State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
James Phillip Chouteau, Jr.	)	**Case No. 110426485C**
Applicant.	)	

REFUSAL TO RENEW INSURANCE PRODUCER LICENSE

On October 14, 2011, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to renew an insurance producer license to James Phillip Chouteau, Jr. 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:

FINDINGS OF FACT

1. James Phillip Chouteau, Jr. ("Chouteau") is an individual residing in Missouri.

2. On October 10, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Chouteau's Uniform Electronic Renewal Application for Individual Insurance Produce License ("Application").

3. In his Application, Chouteau listed his residential and business addresses as 1617 NE Auburn Dr., Lees Summit, Missouri 64086, and his mailing address as 11400 Tomahawk Creek Pkwy., Suite 210, Leawood, Kansas 66211.

4. Chouteau was originally licensed as an insurance producer, license number 0404246, on October 16, 2007, and such license is set to expire on October 16, 2011.

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 ("Application") to enroll in the Advantra2 Plan.

8. On or about April 3, 2008, Chouteau signed the same 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. In response to the Department's inquiry regarding the consumer complaint, 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, his unit sales manager, and Jeffery Schuster, his branch office administrator, Gottman explained that he met with Ms. Bond personally, provided her information on the Advantra2Plan, and filled out the 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").

14. 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.

15. 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").

16. 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."

17. As a result of their meeting, 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."

CONCLUSIONS OF LAW

18. Section 375.141 (Supp. 2010)[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;
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

19. Section 375.144(4), RSMo, states, in pertinent part:

> It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:
>
> * * *
>
> (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

20. "Fraud is the intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him." *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910); *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n. 2 (Mo. App. W.D. 1997).

21. Fraud "necessarily involves dishonesty, which is a lack of integrity or a disposition to defraud or deceive." *Missouri Real Estate Comm'n v. Simpson*, Mo. Adm. Hrg. Comm'n, No. 00-0474 RE (Oct. 5, 2000), citing MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 333 (10th ed. 1993).

22. "Deceit is '**1:** the act or practice of deceiving : DECEPTION **2:** an attempt or device to deceive : TRICK **3:** the quality of being deceitful[.]'" *Missouri Real Estate Comm'n v. Little*, Mo. Adm. Hrg. Comm'n, No. 03-2227 RE (June 9, 2004), citing MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 298 (10th ed. 1993). "Deception is the act of causing someone to accept as true what is not true." *Id.*

23. The definition of "trustworthy" is "worthy of confidence" or "dependable." *Stith v. Lakin*, 129 S.W. 3d 912, 918 (Mo. App. S.D. 2004).

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

24. Incompetency is a "state of being" amounting to an inability or unwillingness to function properly. *Albanna v. State Bd. Of Regis'n for the Healing Arts*, 293 S.W.3d 423, 436 (Mo. banc 2009). It is "general lack of, or lack of disposition to use, a professional ability." *Id.*, citing *Forbes v. Missouri Real Estate Comm'n*, 798 S.W.2d 227, 230 (Mo. App. 1990).

25. "Irresponsible" is defined as "not mentally or financially fit to assume responsibility" or "lacking a sense of responsibility." THE AMERICAN HERITAGE DICTIONARY 678 (2d. College Ed. 1985).

26. "Dishonesty includes actions that reflect adversely on trustworthiness." *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

27. 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. 1984).

CAUSE FOR ORDER REFUSING TO ISSUE PUBLIC ADJUSTER SOLICITOR LICENSE

28. The Director may refuse to renew Chouteau's insurance producer license pursuant to § 375.141.1(2) 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.

29. The Director may refuse to issue an insurance producer license to Chouteau pursuant to § 375.141.1(8) because Chouteau used dishonest practices and/or demonstrated incompetence or untrustworthiness in the conduct of business in this state for the reasons outlined in paragraph 28.

30. As such, granting the renewal of Chouteau's Missouri insurance producer license would not be in the interest of the public.

31. The Director should consider Chouteau's history and all of the circumstances surrounding his Application for renewal and, for all of the reasons given in this Petition, exercise his discretion in summarily refusing to renew Chouteau's insurance producer license.

32. The requested order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the insurance producer license of JAMES PHILLIP CHOUTEAU, JR., is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 14TH DAY OF OCTOBER, 2011.

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 14th day of October, 2011, a copy of the foregoing notice and order was served upon James Phillip Chouteau, Jr.in this matter by UPS delivery at the following address:

James Phillip Chouteau, Jr.
1617 NE Auburn Dr.
Lees Summit, Missouri 64086

UPS Tracking # 1Z0R15W8 0399 35 0523

I hereby certify that on this 14th day of October, 2011, a copy of the foregoing notice and order was served upon James Phillip Chouteau, Jr.in this matter by certified mail at the following address:

James Phillip Chouteau, Jr.
11400 Tomahawk Creek Pkwy., Ste. 210
Leawood, Kansas 66211

Certified # 7007-3020-0003-1572-4605

Kim Sanders
DIFP
PO Box 690
Jefferson City MO 65109