State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	**Case No. 09-1231900C**
James W. Bogart,	)	
	)	
Applicant.	)	
	)	
Serve At:	)	
4785 Antelope Drive	)	
Bar Nunn, Wyoming 82601	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On January 6, 2010, 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 James W. Bogart. 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. James W. Bogart ("Bogart") is an individual residing in Wyoming, whose mailing address of record is 4785 Antelope Drive, Bar Nunn, Wyoming, 82601.

2. In November 2008, the Department received a Uniform Application for Individual Insurance Producer License ("Application") from Bogart.

3. In the section of the Application headed "Background Questions," Background Question # 3 asks "Has any demand been made or judgment rendered against you or any business in which you are or were an owner, partner, officer, or director, or member or manager of a limited liability company, for overdue moneys by an insurer, insured or producer, or have you ever been subject to a bankruptcy proceeding. Only include bankruptcies that involve funds held on behalf of others."

4. Bogart answered "Yes" to Background Question # 3.

5. Bogart disclosed that he and his spouse filed for bankruptcy in July 2007. The bankruptcy case was finalized in December 2007 and Bogart indicated that he is still

making payments for employment taxes owed to the Internal Revenue Service.

6. On December 4, 2008, Department Investigator Dana Whaley mailed a letter by first class mail to Bogart's address of record requiring that Bogart submit a finalized payment plan. Whaley stated in the letter that Bogart's response was due by December 29, 2008. The December 4, 2008 letter was not returned to the Department as undeliverable. The Department did not receive a response from Bogart regarding the December 4, 2008 letter by December 29, 2008.

7. On February 4, 2009, Whaley sent a second request for information by first class mail to Bogart's address of record. Bogart responded to Whaley's February 4, 2009 letter by letter received by the Department on February 17, 2009. The body of Bogart's letter stated: I apologize for having wasted your time. We still do not have a final agreement with the IRS. At this rate I suspect we will not have one until they cash the final check."

8. On February 18, 2009, Whaley sent a letter by first class mail to Bogart's address of record requesting documentation relevant to his tax liability, if available. The February 18, 2009 letter was not returned to the Department as undeliverable. The Department did not receive a response from Bogart within 20 days from the date Whaley mailed the February 18, 2009 letter. To date, the Department has not received any response from Bogart regarding the February 18, 2009 letter.

JURISDICTION AND STATUTORY GROUNDS FOR REFUSAL

9. Section 375.141.1, RSMo (Supp. 2008), provides, in part:

> 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;

10. Section 374.210 provides that the Director may refuse to issue a license to any person who refuses to file a statement or produce records.

11. 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division, provides:

> 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. An envelope's postmark shall determine the date of mailing. 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.

12. 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).

13. 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).

14. Bogart may be refused an insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2008), because he violated the insurance laws of Missouri by failing to respond to two Division of Consumer Affairs inquiries in violation of 20 CSR 100-4.100(2)(A). Each failure is also grounds to refuse Bogart's license pursuant to § 374.210, RSMo (Supp. 2008).

15. Bogart disclosed an ongoing tax liability, which, by itself, is not necessarily grounds to refuse his insurance producer license. However, Bogart failed to produce additional information regarding the tax liability when requested to do so by a Department investigator. Bogart's refusal to cooperate with the Department investigation of his license application demonstrated a lack of ability to comply with the insurance law and disrespect for the Department investigatory process. Granting Bogart's Missouri insurance producer license would not be in the interest of the public.

16. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license application of **James W. Bogart** is hereby summarily **REFUSED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 14th **DAY OF JANUARY, 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 15th day of January, 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 4162.

James W. Bogart
4785 Antelope Drive
Bar Nunn, Wyoming 82601

Kimberly Landers

Kim Landers