State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Robert M. Costello, Jr.	)	**Case No.: 110223248C**
	)	
Applicant.	)	

ORDER REFUSING TO RENEW INSURANCE PRODUCER LICENSE

On October 21, 2011, Ross A. Kaplan, Enforcement 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 Robert M. Costello, 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 order:

FINDINGS OF FACT

1. Robert M. Costello, Jr. ("Costello") is an individual residing in Missouri.

2. On October 17, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Costello's Uniform Application for Individual Insurance Producer License Renewal/Continuation ("Application").

3. In his Application, Costello listed his residential, business, and mailing addresses as 365 Bridal Trail Dr, Robertsville, MO 63072.

4. Costello was originally licensed as an insurance producer, license number 0223607, on October 12, 1983, such license has been subsequently renewed and expired on October 12, 2011.

5. During an investigation into a complaint against Costello, the Department discovered that Costello had a criminal history.

6. Keith Hendrickson ("Hendrickson"), Special Investigator for the Consumer Affairs Division sent a letter, dated September 28, 2010, to Costello inquiring into, among other things, Costello's criminal history.

7. In response to the September 28, 2010 letter, Costello stated in a letter dated October 15, 2010:

Regarding criminal convictions:

> The extent of my criminal convictions are traffic related. Driving while Intoxicated. It has proven very difficult to obtain certified copies of judgements [sic]. However, I am enclosing a letter of release from the Board of Probation and Parole dated 9/10/09.

8. On August 01, 1980, in *State of Missouri v. Robert Mack Costello*, Cause Number 434582, in the Circuit Court of St. Louis County, Missouri, Costello pleaded guilty to the Class C felony of Stealing from a Person under §570.030, RSMo (1978). The Court sentenced him to a term of 3 years imprisonment, suspended execution of sentence and placed Costello on probation for three years.

9. On November 29, 1982, in *State of Missouri v. Robert Mack Costello*, Cause Number 434582, in the Circuit Court of St. Louis County, Missouri, Costello admitted to violating his probation, which was then revoked, and the Court ordered the execution of the sentence previously imposed, less jail time served, and 90 days credit for probation time.

10. On August 02, 2002, in *State of Missouri v. Robert Costello*, Case Number 00CR-1920, in the Circuit Court of St. Louis County, Missouri, Costello pleaded guilty to the Class D felony of Driving while Intoxicated – Persistent Offender under §§577.010 and 577.023, RSMo (2000). The Court sentenced Costello to a term of 3 years imprisonment to run concurrently with Case Number 00CR-5006.

11. Within the Information in *State of Missouri v. Robert Costello*, Case Number 00CR-1920, the facts included:

> That Robert M. Costello, Jr., in violation of Section 577.010, RSMo, committed the class D felony of driving while intoxicated… in that on or about Thursday, April 13, 2000… the defendant operated a motor vehicle while under the influence of alcohol, and on or about November 29, 1995, defendant was convicted of driving while intoxicated, for events occurring on December 29, 1994, in the Circuit Court of St. Louis County, per cause number 95CR-003997, and on or about May 22, 1998, defendant was convicted of driving while intoxicated, for events occurring on March 7, 1997, in the Circuit Court of St. Louis County, per cause number 97TR-009853.

12. On August 02, 2002, in *State of Missouri v. Robert Costello*, Case Number 00CR-5006, in the Circuit Court of St. Louis County, Missouri, Costello pleaded guilty to the Class D felony of Driving while Intoxicated – Persistent Offender under §§577.010 and 577.023, RSMo (2000). The Court sentenced Costello to a term of 3 years imprisonment to run concurrently with Case Number 00CR-1920.

13. Within the Amended Information in *State of Missouri v. Robert Costello*, Case Number 00CR-5006, the facts included:

That Robert M. Costello, in violation of Section 577.010, RSMo, committed the class D felony of driving while intoxicated... in that on or about Saturday, June 10, 2000... the defendant operated a motor vehicle while under the influence of alcohol[.]

14. On September 07, 2006, in *State of Missouri v. Robert Costello*, Case Number 05CR-1440, in the Circuit Court of St. Louis County, Missouri, Costello pleaded guilty to the Class D felony of Driving while Intoxicated – Persistent Offender under §§577.010 and 577.023, RSMo (2000). The Court sentenced Costello to a term of 3 years imprisonment.

15. Costello never reported the criminal prosecution in case number 05CR-1440 to the Director.

CONCLUSIONS OF LAW

16. Section 375.141, RSMo (Supp. 1981) states, in part:

> 1. The director may revoke or suspend, for such period as he may determine, any license of any insurance agent, agency or broker if it is determined... that the licensee or applicant has, at any time[:]
>
> * * *
>
> (3) Been convicted of a felony or crime involving moral turpitude[.]

17. Section 375.141, RSMo (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:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]
>
> * * *
>
> 7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

[1] The statutory language that was in place at the time of the 2002 and 2006 violations is the same as the language in the 2010 supplement.

18. Section 374.210, RSMo (Supp. 2010) states, in part:

> 1. It is unlawful for any person in any investigation, examination, inquiry, or other proceeding under this chapter, chapter 354, and chapters 375 to 385, to:
>
> (1) Knowingly make or cause to be made a false statement upon oath or affirmation or in any record that is submitted to the director or used in any proceeding under this chapter, chapter 354, and chapters 375 to 385[.]

19. "A guilty plea is an admission to the facts in the indictment or information." *Thurman v. State*, 263 S.W.3d 744, 752 (Mo. App. E.D. 2008).

20. 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. E.D. 1984).

21. The Director may refuse to renew Costell's insurance producer license pursuant to §375.141.1(6), RSMo (Supp. 2010) because, Costello pleaded guilty to and was convicted of Driving while Intoxicated – Persistent Offender, a Class D felony on three separate occasions. Each conviction of a felony is a separate and sufficient cause to refuse to renew Costello's insurance producer license.

22. Costello pleaded guilty to and was convicted of Driving while Intoxicated – Persistent Offender, a crime of moral turpitude. Moral turpitude is:

> an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."

In re Frick, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)). In *Brehe v. Missouri Dep't of Elementary and Secondary Education*, a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime of moral turpitude, the court referred to three classifications of crimes:

> (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
> (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes);
> (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

Brehe, 213 S.W.3d 720 (Mo. App., W.D. 2007). The court stated that Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved. *Id.*

In *In re Disciplinary Proceedings Against Brandt*, the Supreme Court of Wisconsin specifically addressed the issue of driving while intoxicated:

> Driving while intoxicated is a very serious offense with the potential to cause great harm-or even death. While it is indeed fortunate that Attorney Brandt did not injure anyone by his intoxicated driving, the fact that he repeatedly drove while intoxicated reflects adversely on his fitness as a lawyer[.]

Brandt, 766 N.W.2d 194, 202 (Wis. 2009).

23. The court in *Brandt* addressed the issue of repeated Driving while Intoxicated violations, which is the same issue with Costello. Consequently, because of the aforementioned potential for great harm or actual great harm, the Director deems repeated violations of alcohol-impaired driving to constitute Category 3 crimes under *Brehe*. As a Category 3 crime, the Director must look at the related factual circumstances. Costello has been convicted of Driving while Intoxicated five separate times. Presumably, Costello would have recognized after the first conviction that it was both unsafe and unlawful to drive while intoxicated. Unfortunately, Costello chose to subsequently and repeatedly operate a motor vehicle while under the influence of alcohol, putting those around him in danger and breaking the law. Due to these actions, Costello has become a repeat offender and committed the Class D felony of Driving while Intoxicated – Persistent Offender on three separate occasions. Costello's repeated alcohol-impaired driving violations constitute moral turpitude, and the Director has cause and may refuse to renew Costello's insurance producer license under §375.141.1(6), RSMo (Supp. 2010). *See Monroe v. Office of Tattooing, Body Piercing and Branding*, No. 09-0927TP (Mo. Adm. Hrg. Comm'n June 3, 2010).

24. The Director may refuse to renew Costello's insurance producer license pursuant to §375.141.1(2), RSMo (Supp. 2010) because Costello failed to report to the Director the criminal prosecution for the felony and crime of moral turpitude of Driving while Intoxicated – Persistent Offender, in Case Number 05CR-1440, in the Circuit Court of St. Louis County, Missouri within 30 days of the initial pretrial hearing date of the matter, as required by §375.141.7, RSMo (Supp. 2010).

25. The Director may refuse to renew Costello's insurance producer license pursuant to §375.141.1(3), RSMo (Supp. 1981) because Costello pleaded guilty to and was convicted of Stealing from a Person, a Class C felony.

26. Under *Brehe*, stealing is considered a Category 1 crime. *See Missouri Real Estate Appraisers Commission v. Hesselgesser*, No. 07-0993 RA (Mo. Adm. Hrg. Comm'n March 10, 2008); *In re Carpenter*, 891 A.2d 223 (D.C. 2006); *U.S. v. Morrow*, 2005 WL 3163801 (D.D.C June 2, 2005); *Johnson v. Commonwealth*, 581 S.E.2d 880 (41 Va. App. 2003). Costello pleaded guilty to and was convicted of Stealing from a Person, which is a crime of moral turpitude and, therefore, the Director has cause and may refuse to renew Costello's insurance producer license under §375.141.1(3), RSMo (Supp. 1981).

27. Costello, during a Departmental investigation pursuant to chapter 375, knowingly made a false statement in a record submitted to the Director in violation of §374.210, RSMo (Supp. 2010). When asked by the Department about his criminal convictions, Costello, in a letter he submitted in response, stated that the extent of his criminal convictions were traffic related, driving while intoxicated, when in fact he also pleaded guilty to and was convicted of Stealing from a Person. This is in violation of §374.210, RSMo (Supp. 2010), and the Director has cause and may refuse to renew Costello's insurance producer license under §374.141.1(2), RSMo (Supp. 2010).

28. The Director has considered all of the circumstances surrounding Costello's application. Costello has been convicted of four felonies. He has been convicted of Driving while Intoxicated five separate times. Because of his repeated, willful disregard for the safety of others, his felony convictions of Driving while Intoxicated – Persistent Offender are also convictions for crimes of moral turpitude. Costello failed to report his last felony conviction to the Director and, when asked by the Department, Costello lied about the fact that one of his felony convictions was for Stealing from a Person. Any one of these violations is cause for the Director to refuse to renew Costello's Missouri insurance producer license. Granting a renewal of Costello's Missouri resident insurance producer license would not be in the interest of the public.

29. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the insurance producer license of Robert M. Costello, Jr. is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 24th **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 §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 26th day of October, 2011, a copy of the foregoing Notice and Order was served upon the Applicant Robert M. Costello, Jr. in this matter by certified mail No. 7008 2810 0000 2014 8841 at

Robert M. Costello, Jr.
365 Bridal Trail Dr.
Robertsville, Mo 63072

Kathryn Randolph