State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	**Case No. 09-1211804C**
Thomas F. Terry,	)	
	)	
Applicant.	)	
	)	
Serve at:	)	
307 Weslyan Terrace	)	
Cameron, Missouri 64429	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On December 17, 2009, Tamara W. Kopp, 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 Thomas F. Terry. 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. Thomas F. Terry ("Terry") is an individual residing in Missouri, whose mailing address of record is 307 Weslyan Terrace, Cameron, Missouri 64429.

2. On September 21, 2009, the Department received a Uniform Application for Individual Insurance Producer License ("Application") from Terry.

3. 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?

4. Terry answered "Yes" to Background Question # 1.

5. Terry disclosed three misdemeanor and two felony convictions, including the following:

a. On November 15, 1994, Terry was charged with class C misdemeanor attempted property damage in violation of § 564.011, RSMo, and attempted assault in violation of § 565.070, RSMo, in Daviess County, Missouri, for dropping a pumpkin off a highway overpass in the presence of vehicular traffic. On June 12, 1995, Terry pleaded guilty to the crime of attempted property damage and was sentenced to 15 days in the county jail. The execution of the jail sentence was suspended and Terry was placed on probation. Ultimately, Terry admitted to violating the terms of his probation. The Daviess County Circuit Court revoked Terry's probation and ordered Terry to serve 13 days in jail.
b. On March 9, 1995, a felony complaint was filed against Terry in Buchanan County, Missouri charging him with the class C felony of possession of a controlled substance. On June 9, 1995, Terry pleaded guilty to the class C felony of possession of a controlled substance. On July 11, 1995, Terry received a suspended imposition of sentence and was placed on probation for three years. On May 22, 1996, the Circuit Court of Buchanan County entered an Order Revoking Probation against Terry and sentenced Terry to five years imprisonment with the Missouri Department of Corrections.
c. On July 4, 1995, Terry was charged with the class A misdemeanor of possession of drug paraphernalia, in violation of § 195.233, RSMo, in Clinton County, Missouri. On May 20, 1996, Terry was granted a suspended execution of sentence on a 90 day jail sentence and ordered to complete two years of probation. Terry completed his probation on May 21, 1998 and was discharged.
d. On October 22, 2002, Terry was charged with a misdemeanor passing bad checks in Clinton County, Missouri. On December 9, 2002, Terry was found guilty and sentenced to 30 days in jail.
e. On January 28, 2003, Terry was charged with felony unlawful transport of firearms, in violation of 18 U.S.C §§ 922(g)(1) and 924(a)(2), in the United States District Court for the Western District of Missouri. On April 14, 2003, Terry pleaded guilty and on September 4, 2003, was sentenced to 21 months in federal prison. Terry served 18 months of that sentence and was fully released from probation/parole on November 25, 2007.

CONCLUSIONS OF LAW

6. Section 375.141.1(6), RSMo (Supp. 2008), provides that the director may suspend, revoke, refuse to issue, or refuse to renew an insurance producer license for having been convicted of a felony or a crime involving moral turpitude.

7. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

8. In *Brehe v. Mo. Dept. of Elementary & Secondary Education*, which involved an attempt to discipline a teacher's certificate under § 168.071, RSMo, for committing a crime involving moral turpitude, the court referred to three categories of crimes, the categories drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):

   (1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);
   (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" ("category 2" crimes); and
   (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes).

   See Brehe v. Mo. Dept. of Elementary & Secondary Education, 213 S.W.3d 720, 725 (Mo. App. 2007).

9. Category 1 crimes, since they necessarily involve moral turpitude, require no analysis beyond their elements to show moral turpitude; category 3 crimes require some examination of the facts supporting the conviction in order to determine whether they involve moral turpitude. See *Brehe* at 725-7; See also *Joyce v. Dir. of Dept. of Ins.*, Mo.Admin. 07-1364 DI, 2008 WL 4182673 (Mo.Admin.Hrg.Commn.).

10. 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).

11. Terry may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), because the offense of attempted property damage is a category 3 crime of moral turpitude. "Knowingly damaging the property of another involves moral turpitude because it violates a private and social duty to another person regarding their property." *Director of Department of Public Safety v. Raymond L. Ladewig*, Mo. Admin. 00-0286 PO, 1999 WL 33596219, 1, (Mo.Admin.Hrg.Comm.). In Terry's case, he dropped a pumpkin off a highway overpass in the presence of traffic. The risk of harm to individuals from a pumpkin landing on their vehicle or causing them to swerve to avoid the pumpkin was high and Terry's conduct showed sufficient vileness or depravity to qualify as a crime of moral turpitude.

12. Terry may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), because the offense of possession of a controlled substance is a felony under to § 195.202, RSMo. Possession of a controlled substance is also a category 1 crime of moral turpitude. *State Board of Nursing v. Susan Rawlings*, Mo. Admin. 09-0282 BN, 2009 WL 3754242, 3, (Mo.Admin.Hrg.Comm.).

13. Terry may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), because the offense of possession of drug paraphernalia is a category 1 crime of moral turpitude. *Id.* and *State Board of Nursing v. Janell Pace*, Mo. Admin. 02-1790 BN, 2003 WL 1869223, 3, (Mo.Admin.Hrg.Comm.).

14. Terry may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), because the offense of passing a bad check is a category 1 crime of moral turpitude. Passing a bad check "necessarily involve[s] moral turpitude" because it "involve[s] the purpose to defraud or take what belongs to another without consent." *Gillotti v. Missouri Real Estate Commission,* Mo. Admin. 07-0860 RE, 2008 WL 682227, 8, (Mo.Admin.Hrg.Comm.).

15. Terry may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2008), because the offense of unlawful possession of firearms, in violation of 18 U.S.C §§ 922(g)(1) and 924(a)(2), is a felony.

16. Terry was convicted of three misdemeanors, all of which were crimes of moral turpitude, and two felonies, one of which was a crime of moral turpitude. Terry's criminal history spans a period of approximately nine years and he completed probation only two years ago which has given him little time to demonstrate that he can comply with the law without regular supervision. Further, one of Terry's most recent criminal acts involved the handling of money which is closely related to the duties of an insurance producer who handles clients' premium dollars. Granting Terry's Missouri insurance producer license would not be in the interest of the public.

17. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license application of **Thomas F. Terry** is hereby summarily **REFUSED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 24th **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, 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 29th day of December, 2009, 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 5350.

Thomas F. Terry
307 Weslyan Terrace
Cameron, Missouri 64429

Karen Crutchfield

Karen Crutchfield
Senior Office Support Staff