily refusing to grant Yang's insurance producer license.

15. Granting Yang's insurance producer license would not be in the public interest.
16. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the non-resident insurance producer license application of Pheng Yang is hereby summarily REFUSED.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 6TH
DAY OF JANUARY, 2012.




JOHN M. HUFF
DIRECTOR

NOTICE

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

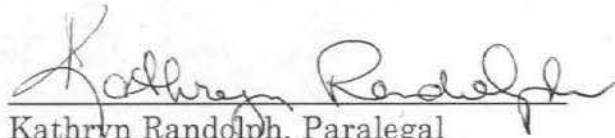
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to §621.120, RSMo. Under 1 CSR 15-3.290, unless you send your complaint by registered 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 11th day of January, 2012, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Pheng Yang
626 South 9th Street
De Pere, Wisconsin 54115-3849

Certified Mail No. 7008 2810 0000 2014 8915



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