State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DOMENICO E. LUPO, JR.,	)	**Case No. 160411229C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE AN INSURANCE PRODUCER LICENSE

On June 30, 2016, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Domenico E. Lupo, Jr. After reviewing the Petition and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Domenico E. Lupo, Jr. ("Lupo") is a Missouri resident with a residential, mailing, and business address of 9315 Bataan, St. Louis, Missouri 63134.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") received Lupo's electronic application for a resident insurance producer license ("Application") on November 20, 2015.

3. The "Applicant's Certification and Attestation" section of the Application states, in relevant part:

    1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

4. Lupo accepted the "Applicant's Certification and Attestation" section of his Application.

5. Background Question No. 1B of the Application asks, in part:

    > Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?

6. Lupo answered "Yes" in response to Background Question No. 1B.

7. With his Application, Lupo submitted a letter to further explain his response to Background Question No. 1B, a letter from the Missouri Department of Corrections evidencing Lupo's discharge from supervised probation, and a Case.net print out of the charges and sentences entered in case number 04CR166702-01. In Lupo's letter, he stated verbatim, in part:

> In 2004 I was working on my masters of counseling psychology and violated research protocols and in doing so violated the law. I also have a drug charge from 1990.

8. The Consumer Affairs Division's ("Division") investigation confirmed that Lupo has been convicted of the following felonies:

   a. On January 10, 2005, Lupo pled guilty to Promoting Child Pornography 1st Degree, a Class B Felony, in violation of § 573.025.[1] The First Amended Information, filed on January 10, 2005, charged Lupo with "publish[ing] obscene material consisting of photographs that portrays what appears to be a person under the age of fourteen years as a participant in sexual conduct." On March 7, 2005, the court convicted Lupo and sentenced him to ten (10) years' incarceration. *State v. Domenico Eugene Lupo, Jr.*, Boone Co. Cir. Ct., Case No. 04CR166702-01.

   b. On January 10, 2005, Lupo pled guilty to Possession of Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202. The First Amended Information, filed on January 10, 2005, charged Lupo with felony possession of "more than 35 grams of marijuana, a controlled substance[.]" On March 7, 2005, the court convicted Lupo and sentenced him to seven (7) years' confinement, to be served concurrent with his sentence for Promoting Child Pornography. *Id.*

   c. On November 26, 1990, Lupo pled guilty to and was convicted of three counts of Drug Violation - Sell, all Unclassified Felonies, and all in violation § 195.020. The Information, filed on August 2, 1990, charged Lupo with "the Felony of Sale of Psilocyn Mushrooms, A Controlled Substance," on three (3) separate occasions. The court sentenced Lupo to five (5) years' incarceration on each count but suspended the execution of all three sentences, placed Lupo on five (5) years' supervised probation, and ordered Lupo to complete 100 hours community service. *State v. Domenico Edward Lupo, Jr.*, Boone Co.

[1] All criminal statutory references are to those contained in the version of the Revised Statutes of Missouri under which the court rendered judgment.

Cir. Ct., Case No. 13R019025313-01.[2]

9. Contrary to Lupo's letter submitted with his Application, the court records regarding Lupo's Class B Felony of Promoting Child Pornography in the 1st Degree make no reference to a "violat[ion of] research protocols," but rather, based on a complaint from the National Center for Missing and Exploited Children, a search warrant resulted in the seizure of his computer containing "obscene material consisting of photographs that portrays what appears to be a person under the age of fourteen years as a participant in sexual conduct." *State v. Domenico Eugene Lupo, Jr.*, Boone Co. Cir. Ct., Case No. 04CR166702-01.

10. In his letter submitted with his Application, Lupo failed to explain his 2005 drug charge, Class C Felony Possession of Controlled Substance Except 35 Grams or Less of Marijuana, to which he also pled guilty in the same case as the Class B Felony of Promoting Child Pornography in the 1st Degree. *Id.*

11. Further, in Lupo's letter submitted with his Application, Lupo stated he had "a drug charge from 1990." Contrary to his statement, Lupo pled guilty to three (3) charges of the Unclassified Felony of Drug Violation - Sell. *State v. Domenico Edward Lupo, Jr.*, Boone Co. Cir. Ct., Case No. 13R019025313-01.

12. It is inferable, and hereby found as fact, that Lupo provided materially incorrect, misleading, incomplete or untrue information in his Application for the purpose of inducing the Director to issue him an insurance producer license.

13. It is also inferable, and hereby found as fact, that Lupo mischaracterized or minimized his criminal history in an attempt to obtain an insurance producer license through material misrepresentation or fraud.

CONCLUSIONS OF LAW

14. Section 375.141 RSMo (Supp. 2013)[3] 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:
>
> (1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

[2] Although case numbers 04CR166702-01 and 13R019025313-01 list two different middle names for Lupo, the defendant's birthdate and social security numbers in both cases match each other and the information Lupo provided in his Application.

[3] All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement unless otherwise noted.

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

15. The Director may refuse to issue a resident insurance producer license to Lupo pursuant to § 375.141.1(6) because Lupo has been convicted of five (5) felonies:

    a. Promoting Child Pornography 1st Degree, a Class B Felony. *State v. Domenico Eugene Lupo, Jr.*, Boone Co. Cir. Ct., Case No. 04CR166702-01.

    b. Possession of Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony. *Id.*

    c. Drug Violation - Sell, an Unclassified Felony. *State v. Domenico Edward Lupo, Jr.*, Boone Co. Cir. Ct., Case No. 13R019025313-01.

    d. Drug Violation - Sell, an Unclassified Felony. *Id.*

    e. Drug Violation - Sell, an Unclassified Felony. *Id.*

16. The Director may refuse to issue a resident insurance producer license to Lupo pursuant to § 375.141.1(6) because Lupo has been convicted of five (5) crimes involving moral turpitude:

    a. Promoting Child Pornography 1st Degree, a Class B Felony. *State v. Domenico Eugene Lupo, Jr.*, Boone Co. Cir. Ct., Case No. 04CR166702-01.

    b. Possession of Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony. *Id.*

    c. Drug Violation - Sell, an Unclassified Felony. *State v. Domenico Edward Lupo, Jr.*, Boone Co. Cir. Ct., Case No. 13R019025313-01.

    d. Drug Violation - Sell, an Unclassified Felony. *Id.*

    e. Drug Violation - Sell, an Unclassified Felony. *Id.*

17. Each conviction of a felony or crime involving moral turpitude is a separate and sufficient cause for refusal pursuant to § 375.141.1(6).

18. The Director may refuse to issue a resident insurance producer license to Lupo pursuant to § 375.141.1(1) because Lupo intentionally provided materially incorrect, misleading, incomplete or untrue information in his license application. Lupo misrepresented the underlying facts that led to his felony conviction of Promoting Child Pornography in the 1st Degree, failed to explain the circumstances surrounding his 2005 felony drug conviction, and incorrectly stated that he has "a drug charge from 1990" when in fact he has three 1990 felony convictions for Drug Violation - Sell.

19. The Director may refuse to issue a resident insurance producer license to Lupo pursuant to § 375.141.1(3) because Lupo attempted to obtain a license through material misrepresentation or fraud. Lupo materially misrepresented his criminal background by misrepresenting the underlying facts that led to his felony conviction of Promoting Child Pornography in the 1st Degree, failed to explain the circumstances surrounding his 2005 felony drug conviction, and incorrectly stated that he has "a drug charge from 1990" when in fact he has three 1990 felony convictions for Drug Violation - Sell.

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

21. The requested Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that Domenico E. Lupo, Jr.'s application for an individual resident insurance producer license is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 30th **DAY OF** June**, 2016.**

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 1st day of July, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Domenico E. Lupo, Jr.
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St. Louis, Missouri 63134

Tracking No. 1Z0R15W84297694502

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