DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:	)	
	)	
JAMES PHILLIP CHOUTEAU, JR.,	)	Case No. 11-0426485C
	)	
Respondent.	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration, takes up the above-referenced matter for consideration and disposition. The Consumer Affairs Division, through counsel, Carolyn H. Kerr, and Respondent James Phillip Chouteau, Jr., through counsel, William C. Kenney, have reached a settlement in this matter and have consented to the issuance of this Consent Order.

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department") whose duties, pursuant to Chapters 374 and 375 RSMo,[1] include supervision, regulation, and discipline of insurance producers and business entity producers.

[1] All statutory references are to the 2010 Supplement to the Revised Statutes of Missouri unless otherwise noted.

2. The Consumer Affairs Division ("Division") of the Department has the duty of conducting investigations into the unfair or unlawful acts of insurance producers and companies under the insurance laws of this state and is authorized to initiate this action before the Director to enforce the insurance laws of this state.

3. On October 10, 2011, the Department received Chouteau's Uniform Electronic Renewal Application for Individual Insurance Producer License ("Renewal Application").

4. Chouteau was originally licensed as an insurance producer, license (No. 0404246) on October 16, 2007.

5. The Department issued Jay Richard Gottman ("Gottman") an insurance producer license (No. 0398204) on July 20, 2007. Gottman's license expired on July 20, 2011.

6. On or about July 7, 2008, the Department received a consumer complaint from Patricia Mullen, alleging that in April 2008, Chouteau enrolled her mother, Curtina A. Bond, in the Advantra2 Medicare Advantage plan ("Advantra2 Plan").

7. On or about April 3, 2008, Ms. Bond signed an Individual Enrollment Application ("Enrollment Application") to enroll in the Advantra2 Plan.

8. On or about April 3, 2008, Chouteau signed the same Enrollment Application that Ms. Bond signed, stating that he was the "Agent/Producer/Broker" who sold her the policy.

9. Chouteau is also named as the Agent on the Application/Payment Transmittal Form, dated April 7, 2008, for the policy sold to Ms. Bond.

10. At all relevant times herein, Gottman and Chouteau were appointed with Bankers Life and Casualty Co., which is authorized to write business on behalf of Coventry Health Care, Inc.

11. Chouteau admitted the following in a letter to the Department dated July 23, 2008:

a. That he "was not the agent that met with Ms. Bond" during her enrollment in the Advantra2 Plan; and

b. That "because agent Jay Gottman and I work together and he wanted to repay me for the commission on my uncle's application, he gave me the Curtina A. Bond case to sign and turn in with my name, therefore making us even on commissions."

12. In an email dated July 24, 2008, to Chouteau, Michael Meloy, Chouteau's unit sales manager, and Jeffery Schuster, Chouteau's branch office administrator, Gottman explained that he met with Ms. Bond personally, provided her information on the Advantra2Plan, and filled out the Enrollment Application with Ms. Bond to enroll her in the Advantra2 Plan.

13. Gottman appeared before the Department on June 18, 2009, pursuant to a subpoena and testified under oath ("Subpoena Conference"). During the Subpoena Conference, Gottman stated that he "wrote" the application for Ms. Bond's

enrollment in the Advantra2 Plan and then "let [Chouteau] sign the application" even though Gottman conducted the sale.

14. Chouteau signed an Agent/Career Agent Counseling Form ("Counseling Form"), dated July 28, 2008, relating to a meeting with his Branch Sales Manager Larry Crane ("Crane").

15. According to the Counseling Form, the "Nature of the Problem" included the following:

a. "The splitting of business ... with another agent – Jay Gottman when I was not in house" and

b. "Taking an application from another agent which I was not in the household at the time an application is written."

16. As a result of Chouteau's meeting with Crane, Crane issued a "verbal warning" to Chouteau reprimanding him "for his actions" and informing "him that this type of behavior from today on WILL NOT be tolerated."

17. Chouteau acknowledges and understands that under § 375.141.1(2) the Director may refuse to renew Chouteau's insurance producer license because Chouteau violated § 375.144(4) by engaging in conduct which operated as a fraud or deceit, based on the following facts:

a. Chouteau knew that the individual who signed Ms. Bond's Application would be paid a commission for the sale of that policy by the insurer;

b. After Gottman filled out Ms. Bond's Application for the Advantra2 Plan policy, he gave Ms. Bond's unsigned Application to Chouteau for

him to sign, even though Chouteau was not the producer who actually sold her the policy so that Chouteau would be paid the commission for the sale of that policy;

c. Chouteau affirmed on Ms. Bond's Application that he was the "Agent/Producer/Broker" who sold her the policy, knowing that he did not do so; and

d. Chouteau signed Ms. Bond's Application for insurance coverage in order to obtain the commission on that policy even though he was not actually the producer who met with and sold Ms. Bond the policy.

18. Chouteau acknowledges and understands that under § 375.141.1(8) the Director may refuse to renew Chouteau's insurance producer license because the aforementioned actions demonstrate dishonest practices and/or incompetence or untrustworthiness in the conduct of business in this state for the reasons outlined in paragraph 17, above.

19. On October 14, 2011, the Director issued a Refusal to Renew the Insurance Producer License ("Refusal") concerning Chouteau's Renewal Application. The Department served the Refusal on Chouteau on October 14, 2011.

20. On November 10, 2011, Chouteau filed a Complaint with the Administrative Hearing Commission (AHC) appealing the Refusal issued by the Director against him. *Chouteau v. Department of Insurance, Financial Institutions and Professional Registration*, Mo. Adm. Hrg. Comm'n, No. 11-2213 DI.

21. Chouteau acknowledges and understands that he has the right to consult counsel at his own expense.

22. Chouteau stipulates and agrees to waive any rights that he may have to a hearing before the Administrative Hearing Commission or the Director and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever release and hold harmless the Department, the Director and his agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

23. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

24. The parties agree that neither party is the prevailing party, and each party will bear its own attorneys' fees and costs.

Conclusions of Law

25. The actions admitted by Chouteau are grounds to refuse or otherwise discipline Chouteau's Missouri insurance producer license pursuant to §§375.141.1(2) and (8).

26. The Director may impose orders in the public interest under § 374.046.

27. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

Settlement Terms

IT IS ORDERED that the Department will renew the insurance producer license of James Phillip Chouteau, Jr., subject to the conditions set forth herein;

IT IS FURTHER ORDERED that James Phillip Chouteau, Jr., shall respond to all inquiries and consumer complaints forwarded or otherwise communicated to him by the Department of Insurance, Financial Institutions and Professional Registration or the consumer within three business days of receipt. James Phillip Chouteau, Jr., shall immediately report in writing to the Department all inquiries and consumer complaints within three business days of receipt;

IT IS FURTHER ORDERED that James Phillip Chouteau, Jr., shall report to the Department of Insurance, Financial Institutions and Professional Registration any administrative action taken against Chouteau in another jurisdiction or by another governmental agency in this state within three business days after he receives notification of the initiation of such administrative action;

IT IS FURTHER ORDERED that James Phillip Chouteau, Jr., shall complete four (4) hours of continuing education in the area of ethics, in addition to the sixteen (16) hours of continuing education already required to maintain his producer license, and submit proof of such satisfactory completion to the Director within six (6) months of the date of this Order;

IT IS FURTHER ORDERED that James Phillip Chouteau, Jr., shall report to the Department of Insurance, Financial Institutions and Professional Registration

any violation of or failure to comply with the laws set forth in Chapters 374 and 375, RSMo within three business days of such violation or failure to comply;

IT IS FURTHER ORDERED that within five (5) business days after Chouteau executes this Consent Order, and it is accepted by the Director, the Division will file the Consent Order and Chouteau's Stipulation of Prejudicial Dismissal (previously provided to the Director) with the Administrative Hearing Commission, securing the dismissal with prejudice of the administrative action pending before the Administrative Hearing Commission in *Chouteau v. Department of Insurance, Financial Institutions and Professional Registration*, Mo. Adm. Hrg. Comm'n, No. 11-2213 DI; and

IT IS FURTHER ORDERED that James Phillip Chouteau, Jr., shall pay the total amount of two thousand dollars ($2,000.00) as a forfeiture as authorized by § 374.046.15, and pursuant to §§ 374.280 and 375.145, payable to the Missouri State School Fund for the above-described violations.

IT IS FURTHER ORDERED that such payment shall be due immediately and payable by money order or cashier's check to the Missouri State School Fund, and shall be forwarded with this executed Consent Order to the attention of Carolyn H. Kerr, Missouri Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, Missouri, 65102. Any correspondence and/or money order or cashier's checks shall reference the case name and number appearing at the top of this Order. The Director shall forward these funds to the state treasury for the benefit of school fund as provided in

§§374.049.11 and 374.280.2, and Article IX, Section 7 of the Constitution of Missouri.

IT IS FURTHER ORDERED that if James Phillip Chouteau, Jr., violates or otherwise fails to comply with the terms and conditions of this executed Consent Order, the Director may pursue additional legal remedies, as necessary and without limitation, as authorized by Chapters 374 and 375, RSMo.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 14th DAY OF DECEMBER, 2011.

JOHN M. HUFF, Director
Missouri Department of Insurance,
Financial Institutions and
Professional Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Respondent James Phillip Chouteau, Jr., has a right to a hearing, but that Respondent waived the hearing and consented to the issuance of this Consent Order.

12-9/2011

Date

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1617 NE Auburn Dr.
Lees Summit, Missouri 64086
Telephone: (636) 733-2337

Respondent

12/09/11

Date

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