

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

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ADMINISTRATIVE HEARING
COMMISSION

ANGELA DIANE RICKABAUGH,)
)
Petitioner,)
)
vs.)
)
DOUGLAS M. OMMEN, Director of)
Insurance, Financial Institutions and)
Professional Registration,)
State of Missouri,)
)
Respondent.)

Case No. 06-1543DI

061101320C

RESPONDENT'S REPLY BRIEF

Pursuant to the Commission's Order dated August 22, 2007, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Reply Brief in support of his refusal to issue an insurance license to Angela D. Rickabaugh ("Rickabaugh" or "Petitioner"). Despite any contentions and allegations made in Rickabaugh's Brief, the evidence presented in this matter demonstrates that the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" or "Respondent") has established cause to deny Rickabaugh's insurance license pursuant to section 375.141.1(1), (8) and (9), RSMo (Supp. 2005).

1. On or about October 18, 2007, Rickabaugh filed Petitioner's Brief with this Commission.
2. In Petitioner's Brief, Rickabaugh proposed findings of fact and conclusions of law, requesting that this Commission grant her an insurance producer license despite the following:

- a. Though not criminally charged, Rickabaugh admitted in prior administrative proceedings and to this Commission that she has used fraudulent or dishonest practices in the conduct of business.
- b. The Illinois Department of Insurance (“Illinois DOI”) revoked Rickabaugh’s license based upon her admittedly fraudulent insurance business practices.
- c. Rickabaugh signed and submitted to the department a license application that included materially incorrect, misleading, incomplete or untrue information.

3. In Petitioner’s Brief, Rickabaugh asserts that her Illinois license was reinstated and that the Illinois DOI had “full knowledge of the circumstances surrounding the previous revocation”. *Petitioner’s Brief, page 2, paragraph 3.* However, the AHC Transcript page Rickabaugh cites does not stand for her strong proposition.

Respondent disputes Rickabaugh’s assertion that the “Illinois DOI reinstated Petitioner’s Illinois Property and Casualty Resident license with full knowledge of the circumstances surrounding the previous revocation”. *Id.* No evidence was presented to prove that the Illinois DOI had “full knowledge of the circumstances surrounding the previous revocation.” The parties simply stipulated that Rickabaugh currently has an Illinois insurance license, but there was no such stipulation as to what the Illinois DOI considered in reinstating Rickabaugh’s license. *Tr. at 54-55.* Rickabaugh may have submitted some documents pertaining her Illinois insurance license when requesting reinstatement, however, there is nothing on the record, nor any stipulation, that those documents (Petitioner’s Exhibit D) vested “full knowledge of the circumstances surrounding the previous revocation” in the Illinois DOI.

4. In her proposed findings of fact, Rickabaugh states that Sheri Sloan, an investigator for Respondent, attempted to correspond with Rickabaugh at a faulty address. *Petitioner's Brief, pages 3-4, paragraphs 13 – 14.*

The fact that Ms. Sloan attempted to correspond with Rickabaugh via a faulty address is of no consequence to this case. Respondent has not alleged that he denied Rickabaugh a license based on her delayed response. Respondent understands that its use of a faulty address contributed to Rickabaugh's delayed response to its inquiries and has in no way attempted to hold Rickabaugh responsible for such delays. As such, references to Respondent's or Respondent's investigator's use of a faulty address are irrelevant and should be omitted from this Commission's Findings of Fact.

5. Rickabaugh disputes the applicability of *Spradling v. Supervisor of Liquor Control*, 824 S.W.2d 906 (Mo. 1992), as cited in Respondent's Brief, because it is a "criminal case". *Petitioner's Brief, page 5.*

To the contrary, *Spradling* is not a criminal case and it is particularly apposite to the case at hand because *Spradling*, like the case at hand, involves a license applicant who signed a license application that was completed by another person who provided materially incorrect information. *Spradling*, 824 S.W.2d 906. In *Spradling*, the Missouri Supreme Court upheld the license denial, even though the applicant did not personally make the misrepresentation, because the answer was not "full, true and complete." *Id.* at 909.

While this case involves insurance and *Spradling* concerned the liquor industry, the licensing concepts are the same. Both the insurance and liquor industries are heavily regulated by the state and regulators rely upon licensees and applicants to provide "full, true and complete answers" to application questions. *Id.* at 908; *Respondent's Exhibit 2 at page 4*

(“The Applicant must read the following very carefully and answer every question.”). Petitioner requests that the provision of materially incorrect, misleading, incomplete or untrue information on her application be excused. *AHC Transcript at page 44; Petitioner’s Brief, page 8*. If Petitioner’s conduct is excused and she is granted a license despite the materially incorrect, misleading, incomplete or untrue information on her application, other license applicants – or appointing insurance companies or agencies - may view that decision as an opportunity to allow non-applicants to complete license applications and then the applicants may sign without reviewing the applications – regardless of the materially incorrect, misleading, incomplete or untrue information contained therein.

6. In Petitioner’s Brief, Rickabaugh contends that Respondent “has failed to provide evidence supporting the allegation of Petitioner’s intent to provide materially incorrect, misleading, incomplete or untrue information” in her application for an insurance producer license. Petitioner’s Brief, pp. 1-2.

In this case, Petitioner *intentionally* signed the license application certifying that she understands that “all of the information submitted in this application and attachments is true and complete,” and that she was “aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license . . . denial” *Respondent’s Exhibit 2 at page 5*. Petitioner’s signature appears in the signature block immediately below the above quoted language certifying that she understands the application and the consequences of submitting false information. *Id.* Truthfulness is an essential quality of an insurance producer licensee, whether in the context of an application or an insurance transaction. It is as unacceptable in the former as it is latter. The policing authority of Respondent, by law, can neither forgive nor condone submitting false information

or omitting material information in an application or insurance transaction, because, whether such is done “negligently” as Rickabaugh claims or purposefully, Respondent is charged with the protection of insurance consumers. Hence, Respondent properly exercised his discretion in denying Petitioner’s license where: (1) Rickabaugh knew that submitting untruthful information was grounds for discipline; (2) the information omitted regarding her prior administrative discipline was material to her license application; and (3) lack of truthfulness in the application (particularly in light of Rickabaugh’s history of admitted insurance fraud) demonstrates her untrustworthiness to hold a Missouri insurance producer license and engage in business with Missouri consumers.

7. Even if this Commission excuses Rickabaugh’s signing and submission of a license application that included materially incorrect, misleading, incomplete or untrue information, this Commission should not ignore the fact that she admitted to committing insurance fraud on multiple occasions and that she had an insurance producer license revoked in Illinois, both grounds for denying her license pursuant to 375.141.1(8) and (9), respectively.

Rickabaugh admitted to Illinois DOI officials that she committed insurance fraud, a fraudulent and untrustworthy business practice, and grounds for denying her license pursuant to 375.141.1(8), RSMo. *Respondent’s Exhibit 2*. Rickabaugh further testified before this Commission that she committed the fraudulent acts that led to the revocation of her Illinois insurance license. *AHC Tr. at p. 30*.

Further, Rickabaugh presented no evidence to this Commission that the order revoking her Illinois insurance license had been vacated by the Illinois DOI or any other court. While the Illinois DOI chose to reinstate her license, the fact that her license was

revoked in another state still stands true and Respondent is not obligated to exercise discretion in the same way as the Illinois DOI. The plain language of section 375.141.1(9), RSMo, grants Respondent the discretion to deny Rickabaugh's license regardless of the Illinois DOI's decision to reinstate, after previously revoking, her Illinois insurance license. Section 375.141.1(9) does not distinguish between a license that is currently revoked and one that was previously revoked and later reinstated. Rickabaugh has presented no grounds for this Commission to infer such a distinction.

8. Rickabaugh cites the AHC Case of *Morrow v. The Director of Insurance*, Case No. 01-1809, in support of her request that this Commission grant her an insurance license. Petitioner's Brief, page 6. *Morrow* describes how this Commission exercises discretion regarding a prior license revocation.

While Respondent recognizes that the Illinois revocation and section 375.141.1(9), RSMo, does not mandate that he deny Rickabaugh's insurance license, he has considered the underlying actions resulting in her Illinois license revocation and exercised his discretion to deny her license. Rickabaugh admitted to committing *insurance fraud* on multiple occasions to insurance officials and, under oath to this Commission. Even after fully considering Rickabaugh's record since the events that led her Illinois license revocation, Respondent cannot ignore the fact that she committed multiple fraudulent acts to the financial detriment of the very industry in which she is seeking to be licensed. As such, Respondent has exercised his discretion to deny Rickabaugh's license in an effort to protect Missouri consumers.

WHEREFORE, based on the foregoing Reply Brief and the previously filed Respondent's Brief, the Director respectfully requests that this Commission make findings of facts and conclusions of law stating that the Director has established cause to deny the insurance license of Respondent, Angela D. Rickabaugh based upon 375.141.1(1), (8) and (9), RSMo (Supp. 2005).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 2nd day of November, 2007, to:

Ms. Angela D. Rickabaugh
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