

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

SCOTT B. LAKIN, Director)
Department of Insurance)
State of Missouri,)

Petitioner,)

Case No. 04-1128 DI

v.)

VERSATILE MANAGEMENT GROUP,)
Respondent.)

AND)

DEMITRIUS GLASS)

Petitioner,)

Case No. 04-0979 DI

v.)

SCOTT B. LAKIN, Director of)
Insurance, State of Missouri)

Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A hearing was held in this cause on January 12, 2005. Stephen R. Gleason represented Petitioner and Dorothy White-Coleman represented Respondents.

FINDINGS OF FACT

1. Petitioner is the duly appointed Director of Insurance, State of Missouri (“the Director”), whose duties include the licensing, discipline and regulation of insurance producers in this state pursuant to Chapter 375 RSMo.

2. Respondent Demetrius Glass (“Glass”) held a Missouri insurance producer license issued by the Director, No. PR238505, which expired on June 24, 2004. The license cited “Accident and Health, Life and Variable Contracts” as Respondent Glass’s authorized lines of insurance. Petitioner refused to renew Respondent Glass’s license and the license was terminated on June 24, 2004. (Petitioner’s Exhibit 1)¹

3. Respondent Versatile Management Group (VMG) was issued an insurance business entity producer license by the Director, number AG8013543, which expires on November 7, 2005. (Petitioner’s Exhibit 9)

4. Respondent Glass is the principal/owner of VMG and acted in that capacity at all times relevant to the matters involved these cases. (Tr. 64, L. 3-6)

5. Prior to June 24, 2004, Respondent Glass had been licensed in the State of Missouri since 1998. He has never had any prior complaints. (Tr. 45, L. 15-19 and 46, L. 1-5; Tr. 108, L. 9-15)

6. On or about May 12, 2004, Respondent Glass completed and submitted to the Department the Producer Renewal notice to renew his Accident and Health, Life, Life and Variable Contracts license, along with proof of completion of the necessary continuing education hours and the required fees. (Respondents’ Exhibit J; Tr. 109, L. 13-25 and 110, L. 1)

7. On or about May 12, 2004 Respondent Glass also filed an application with the Department for a Property and Casualty insurance producer’s license. Glass passed the Producer Property and Casualty insurance examination, paid the required fees and completed all the necessary requirements. (Respondents’ Exhibit J; Tr. 110, L. 5-25 and 111, L. 1-9)

¹ Petitioner’s Exhibits will be referred to as “Petitioner’s Exhibit ___”, with reference to the specific number thereof; Respondents’ Exhibits will be referred to as “Respondents’ Exhibit ___”, with reference to the specific number thereof; the transcript of the hearing held on January 12, 2005 will be referred to as “Tr. ___” with reference to the specific page and line thereof.

8. On or about June 28, 2004, Mr. Glass was notified by the Department that his application for a Property and Casualty insurance producer's license was denied and that his Producer Renewal for an Accident and Health, Life, Life and Variable Contracts license was refused. (Petitioner's Exhibit 8)

9. Thereafter, on or about July 21, 2004 Respondent Glass filed this appeal, Cause No. 04-0979 DI, of the Department's decision to deny his request for a Property and Casualty insurance producer's license and its refusal to renew his Missouri insurance producer's license for Accident and Health, Life and Variable Contracts.

10. On or about August 19, 2004, the Director of the Missouri Department of Insurance (the "Department") filed its Complaint against Respondent VMG, Cause No. 04-1128 DI, alleging various violations of Missouri State Statutes and/or regulations by Respondent VMG and requesting that this Commission find cause to discipline the insurance business entity producer's license of VMG.

11. The Department filed an answer and counterclaim in cause No. 04-0979 DI alleging the violations set forth in Cause No. 04-1128 DI against Respondent VMG involving the Sonya James and Veronica Osborne matters as the basis for the denial of Respondent Glass's request for a Property and Casualty insurance producer's license and its refusal to renew Glass's Missouri insurance producer's license.

12. There were conflicts in the evidence presented at the hearing by Petitioner and Respondents regarding both the Sonya James and Veronica Osborne matters.

13. Respondents' evidence established that Glass first met Ms. James on or about February 10, 2003. Ms. James came to VMG's office to make a payment on a policy. As the principal of VMG, Respondent Glass met with her at that time and accepted her application and

check in the amount of \$898.00 because Nicole Childress, who had previously quoted Ms. James for property and casualty insurance, was not in the office. (Tr. 68, L. 19-28; Tr. 69, L. 1-6)

14. Nicole Childress was duly licensed to sell Property and Casualty insurance in February, 2003. (Respondents' Exhibit B; Tr. 68, L. 4-11)

15. There was no evidence that Respondent Glass provided Ms. James quotes for property and casualty insurance. Neither Ms. James' affidavit nor complaint state that Glass quoted her rates for property and casualty insurance. (Petitioner's Exhibit 3)

16. Following Glass's meeting with Ms. James, her application was turned over to Nicole Childress for processing and the check was deposited into the VMG's business account. (Tr. 69, L. 9-25; 70, L. 1)

17. Nicole Childress and Sonya Davis, an administrative assistant in Glass's office handled the James matter. (Tr. 69, L. 1-6, Tr. 74, L. 1-21)

18. On or about February 18, 2003, Graham-Rogers Inc. terminated its producer's agreement with Respondent VMG. Graham-Rogers Inc. and Respondent VMG had an automatic withdrawal process for premiums once the insurance application was received. Ms. James' application and check was sent for processing during the time the termination by Graham-Rogers, Inc. went into effect. (Respondents' Exhibit L; Tr. 73, L. 1-25; Tr. 114, L. 22-25 and 115, L. 1-9)

19. Respondent VMG did not fail to remit the funds for the premium payment within 30 days to the insurance company, but rather Graham-Rogers, Inc. did not withdraw the funds from VMG's account. Ms. James was without insurance coverage for a period of time for that reason.

20. Sometime in October 2003, Respondent Glass received a telephone call from Ms. James regarding her homeowner's insurance. Ms. James had a claim for some damaged carpet and upon contacting the insurance company, American Modern Home, she was advised that no policy existed for her. (Tr. 71, L. 9-25 and 72, L. 1-10)

21. Following his own investigation, Respondent Glass learned that no policy had been issued by American Modern Home for Ms. James due to the termination by Graham-Rogers Inc. (Tr. 76, L. 7-25; 77, L. 1-3 and 78, L. 12-23)

22. As the principal of VMG, in an effort to rectify the problem he paid Ms. James \$800.00 for her damaged carpet. This was done before Ms. James filed a complaint with the Department. (Respondents' Exhibit G; Tr. 62, L. 14-17 and 72, L. 11-25) Subsequently, he also refunded her the premium paid of \$898.00. (Respondents' Exhibit G; Tr. 77, L. 10-21)

23. There was not substantial evidence that Respondent Glass quoted or sold Ms. James an automobile policy. (Tr. 80, L. 1-13)

24. Respondents' evidence established that Glass first came in contact with Veronica Osborne on or about June 13, 2003 when she came to VMG's office to make a payment. Nicole Childress, who had previously quoted Ms. Osborne rates for homeowner's insurance, was not in the office at that time. (Tr. 86, L. 8-14 and 87, L. 5-25)

25. Nicole Childress was duly licensed to sell Property and Casualty insurance in June, 2003. (Respondents' Exhibit B; Tr. 86, L. 15-25 and 87, L. 1-4)

26. As the principal of VMG, he accepted Ms. Osborne's application and check for \$163.87. The check was then deposited into VMG's business account. (Tr. 87, L. 5-25 and 88, L. 1-17)

27. There was no evidence that Respondent Glass provided Ms. Osborne quotes for property and casualty insurance. Neither Ms. Osborne's affidavit nor complaint state that Glass quoted her rates for Property and Casualty insurance. (Petitioner's Exhibit 4)

28. Nicole Childress and Sonya Davis were the members of his staff who handled the Osborne matter. (Tr. 87, L. 12-18)

29. Ms. Osborne subsequently advised Ms. Childress that she wanted to have the insurance premiums paid by her mortgage company from her mortgage escrow. (Tr. 88, L. 2-6 and 89, L. 12-25) Ms. Osborne was advised at that time that upon receipt of the funds from her mortgage company, VMG would refund the \$163.87 she paid. (Tr. 90, L. 14-24)

30. Ms. Osborne's mortgage company failed to make the check out to the proper payee, failed to forward the check to the proper address and subsequently the envelope containing the check was delivered to the wrong address. As a result, the check from the mortgage company was not received until weeks later. (Respondents' Exhibit K; Tr. 91, L. 2-25, 92, L. 1-25 and 93, L. 1-20)

31. By the time VMG received the envelope containing the check from the mortgage company, Ms. Osborne had already filed a complaint with the Department. (Tr. 93, L. 21-25 and 94, L. 1-22)

32. Respondent Glass issued Ms. Osborne a refund check for \$163.87 (Tr. 94, L. 23-25) and delivered to her the original check from her mortgage company in the amount of \$655.50. The check from the mortgage company was never cashed by VMG. (Petitioner's Exhibit 4; Tr. 96, L. 9-25)

33. In the Osborne matter, the funds were not submitted to the insurance company within 30 days and she was without insurance because the check from the mortgage company

was not in Respondent Glass's possession until after Ms. Osborne filed her complaint with the Department. The original check was then given to her. (Respondents' Exhibit K; Tr. 91, 92, 93, L. 1-25 and 94, L. 1-22)

34. There was not substantial evidence that Respondent Glass ever quoted or sold Ms. Osborne an automobile insurance policy. (Tr. 97, L. 19-21 and 98 L. 1-8))

35. There was no evidence, let alone substantial evidence, that any funds from Ms. Osborne or Ms. James were converted or used for personal or business expenses of VMG or Glass. The only testimony from Department Investigator, Frank Smith, was that the funds went into VMG's account. Mr. Smith had no information as to how the funds were used. (Tr. 46, L. 6-25 and 47, L. 1-5) The evidence was thus insufficient as to the use made of the funds.

36. Likewise, there was no substantial and competent evidence that the funds representing premium payments were improperly withheld. Glass returned the premiums paid by both Ms. James and Ms. Osborne to each of them. (Tr. 94, L. 23-25; Respondents' Exhibit G; Tr. 77, L. 10-21)

37. Respondent Glass also took other corrective actions in an effort to protect his customers. Following the events surrounding Sonya James and Veronica Osborne, Respondent Glass terminated both Nicole Childress and Sonya Davis, the administrative person who worked with Ms. Childress on the James and Osborne matters. (Tr. 78, L. 10-23 and 79, L. 14-25)

CONCLUSIONS OF LAW

1. This Commission has jurisdiction of this cause pursuant to section 621.045 RSMo.

2. The Department has the burden of proof in proceedings where it seeks the discipline, non-renewal or revocation of a license. Tonkin v. Jackson County Merit System, 599 S.W.2d. 25, 31 (Mo. App. 1980). The Department did not meet its burden of proving by substantial and competent evidence, on the record as a whole, that Respondents improperly withheld, misappropriated and converted money received in the course of doing business, a ground for discipline under section 375.141.1(4) RSMo. (2004).

3. The Department did not meet its burden of proving by substantial and competent evidence, on the record as a whole, that Respondents violated any insurance regulation (20 CSR 700-1.140(2)(D)), a ground for discipline under section 375.141.1(2) RSMo. (2004).

4. The Department did not meet its burden of proving by substantial and competent evidence, on the record as a whole, that Respondents engaged in dishonest practices and demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business in this state, a ground for discipline under section 375.141.1(8) RSMo. (2004).

5. Therefore, there was not substantial and competent evidence, on the record as a whole, to support the Department's request to discipline Respondent VMG's insurance producer's license or its refusal to renew Respondent Glass's Missouri insurance producer's license for Accident and Health, Life, Life and Variable Contracts.

6. Accordingly, the evidence would also not support the Department's denial of Respondent Glass's request for a Property and Casualty license. Respondent Glass met his burden of proving by substantial and competent evidence, on the record as a whole, that he applied for a Property and Casualty insurance producer's license, passed the Producer Property

and Casualty insurance examination, paid the required fees and completed all the necessary requirements.

ORDER

The Director's refusal to add "Property and Casualty" as a line of insurance to Respondent Glass's license is reversed and denied. The Director's refusal to renew Respondent Glass's Producer's license for Accident and Health, Life, Life and variable contracts is reversed and denied. Respondent Glass's insurance producer license and Respondent VMG's insurance producer license are not subject to discipline under sections 375.141.1(2), (4) and (8) RSMo. (2004).

Date: _____

Commissioner