State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
	)	Case No. 11-1021744
Jeffrey P. Dungan,	)	
	)	
Applicant.	)	
	)	
Serve:	)	
Lawrence W. Ferguson,	)	
Attorney for Jeffrey P. Dungan	)	
903 Old 63 N, Suite C	)	
Columbia, MO 65201	)	

ORDER REFUSING TO RENEW INSURANCE PRODUCER LICENSE

On October 21, 2011, Andy Heitmann, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Jeffrey P. Dungan. 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. Jeffrey P. Dungan ("Dungan") is an individual residing in Missouri, with a mailing address of record of 5264 County Road 321, Fulton, Missouri, 65251. He is represented in this matter by Lawrence W. Ferguson, 903 Old 63 N, Suite C, Columbia, Missouri, 65201.

2. Dungan has held a Missouri insurance producer license (number 0285831) since October 21, 1987, which license expires October 21, 2011.

3. On October 4, 2011, Dungan submitted to the Director an electronic application for renewal of his insurance producer license.

4. As part of an investigation, the Department issued a subpoena duces tecum to Dungan, pursuant to which Dungan appeared at the Department and testified under oath on February 24, 2009 (the "Subpoena Conference").

5. On September 26, 2007, Dungan sold an American Family commercial insurance policy to Mullins Investments, LLC, d/b/a Wornall Place Apartments ("Wornall").

6. When Dungan sold the policy to Wornall, he provided Wornall with an evidence of insurance, or binder, bearing a "date issued" of October 3, 2007, "effective date" of September 26, 2007, "expiration date" of September 26, 2008, and a "policy number" of "TBA" (meaning "To Be Assigned").

7. Thereafter, Dungan, or an unlicensed employee at Dungan Agency, Stephanie Walter ("Walter"), misplaced the application and the initial premium check, apparently by filing it as a part of an inactive "dead" file in a storage area in the back of the agency office. As a result, neither the Wornall application nor its check was forwarded to American Family.

8. In the following months, Dungan, Walter, or other unlicensed employees of Dungan Agency received ten additional monthly premium checks from Wornall for the commercial insurance policy sold to Wornall by Dungan, but none of these checks was forwarded to American Family.

9. At least six of the Wornall premium checks were attached to the unsent application and left in storage in the back of the agency or were otherwise retained at the office of Dungan Agency, and the remainder were received and held by Dungan after Walter left the Agency.

10. On August 21, 2008, Wornall called Dungan because Wornall's mortgagee, Champion Bank, was concerned that it had not received a copy of the commercial insurance

policy.

11. In response to this call, Dungan created a second evidence of insurance ("Evidence Two") and faxed it to Champion Bank.

12. Evidence Two indicated that coverage requested by Wornall from American Family, through Dungan, was or would be bound or issued.

13. Evidence Two bore a "date issued" of August 21, 2008, an "effective date" of July 29, 2008, an "expiration date" of July 29, 2009, and a policy number of "24-XJ7416-01."

14. When Dungan created Evidence Two, he approximated the dates listed and knowingly inserted a false policy number he knew did not correspond to a policy issued by American Family to Wornall.

15. Dungan created a policy number he thought would be similar to the policy number that would be issued by American Family.

16. Dungan inserted the approximate dates and the false policy number to create the false appearance that the application had been submitted to American Family and the policy issued.

17. Dungan discovered the failure to submit the application and approximately six to eight unsent premium payment checks from Wornall in mid- or late summer of 2008.

18. Upon making this discovery, Dungan did not contact Wornall or American Family to notify them of the lost application or unsent premium checks, nor did he propose to rewrite the application, but instead continued for months to receive and hold premium checks while looking for the lost application.

19. Dungan considered rewriting the policy, but was concerned about calling Wornall and admitting the application was lost.

20. After approximately three to five months, Dungan located the application and the unsent premium checks, but Wornall elected to place coverage through another agency.

21. During the approximately three to five months after Dungan discovered the failure to submit the application, Walter was no longer working in Dungan's office.

22. Dungan personally received and failed to forward premium checks from Wornall after he discovered the failure to submit the application and premium checks.

23. When Dungan created and issued Evidence Two, he included a false policy number, which he knew did not accurately correspond with an existing policy issued by American Family to Wornall.

24. When Dungan created and issued Evidence Two, he included the false policy number and dates in order to create the false impression to Wornall and Champion Bank that a policy had been issued by American Family to Wornall.

25. Dungan included the false policy number to create the false impression to Wornall and Champion Bank that Dungan had properly forwarded Wornall's application and all premium checks submitted by Wornall to Dungan Agency to American Family.

26. On August 13, 2010, the Director filed a complaint with the Administrative Hearing Commission ("AHC"), alleging that the Director had cause to discipline Dungan's insurance producer license based in part on the facts found in paragraphs 3 through 25 of this Order's Findings of Fact and the legal causes for discipline set out in paragraphs 34 and 35 of this Order's Conclusions of Law.

27. On December 29, 2010, the Director filed with the AHC a motion for partial summary decision.

28. On August 24, 2011, the AHC granted the Director's motion for partial summary decision and found cause to discipline Dungan's insurance producer license under § 375.141.1(2)

and (8).

29. As part of its summary decision Order, the AHC found the facts now set out in paragraphs 3 through 25 of this Order's Findings of Fact and determined that the causes for refusal now found in paragraphs 34 and 35 this Order's Conclusions of Law were cause for discipline to Dungan's license.

30. The facts found by the AHC, and found as paragraphs 3 through 25 of this Order, were undisputed because Dungan admitted them in his Answer to the Director's Complaint.

CONCLUSIONS OF LAW

31. Section 375.141.1, RSMo Supp. 2010,[1] provides, in part:

> 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[.]

32. Section 375.144 provides, in part:

> It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:
>
> * * *
>
> (2) As to any material fact, make or use any misrepresentation, concealment, or suppression[.]

33. The principal purpose of § 375.141 is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. 1984).

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

34. Dungan may be refused an insurance producer license under § 375.141.1(2) because Dungan violated § 375.144(2), an insurance law, when he created Evidence Two with a false policy number and issued it to Champion Bank for the purpose of deceiving Champion Bank and Wornall into believing that a policy had been issued when, in fact, no policy had been issued, thereby making material misrepresentations to Champion Bank and Wornall and concealing from them the material fact that the policy had not been issued.

35. Dungan may be refused an insurance producer license under § 375.141.1(8) because Dungan failed to forward eleven separate premium checks to American Family and then chose to cover up his failures to forward premium with a false evidence of insurance, thereby using dishonest business practices and demonstrating untrustworthiness and financial irresponsibility in the conduct of business in this state.

36. Renewing Dungan's insurance producer license would not be in the public interest.

37. For the reasons given above, the Director has considered Dungan's history and all of the circumstances surrounding Dungan's renewal application and exercises his discretion in summarily refusing to renew Dungan's insurance producer license.

ORDER

IT IS THEREFORE ORDERED that the renewal of Jeffrey P. Dungan's insurance producer license is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 21ST 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, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to § 621.120, RSMo. Under 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 21st day of October, 2011, a duplicate original of the foregoing Order and Notice was served upon the Applicant in this matter by certified/priority mail No. 7008 2810 0000 2014 8793

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Kim Landers
Senior Support Staff