State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Ethan F. Baker,	)	**Case No. 08A000757**
	)	
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On November 17, 2009, Mary S. Erickson, Senior 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 Ethan F. Baker. 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. Ethan F. Baker ("Baker") is an individual residing in Missouri, whose mailing address of record is 147 South Cedar Heights, Nixa, Missouri 65714.

2. On August 27, 2008, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Baker's Uniform Application for Individual Insurance Producer License ("Application").

3. In the section of the Application headed "Background Questions," Background Question #4 asks "Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?"

4. Baker answered "Yes; STATE OF MISSOURI" to Question # 4.

5. On or about August 27, 2008, Baker sent a facsimile to the Department stating that he and his ex-wife were "re doing (sic) those tax years to confirm the exact amount owed. Then we will pay the amount owed."

6. On September 29, 2008, Diana Brady, Special Investigator for Consumer Affairs Division ("Investigator Brady" or "Investigator"), mailed a letter to Baker at his address of record (as provided in his application) asking for documentation showing that he is in a repayment plan for the owed taxes.

7. The September 29, 2008 letter stated that Baker's response was due by October 20, 2008.

8. The Department did not receive a response from Baker to the September 29, 2008 letter, which was sent to his address of record by first class mail. The letter was also not returned by the U.S. Postal Service as undeliverable.

9. On October 30, 2008, Investigator Brady sent a second letter to Baker stating that no reply had been received to the September 29, 2008 letter and requesting that Baker give this matter his immediate attention and forward his reply by November 10, 2008.

10. The Department did not receive a response from Baker to the October 30, 2008 letter, which was sent to his address of record by first class mail. The letter was also not returned by the U.S. Postal Service as undeliverable.

11. On February 20, 2009, Investigator Brady telephoned Baker and left a message for Baker to contact the Department.

12. On or about March 3, 2009, having received no response to the Investigator's requests for information and documentation, the Department served by certified mail a Subpoena Duces Tecum to Baker's address of record, ordering him to appear before the Director or his appointee on March 26, 2009, for an investigation conference under oath ("Subpoena Conference") and to bring and produce documentation supporting a repayment plan for delinquent taxes.

13. The Department received the certified mail delivery receipt (U.S. Postal Service Form 3811, known as a "green card"), bearing the signature of "EB" (printed name, "Ethan Baker"), and indicating delivery of the Subpoena on March 18, 2009.

14. On March 25, 2009, Baker telephoned Investigator Brady and stated that he wished to withdraw his Application. The Investigator told Baker to put his withdrawal in writing and to send it to her. In light of Baker's intention to withdraw his Application, the Subpoena Conference was cancelled.

15. On April 10, 2009, the Investigator telephoned Baker and stated that no written withdrawal had been received.

16. On April 23, 2009, the Investigator emailed Baker at ethanbaker@yahoo.com, the email address provided by Baker on his Application. In the email, the Investigator again stated that no written withdrawal had been received and that Baker's response was due by May 1, 2009 by letter or email.

17. On July 14, 2009, the Investigator obtained from the Missouri Department of Revenue, Taxation Division, a Certification of Tax Compliance certifying that Baker "has taken the necessary steps to be in tax compliance."

18. As of November 1, 2009, no written withdrawal request had been received by the Department from Baker.

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:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state[.]

20. Title 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.

21. 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).

22. 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. 1984).

23. Baker failed twice to respond as required by 20 CSR 100-4.100 to Division of Consumer Affairs inquiries regarding his self-reported delinquent tax status. These failures each constitute cause under § 375.141.1(2) RSMo (Supp. 2008) and 20 CSR 100-4.100 for this Department's refusal to license Applicant Baker.

24. Baker has shown through his repeated failures to cooperate with the Consumer Affairs Division that he cannot be counted upon to submit himself to this Department's regulatory authority.

25. The Director has considered Baker's history and all of the circumstances surrounding his Application. Baker failed to respond to two inquiries from the Consumer Affairs Division. Therefore, granting Baker an insurance producer license would not be in the interest of the public. For all of the reasons stated in this Order, the Director exercises his discretion by refusing to issue Baker an insurance producer license.

26. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of ETHAN F. BAKER is hereby summarily **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 2nd **DAY OF** DECEMBER, **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. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2009, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by certified mail No. 7006 0100 0005 2090 6839.

Karen Crutchfield

Karen Crutchfield
Senior Office Support Staff