State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Brian M. Pursley,	)	Case No. 090608562C
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
1103 N. Emma Street	)	
Olathe, KS 66061-6714	)	
(816) 420-8855 (work)	)	
(913) 999-1301 (home)	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On April 20, 2010, 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 Brian M. Pursley. 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. Brian M. Pursley ("Pursley") is an individual residing in Kansas, with a mailing address of record of 1103 N. Emma Street, Olathe, Kansas, 66061-6714.

2. On or about August 27, 2008, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic Non-Resident Individual Producer License Application submitted by Pursley ("Application").

3. In the Application, Pursley provided the address alleged in Paragraph 1 of this Order as his mailing address.

4. At no time since he submitted his Application has Pursley informed 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. Pursley answered "Yes" to Background Question # 1.

7. The electronic Application program alerted Pursley that his "Yes" answer to Background Question #1 required a written statement explaining the circumstances of his conviction(s), certified copies of the relevant charging documents and documents demonstrating the resolution of the charges, but Pursley did not attach those documents to his Application.

8. On December 16, 2008, the Department received a mailing from Pursley containing:

a. An uncertified copy of a judgment against Pursley in the U.S. District court for the Western District of Missouri, Western Division, for one count of Obtaining Information from a Government Computer Without Authorization, identified in the document as a violation of 18 U.S.C. § 1030(a)(2)(B).

b. A letter, dated December 10, 2008, and signed by Pursley, briefly describing the circumstances surrounding Pursley's felony conviction of Obtaining Information from a Government Computer Without Authorization.

c. An uncertified copy of a printout of an online summary of docket entries in Johnson County, Kansas District Court case number 03DV01440, a criminal case in which Pursley was charged with Battery and Intimidation of a Witness on November 26, 2003, and in which he was convicted of the misdemeanor Battery charge.

9. On December 30, 2008, Carrie Couch (the "Investigator"), an investigator for the Department's Consumer Affairs Division mailed a letter by first class mail to Pursley at the mailing address he provided in his Application, advising Pursley that based on his disclosed felony conviction he should submit an application (provided in the letter) for written consent to conduct insurance business under 18 U.S.C. § 1033(e)(2). The letter also requested a detailed explanation of the criminal matter indicated by the Johnson County, Kansas District Court docket information and certified charging documents, plea documents, sentencing documents and judgment in that case.

10. On January 27, 2009, not having received a response to the December 30, 2008 letter, the Investigator mailed a second letter, again requesting a detailed explanation of Pursley's Johnson County, Kansas criminal matter and certified documents showing the charge, plea and final judgment and sentence in that matter.

11. On March 2, 2009, as the Department still had not received a response from Pursley to the investigator's inquiries, the Director issued a subpoena duces tecum to Pursley, ordering Pursley to produce certified copies of the Indictment, Plea Agreement and Judgment in Pursley's 2007 federal conviction; a detailed statement of the circumstances surrounding the Johnson County Kansas criminal matter; and certified copies of the charging document, plea agreement, and judgment and sentence in the Johnson County, Kansas criminal matter. The subpoena was sent by certified mail. The subpoena provided that Pursley needed only to mail the ordered documents to the Department's investigator on or before March 23, 2009.

12. On March 30, 2009, the March 2, 2009 subpoena was returned to the Department as unclaimed.

13. On May 6, 2009, the Director issued a second subpoena duces tecum, again ordering Pursley to produce certified copies of the Indictment, Plea Agreement and Judgment in Pursley's 2007 federal conviction; a detailed statement of the circumstances surrounding the Johnson County Kansas criminal matter; and certified copies of the charging document, plea agreement, and judgment and sentence in the Johnson County, Kansas criminal matter. This subpoena was sent to Pursley's mailing address of record by first class mail. The subpoena provided that Pursley needed only to mail the ordered documents to the Department's investigator on or before June 2, 2009.

14. At no time since it was mailed to Pursley's mailing address of record has the May 6, 2009 subpoena been returned to the Department by the postal service.

15. The Investigator contacted the United States District Court for the Western District of Missouri, Western Division, and received from the court exemplified copies of an Indictment, Plea Agreement, and Judgment in Pursley's criminal prosecution for Obtaining Information from a Government Computer Without Authorization.

In the Plea Agreement, Pursley admitted that:

a. In 2002, Pursley was a Wyandotte County [Kansas] Sherriff's Office employee with access to police computer files, including the federal National Crime Information Center (NCIC) database.

b. In October 2002, Pursley used the NCIC database system to access background information on a Kansas City [Missouri] Police Department detective, who was working undercover for the [Kansas City] Metro Meth Task Force.

c. The detective was at the time investigating a local motorcycle club for participation in weapons and narcotics offenses.

d. In accessing the detective's information, Pursley exceeded his authorization as an employee of the Wyandotte County Sherriff's Office to access the NCIC database.

e. Pursley knew he was exceeding his authorization to access the NCIC database when he accessed the detective's information.

The Judgment showed that:

f. Pursley was sentenced to 4 months in federal prison on April 27, 2007.

g. Pursley was assessed and fined a total of $600.

16. The Investigator contacted the District Court of Johnson County, Kansas, and received from the court certified copies of the Complaint, Initiation of Action, and sentencing document. Those documents showed that:

a. Pursley pleaded guilty in the District Court of Johnson County, Kansas, to one count of battery, which is defined under Kansas law in K.S.A. § 21-3412.

b. On July 6, 2004, Pursley was sentenced by the District Court of Johnson County, Kansas, to 180 days in county jail as a result of the guilty plea to one count of battery.

17. To date, Pursley has not provided the Department with the documents required by the Application, requested in the December 30, 2009 letter and the January 27, 2009 letters, and required by the May 6, 2009 subpoena duces tecum.

CONCLUSIONS OF LAW

18. Section 375.141, RSMo (Supp. 2009) provides, in part:

> 1. The director may . . . refuse to issue . . . 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;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude;
>
> * * *

19. 20 CSR 100-4.100, Required Response to Inquiries by the Consumer Affairs Division, provides in 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 . . . When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

* * *

20. Section 374.210, RSMo (Supp. 2009), provides, in relevant part:

* * *

2 . . . 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.

* * *

21. 18 U.S.C. § 1030, which defines the federal crime of Obtaining Information from a Government Computer Without Authorization, states, in part:

(a) Whoever--

* * *

(2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains--

* * *

(B) information from any department or agency of the United States;

* * *

shall be punished as provided in subsection (c) of this section.

(c) The punishment for an offense under subsection (a) or (b) of this section is—

* * *

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(2), or an attempt to commit an offense punishable under this subparagraph, if—

* * *

(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State[.]

22. 18 U.S.C. § 3559 provides, in part:

(a) Classification.--An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is--

* * *

(4) less than ten years but five or more years, as a Class D felony[.]

* * *

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. 2009), 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).

25. Pursley's conviction of the felony of Obtaining Information from a Government Computer Without Authorization provides cause to refuse Pursley's license under § 375.141.1(6), RSMo (Supp. 2009).

26. Pursley's failure to produce records is a failure to obey an order of the Director and constitutes cause to refuse Pursley's license under § 375.141.1(2), RSMo (Supp. 2009) and is also cause for refusal under § 374.210.2, RSMo (Supp. 2009). The Director ordered Pursley by subpoena duces tecum to produce documents containing information necessary to decide his Application on its merits. Pursley failed to produce records in response to the Director's subpoena. Pursley did not apply to any court for relief from the director's subpoena duces tecum or seek postponement from the Director.

27. Pursley's Application may be refused under § 375.141.1(2), RSMo (Supp. 2009) because Pursley twice violated 20 CSR 100-4.100 by failing to provide adequate responses to Department inquiries within 20 days when Pursley failed to respond to the investigator's December 30, 2008 and January 27, 2009 letters. In neither case has Pursley offered any reasonable justification for his failure to respond.

28. The Director has considered Pursley's history and all of the circumstances surrounding Pursley's Application. Pursley was convicted of a felony. Pursley failed to obey an order of the Director and failed to produce documents as ordered by subpoena. Pursley failed to respond to Department inquiries. For all of these reasons, the Director exercises his discretion and refuses

to issue an insurance producer license to Pursley.

29. An order refusing to issue a license to Pursley is in the public interest.

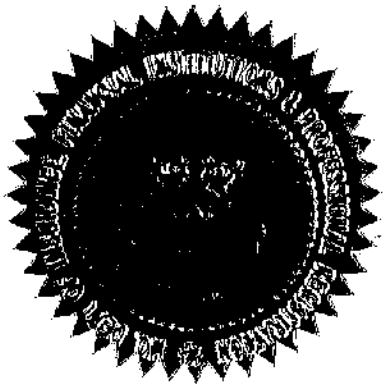
ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Brian M. Pursley is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 20th DAY OF APRIL, 2010.

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, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to § 621.120, RSMo. Under 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 22nd day of April, 2010, a copy/duplicate original of the foregoing Order and Notice was served upon the Applicant in this matter by certified/priority mail No. 7007 3020 0003 1572 6067.

Brian M. Pursley
1103 N. Emma Street
Olathe, Kansas 66061-6714
(816) 420-8855 (work)
(913) 999-1301 (home)

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff