State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
BRETT WESLEY LOETHEN,	)	**Case No. 140429441C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE AN INSURANCE PRODUCER LICENSE

On July 9, 2014, the Consumer Affairs Division ("Division") submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Brett Wesley Loethen. 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. Brett Wesley Loethen ("Loethen") is a Missouri resident with a residential, business and mailing address of 2722 S. Glendale, Springfield, MO 65804.

2. The Director of the Department of Insurance, Financial Institutions and Professional Registration (the "Director" of the "Department") previously issued Loethen an individual resident insurance producer license (#0364612) on February 3, 2006. That license expired on February 3, 2008.

3. On or about February 24, 2014, the Department received an electronic application for an individual resident insurance producer license ("Application") from Loethen.

The Coffey Complaint

4. In July 2011, Brenda Coffey filed a complaint with the Department regarding Loethen and Sterling Title Services, LLC ("Sterling"). Coffey explained that she had refinanced her home in May 2011; Coffey also consolidated various loans as part of the refinancing. Loethen, on behalf of Sterling, handled Coffey's closing. Coffey asserted that Sterling sent several bad checks drawn on escrow to companies that were supposed to be paid off as part of the refinancing and loan consolidation. Coffey indicated that Loethen had kept over $23,000.00 of her money. Coffey said that she had tried to contact Loethen and Sterling but did not receive a response.

5. On August 18, 2011, Loethen appeared at a subpoena conference at the Department in reference to Coffey's complaint. During the subpoena conference, Loethen admitted the following:

   a. Loethen was licensed as an insurance producer on February 3, 2006, but he let that license expire on February 3, 2008 because he failed to file the necessary paperwork. Subpoena Conference Tr. 26.

   b. Loethen owned and managed Sterling. Subpoena Conference Tr. 22.

   c. Loethen was responsible for maintaining the escrow account at Sterling. Subpoena Conference Tr. 13.

   d. Two of Coffey's lienholders, US Bank and Household Bank, did not get paid when the Coffey refinancing closed, in part because Sterling's escrow account was "short." Subpoena Conference Tr. 6.

   e. For at least a two-year period, the bank was allegedly deducting charges for Sterling's operating account from its escrow account, thereby depleting the escrow funds. Loethen had no explanation for why it took him more than two years to figure out that operating fees were supposedly coming out of escrow and reducing the escrow account balance. Subpoena Conference Tr. 12-13.

   f. Loethen admitted that he made two cash withdrawals from Sterling's escrow account, though he guessed that such cash would have been used to give earnest money back to someone. Subpoena Conference Tr. 24.

   g. Regarding recordkeeping and bookkeeping, Loethen admitted that such subjects have "Always been a downfall of mine. I've never been good at [them]." Subpoena Conference Tr. 27.

6. In January 2014, Coffey contacted the Division and indicated that both she and her lienholders had ultimately been paid in connection with her refinance and loan consolidation.

The Trust Complaint

7. In May 2012, the Department received another complaint regarding Sterling from William Morin, counsel for the Treece Relocation Assistance Trust (the "Trust"). Complete Title, a Missouri business entity producer, had been holding funds in escrow for the Trust when the company's owner died. First American Title Insurance

Company asked Sterling to complete certain closings on behalf of the Trust.

8. Complete Title had been holding $9,000.00 for the Trust relative to three land purchases from the following sellers:

   a. Michael and Donna Lamb (11567 S.W.10th)
   b. Larry Hargis (427 Main)
   c. Jan Leatherman (309 Park)

   For each closing, Complete Title was holding $3,000.00 in escrow (for a total of $9,000.00); once the sellers vacated the properties indicated, the offer agreements provided that the Trust would pay them each the $3,000.00 that had been previously withheld from the sale proceeds.

9. The Trust's escrowed funds were transferred from Complete Title to Sterling in April 2011, ostensibly for use in the above-described Lamb, Hargis and Leatherman closings. But Sterling did not receive or obtain copies of any real estate purchase agreements relative to those land transactions.

10. Jamie Stanton ("Stanton"),[1] a Sterling employee, accepted the escrowed funds from Complete Title to be placed in Sterling's escrow account. Stanton ultimately applied the Trust's funds to the following different Trust transactions closed by Sterling:

    a. Lamb (123 Washington)
    b. Barr
    c. Huston

    As with the Lamb, Hargis and Leatherman transactions, the Lamb, Barr and Huston transactions were subject to the same $3,000.00 withholding requirement as part of the offer agreements.

11. From the $9,000.00 that Sterling held in escrow for the Trust, Stanton paid $3,000.00 to Michael and Donna Lamb, but did so in connection with the sale of property at 123 Washington, not in connection with the Lambs' sale of property at 11567 S.W.10th. Stanton did not pay the $6,000.00 in escrow to Hargis or Leatherman ($3,000.00 each). The Trust paid that money to Hargis and Leatherman from non-escrowed funds and was therefore due reimbursement from Sterling for the escrowed money that was not appropriately disbursed.

12. Loethen tried to negotiate with the Trust regarding the money owed. In September 2011, the Trust made a demand of Loethen for $4,777.43 (representing non-disbursed escrow money plus certain taxes and fees not relevant here, minus Sterling's fees). In

[1] Stanton is a licensed insurance producer and has been since 2002.

response, in February 2013, Loethen paid $2,037.39 – all that remained in the Sterling escrow account at that time – and asked the Trust for forgiveness of the balance. The Trust declined. Loethen finally paid the balance ($2,740.04) to the Trust in early 2014.

Tax Lien Judgment

13. On June 29, 2009, the Greene County Circuit Court entered a judgment against Loethen for unpaid taxes for the 2005 filing year as follows:

> The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of individual income tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $2,829.77]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Brett Loethen, Greene Co. Cir. Ct., Case No. 0931-MC01410.

CONCLUSIONS OF LAW

14. Section 375.141.1 RSMo Supp. 2013[2] 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:
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> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> * * *
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> * * *

[2] All further statutory references are to RSMo Supp. 2013 unless otherwise noted.

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

* * *

(12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person is not licensed;

* * *

(14) Failing to comply with any administrative or court order directing payment of state or federal income tax.

15. Section 381.022 provides, in part:

2. A title insurer, title agency, or title agent not affiliated with a title agency may operate as an escrow, security, settlement, or closing agent, provided that all funds deposited with the title insurer, title agency, or title agent not affiliated with a title agency, pursuant to written instructions in connection with any escrow, settlement, closing, or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the second business day after receipt, in accordance with the following requirements:

(1) The funds regulated under this section shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit, or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit, or closing in the records of the title insurer, title agency, or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and in accordance with the terms of the individual written instructions or agreements under which the funds were accepted; and

(2) The funds shall be applied only in accordance with the terms of the individual written instructions or agreements under which the funds were accepted.

3. It is unlawful for any person to:

* * *

(3) Use such escrow funds for any purpose other than to fulfill the terms of the individual written escrow instructions after the necessary conditions of the

written escrow instructions have been met[.]

16. Section 381.115 provides, in part:

1. It is unlawful for any person to transact the business of title insurance unless authorized as a title insurer, title agency or title agent.

2. It is unlawful for any person to transact business as:

* * *

(2) A title agent, unless the person is a licensed individual insurance producer under subsection 1 of section 375.015 or is exempt from licensure under subsection 3 of this section.

17. 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).

18. Loethen may be refused an individual resident insurance producer license pursuant to § 375.141.1(2) because he violated insurance laws, as follows:

a. Loethen violated § 381.115.1 and .2(2) because he transacted the business of title insurance while neither licensed as an individual insurance producer nor otherwise exempt from licensure. Loethen was licensed for two years, from 2006 to 2008. When Loethen managed Sterling and closed the refinancing and loan consolidation for Coffey in 2011, he was not licensed as an insurance producer, but he transacted the business of title insurance and closed for Coffey anyway. Similarly, Loethen disbursed money to the Trust from the escrow account to pay the Trust for funds previously disbursed inappropriately. Loethen maintained the escrow account at Sterling, Subpoena Conference Tr. 13, and made disbursements from it, but was not licensed to do so.

b. Loethen violated § 381.022.2(1) and (2) in the Coffey transaction because he failed to segregate and disburse escrow funds in accordance with the terms of the written instructions or agreements under which such funds were accepted. Loethen issued bad checks to some of Coffey's creditors that were supposed to be paid out in connection with her refinancing and loan consolidation. Therefore, Loethen must not have segregated the funds and disbursed them according to written instructions or agreements. Had he done so, Sterling's escrow account would not have been "short," Subpoena Conference Tr. 6, the checks to Coffey's creditors would not have bounced, and the creditors would have been paid on time.

c. Loethen also violated § 381.022.2(1) and (2) as to the Trust because he failed to identify, segregate and disburse escrowed funds in accordance with the terms of the written instructions or agreements under which such funds were accepted. Stanton, who worked for Sterling, did not disburse the money that Sterling had received on behalf of the Trust to the parties who were supposed to receive it; indeed, two of the parties who were supposed to receive it did not get paid from the escrowed funds. Loethen, who was responsible for maintaining the escrow account at Sterling, Subpoena Conference Tr. 13, thus had to disburse money to the Trust at a later date in order to pay the Trust back. And while Loethen finally reimbursed the Trust, he did so only after he offered partial payment in satisfaction (which offer the Trust rejected) and only after a substantial period of time.

d. Loethen violated § 381.022.3(3) because he used escrow funds for purposes other than to fulfill the terms of the individual written escrow instructions or agreements after the necessary conditions of the written escrow instructions or agreements had been met. As to both the Coffey and Trust transactions, as noted, Loethen did not properly disburse money. Loethen sent bad checks to Coffey's creditors because Coffey's escrowed money had obviously been put to other non-agreed-upon uses. And Loethen had to reimburse the Trust after the Trust's escrowed money went to incorrect transactions and the Trust had to pay additional, non-escrowed money to the sellers. The checks to Coffey's creditors bounced and when Loethen made a belated offer of satisfaction to the Trust, the amount was partial because it was all the money that remained in Sterling's escrow account. Consequently, Loethen must have used that escrow money for other purposes, unrelated to Coffey or the Trust or the arrangements under which he accepted money in the first place. Indeed, Loethen admitted that he made cash withdrawals from the escrow account, purportedly to pay back earnest money. Subpoena Conference Tr. 23. But he either did not or could not identify the transactions for which this money was meant, or the parties to whom it belonged, as the withdrawals were for cash.

19. Loethen violated § 375.141.1(4) because he withheld, misappropriated or converted money received in the course of doing insurance business. As to Coffey, Loethen either withheld, misappropriated or converted money held in escrow to be used for Coffey's refinancing and loan consolidation because when it came time to pay Coffey's creditors with that money, Sterling's escrow account was "short." Subpoena Conference Tr. 6. Loethen either withheld, misappropriated or converted Coffey's money for other purposes, resulting in a deficit in Sterling's escrow account.

20. Loethen also violated § 375.141.1(4) because he withheld, misappropriated or converted money received in the course of doing insurance business relative to his

actions with the Trust. Loethen maintained the Sterling escrow account. Subpoena Conference Tr. 13. Sterling's employee, Stanton, deposited the money from Complete Title that was meant for Lamb, Hargis and Leatherman but disbursed it for the Lambs on a different transaction and for two new parties – Barr and Huston. Sterling never disbursed $3,000.00 each to Hargis and Leatherman as required and the Trust had to step in and pay Hargis and Leatherman with funds separate and apart from the money it had placed in escrow. Loethen eventually paid the Trust out of the remaining funds in Sterling's escrow account, but he did so in piecemeal fashion. Loethen's delay in payment and attempt at partial payment show that the funds he maintained in Sterling's escrow account were put to other, non-Trust uses.

21. Loethen also violated § 375.141.1(8) because he used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. As explained above, Loethen failed to properly segregate escrow funds belonging to various individuals and entities. He also failed, multiple times, to disburse money per escrow instructions and agreements. Loethen admitted, as to Coffey, that he sent bad checks to her creditors because Sterling's escrow account – that he maintained – came up "short." Subpoena Conference Tr. 6 and 13. And Loethen could not pay the Trust the full amount owed for improper escrow disbursements until years after the real estate transactions in question. By Loethen's reckoning, he is a poor money manager – he revealed that bookkeeping and recordkeeping have "[a]lways been a downfall of mine. I've never been good" at those subjects. Subpoena Conference Tr. 27. Loethen either does not understand the requirements for escrow in a title context, cannot execute those instructions, or simply used the escrowed money for his own purposes to the repeated detriment of Sterling's escrow account and the consumers who were supposed to receive disbursements from it.

22. Loethen violated § 375.141.1(12) because he knowingly acted as an insurance producer when not licensed to do so. Loethen closed Coffey's refinancing and loan consolidation in May 2011 even though his insurance producer license had long since expired. Loethen knew the licensure requirements, having once held a license, but he closed the Coffey refinancing anyway. Likewise, Loethen disbursed escrowed money to pay back the Trust – albeit well after the real estate purchases for which the money was escrowed – even though he did not have a license at that time.

23. Loethen violated § 375.141.1(14) because he failed to comply with an administrative or court order directing the payment of state income tax. The Department of Revenue filed a certificate of tax lien (total amount due, $2,829.77) against Loethen in Greene County, resulting in an entry of judgment against him.

24. The above-described instances are grounds upon which the Director may refuse to issue Loethen a resident individual insurance producer license. Loethen has repeatedly flouted the title laws regarding escrow requirements. Loethen accepted

funds from Coffey, who expected her escrowed funds to be timely disbursed to her creditors, but Loethen failed to do so. Instead, Loethen sent bad checks to Coffey's creditors. And, while he ultimately paid Coffey and her creditors the money owed, he was late in doing so. Similarly, as to the Trust, Loethen – who owned and managed Sterling and maintained Sterling's escrow account, Subpoena Conference Tr. 13 and 22 – tried to pay the Trust after Sterling's employee, Stanton, did not disburse the money appropriately, to the correct real estate sellers. As with Coffey, Loethen ultimately reimbursed the Trust, but he did so well after the fact and in piecemeal fashion.

25. Loethen admits that he is unskilled at bookkeeping and recordkeeping. Subpoena Conference Tr. 27. Whether his poor handling of escrow results from those shortcomings or diversion of funds or both matters not – regardless, consumers are harmed. And as a former license holder, Loethen knew of the licensure requirements. Nonetheless, he let his license lapse and continued to conduct the business of insurance unabated. Finally, Loethen has failed to comply with an administrative or court order directing the payment of state income tax.

26. The Director has considered Loethen's history and all of the circumstances surrounding Loethen's Application. Granting Loethen an insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue Loethen's resident individual insurance producer license.

27. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident individual insurance producer license of **Brett Wesley Loethen**, is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 18th DAY OF JULY, 2014.

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 21st day of July, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required, at the following address:

Brett Wesley Loethen
2722 S. Glendale
Springfield, Missouri 65804

Tracking No. 1Z0R15W84291586023

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