FINAL ORDER EFFECTIVE 03-24-16

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JACK HOLT BOUCHER	)	**Case No. 150929455C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On February 16, 2016, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a resident insurance producer license to Jack Holt Boucher. After reviewing the Petition and 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. Jack Holt Boucher ("Boucher") is a Missouri resident with a residential and mailing address of 9801 Pennsylvania Avenue, Kansas City, Missouri 64114.

2. On December 24, 2009, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Boucher's Application for an Individual Insurance Producer License ("2009 Application").

3. The "Applicant's Certification and Attestation" section of the 2009 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. By signing the application, Boucher accepted the "Applicant's Certification and Attestation" section of the 2009 Application.

5. Background Question No. 1 of the 2009 Application asks the following:

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

"Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by a verdict of a judge or jury, having entered a plea of guilty or nolo contendre, or having been given probation, a suspended sentence or a fine.

If you answer yes, you must attach to this application:

a) a written statement explaining the circumstances of each incident,
b) a certified copy of the charging document
c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

6. Boucher answered "Yes" in response to Background Question No. 1 on his 2009 Application.

7. Boucher attached an "Addendum" to his 2009 Application which explained that "[o]n December 12, 2006 I was arrested for DUI and Fleeing or Eluding Police. I was convicted of both charges and I have satisfied the court by paying all fines and serving the term of confinement." Boucher also attached certified copies of court records evidencing that:

a. On July 25, 2007, Boucher was convicted of driving under the influence, a Felony, in violation of K.S.A. 8-1567[1] and fleeing and eluding capture, a Felony, in violation of K.S.A. 8-1568 and was sentenced to twelve months incarceration in jail, twelve months incarceration in prison and twelve months' probation. *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 06CR3533. On July 30, 2008, Boucher was released from probation in case number 06CR3533. *Id.*

8. However, Boucher failed to disclose the following criminal misdemeanor convictions on his 2009 Application:

[1] All references to criminal statutes are to those contained in the version of the Kansas Statutes Annotated under which the court rendered judgment

a. On October 8, 1998, Boucher was convicted of domestic battery, a Class B Misdemeanor, in violation of K.S.A. 21-3412 and was sentenced to six months incarceration in jail and placed on probation for twelve months. *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 98DV0792.

b. On March 16, 1999, Boucher was convicted of domestic battery, a Class A Misdemeanor, in violation of K.S.A. 21-3412, he was sentenced to six months incarceration in jail and twelve months' probation. *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 99DV144. Boucher was released from probation in case number 99DV144 on March 16, 2000. *Id.*

9. Background Question No. 2 of the 2009 Application asks the following:

Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of a limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration?

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

a) a written statement identifying the type of license and explaining the circumstances of each incident,
b) a certified copy of the Notice of Hearing or other document that states the charges and allegations, and
c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

10. Boucher answered "No" to Background Question No. 2 on his 2009 Application.

11. However, Boucher failed to disclose the following administrative action on his 2009 Application:

a. On March 3, 2003, the Kansas Commissioner of Insurance issued an Order that revoked Boucher's Kansas insurance producer license ("2003 Kansas

Revocation"). *In the Matter of the Kansas Resident Insurance Agent's License of Jack H. Boucher*, Docket No. 3124-SO.

12. On April 26, 2010, the Director issued an Order refusing Boucher's 2009 Application for a resident insurance producer license ("2010 Missouri Refusal"). *In the Matter of: Jack Holt Boucher, Order Refusing to Issue Insurance Producer License*, Case No. 10-0401418C.

13. In the 2010 Missouri Refusal, the Director found that grounds existed to refuse Boucher's 2009 Application pursuant to § 375.141.1(1), (3), (6), and (9) as follows:

    a. Section 375.141.1(1) RSMo (Supp. 2009), because by failing to disclose two misdemeanor convictions and the 2003 Kansas Revocation on his Application, Boucher intentionally provided materially incorrect, misleading, incomplete or untrue information on his Application.

    b. Section 375.141.1(3) RSMo (Supp. 2009), because by failing to disclose two misdemeanor convictions and the 2003 Kansas Revocation on his Application, Boucher attempted to obtain a license through material misrepresentation or fraud.

    c. Section 375.141.1(6) RSMo (Supp. 2009), for having been convicted of two felonies in *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 06CR3533.

    d. Section 375.141.1(9) RSMo (Supp. 2009), for having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory. *In the Matter of the Kansas Resident Insurance Agent's License of Jack H. Boucher*, Docket No. 3124-SO.

    Id.

14. The 2010 Missouri Refusal included a Notice that provided instructions regarding filing a complaint with the Administrative Hearing Commission of Missouri within 30 days. *Id.*

15. The 2010 Missouri Refusal was served[2] on Boucher via United States Postal Service, certified mail on April 27, 2010.

[2] The 2010 Missouri Refusal was mailed to the same address Boucher listed as his residential and mailing address on his 2015 Application.

16. Boucher did not appeal the 2010 Missouri Refusal.

17. On May 26, 2015, the Department received Boucher's completed Application for Individual Producer License/Registration ("2015 Application").

18. The "Applicant's Certification and Attestation" section of the 2015 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.

19. By signing the application, Boucher accepted the "Applicant's Certification and Attestation" section of the 2015 Application.

20. Background Question No. 1a of the 2015 Application asks the following:

> Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?
>
> You may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license.
>
> You may also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court)[.]
>
> * * *
>
> **NOTE:** For Questions 1a, 1b, and 1c, **"Convicted"** includes, but is not limited to, having been found guilty by a verdict of a judge or jury, having entered a plea of guilty or nolo contender or no contest, or having been given probation, a suspended sentence or a fine.
>
> (Emphasis in original.)
>
> If you answer yes, you must attach to this application:
>
> a) a written statement explaining the circumstances of each incident,
> b) a certified copy of the charging document
> c) a copy of the official document, which demonstrates the resolution of

the charges or any final judgment.

21. Boucher answered "No" in response to Background Question No. 1a on his 2015 Application.

22. However, Boucher failed to disclose the same criminal misdemeanor convictions on his 2015 Application that he failed to disclose on his 2009 Application:

    a. Domestic Battery, a Class B Misdemeanor. *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 98DV0792.

    b. Domestic Battery, a Class A Misdemeanor. *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 99DV144.

23. Background Question No. 1b of the 2015 Application asks the following, in relevant part:

    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)[.]

    * * *

    NOTE: For Questions 1a, 1b, and 1c, **"Convicted"** includes, but is not limited to, having been found guilty by a verdict of a judge or jury, having entered a plea of guilty or nolo contender or no contest, or having been given probation, a suspended sentence or a fine.

    (Emphasis in original.)

    If you answer yes, you must attach to this application:
    a) a written statement explaining the circumstances of each incident,
    b) a certified copy of the charging document
    c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

24. Boucher answered "Yes" in response to Background Question No. 1b on his 2015 Application.

25. Boucher attached "Addendum II" to his 2015 Application which explained that "In June, 2010 I was arrested and convicted for DUI. I remained incarcerated until Jan.

2011 and then released. I had a suspended DL until Jan[.] 2011. Then I had [sic] interlock device on my car for 2 years." Boucher attached certified copies of court records evidencing that on July 12, 2010, he was charged with driving under the influence of alcohol (4th lifetime offense), a Felony, in violation of K.S.A. 8-1567. *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 10CR1642. On November 12, 2010, Boucher was sentenced to 180 days confinement in jail and twelve months' probation. *Id.*

26. However, on his 2015 Application Boucher failed to disclose the two other felony convictions that he did disclose on his 2009 Application:

    a. Driving Under the Influence, a Felony. *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 06CR3533.

    b. Fleeing and Eluding Capture, a Felony. *Id.*

27. Background Question No. 2 on the 2015 Application asks the following:

    Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?

    "Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. "Involved" also means having a license, or registration application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions in your capacity as an owner, partner, officer or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

28. Boucher answered "No" to Background Question No. 2 on his 2015 Application.

29. Contrary to his "No" answer to Background Question No. 2 on his 2015 Application, Boucher has been involved in the following administrative actions.

    a. On March 3, 2003, the Kansas Commissioner of Insurance issued an Order that revoked Boucher's Kansas insurance producer license (previously introduced as "2003 Kansas Revocation"). *In the Matter of the Kansas Resident Insurance Agent's License of Jack H. Boucher*, Docket No. 3124-SO.

b. On April 26, 2010, the Director issued an Order refusing Boucher's 2009 Application for a resident insurance producer license (previously introduced as "2010 Missouri Refusal"). *In the Matter of: Jack Holt Boucher, Order Refusing to Issue Insurance Producer License*, Case No. 10-0401418C.

30. On May 28, 2015, the investigator for the Division sent an inquiry letter to Boucher's residential address listed on his 2015 Application. Said inquiry letter requested information regarding Boucher's failure to disclose his 1998 and 1999 misdemeanor convictions, his 2007 felony convictions and his 2003 Kansas Revocation on his 2015 Application. The inquiry letter required Boucher to respond within twenty days pursuant to 20 CSR 100-4.100.

31. The May 28, 2015 inquiry letter was not returned to the Division, therefore it is presumed received by Boucher.

32. Boucher failed to respond to the May 28, 2015 inquiry letter within twenty days and failed to provide a reasonable justification for the delay.

33. On July 6, 2015, the investigator for the Division sent a second inquiry letter to Boucher's residential address listed on his 2015 Application. Said inquiry letter requested the same information as the May 28, 2015 inquiry letter and required a response within twenty days pursuant to 20 CSR 100-4.100.

34. The July 6, 2015 inquiry letter was not returned to the Division, therefore it is presumed received by Boucher.

35. Boucher failed to respond to the July 6, 2015 inquiry letter within twenty days, and failed to provide a reasonable justification for the delay.

36. It is inferable, and hereby found as fact that Boucher failed to disclose his 2010 Missouri Refusal in response to Background Question No. 2 on his 2015 Application in order to misrepresent to the Director that he was a new applicant and that he had never been denied an insurance producer license by the Director.

37. It is inferable, and hereby found as fact that Boucher answered "No" to Background Question No. 2 and failed to disclose his 2003 Kansas Revocation on his 2015 Application in order to misrepresent to the Director that his insurance producer license, or its equivalent, had not been denied, suspended or revoked in any other state, province, district or territory, and accordingly, in order to improve the chances that the Director would approve his 2015 Application and issue Boucher an insurance producer license.

38. It is inferable, and hereby found as fact that Boucher falsely answered "No" to

Background Question No.1a and failed to disclose his misdemeanor convictions on his 2015 Application in order to misrepresent to the Director that he had no misdemeanor convictions, and accordingly, in order to improve the chances that the Director would approve his 2015 Application and issue Boucher an insurance producer license.

39. It is inferable, and hereby found as fact that Boucher failed to disclose his two 2007 felony convictions and his 2010 Missouri Refusal on his 2015 Application in order to conceal that the 2007 convictions were used as grounds for the Director to refuse Boucher's 2009 Application and in an effort to prevent the refusal of his 2015 Application for licensure.

40. It is inferable, and hereby found as fact that Boucher knew he was required to disclose his complete criminal history and prior administrative actions against him because the Director specifically refused Boucher's 2009 Application based on Boucher's failure to disclose his complete criminal history and prior administrative action against Boucher in the 2010 Missouri Refusal.

CONCLUSIONS OF LAW

41. 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) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude;
>
> * * *

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

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

42. 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.

43. Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. banc 2012) (citation omitted).

44. "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).

45. The Director may refuse to issue an individual resident insurance producer license to Boucher pursuant to § 375.141.1(1) because, as found in the 2010 Missouri Refusal, Boucher intentionally provided materially incorrect, misleading, incomplete or untrue information in the license application when he failed to disclose his two misdemeanor convictions and his 2003 Kansas Revocation on his 2009 Application.

46. The Director may refuse to issue an individual resident insurance producer license to Boucher pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading, incomplete or untrue information in the license application when he answered "No" to Background Question No. 1a and failed to disclose his two misdemeanor convictions, answered "No" to Background Question No. 2 and failed to disclose his 2003 Kansas Revocation and his 2010 Missouri Refusal, and failed to disclose his 2007 felony convictions in response to Background Question No. 1b on his 2015 Application.

47. Each instance in which Boucher intentionally provided materially incorrect, misleading, incomplete or untrue information in the license application is a separate and sufficient ground for refusal under § 375.141.1(1).

48. The Director may refuse to issue a non-resident insurance producer license to Boucher pursuant to § 375.141.1(2) because he failed to respond to two inquiries

from the Division regarding his 2015 Application, thereby twice violating 20 CSR 100-4.100(2)(A), a department regulation, and failed to demonstrate a reasonable justification for the delay.

49. Each failure to provide an adequate response or failure to provide a reasonable justification for the delay in violation of a Department regulation is a separate and sufficient cause for refusal pursuant to § 375.141.1(2).

50. The Director may refuse to issue an individual resident insurance producer license to Boucher pursuant to § 375.141.1(3) because, as found in the 2010 Missouri Refusal, Boucher attempted to obtain a license through material misrepresentation or fraud when he failed to disclose two misdemeanor convictions and the 2003 Kansas Revocation on his 2009 Application.

51. The Director may refuse to issue an individual resident insurance producer license to Boucher pursuant to § 375.141.1(3) because Boucher attempted to obtain a license through material misrepresentation or fraud when he answered "No" to Background Question No. 1a and failed to disclose his two misdemeanor convictions, answered "No" to Background Question No. 2 and failed to disclose his 2003 Kansas Revocation and his 2010 Missouri Refusal, and failed to disclose his 2007 felony convictions in response to Background Question No. 1b on his 2015 Application.

52. Each instance in which Boucher attempted to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal under § 375.141.1(3).

53. The Director may refuse to issue an individual resident insurance producer license to Boucher pursuant to § 375.141.1(6) because, as found in the 2010 Missouri Refusal, Boucher was convicted of two felonies in *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 06CR3533.

54. The Director may refuse to issue an individual resident insurance producer license to Boucher pursuant to § 375.141.1(6) because Boucher was convicted of a felony in *State of Kansas v. Jack Holt Boucher*, Johnson Co. Dist. Ct., Case No. 10CR1642.

55. Each felony conviction is a separate and sufficient ground for refusal pursuant to § 375.141.1(6).

56. The Director may refuse to issue an individual resident insurance producer license to Boucher pursuant to § 375.141.1(9) because, as found in the 2010 Missouri Refusal, Boucher's insurance producer license, or its equivalent, was denied, suspended or revoked in any other state, province, district or territory. *In the Matter of the Kansas Resident Insurance Agent's License of Jack H. Boucher*, Docket No. 3124-SO.

57. Since Boucher did not appeal the 2010 Missouri Refusal, he is precluded from relitigation of the findings of fact within the 2010 Missouri Refusal which included the finding that Boucher intentionally provided materially incorrect, misleading incomplete and untrue information when he failed to disclose his two misdemeanor convictions and the 2003 Kansas Revocation of his insurance producer license on his 2009 Application; that Boucher attempted to obtain a license through material representation or fraud when he failed to disclose his two misdemeanor convictions and the 2003 Kansas Revocation of his insurance producer license on his 2009 Application; that Boucher failed to disclose he was convicted of two felonies in 2007; and that Boucher's insurance producer license, or its equivalent, was denied, suspended or revoked in any other state, province, district or territory. *In the Matter of: Jack Holt Boucher, Order Refusing to Issue Insurance Producer License*, Case No. 10-0401418C.

58. Boucher's failure to disclose the Director's 2010 Missouri Refusal of his 2009 Application and any of the underlying findings of fact within that refusal on his 2015 Application shows disregard for the Director from whom he seeks a license.

59. The Director has considered Boucher's history and all of the circumstances surrounding Boucher's 2015 Application. Granting Boucher an individual resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue an individual resident insurance producer license to Boucher.

39. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the individual resident insurance producer license application of **Jack Holt Boucher** is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 19th **DAY OF** FEBRUARY**, 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 22nd day of February, 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:

Jack Holt Boucher
9801 Pennsylvania Avenue
Kansas City, Missouri 64114

Tracking No. 1Z0R15W84297718521

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