STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Melissa Pell,	)	Case No. 09A000059
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
1514 Maple St. Kenova, West Virginia 25530	))	
	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On July 7, 2009, Elfin L. Noce, as Legal Counsel for the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Melissa Pell ("Pell"). After reviewing the Petition, and the investigative report, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Melissa Pell ("Pell") is a West Virginia resident with an address of 1514 Maple St., Kenova, West Virginia 25530.

2. Pell was originally licensed by the Department of Insurance, Financial Institutions & Professional Registration ("Department") as an insurance producer, license number 0105760, on February 16, 2003.

3. On January 22, 2009, the Department received the electronic Uniform Non-Resident Renewal Application for Individual Producer License ("Application").

4. Under "Background Questions," question #1 of the Application asks: "Since the last renewal or initial application in this state, have you been convicted or, or are you currently charged with, committing a crime, whether or not adjudication was withheld?"

5. Pell answered "Yes" to this question.

6. Under "Background Questions," question #2 of the Application asks: "Since the last renewal or initial application in this state, have you or any business in which you are or were an owner, partner, officer, or director ever been involved in an administrative proceeding regarding any professional or occupational license?"

7. Pell answered "No" to this question.

8. On January 30, 2009, Special Investigator Dennis Fitzpatrick ("Fitzpatrick"), Consumer Affairs Division, mailed a letter to Pell requesting a written statement explaining Pell's answer to question #1 of the application along with certified copies of records relating to her answer in question #1. Fitzpatrick also requested information on a state regulatory action in Kansas. Fitzpatrick requested a response by February 24, 2009.

9. Pell did not respond to the January 30, 2009 letter.

10. On September 24, 2003, Janie A. Miller, the Commissioner of the Kentucky Department of Insurance, found Respondent violated KRS 304.9-105, KRS 304.9-140, KRS 304.9-440(1)(a) and KRS 304.9-440(1)(p) and ordered Respondent to pay a civil penalty of $500.00.

11. On or about May 12, 2004, the state of Virginia revoked Respondent's insurance agent license.

12. On or about February 1, 2005, the state of Massachusetts revoked Respondent's insurance producer license.

13. On or about December 21, 2005, the state of Iowa revoked Respondent's insurance agent license.

14. On or about November 15, 2006, Respondent stipulated to the revocation of her New York insurance agent license.

15. On March 5, 2008, the state of Kansas suspended Respondent's insurance agent license.

16. Pell's Missouri insurance producer license was revoked on April 30, 2009 by the Department because her insurance producer license, or its equivalent, was revoked in Virginia, Massachusetts, Iowa, and New York and disciplined in Kentucky and that she failed to report these administrative actions to the Department.

CONCLUSIONS OF LAW

17. 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;

. . .

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

. . .

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

. . .

18. 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...

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

. . .

19. The principal purpose of § 375.141, RSMo 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).

20. Pell may be refused an insurance producer license for failure to respond to Division of Consumer Affairs' inquiries regarding her "Yes" response to question #1 and her "No" response to question #2, as required by 20 CSR 100-4.100. This failure to respond constitutes cause to refuse to issue Pell an insurance producer license under § 375.141.1(1), RSMo (Supp. 2008), because the Application is incomplete, and § 375.141.1(2), RSMo (Supp. 2008), for violating 20 CSR 100-4.100.

21. Pell may be refused an insurance producer license for attempting to obtain a license through material misrepresentation on her Application by her answer of "No" in response to question #2, despite multiple administrative actions in other states against her insurance producer license, or its equivalent. This misrepresentation constitutes cause to refuse to renew Pell's insurance producer license under §§ 375.141.1(1) and 375.141.1(3), RSMo (Supp. 2008).

22. Pell may be refused an insurance producer license because her insurance producer license, or its equivalent, has been revoked in the states of New York, Massachusetts, Virginia, and Iowa, which constitutes cause to refuse to renew Pell's insurance producer license under § 375.141.1(9), RSMo (Supp. 2008).

23. Pell may be refused an insurance producer license for not reporting to the Director that her insurance producer license, or its equivalent, had been revoked by the states of New York, Massachusetts, Virginia, and Iowa and disciplined by the states of Kentucky and Kansas. This failure to report these revocations and disciplines are violations of § 375.141.6, RSMo (Supp. 2008) and cause to refuse to renew Pell's insurance producer license under § 375.141.1(2), RSMo (Supp. 2008).

24. In applying his discretion, the Director has considered the history of Pell and all of the circumstances surrounding Pell's Application including Pell's misrepresentations in the Application, the discipline of her insurance producer license, or its equivalent, by other states, her failure to report such discipline to the Director, and her refusal to respond to inquiries by the Department. Pell's

history raises questions of Pell's ability to comply with Missouri law and whether she has demonstrated that she can meet the significant responsibilities of a licensed insurance producer. For these reasons, the Director exercises his discretion in refusing to issue an insurance producer license to Pell.

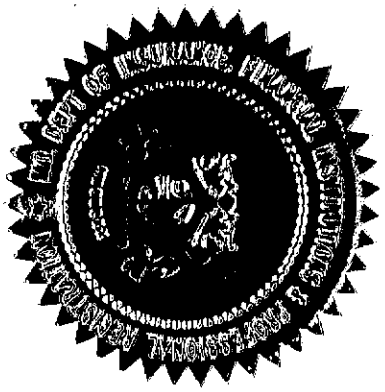
25. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that issuance of the insurance producer license of Applicant Melissa Pell is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 13TH DAY OF JULY, 2009.



JOHN M. HUFF
DIRECTOR

NOTICE

TO: Melissa Pell 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 thirty (30) days after the mailing of this notice pursuant to Section 621.120, RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2009, a copy of the foregoing notice and order was served upon the Melissa Pell in this matter by certified mail.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff