State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	**Case No. 10-0401413C**
Jeremy M. Smith,	)	
	)	
Applicant.	)	
Serve at:	)	
252 Elizabeth Street	)	
Marshfield, Missouri 65706	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On April 7, 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 Jeremy M. Smith. 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:

FACTUAL BACKGROUND

1. Jeremy M. Smith ("Smith") is an individual residing in Missouri, whose mailing address of record is 252 Elizabeth Street, Marshfield, Missouri 65706.

2. On December 15, 2009, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received a Uniform Application for Individual Insurance Producer License ("Application") from Smith.

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

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

5. Smith disclosed that he was convicted of felony cattle theft for violating § 570.030, RSMo, in 1999 in Christian County, Missouri. *State v. Jeremy M. Smith*, Case No. CR299-345FX. Smith was initially placed on probation, but the court revoked his

probation in January 2002 and sentenced him to three years in prison after Smith failed to report to his probation officer on time and failed a drug test. Smith served 120 days in prison and was again granted probation. Smith was ultimately discharged from probation on February 23, 2005.

6. The Department's Consumer Affairs Division sent a letter dated December 31, 2009, via U.S. Mail to Smith at his address of record, requesting an explanation regarding his felony stealing conviction. The Consumer Affairs Division investigator received a phone call from Smith on January 4, 2010. During that phone call, Smith indicated that he thought he had already sent everything in to the Department. The investigator informed Smith that an explanation was required regarding his probation violation and incarceration. That same day, the investigator received a faxed response from Smith in which he explained why his probation was revoked, described his life while incarcerated, and discussed some aspects of his life that he believed showed rehabilitation.

7. The Department's Consumer Affairs Division sent a letter dated January 11, 2010, via U.S. Mail to Smith at his address of record, along with an application for written consent to engage in the business of insurance under the Insurance Fraud Prevention Act of 1994, 18 U.S.C. § 1033(e)(2).

8. On February 1, 2010, Smith contacted the Consumer Affairs Division investigator by phone in response to the January 11, 2010 letter. Smith stated he did not want to complete the application for written consent under the Insurance Fraud Prevention Act of 1994, 18 U.S.C. § 1033(e)(2). The investigator informed Smith that the application for written consent was required, and if Smith did not want to complete the application for written consent, he may want to consider withdrawing his Application.

9. The Department's Consumer Affairs Division sent a letter dated February 1, 2010, via U.S. Mail to Smith at his address of record, in response to the telephone conversation that same day explaining the withdrawal process and the requirement that Smith complete the application for written consent if he wished to proceed with the license application process. The letter was not returned to the Department as undeliverable, and the Department did not receive a response from Smith.

10. To date, Smith has not withdrawn his Application, nor has he submitted an application for written consent under the Insurance Fraud Prevention Act of 1994, 18 U.S.C. § 1033(e)(2).

CONCLUSIONS OF LAW

11. Section 375.141.1, RSMo (Supp. 2009), 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:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

* * *

(6) Having been convicted of a felony or crime involving moral turpitude;

12. Section 570.030.1, RSMo (Supp. 1998), provides:

> A person commits the crime of stealing if he or she appropriates 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.

13. 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).

14. In *Brehe v. Missouri Dep't. of Elementary & Secondary Educ.*, 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 include:

    (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. Missouri Dep't. of Elementary & Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. 2007).

15. 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 725-727. Stealing is a Category 1 crime of moral turpitude. *State Bd. of Nursing v. Deborah Dann*, No. 09-0472 BN (Mo. Admin. Hrg. Comm'n. Sept. 14, 2009).

16. Title 18 U.S.C. § 1033 prohibits certain activities by or affecting persons engaged, or proposing to become engaged, in the business of insurance. Title 18 U.S.C § 1033

provides, in part:

> (E)(1)(A). Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust . . . who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.
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> * * *
>
> (e)(2). A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any regulatory official authorized to regulate the insurer, which consent specifically refers to this section.

17. 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).

18. Smith may be refused an insurance producer license pursuant to § 375.141.1(6), RSMo (Supp. 2009), because he was convicted of a felony that is also a Category 1 crime involving moral turpitude. "The offense of stealing always requires the element of dishonesty." *See Dann* at * 4. (stealing is a Category 1 crime of moral turpitude.).

19. Smith may be refused an insurance producer license pursuant to § 375.141.1(1) for intentionally providing incomplete information in the license application by failing to submit an application for written consent under the Insurance Fraud Prevention Act of 1994, 18 U.S.C. § 1033(e)(2). An application for written consent is required for individuals who have been convicted of any felony involving dishonesty or breach of trust. Smith's conviction of felony cattle theft qualifies as a felony involving dishonesty or breach of trust. *See Dann* at * 4. On February 1, 2010, Smith indicated an unwillingness to submit an application for written consent under the Insurance Fraud Prevention Act of 1994, 18 U.S.C. § 1033(e)(2), and failed to submit an application for written consent when informed of its necessity to continue with the insurance producer license application process. To date, the Department has not received an application for written consent under the Insurance Fraud Prevention Act of 1994, 18 U.S.C. § 1033(e)(2) from Smith, thus, his Application is incomplete.

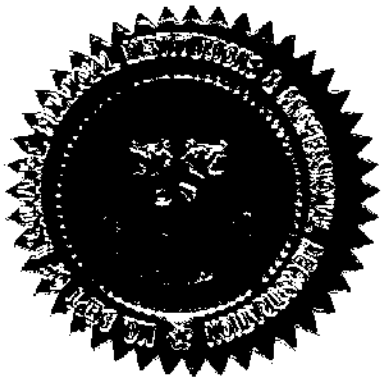
20. Granting Smith's insurance producer license would not be in the public interest.

21. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license application of Jeremy M. Smith is hereby summarily **REFUSED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 13th **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 13th 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. 70070710000220551865.

Jeremy M. Smith
252 Elizabeth Street
Marshfield, Missouri 65706

Kathryn Randolph