State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Ted Herrera,	)	Case No. 08A000561
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
211 Orange Blossom San Antonio, TX 78247	)	
	)	
Or:	)	
	)	
4320 S. Western Street Amarillo, TX 79109	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On March 10, 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 Ted Joaquin Herrera. 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. Ted Joaquin Herrera ("Herrera") is an individual residing in Texas.

2. On or about April 9, 2008, the Department of Insurance, Financial Institutions & Professional Registration ("Department") received the electronic Non-Resident Individual Producer License Application of Herrera ("Application").

3. Herrera provided his residential address on the Application as 211 Orange Blossom, San Antonio, Texas, 78247, and his business address (also listed on the Application as his mailing address) as 4320 South Western Street, Amarillo, Texas, 79109.

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

5. In the section of the Application headed "Background Questions," Background Question # 1 asks "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"

6. Herrera answered Background Question # 1 with a "Yes."

7. A facsimile transmission of seventeen (17) pages was sent to the Consumer Affairs Division on July 3, 2008, according to a date stamp at the top of each page, submitted by Herrera in elaboration on his answer to Background Question # 1, disclosing that Herrera had been subject to six arrests, charges or convictions. The faxed documents gave only partial explanation of Herrera's criminal history and included:

   a. A plea document from the 175th District Court of Bexar County, Texas, dated May 14, 1996, and entitled "State Jail Felony Sentence Suspended: Placement on Community Supervision," which indicates that Herrera pled nolo contendere, and received a court verdict of guilty, to one count of felony Possession of a Controlled Substance, Penalty Group 1, Less than One (1) Gram, under Tex. Health & Safety Code Ann. § 481.115(b); the May 14, 1996 plea document indicates that Herrera received three years' probation for the Possession of a Controlled Substance plea;

   b. A document from the 175th District Court of Bexar County, Texas, dated June 2, 1998, and entitled "Early Termination: Termination of Probation/Community Supervision Satisfactorily," which indicates that Herrera's probation for Possession of a Controlled Substance was terminated satisfactorily on May 22, 1998;

   c. Two more documents from the 175th District Court of Bexar County, Texas, dated June 2, 1998, and entitled "Early Termination: Termination of Probation/Community Supervision Satisfactorily," which indicate that Herrera had been given ten years' probation on January 3, 1994, which probation was also terminated on May 22, 1998;

   d. A Court Order from the County Court at Law No. 1 of Bexar County, Texas, dated March 22, 2007, and entitled "Termination From Community Supervision," which indicates that another period of Herrera's probation, also for possession of a controlled substance, was terminated on that date;

   e. A Motion to Dismiss apparently filed by the Assistant Criminal District Attorney of Bexar County, Texas with the County Court at Law No. 5 of Bexar County, Texas, dated March 5, 1998, which also contains the court's order to dismiss charges for an offense labeled on the motion "DWLS;"

   f. A page that appears to have been printed from a terminal screen, undated but reading "Last Updated 01 01 2000" and untitled but headed "Case Inquiry Page

(B1-Page)," which appears to relate docket information, but the information is abbreviated and is nowhere explained or annotated by Herrera;

g. A document from the County Court at Law No. 8 of Bexar County, Texas, dated July 28, 1995 and entitled "Order of Court Terminating Period of Probation: Offense: Possession of Marijuana," which indicates that a period of Herrera's probation was terminated satisfactorily on July 28, 1995;

h. A series of brief handwritten narratives describing the circumstances of each arrest or conviction, and the probation that followed the criminal proceedings for each, as applicable. According to the narratives, at least two of Herrera's criminal cases involved possession of marijuana, and one of the cases involved carrying a gun onto school property.

8. Investigation by the Consumer Affairs Division revealed that, according to a certified record of the State of Idaho Department of Insurance, on May 21, 2008, the Idaho Department of Insurance denied Herrera's application for a non-resident producer license based on Herrera's "extensive criminal history, having six convictions, and therefore failing to qualify under Idaho Code § 41-1016(1)(f)."

9. On July 22, 2008, Carrie Couch, Special Investigator for the Consumer Affairs Division ("Investigator"), mailed a letter to Herrera at his business address of record requesting further information on Herrera's criminal history and a detailed explanation of the administrative action taken by Idaho.

10. In the July 22, 2008 letter, the Investigator also requested a certified copy of the Order from the State of Idaho denying Herrera's license in Idaho.

11. In the July 22, 2008 letter, the Investigator requested a response from Herrera by August 12, 2008 and advised Herrera that failure to respond could result in refusal of Herrera's license.

12. On August 22, 2008, having received no response from Herrera to her July 22, 2008 letter, the Investigator mailed a second letter requesting the same information and documents requested in the July 22, 2008 letter and required a response by September 11, 2008, again warning Herrera that failure to respond could result in refusal.

13. On September 19, 2008, as the Consumer Affairs Division still had not received any response to its inquiries of Herrera, the Director issued and sent by certified mail a Subpoena Duces Tecum to Herrera, ordering him to appear before the Director or her appointee on October 9, 2008 at 12:30 p.m. to answer questions concerning Herrera's failure to respond to the Investigator's inquiries and Herrera's failure to disclose the administrative action taken by the State of Idaho Department of Insurance.

14. The September 19, 2008 Subpoena Duces Tecum also required Herrera to bring with him to the subpoena conference:

a. A certified copy of the information or charging document, plea agreement and judgment and sentence related to any criminal convictions in which Herrera was a defendant; and

b. A certified copy of any administrative actions and/or license denials taken against Herrera in the State of Idaho.

15. On October 9, 2008, at about 1:35 pm, the Investigator and an attorney for the Consumer Affairs Division went on record in a conference pursuant to the Subpoena Duces Tecum, and the Investigator testified under oath that Herrera had not appeared as ordered.

16. At the October 9, 2008, subpoena conference, the Investigator further testified under oath that neither the July 22, 2008 letter nor the August 22, 2008 letter, referenced above in this Petition, had been returned to the Department after being mailed.

17. At the October 9, 2008 subpoena conference, the Investigator further testified under oath that neither the Subpoena Duces Tecum, nor the Postal Service Form 3811, Certified Receipt ("Green Card") had been returned to the Department.

18. At the October 9, 2008 subpoena conference, the Investigator further testified under oath that on October 8, 2008 she left Herrera a voicemail message at Herrera's residence phone number, (210) 404-1931, which number was verified by the voicemail greeting she reached, but that as of the time of the subpoena conference she had not received a response from Herrera.

19. The Consumer Affairs Division has received no further response or cooperation from Herrera since the July 3, 2008 faxed information.

CONCLUSIONS OF LAW

20. 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:

...

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

...

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

21. 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.

22. 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.

23. 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).

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

25. Herrera has had his application for an insurance license refused in Idaho. That refusal in itself constitutes cause under § 375.141.1(9), RSMo (Supp. 2008), for this Department's refusal to license Herrera.

26. Herrera twice failed to respond as required by 20 CSR 100-4.100 to Division of Consumer Affairs inquiries regarding his criminal history and the refusal of his license in Utah. These failures each constitute cause under § 375.141.1(2), RSMo (Supp. 2008), § 374.210.2, RSMo (Supp. 2008), and 20 CSR 100-4.100 for this Department's refusal to license Herrera.

27. The Director ordered Herrera by Subpoena Duces Tecum to appear at the Department to testify concerning his criminal history and the refusal of his license in Utah and to produce documents containing information necessary to decide his Application on its merits. Herrera failed to appear and failed to contact the Department to reschedule the subpoena conference. Herrera's failure to appear is a failure to obey an order of the Director and constitutes cause to refuse Herrera's license under § 375.141.1(2) (Supp. 2008) and § 374.210.2, RSMo (Supp. 2008).

28. A document supplied by Herrera entitled "Judgment of Conviction – Plea of Nolo Contendere Before the Court," dated May 14, 1996, indicates that at least one crime of which Herrera may have been convicted was a felony count of possession of a controlled substance.

29. From the incomplete documents Herrera supplied to the Consumer Affairs Division concerning his criminal history, it appears that Herrera may have been convicted at least once of possession of marijuana which, as a drug crime, is a crime of moral turpitude. See In re Frick, 694 S.W.2d 473, 479 (Mo. banc 1985).

30. Although it also appears that Herrera may have received a suspended sentence for some or all of his convictions, without the documentation the Investigator requested and Herrera failed to provide, the Consumer Affairs Division cannot determine whether Herrera has been convicted of a felony or a crime involving moral turpitude.

31. The Director has considered Herrera's history and all of the circumstances surrounding Herrera's Application. Herrera has had his licensed refused in another state. Herrera's failures to cooperate with this Department in the licensure process and his failure to obey an order of the Director provoke serious doubt about his willingness to conform to this state's insurance laws and regulations. For these reasons, the Director exercises his discretion in refusing to license Herrera.

32. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Ted Joaquin Herrera is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 12TH 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 13th day of March, 2009, a copy of the foregoing notice and order was served upon the Herrera in this matter by certified mail.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff