BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

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ADMINISTRATIVE HEARING COMMISSION

DIRECTOR OF THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION STATE OF MISSOURI,	)	
Petitioner,	)	Case No.
vs.	)	
JAMES A. BAYER,	)	
Respondent.	)	
Serve: 4705 Oakridge Park Drive St. Louis, Missouri 63129-1788	)	

COMPLAINT

The Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists to discipline the insurance producer license held by Respondent James A. Bayer, because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department"). The Director has the duty to administer Chapters 374 and

375, RSMo,[1] which includes the supervision, regulation, and discipline of insurance companies, agencies, and producers licensed to operate and conduct business in the State of Missouri.

2. The Department issued Respondent James A. Bayer ("Bayer") an insurance producer license (No. 178601) on July 1, 1976. Bayer's license is active and set to expire on July 1, 2012.

3. In January 2010, then 88-year-old Rita Purvis ("Purvis"), her daughter Vickie Purvis, and a family friend Janis Hartman filed consumer complaints against Bayer with the Department.

4. Bayer sold a variety of insurance products to Purvis over the years, beginning in 1990.

5. In 2005, Bayer recommended that Purvis withdraw funds from four existing annuity[2] contracts so that Bayer could invest those funds in a company identified as Advisor's Excel Program on Purvis' behalf.

6. Anticipating the funds Purvis would have available from the liquidated annuities, Bayer provided Purvis a signed receipt dated May 9, 2005 for an amount of $19,090.84 which indicated "for purchase in Advisor's Excel program. Returns of 10% will be paid annually."

7. At Bayer's request, Purvis wrote a check dated May 11, 2005, for $19,000, payable to Bayer as an investment in Advisor's Excel Program.[3]

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[1] All statutory references are to the 2009 Supplement to the Revised Statutes of Missouri unless otherwise noted.

[2] Annuities are insurance products. *See* §§ 375.018, 375.786, 375.932(5), and 375.1002(4) RSMo.

Bayer endorsed the $19,000 check and deposited the funds into an account he controlled.

8. To date, Bayer has not repaid any of the $19,000 principal or interest to Purvis for her investment in Advisor's Excel Program.

9. In 2007, Bayer asked Purvis for a personal loan to pay his daughter's tuition. Purvis refused to give Bayer a loan because she did not have the funds available.

10. In September 2007, Purvis wrote a $5,000 check, payable to Bayer for an investment in a company Bayer told Purvis he owned. In March of 2010, Bayer repaid Purvis the $5,000 principal and part of the interest owed for the September 2007 investment.

11. In October 2007, Bayer recommended that Purvis withdraw funds from her existing annuities if she was in need of money.

12. In October 2007, Purvis withdrew funds from two existing annuities.

13. On November 1, 2007, Purvis received credits to her bank account in the amounts of $4,842.40 and $4,493.30 as proceeds from two existing annuities.

14. At Bayer's request, Purvis wrote a $5,000 check dated November 8, 2007, payable to Bayer. The same day Purvis wrote the check, Bayer provided her a receipt and contract for Prosperity Automated System. In

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[8] Advisors Excel purports to be an insurance marketing organization. *See* www.advisorsexcel.com. The receipt provided by Bayer spells "Advisor's" with an apostrophe.

January 2010, Bayer repaid the principal and interest to Purvis for the Prosperity Automated System contract.[4]

15. According to Bayer, the $19,000 and two $5,000 transactions were loans, not investments.

16. Section 375.141.1 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:
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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;
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> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

17. Title 20 CSR 700-1.140(3) interprets § 375.141.1(8) and states:

> No insurance producer shall obtain or solicit for a loan from an insurance client or former or prospective insurance client or any type of ownership interest in any insurance policy held by an insurance client or former or prospective insurance client. This prohibition shall not apply—
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> (A) When it is the usual occupation or practice of the insurance client or former or prospective insurance client to receive and process loan applications and to provide loans to the public as an

[4] The Securities and Exchange Commission filed a Complaint alleging that Prosperity Automated System is a fraudulent pyramid scheme. *Securities and Exchange Commission v. William M. Osterhout and Prosperity Network, Inc. d/b/a Prosperity Automated System*, Civil Action No. 06CV2318. http://www.sec.gov/litigation/complaints/2006/comp19848.pdf, last accessed January 4, 2010.

owner, officer, director, or employee of an institution in the business of providing such loans; or

(B) When there exists a relationship between the insurance client or former or prospective insurance client and the insurance producer which gives rise to an insurable interest.

18. The Administrative Hearing Commission has jurisdiction over this Complaint pursuant to § 621.045.

COUNT I

19. Respondent Bayer demonstrated fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state by soliciting a loan from an insurance client in violation of 20 CSR 700-1.140(3), which is a ground to discipline Bayer's insurance producer license pursuant to §§ 375.141.1(2) and/or (8).

20. At all times relevant to this Complaint, Purvis was Bayer's insurance client because Purvis had purchased insurance products from Bayer.

21. In 2007, Bayer solicited a loan from Purvis to pay his daughter's tuition.

22. It is improper for an insurance producer to solicit a loan from an insurance client unless: 1) it is the insurance producer's usual occupation or practice to receive and process loan applications or to provide loans to the public as an owner, officer, director, or employee of an institution in the business of providing such loans; or 2) there existed a relationship between

the insurance producer and the insurance client gave rise to an insurable interest. 20 CSR 700-1.140(3).

23. It is not Bayer's usual occupation or practice to receive and process loan applications or to provide loans to the public as an owner, officer, director, or employee of an institution in the business of providing such loans.

24. At all relevant times, there never existed a relationship between Bayer and Purvis which gave rise to an insurable interest.

25. By soliciting a loan from an insurance client, Bayer violated 20 CSR 700-1.140(3), which is a ground to discipline his insurance producer license pursuant to §§ 375.141.1(2) and/or (8).

COUNT II

26. Respondent Bayer demonstrated fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state by obtaining a loan from an insurance client in violation of 20 CSR 700-1.140(3), which is a ground to discipline Bayer's insurance producer license pursuant to §§ 375.141.1(2) and/or (8).

27. At all times relevant to this Complaint, Purvis was Bayer's insurance client because Purvis had purchased insurance products from Bayer.

28. According to Bayer, the $19,000 and two $5,000 transactions with Purvis were loans rather than investments.

29. It is improper for an insurance producer to solicit a loan from an insurance client unless: 1) it is the insurance producer's usual occupation or practice to receive and process loan applications or to provide loans to the public as an owner, officer, director, or employee of an institution in the business of providing such loans; or 2) there existed a relationship between the insurance producer and the insurance client gave rise to an insurable interest. 20 CSR 700-1.140(3).

30. It is not Bayer's usual occupation or practice to receive and process loan applications or to provide loans to the public as an owner, officer, director, or employee of an institution in the business of providing such loans.

31. At all relevant times, there never existed a relationship between Bayer and Purvis which gave rise to an insurable interest.

32. By obtaining three loans from an insurance client, Bayer violated 20 CSR 700-1.140(3), which is a ground to discipline his insurance producer license pursuant to §§ 375.141.1(2) and/or (8).

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent James A. Bayer's Missouri insurance producer license pursuant to §§ 375.141.1(2) and/or (8) RSMo (Supp. 2009).

Respectfully submitted,

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