State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	Case No. 07A000482
Timothy W. Newkirk,	)	
Applicant.	)	
	)	
Serve at:	)	
Timothy W. Newkirk	)	
1307 Western Avenue	)	
Green Bay, WI 54303	)	
	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On March 13, 2009, Andy Heitmann, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Jan Garwood. 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:

FINDINGS OF FACT

1. Timothy W. Newkirk ("Newkirk") is an individual residing in Wisconsin.

2. On or about March 8, 2007, the Department of Insurance, Financial Institutions & Professional Registration ("Department") received the electronic Non-Resident Individual Producer License Application of Newkirk ("Application").

3. Newkirk provided his residential address (also listed as his mailing address) on the Application as 1307 Western Avenue, Green Bay, Wisconsin 54303, and his business address as Secure Horizons, 3100 Ams Boulevard, Green Bay, Wisconsin, 54313.

4. At no time after he submitted his Application did Newkirk inform the Department of any change in his address.

5. In completing the Application, Newkirk attested under penalty of perjury to the truthfulness and completeness of the information he provided in the Application, in that the Application required assent to the Attestation Statement and the Application indicates that Newkirk signified such assent before submitting the Application.

6. Background Question #2 of the Application asks,

> Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration?

7. Newkirk answered "No" to Background Question # 2.

8. Contrary to Newkirk's answer to Background Question # 2, over a year before Newkirk gave that answer the state regulatory agencies in charge of licensure for insurance producers in Arkansas, Iowa and Virginia had each revoked Newkirk's license to produce insurance in their respective states:

   a. Newkirk's insurance producer license, or its equivalent, was revoked in Virginia on July 6, 2005;

   b. Newkirk's insurance producer license, or its equivalent, was revoked in Iowa on December 23, 2005;

   c. Newkirk's insurance producer license, or its equivalent, was suspended in Arkansas on April 20, 2005; and

   d. Newkirk had entered into a Consent Order with the Insurance Commissioner of the State or Arkansas to surrender his license for revocation on December 29, 2005.

9. On or about June 22, 2007, the Department received a faxed letter from Newkirk in response to its request for explanation.

10. In the June 22, 2007 letter, Newkirk stated that he "had not been aware of any administrative action until recently," adding "I had never received any notification of these actions."

11. Contrary to Newkirk's statement that he was not aware of any administrative proceedings against him when he falsely indicated on his Application that no such proceedings had taken place:

   a. A certified copy of the Consent Order agreeing with the Department of Insurance for the State of Arkansas to the revocation of his license in

Arkansas bears Newkirk's signature, signifying Newkirk's knowledge of and acquiescence to the terms of the Consent Order;

b. A certified copy of the Findings of Fact, Conclusions of Law and Order issued by the Iowa Insurance Division revoking Newkirk's license in Iowa states that the Iowa Insurance Division had mailed two letters to Newkirk's address of record, affording him notice of the administrative action against his Iowa insurance license;

c. A certified copy of the Order Revoking License issued by the Virginia Bureau of Insurance states that Newkirk had been sent notice to his address of record, by certified letter dated June 8, 2005, of proceedings concerning his license taking place before that body.

12. Newkirk truthfully revealed on his Application that he had been convicted of a crime; Newkirk was found guilty on April 2, 2003 in the Circuit Court of Brown County, Wisconsin of Credit Card – False Statements, a violation of Wisconsin Statutes § 943.41(2) and misdemeanor Theft of Movable Property, a violation of Wisconsin Statutes § 943.20(1)(a), both of which are Class A misdemeanors under Wisconsin law.

13. The crime of Credit Card – False Statements, of which Newkirk was found guilty, necessarily involves the use of misrepresentation, fraud, dishonesty or deceit.

14. The crime of Theft of Movable Property, under the facts disclosed in the State of Wisconsin's Amended Criminal Complaint against Newkirk, involved repeated breaches of trust, misrepresentations, fraud, dishonesty or deceit, in that Newkirk stole his girlfriend's ATM card and used it to make withdrawals from her bank account without her knowledge or permission.

15. Newkirk's explanation of his convictions in his June 22, 2007 letter seeks to minimize his culpability in the crimes and the breaches of trust, misrepresentations, fraud, dishonesty or deceit involved in their commission.

16. Following his June 22, 2007 letter, Newkirk ceased to cooperate in the Consumer Affairs Division's investigation into the matter of his licensure, in that:

a. On July 16, 2007, an investigator for the Consumer Affairs Division mailed a letter to Newkirk requesting certified copies of the charging and sentencing documents for Newkirk's 2003 Wisconsin criminal cases for Credit Card – False Statement and Theft of Movable Property; the letter required that the information be received by the Consumer Affairs Division by August 16, 2007, but Newkirk failed to respond by that date, and still has failed to respond as of the date of this Order;

b. On September 4, 2007, an investigator for the Consumer Affairs Division mailed a letter to Newkirk asking to speak with Newkirk about the investigation and the disciplinary actions taken against him in Arkansas, Iowa and Virginia; the investigator requested a response by September 21, 2007, but Newkirk failed to respond by that time or within twenty (20) days, and still has failed to respond as of the date of this Order;

c. As of the date of this Order, the Department has received no further response or communication from Newkirk since his June 22, 2007 letter.

17. Newkirk intentionally provided materially incorrect, misleading, incomplete or untrue information in the license Application when he misrepresented the history of administrative discipline to his insurance licenses in Arkansas, Iowa and Virginia for the purpose of misleading the Department into granting him an insurance producer license in Missouri. Newkirk had notice of those actions and even participated in bringing about the revocation of his Arkansas license by signing a Consent Order over a year before submitting his Application in Missouri.

18. Newkirk failed to cooperate with the Consumer Affairs Division investigation into the matter of his licensure in Missouri.

CONCLUSIONS OF LAW

19. Section 375.141, RSMo (Supp. 2008) 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;
>
> (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;
>
> ...
>
> (6) Having been convicted of a felony or crime involving moral turpitude;
>
> ...

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

20. 20 CSR 100-4.100, Required Response to Inquiries by the Consumer Affairs Division, provides in relevant part:

(2) Except as required under subsection (2)(B)—
(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...

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

21. Section 374.210.2, RSMo (Supp. 2008), provides, in relevant part:

The director may also suspend, revoke or refuse any license ... issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

22. Under Missouri law, when a letter is duly mailed by first class mail, there is a rebuttable presumption that the letter was delivered to the addressee in the due course of the mails. *Hughes v. Estes*, 793 S.W.2d 206 (Mo. App. 1990).

23. The principal purpose of § 375.141, RSMo (Supp. 2008), is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo.App. E.D. 1984).

24. Newkirk may be refused an insurance producer license, based upon § 375.141.1(9), RSMo (Supp. 2008), for the revocation in Arkansas.

25. Newkirk may be refused an insurance producer license, based upon § 375.141.1(9), RSMo (Supp. 2008), for the revocation in Iowa.

26. Newkirk may be refused an insurance producer license, based upon § 375.141.1(9), RSMo (Supp. 2008), for the suspension in Virginia.

27. Newkirk may be refused an insurance producer license, based upon § 375.141.1(9), RSMo (Supp. 2008), for the revocation in Virginia.

28. Newkirk may be refused an insurance producer license, based upon § 375.141.1(6), RSMo (Supp. 2008), for his convictions in Wisconsin for Credit Card – False Statements and Theft of Movable property, in that those offenses are contrary to justice, honesty and good morals and are therefore crimes of moral turpitude.

29. Newkirk intentionally provided incorrect, misleading, incomplete or untrue information in his Application when he answered Background Question #2 "No," thereby asserting that he had not been involved in any administrative proceeding regarding any professional or occupational license, or registration, when in fact for over a year before he submitted the Application at least three (3) of his insurance licenses had been revoked, by Arkansas, Iowa and Virginia.

30. Newkirk may be refused an insurance producer license, based upon § 375.141.1(1), RSMo (Supp. 2008), for answering "No" to Background Question #2 and thereby intentionally providing incorrect, misleading, incomplete or untrue information in his Application.

31. Newkirk may be refused an insurance producer license, based upon § 375.141.1(3), RSMo (Supp. 2008), for answering "No" to Background Question #2 and thereby attempting to obtain a license through material misrepresentation or fraud.

32. Newkirk may be refused an insurance producer license, based upon § 375.141.1(8) (Supp. 2008), for answering "No" to Background Question #2 and for his neglectful failure to respond to this Department's investigative inquiries, thereby using fraudulent, coercive, or dishonest practices, or demonstrating incompetence or untrustworthiness in the conduct of business in this state or elsewhere.

33. Newkirk may be refused an insurance producer license, based upon § 375.141.1(2), RSMo, for failing to respond to inquiries by the Department into the administrative proceedings involving Newkirk in Arkansas, Iowa and Virginia, thereby in each instance violating 20 CSR 100-4.100 by failing to provide an adequate response to inquiries from the Department's Division of Consumer Affairs within twenty (20) days of the Division's inquiry.

34. The Director has considered the history of Newkirk and all of the circumstances surrounding Newkirk's Application. Newkirk's misrepresentations concerning administrative actions taken against him in other states, along with his failure to report those actions on his application, demonstrate a pattern of deceit, untrustworthiness and neglect that makes issuance of a Missouri insurance license to him not in the interest of the public. In addition, Newkirk has been convicted in Wisconsin of crimes

involving moral turpitude. For all of these reasons, the Director exercises his discretion in refusing to license Newkirk.

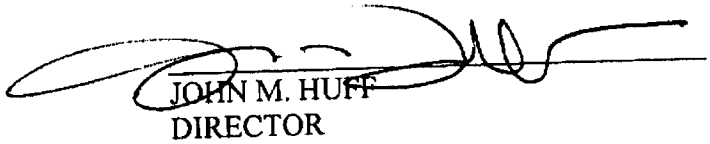
35. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Timothy W. Newkirk is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 17th DAY OF March, 2009.



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 of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120, RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2009, a copy of the foregoing notice and order was served upon the Applicant in this matter by certified mail.

Karen Crutchfield

Karen Crutchfield
Senior Office Support Staff