State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	Case No. 08A000846
Timothy L. Norrell,	)	
Applicant.	)	
	)	
Serve at:	)	
Timothy L. Norrell	)	
1004 North 25th Street	)	
Ozark, MO 65721 4	)	
	)	
Or	)	
	)	
1826 W. Willow Wood Drive	)	
Nixa, MO 6571	)	

REFUSAL TO ISSUE AN INSURANCE PRODUCER LICENSE

On July 31, 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 Respondent Timothy L. Norrell. 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 L. Norrell ("Norrell") is an individual residing in Missouri.

2. Norrell held a license as an individual insurance producer in Missouri (license number 131123) from May 14, 2001, until May 14, 2003, when his license expired.

3. On or about September 30, 2008, the Department of Insurance, Financial Institutions & Professional Registration ("Department") received Norrell's electronic Uniform Application for Individual Insurance Producer License ("Application").

4. The Application lists Norrell's address as 1826 W. Willow Wood Drive, Nixa, Missouri, 65714.

5. Norrell also referred, at a subpoena conference held on December 10, 2008, to a second address, as his business address: 1004 North 25th Street, Ozark, Missouri, 65721.

6. The Application included a section headed "Applicants [sic] Certification and Attestation" ("Attestation Statement"), which contains eight (8) items that Norrell had to attest to before completing and submitting the Application.

7. By agreeing to the Attestation Statement, Norrell certified that "under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties."

8. Although Norrell certified under penalty of perjury that his Application was true and complete, it was not.

9. In the section of the Application headed "Background Questions," Question # 1 asks "Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?"

10. Question # 1 elaborates that "'Convicted' includes, but is not limited to...having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine."[1]

11. Norrell answered "No" to Question # 1.

12. Further investigation revealed that Norrell had been arrested for felony stealing in Springfield, Missouri, in 2003.

13. An Incident Report from the Springfield Police Department states that on January 3, 2003, Adele Latham and Orville J. Latham complained to Springfield police that Norrell had fraudulently taken $1100 from them by purporting to sell them a long-term care insurance policy in their home, taking the money for the premium from them, but failing to forward the premium to an insurer, and then failing to respond when the Lathams attempted to contact him for a refund. According to the Incident Report, the Lathams alleged that:

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[1] When an online application is submitted through the National Insurance Producer Registry's website, the Department receives an abbreviated readout of the online application. The application, as it actually appears online as the applicant fills it out, contains information substantially identical to that contained in a paper application, including the information described in this Paragraph.

a. Norrell visited their home on November 5, 2002, claiming to represent Guaranty Trust Life Insurance Company ("Guaranty") and offering them both a long-term care insurance policy through Guaranty.

b. Norrell did not bring any insurance brochures, applications, or any other written material with him to the Lathams' home.

c. Norrell persuaded the Lathams to pay $1000 in cash and $100 by check to initiate coverage under a long-term care policy.

d. Norrell asked for a piece of paper from the Lathams and used it to make out a handwritten receipt for the money and check.

e. The Lathams changed their minds about the long-term care product purportedly sold to them by Norrell and attempted to call Norrell at the number he had given them but reached a disconnected number.

f. After about two months of repeated failed attempts to contact Norrell, and after having received no indication that they had a policy in force, the Lathams became suspicious and complained to the police.

g. Norrell never returned the $1000 in cash, but also apparently never cashed the check for $100.

14. According to the police report, Norrell admitted to the investigating officer that he sold the Lathams a long-term care policy on November 5, 2002.

15. On October 23, 2008, Consumer Affairs Division Special Investigator Les Hogue ("Investigator") mailed a letter to Norrell asking Norrell for certified court records and other documentation showing the resolution of the felony stealing case initiated by the Lathams' complaint.

16. Also on October 23, 2008, the Investigator mailed a letter to the Greene County Judicial Courts Facility, seeking certified copies of any court records related to Norrell's felony stealing case.

17. On October 31, 2008, the Investigator received an e-mailed written response from Norrell. In the response, Norrell stated that:

a. He called Mrs. Latham first and made an appointment with her to come to the Lathams' home.

b. He went to the Lathams' home intending to sell them a security system for U. S. Security Company, for whom he then worked.

c. The Lathams gave him $1000 in cash and a $100 check as payment

toward the purchase of a security system for their home.

d. He received a call "[e]arly the next morning" from Mr. Latham saying the Lathams had changed their minds about the security system and wanted their money back.

e. He went to the Lathams' home later that day and returned the $1000 in cash and the $100 check.

18. Norrell's emailed response makes no mention of a long-term care product.

19. The Department received a certified copy of the Circuit Court of Greene County, Missouri felony Complaint alleging that in his dealings with the Lathams Norrell violated § 570.030, RSMo, and thereby committed the crime of stealing by deceit.

20. The Department also received a certified copy of the Circuit Court of Greene County's Judgment against Norrell in the stealing by deceit case, in which the court found that Norrell pleaded guilty on July 1, 2004, and in which the court suspended imposition of Norrell's sentence and placed Norrell on supervised probation for five (5) years, beginning October 8, 2004.

21. On December 10, 2008, Norrell appeared at the Department's offices for an investigations conference held pursuant to a subpoena ("Subpoena Conference"), in which Norrell testified under oath that:

a. Contrary to his own statement in his emailed response, he showed up at the Lathams' home without having first called to make an appointment.

b. He had returned the Lathams' money, but he nevertheless "paid restitutions" to them as part of his probation.

c. The reason he failed to include any mention of his 2004 felony guilty plea in part because he "wasn't aware that [the Department] had that public record" and he "didn't want to open up something that [the Department] [wasn't] aware of." He added, though he didn't explain, that he failed to reveal that information "secondly, out of fear."

d. Contrary to his own statement in his emailed response, he sold the Lathams a "long-term care product," and not a security system.

e. When he sold the long-term care product, he purported to be selling it as a producer for Guaranty Trust Life Insurance Company, through a company called "Seniors First," and that at the relevant time his appointment with Guaranty Trust Life Insurance had been terminated for over eight months.

f. His failure to include any reference in his response to selling the Lathams a long-term care policy was due to "stupidity, on my [Norrell's] part."

CONCLUSIONS OF LAW

22. 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;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

* * *

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

* * *

23. Section 375.144, RSMo (Supp. 2008), provides, in relevant part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

(1) Employ any deception, device, scheme, or artifice to defraud;

* * *

(4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

24. Section 375.022, RSMo (Supp. 2008), provides, in relevant part:

* * *

2. An insurance producer shall not act on behalf of an insurer unless the insurance producer is listed on the company register of appointed insurance producers authorized to sell, solicit or negotiate contracts of insurance on behalf of the insurer.

* * *

25. 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).

26. Section 374.210 provides, in relevant part:

1. It is unlawful for any person in any investigation, examination, inquiry, or other proceeding under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, to:

(1) Knowingly make or cause to be made a false statement upon oath or affirmation or in any record that is submitted to the director or used in any proceeding under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo[.]

* * *

27. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruiett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972).

28. Misappropriation has been defined as "[t]he unauthorized, improper, or unlawful use of funds or other property for purpose other than that for which intended." *Monia v. Melahn*, 876 S.W.2d 709, 713 (Mo. App. 1994).

29. Conversion is the diversion of another's funds, by the holder of such funds, to a purpose other than that specified by the owner. *Dir. of Ins. v. Denny*, 00-0359 DI (Mo. Admin. Hearing Comm'n October 31, 2000) (citing *Hall v. W.L. Brady Investments, Inc.*, 684 S.W.2d 379, 384 (Mo. App. 1984).

30. Norrell may be refused an insurance producer license, based upon § 375.141.1(1), RSMo (Supp. 2008), for intentionally providing materially incorrect, misleading, incomplete or untrue information on his Application:

a. Norrell answered Background Question # 1 with a "No" despite having pleaded guilty to felony stealing by deceit.

b. Pleading guilty to a felony is a memorable event; the most likely explanation for an applicant's failure to disclose such plea on an application is that he intentionally failed to disclose the plea in order to improve his chances of succeeding with his application.

c. Norrell testified under oath that he failed to disclose the plea in part because he "wasn't aware that [the Department] had that public record," he "didn't want to open up something that [the Department] [wasn't] aware of," and that he failed to disclose it "secondly, out of fear." These reasons, given by Norrell himself, support the conclusion that Norrell intentionally failed to disclose the plea in order to improve his chances of succeeding with his application.

31. Norrell may be refused an insurance producer license, based upon § 375.141.1(2), RSMo (Supp. 2008), for violating § 375.022, RSMo (Supp. 2008), in that Norrell offered to sell and purported to sell a long-term care policy in the name of Guaranty Trust Life Insurance Company while he was not appointed as a producer with Guaranty Trust Life Insurance Company.

32. Norrell may be refused an insurance producer license, based upon § 375.141.1(2), RSMo (Supp. 2008), for violating § 374.210.1, RSMo (Supp. 2008), in that Norrell knowingly made the following false statements in his October 31, 2008 email to the Department:

a. Norrell falsely stated that he had made an appointment with the Lathams before arriving at their home on November 5, 2002.

b. Norrell falsely stated that he sold the Lathams a security system, and not a long-term care product.

c. Norrell falsely stated that he returned all the money to the Lathams that he obtained from them on November 5, 2002. Norrell also made this false statement under oath at the Subpoena Conference.

33. Norrell may be refused an insurance producer license based upon § 375.141.1(2), RSMo (Supp. 2008), for violating § 375.144, RSMo (Supp. 2008), in that the following conduct in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly constitutes the employment of a scheme or artifice to defraud the Lathams and comprised acts which operated as a fraud or deceit upon the Lathams:

a. Norrell obtained $1,100 from the Lathams for long-term care coverage but did not remit the funds to an insurer on behalf of the Lathams.

b. According to the Lathams, Norrell failed to heed their request to return $1,000 of that money to them.

c. There is no evidence tending to show that Norrell made any effort to place the long-term care coverage with any provider.

d. It is inferable that when Norrell took the money from the Lathams, he intended to keep it for his own purposes.

e. Norrell pleaded guilty in the Circuit Court of Greene County on July 1, 2004, to the criminal charge of stealing by deceit, in violation of § 570.030, RSMo, based on Norrell's actions in obtaining the $1,100 from the Lathams.

f. Norrell's guilty plea is an admission against his interest and is admissible in this matter as evidence that Norrell "appropriate[d] property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion," as the crime of stealing by deceit is defined, which admission also supports a finding that Norrell employed a scheme or artifice to defraud the Lathams and comprised acts with operated as a fraud or deceit upon the Lathams for purposes of § 375.144, RSMo (Supp. 2008).

34. Norrell may be refused an insurance producer license, based upon § 375.141.1(3), RSMo (Supp. 2008), for attempting to obtain a license through material misrepresentation or fraud, in that Norrell intentionally misrepresented his actions in selling the long-term care product to the Lathams:

a. In his emailed response to the Department, made as part of his effort to secure a license, Norrell claimed he sold a security system to the Lathams.

b. However, in his sworn Subpoena Conference testimony, also part of the process of his attempt to obtain a license, Norrell admitted that he sold the Lathams a long-term care product.

c. One of these statements must, perforce, be untrue.

d. This misrepresentation was material to the Director's decision of whether to license Norrell, in that his actions may have been related to insurance business and insurance laws, depending on whether he was selling a security system or a long-term care product, which in turn affected the Director's consideration of whether the actions violated § 375.141.1(2), (4) or (7).

35. Norrell may be refused an insurance producer license, based upon § 375.141.1(4), RSMo (Supp. 2008), for improperly withholding, misappropriating or converting any moneys or properties received in the

course of doing insurance business:

a. Norrell obtained $1,100 from the Lathams for long-term care coverage but did not remit the funds to an insurer on behalf of the Lathams.

b. According to the Lathams, Norrell failed to heed their request to return $1,000 of that money to them.

c. There is no evidence tending to show that Norrell made any effort to place the long-term care coverage with any provider.

d. It is inferable that when Norrell took the money from the Lathams, he intended to keep it for his own purposes.

e. Norrell pleaded guilty in the Circuit Court of Greene County on July 1, 2004, to the criminal charge of stealing by deceit, in violation of § 570.030, RSMo, based on Norrell's actions in obtaining the $1,100 from the Lathams.

f. Norrell's guilty plea is an admission against his interest and is admissible in this matter as evidence that Norrell "appropriate[d] property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion," as the crime of stealing by deceit is defined, which admission also meets the definitions of misappropriation and conversion for purposes of § 375.141.1(4), RSMo (Supp. 2008).

36. Norrell may be refused an insurance producer license, based upon § 375.141.1(8) for using fraudulent and dishonest practices, and demonstrating untrustworthiness in the conduct of business in this state:

a. Norrell fraudulently and dishonestly deceived the Lathams into giving him $1,100, ostensibly in exchange for a long-term care product that Norrell was not authorized to sell and which Norrell did not intend to use the money to purchase.

b. Norrell's contradictory and false statements to the Department further demonstrate his untrustworthiness as an insurance producer.

c. Norrell pleaded guilty in the Circuit Court of Greene County on July 1, 2004, to the criminal charge of stealing by deceit, in violation of § 570.030, RSMo, based on Norrell's actions in obtaining the $1,100 from the Lathams.

d. Norrell's guilty plea is an admission against his interest and is admissible in this matter as evidence that Norrell used dishonest practices and

demonstrated untrustworthiness for purposes of § 375.141.1(4), RSMo (Supp. 2008).

30. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 25TH DAY OF AUGUST, 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 ____ day of _____, 2009, a copy of the foregoing notice and order was served upon the Applicant in this matter by certified mail.

_____
Karen Crutchfield
Senior Office Support Staff