FINAL ORDER EFFECTIVE 07-26-16

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
EMMELINE MCCRARY,	)	**Case No. 151201533C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On May 10, 2016, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse to issue an insurance producer license to Emmeline McCrary. 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. Emmeline McCrary ("McCrary") is a Texas resident with a residential address of record of 1415 Babcock Road, Number 403, San Antonio, Texas 78201.

2. On July 23, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received McCrary's electronic application for an individual non-resident insurance producer license ("Application").

3. Background Question No. 1B of the Application asked the following:

> Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court)[.]

4. McCrary answered "yes" in response to Background Question No. 1B of the Application.

5. McCrary submitted a letter explaining her response, which states, in part:

> [I was] charged with aggravated assault with a deadly weapon. ...I was placed on 2 years deferred adjudication probation which I completed one year of. My probation was revoked in February of 2002 and I served 2 years in the Texas Department of Criminal Justice system without parole.

6. McCrary submitted court documents relating to the case of *State of Texas v. Emmeline McCrary*, Bexar Co. Dist. Ct., Case No. 2000CR5553. McCrary's documentation included a Judgment Adjudicating Guilt, indicating that on May 2, 2002, she was convicted of Aggravated Assault with a Deadly Weapon, a Felony in the Second Degree pursuant to Texas Penal Code 22.02.[1] The court sentenced McCrary to two years' incarceration. *Id.*

7. After reviewing McCrary's Application, attachments, and statements, Special Investigator Karen Crutchfield ("Crutchfield") with the Consumer Affairs Division ("Division") sent McCrary inquiry letters in July and August 2015. These inquiry letters asked McCrary to explain the circumstances relating to the revocation of her probation and child support obligations. The letters cited 20 CSR 100-4.100(2)(A) and informed McCrary that failure to respond could result in refusal of her Application. McCrary responded to Crutchfield's inquiries in August and September 2015.

8. Having follow-up questions regarding McCrary's responses and application, Crutchfield sent another inquiry letter, dated September 9, 2015, to McCrary at McCrary's residential address of record. The letter cited 20 CSR 100-4.100(2)(A) and informed McCrary that failure to respond could result in refusal of her Application.

9. The United States Postal Service did not return the Division's September 9, 2015, inquiry letter to the Division, and therefore it is presumed received by McCrary.

10. McCrary failed to provide a written response to the Division's September 9, 2015, inquiry letter and failed to demonstrate a reasonable justification for the delay.

11. On October 23, 2015, the South Dakota Department of Labor and Regulation denied McCrary a non-resident insurance producer license because McCrary provided incomplete information on her application and because she has been convicted of a Felony. *In Re: Emmeline McCrary*, S.D. Dept. of Labor and Regulation, Id. No. 193177 (Oct. 23 2015).

12. McCrary did not appeal the South Dakota order.

CONCLUSIONS OF LAW

13. Section 375.141.1[2] provides, in relevant 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:
>
> * * *

[1] All references to criminal statutes are to those in effect at the time the court rendered judgment.
[2] All statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement, unless otherwise indicated.

(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;[or]

* * *

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

14. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division, provides:

> Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

15. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).

16. The Director may refuse to issue a non-resident insurance producer license to McCrary pursuant to § 375.141.1(2) because she violated 20 CSR 100-4.100(2)(A) when she failed to respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay.

17. The Director may refuse to issue a non-resident insurance producer license to McCrary pursuant to § 375.141.1(6) because McCrary has been convicted of a Felony, namely Aggravated Assault with a Deadly Weapon, a Felony in the Second Degree pursuant to Texas Penal Code 22.02. *State of Texas v. Emmeline McCrary*, Bexar Co. Dist. Ct., No. 2000CR5553.

18. The Director may refuse to issue an insurance producer license to McCrary pursuant to § 375.141.1(9) because McCrary has been denied an insurance producer license, or its equivalent, in another state, namely South Dakota. *In Re: Emmeline McCrary*, S.D. Dept. of Labor and Regulation, Id. No. 193177 (Oct. 23 2015).

19. The Director has considered McCrary's history and all of the circumstances surrounding her Application. Accordingly, the Director exercises his discretion to refuse to issue McCrary a non-resident insurance producer license.

20. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Emmeline McCrary**'s insurance producer license application is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 10th **DAY OF** May, **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 11th day of May, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required, to the following address:

Emmeline McCrary
1415 Babcock Road
Number 403
San Antonio, Texas 78201

Tracking No. 1Z0R15W84297961615

Kathryn Latimer

Kathryn Latimer
Paralegal
Missouri Department of Insurance, Financial Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.6515
Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, certified mail, to the following address:

Emmeline McCrary
1415 Babcock Road
Number 403
San Antonio, Texas 78201

Certified No. 7012 3460 0002 8615 0379

Kathryn Latimer
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301 West High Street, Room 530
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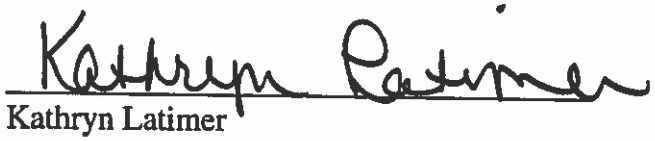
Email: kathryn.latimer@insurance.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, first class mail, to the following address:

Emmeline McCrary
1415 Babcock Road
Number 403
San Antonio, Texas 78201



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