STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
James Curtis Smith,	)	Case No. 08A000083
Applicant.	)	
	)	
Serve at:	)	
16548 NE Glisan St.	)	
Portland, OR, 97230	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On June 19th, 2008, Dale Hardy Roberts, Special Investigations Legal Counsel of the Consumer Affairs Division, submitted a petition to the Director alleging cause to refuse to issue a license to James Curtis Smith. 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. James Curtis Smith is a resident of Oregon, with an address of 16548 NE Glisan Street, Portland, Oregon 97230.

2. On January 25, 2008, the Department received Smith's "Uniform Application for Individual Non-Resident," for a producer's license.

3. Question number one, on the Application, asks:
   Have you ever been convicted of a crime,
   had a judgment withheld or deferred,
   or are you currently charged with committing a crime?

4. The Applicant checked the "Yes" answer to this question.

5. Smith offered an explanation for his answer but his statements regarding his arrest, charges, and convictions, was not truthful, accurate, or complete.

6. This order is in the public interest.

CONCLUSIONS OF LAW

7. Section 375.141.1 RSMo Cum Supp 2007 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 following causes:
> (6) Having been convicted of a felony or crime involving moral turpitude.

8. Applicant has been convicted of attempted murder with a firearm, unlawful use of a weapon, possession of a firearm in a public building, and attempted assault in the first degree with a firearm.

9. Applicant may be disqualified and therefore, refused an insurance producer license, based upon the §375.141.1 (6) for his felony conviction(s). The current statute is to be properly applied to licensing actions. Finke v. Cummings, Case No. 06AC-CC01084, March 23, 2007.

10. As §375.141 provides that the director "may" refuse a license renewal, the director has discretion under this section for disqualifying Smith on the basis of the felony conviction. State Bd. Of Regis'n for the Healing Arts v. Finch, 514 S.W. 2d 608 (Mo. App., E.D. 1984); Joyce v. Director of Insurance, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998); James A. Gillihan v. Director of Insurance, No. 04-1652 DI (Mo. Admin. Hearing Comm'n December 21, 2006); Rochelle K. Whatley v. Director of Insurance, No. 05-1074 DI (Mo. Admin. Hearing Comm'n January 3, 2007). A licensed insurance producer is often entrusted with substantial funds belonging to others. This fiduciary capacity requires integrity. Due to the complexity of many insurance contracts, a licensed insurance producer also often enjoys a substantial bargaining advantage over many prospective insurance purchasers. A duty of fair dealing accompanies this specialized professional knowledge.

11. Section 374.210 RSMo (Cum Supp 2007) provides, in pertinent part, that it is unlawful for any person in an application to: (1) Knowingly make or cause to be made a false statement in any record that is submitted to the director ...; or (2) Make any false certificate or entry ... upon any statement or exhibit ... to be filed in the department, or used in the course of inquiry, or investigation under chapter 374, chapter 354, RSMo, and chapters 375 to 385, RSMo.

12. In applying this discretion, the Director has considered the history of Smith and all of the circumstances surrounding Smith's application. Although Smith may complete his criminal supervision later this year, his felony criminal history, his failure to take responsibility for his actions, and his failure to honestly and

accurately respond to the Investigator's inquiries regarding Smith's criminal record, raise additional questions regarding Smith's integrity and whether he has demonstrated that he can meet the significant responsibilities of a licensed insurance producer.

13. The Director has considered all of the information within the whole record of the application. Any failure to specifically address a piece of evidence, information, a position or any argument of any party in this order does not indicate that the Director has failed to consider relevant information. Although it may not have been discussed herein, all of the evidence was considered in reaching this decision.

14. For all of these reasons, the Director exercises the discretion of the Director in refusing to license James Curtis Smith.

15. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the issuance of the non-resident insurance producer license of James Curtis Smith is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 23rd DAY OF June, 2008.

Linda Bohre

DIRECTOR

NOTICE

TO: Smith 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 26th day of June, 2008, a copy of the foregoing notice, order and petition was served upon Smith in this matter by certified mail.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff