# State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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| **IN RE:** | ) | |
| | ) | |
| **JUAN LOPEZ MONSIVAIS,** | ) | **Case No. 150213092C** |
| | ) | |
| **Applicant.** | ) | |

## ORDER REFUSING TO ISSUE AN INSURANCE PRODUCER LICENSE

On May 5, 2015, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse the issuance of a non-resident insurance producer license to Juan Lopez Monsivais. 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. Juan Lopez Monsivais ("Monsivais") is a Texas resident with a mailing address of record of PO Box 810896, Dallas, Texas 75381-0896 and a residential address of record of 980 South Coit Road, Apartment 233, Prosper, Texas 75078.[1]

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued Monsivais a non-resident insurance producer license (License No. 0408569) on December 18, 2007. Said license expired on December 18, 2013.

3. On September 18, 2014, the Department received Monsivais's completed electronic application for a non-resident insurance producer license ("Application").

4. Monsivais's Application was submitted by Kari Koznick ("Koznick"), an authorized submitter.

5. By submitting the Application on Monsivais's behalf, Koznick certified: "As the authorized submitter, I declare that the applicant provided all the information submitted on this application."

6. The "Attestation" section of the Application states, in relevant part:

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[1] Upon information and belief, Monsivais may also use the address of 502 Scarlet Oak, Allen, Texas 75002.

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.

7. Monsivais accepted the "Attestation" section of the Application.

8. Background Question No. 1 of the Application asks the following, in part:

1A. 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 adjudicated delinquent in a juvenile court)[.]

1B. Have you even 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? [*sic*] includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine. If you answer yes to any of these questions, you must attach to this application: a) a written statement explaining the circumstances of each incident, b) a copy of the charging document, c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

9. Monsivais answered "Yes" in response to Background Question No. 1A.

10. Monsivais answered "No" in response to Background Question No. 1B.

11. Monsivais submitted an attachment explaining his response to Background Question No. 1A. In the attachment, Monsivais disclosed that he pled nolo contendere to Driving While Intoxicated, a Class B Misdemeanor, on June 5, 2006 in the Dallas

County Criminal Court in Case No. MB0337030-G. Monsivais also attached the relevant court records.

12. During its investigation, the Consumer Affairs Division ("Division") of the Department discovered the following pending felony charges that Monsivais failed to disclose in response to Background Question No. 1B on his Application:

    a. On October 12, 2012, Monsivais was charged with Cultivation of Marijuana in violation of Okla. Stat. Ann. tit. 63, § 2-509; Conspiracy to Cultivate Marijuana in violation of Okla. Stat. Ann. tit. 63, § 2-408; and Maintaining Place for Keeping/Selling Controlled Substance in violation of Okla. Stat. Ann. tit. 63, § 2-404. All three charges were Felonies. On or about December 16, 2012, Monsivais was served with a warrant and arrested. On December 17, 2012, Monsivais was arraigned. On April 18, 2013, the court held a preliminary hearing. On February 26, 2015, the court dismissed the case without prejudice due to an ongoing investigation. *Oklahoma v. Juan Lopez Monsivais*, Leflore Co. Dist. Ct., Case No. CF-2012-488.

13. Monsivais, who was a licensed producer at the time of his preliminary hearing, failed to report his criminal prosecution for a felony to the Director within thirty (30) days of the initial pretrial hearing, which was on April 18, 2013.

14. After reviewing Monsivais's Application and criminal record, Division Special Investigator Jodi Lehman ("Special Investigator Lehman") sent an inquiry letter to Monsivais via his mailing address of record dated September 23, 2014. Said letter requested additional documentation and information about Monsivais's pending charges. The letter further requested a response by October 13, 2014.

15. The United States Postal Service did not return the September 23, 2014 inquiry letter to the Division, and therefore, it is presumed received by Monsivais.

16. Monsivais failed to provide a written response to the Division's September 23, 2014 inquiry letter by October 13, 2014 and failed to demonstrate a reasonable justification for the delay.

17. Special Investigator Lehman sent a second inquiry letter to Monsivais via his mailing address of record dated October 14, 2014. Said letter requested additional documentation and information about Monsivais's pending charges. The letter further requested a response within twenty (20) calendar days from the postmark of the letter or immediately.

18. The United States Postal Service did not return the October 14, 2014 inquiry letter to the Division, and therefore, it is presumed received by Monsivais.

19. Monsivais failed to provide a written response to the Division's October 14, 2014 inquiry letter and failed to demonstrate a reasonable justification for the delay.

20. Because Monsivais was served with a warrant, arrested, and arraigned prior to submitting his Application, he was aware of his pending felony charges when he marked "No" in response to Background Question No. 1B. It is inferable, and hereby found as fact, that Monsivais failed to disclose his pending felony charges on his Application to misrepresent to the Director that he had no pending charges and to improve the likelihood that the Director would issue him a non-resident insurance producer license.

21. Monsivais holds an active resident insurance producer license in Texas.

## CONCLUSIONS OF LAW

22. Section 375.141 RSMo[2] 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 licensing 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[.]
>
> * * *
>
> 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 other relevant documents.

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

[2] All statutory references are to RSMo (2000) as updated by RSMo (Supp. 2013) unless otherwise noted.

> 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.

24. There is a "presum[ption] that a document duly mailed has been received by the addressee." *Johnson v. March*, 376 S.W.3d 26, 31 (Mo. Ct. App. 2012) (internal citations omitted).

25. "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. E.D. 1984).

26. The Director may refuse to issue a non-resident insurance producer license to Monsivais pursuant to § 375.141.1(1) because Monsivais intentionally provided materially incorrect, misleading, incomplete, or untrue information on his Application when he failed to disclose the following pending felony charges in response to Background Question No. 1B:

    a. Cultivation of Marijuana, a Felony. *Oklahoma v. Juan Lopez Monsivais*, Leflore Co. Dist. Ct., Case No. CF-2012-488;

    b. Conspiracy to Cultivate Marijuana, a Felony. *Id.*; and

    c. Maintaining Place for Keeping/Selling Controlled Substance, a Felony. *Id.*

27. Each intentional assertion of materially incorrect, misleading, incomplete, or untrue information on the Application is a separate and sufficient ground for refusal pursuant to § 375.141.1(1).

28. The Director may refuse to issue a non-resident insurance producer license to Monsivais pursuant to § 375.141.1(2) because Monsivais failed to respond to two (2) separate inquiry letters from the Division and failed to provide reasonable justifications for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a Department regulation.

29. The Director may refuse to issue a non-resident insurance producer license to Monsivais pursuant to § 375.141.1(2) because Monsivais failed to report the prosecution of his felony crimes in *Oklahoma v. Juan Lopez Monsivais*, Leflore Co. Dist. Ct., Case No. CF-2012-488, to the Director within thirty (30) days of the initial pretrial hearing date, thereby violating § 375.141.7, an insurance law.

30. Each violation of an insurance law or Department regulation is a separate and sufficient ground for refusal pursuant to § 375.141.1(2).

31. The Director may refuse to issue a non-resident insurance producer license to Monsivais pursuant to § 375.141.1(3) because Monsivais attempted to obtain a license through material misrepresentation or fraud when he failed to disclose the following pending felony charges in response to Background Question No. 1B on his Application:

    a. Cultivation of Marijuana, a Felony. *Oklahoma v. Juan Lopez Monsivais*, Leflore Co. Dist. Ct., Case No. CF-2012-488;

    b. Conspiracy to Cultivate Marijuana, a Felony. *Id.*; and

    c. Maintaining Place for Keeping/Selling Controlled Substance, a Felony. *Id.*

32. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 375.141.1(3).

33. The Director has considered Monsivais's history and all of the circumstances surrounding Monsivais's Application. Issuing Monsivais a non-resident insurance producer license is not in the interest of the public. Accordingly, the Director exercises his discretion to refuses to issue a non-resident insurance producer license to Monsivais.

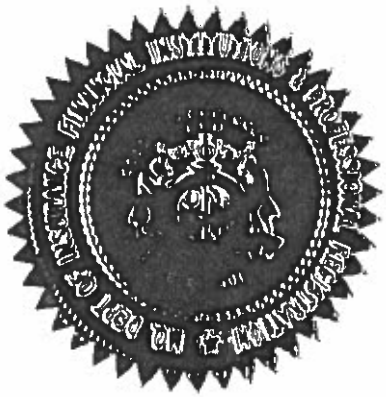
34. This Order is in the public interest.

## ORDER

**IT IS THEREFORE ORDERED** that the non-resident insurance producer license application of **Juan Lopez Monsivais** is hereby **REFUSED**.

**SO ORDERED.**

**WITNESS MY HAND THIS 5 DAY OF May, 2015.**



**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 7th day of May, 2015 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following addresses:

Juan Lopez Monsivais
980 South Coit Road
Apartment 233
Prosper, Texas 75078

Tracking No. 1Z0R15W84291175226

Juan Lopez Monsivais
502 Scarlet Oak
Allen, Texas 75002

Tracking No. 1Z0R15W84291971437

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