# State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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| **IN RE:** | ) | |
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| **AUTOMOTIVE RISK MANAGEMENT & INSURANCE SERVICES, INC.,** | ) | **Case No. 141028699C** |
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| **Applicant.** | ) | |

## ORDER REFUSING TO ISSUE BUSINESS ENTITY INSURANCE PRODUCER LICENSE

On December 31, 2014, the Consumer Affairs Division filed a Petition with the Director alleging cause for refusing to issue a non-resident business entity insurance producer license to Automotive Risk Management & Insurance Services, Inc. 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 order:

## FINDINGS OF FACT

1. Automotive Risk Management & Insurance Services, Inc. ("ARM, Inc."), is a California corporation with a business address of 1919 Grand Canal Boulevard, Suite C7, Stockton, California 95207 and a mailing address of P.O. Box 7095, Stockton, California 95267.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued ARM, Inc. a non-resident business entity insurance producer license (License No. 8009290) on August 11, 1999.

3. The Department issued an Order Refusing to Renew a Business Entity Insurance Producer License on August 5, 2013, which refused to renew ARM, Inc.'s business entity producer license pursuant to § 375.141.1(9) RSMo (Supp. 2012). *In re: Automotive Risk Management & Insurance Services, Inc.*, Case No. 13-0729483C.

4. The Department received ARM, Inc.'s Application for Non-Resident Business Entity Insurance Producer License ("Application") on or about September 10, 2014.

5. ARM, Inc.'s Application was submitted by Amber Reynolds ("Reynolds"), an Authorized Submitter.

6. By submitting the Application on ARM, Inc.'s behalf, Reynolds certified as follows:

"As the authorized submitter, I declare that the applicant provided all the information submitted in this application."

7. The "Attestation" section of the Application states, in relevant part:

1. All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity or limited liability company to civil or criminal penalties.

8. The "Attestation" section of the Application was accepted.

9. The Application lists Marvin McDougal ("McDougal") as the President and sole owner of ARM, Inc. and lists Maria McDougal as the Vice President and Designated/Responsible Licensed Producer of ARM, Inc.

10. Background Question No. 2 of the Application asks the following:

Has the business entity or any owner, partner, officer or director of the business entity, or manager or member of a limited liability company, ever been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license, or registration?

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. ["]Involved["] also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license or registration. ["]Involved["] also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

a) a written statement identifying the type of license, all parties involved (including their percentage of ownership, if any) and explaining the circumstances of each incident,

b) a copy of the Notice of Hearing or other document that states the charges and allegations, and
c) a copy of the official document which demonstrates the resolution of the charges or any final judgment.

11. ARM, Inc. marked "No" to Background Question No. 2.

12. However, during its investigation, the Consumer Affairs Division ("Division") discovered the following administrative actions taken against ARM, Inc.:[1]

a. On December 23, 2010, the Pennsylvania Insurance Department entered into a Consent Order with ARM, Inc. that ordered payment of a civil penalty in the amount to $1,000.00 as a result of ARM, Inc.'s failure to provide the Pennsylvania Surplus Lines Association with a "copy of its 2009 surplus lines filings, which were due by January 31st [2010]." *In re: Automotive Risk Management & Insurance Services, Inc.*, Insurance Department of the Commonwealth of Pennsylvania, Docket No. CO10-10-020 (Dec. 23, 2010).

b. On June 7, 2011, the Virginia Bureau of Insurance entered an Order Revoking License that revoked ARM, Inc.'s insurance agent license and surplus lines broker license as a result of ARM, Inc.'s failure to "file the Annual Gross Premium Tax report for 2010 on or before March 1, 2011." *State Corporation Commission v. Automotive Risk Management & Insurance Services, Inc.*, Commonwealth of Virginia, Case No. INS-2011-00095 (June 7, 2011).

c. On November 10, 2011, the South Dakota Division of Insurance entered into a Consent Order with ARM, Inc. that fined ARM, Inc. $250.00 as a result of its failure to "report an administrative action taken against its insurance license by the State of Virginia[.]" *In the Matter of Automotive Risk Management & Services, Inc.*, South Dakota Division of Insurance (Nov. 10, 2011).

d. On December 20, 2011, the New York State Department of Financial Services entered into a Stipulation with ARM, Inc. that imposed a penalty of $1,000.00 as a result of ARM, Inc.'s failure to "report to the Superintendent within 30 days of the final disposition of" the Pennsylvania Consent Order and Virginia Order. *In the Matter of the Applications and/or Licenses of Automotive Risk Management & Insurance Services Inc. and Marvin E. McDougal*, New York State Department of Financial Services, No. 2011-0243-S (Dec. 20, 2011).

e. On January 13, 2012, the Texas Commissioner of Insurance entered into a Consent Order with ARM, Inc. that ordered ARM, Inc. to pay an

[1] Some of the administrative actions listed against ARM, Inc. also involved Marvin McDougal, President and owner of ARM, Inc.

administrative penalty of $1,550.00 because ARM, Inc. "filed surplus lines policies late." *Automotive Risk Management & Insurance Services Inc.*, Texas Commissioner of Insurance, TDI Enforcement File No. 60698 (Jan. 13, 2012).

f. On April 19, 2012, the Missouri Department of Insurance, Financial Institutions and Professional Registration entered into a Consent Order with ARM, Inc. that renewed McDougal's surplus lines producer license, ordered a forfeiture of $2,500.00, and required McDougal to make quarterly payments toward his outstanding surplus lines premium taxes ($27,768.32 was owed for tax year 2010 and $44,088.19 was owed for tax year 2011). *In re: Marvin E. McDougal, Automotive Risk Management & Insurance Services, Inc., and Automotive Risk Management & Insurance Service, LLC*, Case No. 120221213C (Apr. 19, 2012).

g. On or about December 20, 2012, the Kansas Insurance Department entered a Summary Order revoking ARM, Inc.'s non-resident insurance agency license as a result of ARM, Inc.'s failure to timely file annual statements and pay excess lines premium tax due for tax years 2010 and 2011, "violat[ing] an order of the commissioner," using a "dishonest practice in collecting but failing to pay excess lines premium tax," and demonstrating "untrustworthiness and financial irresponsibility" in its dealings with the Kansas Insurance Department during the 2010 and 2011 tax years. The Summary Order became final on January 7, 2013. *In the Matter of the Kansas Nonresident Insurance Agent's License of Marvin E. McDougal, and The Kansas Nonresident Insurance Agency License of Automotive Risk Management*, Docket Nos. 4543-SO and 4544-SO (Jan. 7, 2013).

h. On August 5, 2013, the Missouri Department of Insurance, Financial Institutions and Professional Registration entered an Order Refusing to Renew a Business Entity Insurance Producer License that refused to renew ARM, Inc.'s business entity producer license as a result of the Kansas revocation. *In re: Automotive Risk Management & Insurance Services, Inc.*, Case No. 13-0729483C (Aug. 5, 2013).

i. On July 28, 2014, the Ohio Department of Insurance entered into a Consent Order with ARM, Inc. as a result of ARM, Inc.'s "various administrative actions," failure to "report these actions," the Virginia revocation, and failure to "timely pay its surplus lines taxes." The Consent Order required ARM, Inc., among other things, to provide the Department with a detailed course of action for payment of its outstanding surplus lines taxes. *In re: Suitability of Automotive Risk Management and Insurance Services*, Ohio Department of Insurance (July 28, 2014).

13. During its investigation, the Division also discovered the following administrative actions taken against McDougal, the owner of ARM, Inc.:

a. On December 20, 2011, the New York State Department of Financial Services entered into a Stipulation with McDougal that imposed a penalty of $1,000.00 as a result of McDougal and ARM, Inc.'s failure to "report to the Superintendent within 30 days of the final disposition of" the Pennsylvania Consent Order and Virginia Order. *In the Matter of the Applications and/or Licenses of Automotive Risk Management & Insurance Services Inc. and Marvin E. McDougal*, New York State Department of Financial Services, No. 2011-0243-S (Dec. 20, 2011).

b. On April 19, 2012, the Missouri Department of Insurance, Financial Institutions and Professional Registration entered into a Consent Order with McDougal that renewed McDougal's surplus lines producer license, ordered a forfeiture of $2,500.00, and required McDougal to make quarterly payments toward his outstanding surplus lines premium taxes ($27,768.32 was owed for tax year 2010 and $44,088.19 was owed for tax year 2011). *In re: Marvin E. McDougal, Automotive Risk Management & Insurance Services, Inc., and Automotive Risk Management & Insurance Service, LLC*, Case No. 120221213C (Apr. 19, 2012).

c. On August 27, 2012, the Florida Department of Financial Services entered into a Consent Order with McDougal that placed McDougal on probation for one year, ordered payment of an administrative penalty in the amount of $4,500.00, and required McDougal to submit his Surplus Line Premium Tax in a timely manner. *In the Matter of: Marvin Eldon McDougal*, Case No. 127786-12-AG (Aug. 27, 2012).

d. On or about December 20, 2012, the Kansas Insurance Department entered a Summary Order revoking McDougal's non-resident insurance agent's license and excess lines agent license as a result of ARM, Inc.'s failure to timely file annual statements and pay excess lines premium tax due for tax years 2010 and 2011, "violat[ing] an order of the commissioner," using a "dishonest practice in collecting but failing to pay excess lines premium tax," and demonstrating "untrustworthiness and financial irresponsibility" in its dealings with the Kansas Insurance Department during the 2010 and 2011 tax years. The Summary Order became final on January 7, 2013. *In the Matter of the Kansas Nonresident Insurance Agent's License of Marvin E. McDougal, and The Kansas Nonresident Insurance Agency License of Automotive Risk Management*, Docket Nos. 4543-SO and 4544-SO (Jan. 7, 2013).

e. On March 14, 2013, the Kentucky Department of Insurance entered an Order that ordered payment of a civil penalty in the amount of $500.00 as a result of McDougal's "failure to file his Annual Reconciliation Report." *In the Matter of: Marvin Eldon McDougal*, DOI No.: 358341, Legal File No.: 2013-0048 (Mar. 14, 2013).

f. On May 9, 2013, the Florida Department of Financial Services entered into a Consent Order with McDougal that suspended his non-resident surplus lines agent license and non-resident general lines agent license for nine months and ordered McDougal to make restitution to the Florida Surplus Lines Service office in the amount of $49,821.89. *In the Matter of: Marvin Eldon McDougal*, Case No. 133815-13-AG (May 9, 2013).

g. On June 14, 2013, the Kentucky Department of Insurance entered an Order of Revocation against McDougal that revoked McDougal's non-resident surplus lines broker license and insurance agent license as a result of McDougal's failure to comply with Kentucky's March 14, 2013 Order. *In the Matter of: Marvin Eldon McDougal*, DOI No.: 358341, Legal File No.: 2013-0048 (June 14, 2013).

h. On August 5, 2013, the Missouri Department of Insurance, Financial Institutions and Professional Registration entered an Order Refusing to Renew an Insurance Producer License that refused to renew McDougal's non-resident insurance producer license as a result of the Kansas revocation and McDougal's violation of a Kansas insurance law. *In re: Marvin Eldon McDougal*, Case No. 13-0604342C (Aug. 5, 2013).

i. On May 20, 2014, McDougal voluntarily surrendered all licenses issued to him by the North Carolina Department of Insurance for a period of five years and agreed that said Voluntary Surrender is equivalent to a regulatory action. *In re Marvin E. McDougal*, Voluntary Surrender of License or Licenses (May 20, 2014).

j. On July 17, 2014, McDougal submitted a Request to Surrender for Cause for an Individual to the Ohio Department of Insurance in which McDougal surrendered all licenses held in Ohio for at least five years as a result of a "surplus lines violation." *In re Marvin E. McDougal*, Request to Surrender for Cause for an Individual (July 17, 2014).

14. Background Question No. 4 of the Application asks the following:

Has the business entity or any owner, partner, officer or director of the business entity, or member or manager of a limited liability company, ever

been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?

If you answer yes, identify the jurisdiction(s): _____

15. ARM, Inc. marked "No" to Background Question No. 4.

16. However, McDougal, the owner of ARM, Inc., has been notified by the Department that he owes surplus lines premium taxes to the Missouri Director of Revenue.

17. On June 19, 2013, Lillian Overbey ("Overbey"), Taxation Section of the Department, sent a letter to McDougal that informed him that he owed $40,288.00 in surplus lines insurance premium tax to the Missouri Director of Revenue and requested payment within fifteen days of the letter.

18. On July 7, 2014, Overbey emailed Amber Reynolds regarding the delinquent surplus lines tax balances owed by McDougal. Reynolds responded the same day saying that the payment would be overnighted.

19. After the Taxation Section did not receive any payment, Overbey sent a follow-up email to Reynolds on July 29, 2014 asking for a status update regarding payment of the delinquent surplus lines tax balances.

20. To date, McDougal's premium tax obligation is still outstanding.

21. It is inferable, and hereby found as fact, that ARM, Inc. failed to disclose its lengthy administrative history, as well as that of McDougal, on its Application to misrepresent to the Director that the business entity and its owner had no administrative history, and accordingly, in order to improve the chances that the Director would approve ARM, Inc.'s Application and issue it a non-resident business entity insurance producer license.

22. It is inferable, and hereby found as fact, that ARM, Inc. failed to disclose McDougal's delinquent surplus lines tax obligation in order to misrepresent to the Director that the owner of the business entity had no outstanding tax obligations, and accordingly, in order to improve the chances that the Director would approve ARM, Inc.'s Application and issue it a non-resident business entity insurance producer license.

## CONCLUSIONS OF LAW

23. Section 375.141 RSMo (Supp. 2014)[2] 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;
>
> * * *
>
> (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud; [or]
>
> * * *
>
> (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

24. The principal purpose of § 375.141 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. The Director has cause to refuse to issue a non-resident business entity insurance producer license to ARM, Inc. pursuant to § 375.141.1(9) because ARM, Inc.'s business entity insurance producer license, or its equivalent, was denied, suspended or revoked in another state, namely Virginia and Kansas, to wit:

    a. *State Corporation Commission v. Automotive Risk Management & Insurance Services, Inc.*, Commonwealth of Virginia, Case No. INS-2011-00095 (June 7, 2011).

    b. *In the Matter of the Kansas Nonresident Insurance Agent's License of Marvin E. McDougal, and The Kansas Nonresident Insurance Agency License of Automotive Risk Management*, Docket Nos. 4543-SO and 4544-SO (January 7, 2013).

26. Each instance in which ARM, Inc.'s business entity insurance producer license, or its equivalent, was denied, suspended or revoked in another state is a separate and sufficient cause for the Director to refuse to issue a non-resident business entity insurance producer license to ARM, Inc.

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[2] All statutory references are to RSMo (2000) as updated by RSMo (Supp. 2014) unless otherwise noted.

27. The Director has cause to refuse to issue a non-resident business entity insurance producer license to ARM, Inc. pursuant to § 375.141.1(1) because ARM, Inc. intentionally provided materially incorrect or untrue information in the license application when ARM, Inc. answered "No" in response to Background Question No. 2 on the Application and failed to disclose that ARM, Inc. has been named or involved as a party in nine separate administrative proceedings.

28. The Director has cause to refuse to issue a non-resident business entity insurance producer license to ARM, Inc. pursuant to § 375.141.1(1) because ARM, Inc. intentionally provided materially incorrect or untrue information in the license application when ARM, Inc. answered "No" in response to Background Question No. 2 on the Application and failed to disclose that McDougal, the owner of ARM, Inc., has been named or involved as a party in ten separate administrative proceedings.

29. The Director has cause to refuse to issue a non-resident business entity insurance producer license to ARM, Inc. pursuant to § 375.141.1(1) because ARM, Inc. intentionally provided materially incorrect or untrue information in the license application when ARM, Inc. answered "No" in response to Background Question No. 4 on the Application and failed to disclose that McDougal, the owner of ARM, Inc., has been notified by any jurisdiction to which it is applying of any delinquent tax obligation that is not the subject of a repayment agreement. Specifically, McDougal had been notified by the Department of his outstanding surplus lines premium tax obligation in the amount of $48,438.45.

30. Each instance in which ARM, Inc. intentionally provided materially incorrect or untrue information in the license application is a separate and sufficient cause for the Director to refuse to issue a non-resident business entity insurance producer license to ARM, Inc.

31. The Director has cause to refuse to issue a non-resident business entity insurance producer license to ARM, Inc. pursuant to § 375.141.1(3) because ARM, Inc. attempted to obtain a license through material misrepresentation or fraud when ARM, Inc. answered "No" in response to Background Question No. 2 on the Application and failed to disclose that ARM, Inc. has been named or involved as a party in nine separate administrative proceedings.

32. The Director has cause to refuse to issue a non-resident business entity insurance producer license to ARM, Inc. pursuant to § 375.141.1(3) because ARM, Inc. attempted to obtain a license through material misrepresentation or fraud when ARM, Inc. answered "No" in response to Background Question No. 2 on the Application and failed to disclose that McDougal, the owner of ARM, Inc., has been named or involved as a party in ten separate administrative proceedings.

33. The Director has cause to refuse to issue a non-resident business entity insurance producer license to ARM, Inc. pursuant to § 375.141.1(3) because ARM, Inc. attempted to obtain a license through material misrepresentation or fraud when ARM, Inc. answered "No" in response to Background Question No. 4 on the Application and failed to disclose that McDougal, the owner of ARM, Inc., has been notified by any jurisdiction to which it is applying of any delinquent tax obligation that is not the subject of a repayment agreement. Specifically, McDougal had been notified by the Department of his outstanding surplus lines premium tax obligation in the amount of $48,438.45.

34. Each instance in which ARM, Inc. attempted to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for the Director to refuse to issue a non-resident business entity insurance producer license to ARM, Inc.

35. The Director has considered the circumstances surrounding ARM, Inc.'s Application. Issuing a non-resident business entity insurance producer license to ARM, Inc. would not in the public's interest. Accordingly, the Director exercises his discretion to refuse to issue a non-resident business entity insurance producer license to ARM, Inc.

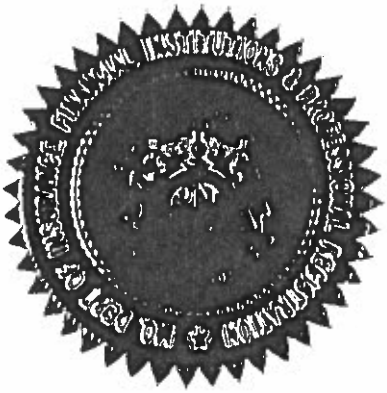
36. This Order is in the public interest.

## ORDER

**IT IS THEREFORE ORDERED** that the non-resident business entity insurance producer license application of **Automotive Risk Management & Insurance Services, Inc.** is hereby **REFUSED.**

**SO ORDERED.**

**WITNESS MY HAND THIS** 7th **DAY OF** JANUARY, 2015.



**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 of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 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 7th day of January, 2015 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular mail and UPS, signature required, at the following addresses:

Automotive Risk Management & Insurance Services, Inc.
Attn: Marvin McDougal
1919 Grand Canal Boulevard, Suite C7
Stockton, California 95207

UPS Tracking No. 1Z0R15W84298035650

Secretary of State – Registered Agent
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