State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
KENNETH R. HARRIS JR.,	)	**Case No. 150514284C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE AN INSURANCE PRODUCER LICENSE

On June 22, 2015, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause for refusing to issue a non-resident insurance producer license to Kenneth R. Harris Jr. 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. Kenneth R. Harris Jr. ("Harris") is an Arizona resident with a mailing address of 14415 South 50th Street, Suite 150, Phoenix, Arizona 85044 and a residential address of P.O. Box 136, Higley, Arizona 85236.

2. On July 9, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Harris's non-resident insurance producer license application ("Application").

3. Harris's Application was submitted by Nicole Nelon of Liberty Mutual Insurance ("Nelon"), an Authorized Submitter.

4. By submitting the Application on Harris's behalf, Nelon certified as follows:

   "As the authorized submitter, I declare that the applicant provided all the information submitted on this application."

5. The "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.

6. Harris accepted the "Attestation" section of the Application.

7. The Application lists Harris's national producer number as 16223539.

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

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

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

10. Harris admitted in a brief explanation attached to the Application that he had been "given probation for a disorderly conduct/disturbing the peace" charge in reference to an incident that occurred on March 1, 2011. Harris claimed he "chose to serve a 4 month sentence with work release" instead of paying fines and being on probation. Additionally, Harris claimed his sentence was complete on October 13, 2013. Harris provided an uncertified copy of the judgment and a motion from Case No. DV2012-0057.

11. The court records from case number DV2012-0057 reveal that:

    a. On March 1, 2012, Harris was charged with Disorderly Conduct/Domestic Violence, a Class One Misdemeanor, in violation of A.R.S. §§ 13-2904(A)(1), 13-3601(A), 13-702.01, 13-707 and 13-802. *Arizona v. Kenneth Harris*, Pinal Co. Apache Junction Justice Ct., Case No. DV2012-0057.

    b. On November 29, 2012, the court suspended imposition or execution of a 104 day sentence and ordered Harris to serve 24 months of supervised probation. *Id.*

    c. On June 20, 2013, the court entered a Judgment and Order resentencing Harris to serve 120 days' confinement and 24 months unsupervised probation. *Id.*

    d. On December 4, 2014 the court entered an order terminating Harris's unsupervised probation citing that all terms of probation had been met. *Id.*

12. Background Question No. 4 of the Application asks the following, in relevant part:

    Have you ever been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?

13. Harris marked "No" to Background Question No. 4.

14. However, during its investigation, the Consumer Affairs Division ("Division") discovered the following delinquent tax obligations that Harris failed to disclose:

   a. On or about August 15, 2013, the Maricopa County Recorder (Arizona) entered an Internal Revenue Service federal tax lien under filing number 20130745299 and serial number 953493413 in the amount of $25,519.00 against Harris for unpaid taxes. *In re Kenneth R. Harris, Jr.*, Federal Tax Lien, Filing No. 20130745299 (Aug. 15, 2013).

   b. On or about June 19, 1997, the State of Indiana filed a State Tax Warrant in the Lake County Circuit Court under filing number 02890664 in the amount of $1,398.00 against Harris for unpaid taxes. *In re Kenneth R. Harris and Tammy R. Harris*, Indiana State Tax Warrant, Filing No. 02890664 (June 19, 1997).

15. On July 18, 2014, an Investigator for the Division sent an inquiry letter to Harris's mailing address of record. Said inquiry letter requested documentation regarding a payment plan for Harris's tax obligations and a "Certified Copy" of court records relating to Harris's criminal conviction in Pinal County, Arizona. The inquiry letter requested a response on or before August 8, 2014 and further warned that failure to respond may result in the non-issuance of producer license.

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

17. Harris failed to provide a written response to the Division's July 18, 2014 inquiry letter by August 8, 2014, and failed to demonstrate a reasonable justification for the delay.

18. On September 2, 2014, an Investigator for the Division sent an inquiry letter to Harris at his mailing address of record. This inquiry letter sought the same information as the previous inquiry letter and requested a response on or before September 23, 2014. Said inquiry letter further warned that failure to respond may result in the non-issuance of a producer license.

19. The United States Postal Service did not return the September 2, 2014 inquiry letter to the Division, and therefore it is presumed received by Harris.

20. Harris failed to provide a written response to the Division's September 2, 2014 inquiry letter by September 23, 2014, and failed to demonstrate a reasonable justification for the delay.

21. On September 30, 2014, an Investigator for the Division sent an inquiry letter to Harris at his residential address of record. This inquiry letter sought the same information as the previous inquiry letter and requested a response on or before

October 21, 2014. Said inquiry letter further warned that failure to respond may result in the non-issuance of a producer license.

22. The United States Postal Service did not return the September 30, 2014 inquiry letter to the Division, and therefore it is presumed received by Harris.

23. Harris failed to provide a written response to the Division's September 30, 2014 inquiry letter by October 21, 2014, and failed to demonstrate a reasonable justification for the delay.

24. On December 22, 2014, an Investigator for the Division sent inquiry letters to Harris at his mailing address of record and his residential address of record. Both inquiry letters sought the same information as the previous inquiry letters and requested a response on or before January 12, 2015. Said inquiry letters further warned that failure to respond may result in the non-issuance of a producer license.

25. The United States Postal Service did not return either of the December 22, 2014 inquiry letters to the Division, and therefore they are both presumed received by Harris.

26. Harris failed to provide a written response to either of the Division's December 22, 2014 inquiry letters by January 12, 2015, and failed to demonstrate a reasonable justification for the delay.

27. On May 4, 2015, an Investigator for the Division sent inquiry letters to Harris at his mailing address of record and his residential address of record. Both inquiry letters sought the same information as the previous inquiry letters and requested a response within twenty (20) days. Said inquiry letters further warned that failure to respond may result in the non-issuance of a producer license.

28. The United States Postal Service did not return either of the May 4, 2015 inquiry letters to the Division, and therefore they are both presumed received by Harris.

29. Harris failed to provide a written response to either of the Division's May 4, 2015 inquiry letters by May 24, 2015, and failed to demonstrate a reasonable justification for the delay.

30. It is inferable, and hereby found as fact, that Harris falsely answered "No" to Background Question No. 4 and failed to disclose his tax liabilities on his Application in order to misrepresent to the Director that he had no tax liabilities in order to improve the chances that the Director would approve his Application for a non-resident insurance producer license.

CONCLUSIONS OF LAW

31. Section 375.141 RSMo (Supp. 2013)[1] 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;
>
> * * *
>
> (14) Failing to comply with any administrative or court order directing payment of state or federal income tax.

32. 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.

33. "There is a clear 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).

34. 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).

35. The Director may refuse to issue a non-resident insurance producer license to Harris pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading, incomplete or untrue information in the license application when he failed

[1] All statutory references are to the RSMo (2000) as updated by the 2013 Supplement, unless otherwise indicated.

to disclose his delinquent tax obligations in response to Background Question No. 4, to wit:

a. *In re Kenneth R. Harris, Jr.*, Federal Tax Lien, Filing No. 20130745299 (Aug. 15, 2013). (Federal Tax Lien in the amount of $25,519.00.)

b. *In re Kenneth R. Harris and Tammy R. Harris*, Indiana State Tax Warrant, Filing No. 02890664 (June 19, 1997). (State Tax Warrant in the amount of $1,398.00.)

36. Each instance in which Harris intentionally provided materially incorrect, misleading, incomplete, or untrue information in the license application is a separate and sufficient cause for refusal pursuant to § 375.141.1(1).

37. The Director may refuse to issue a non-resident insurance producer license to Harris pursuant to § 375.141.1(2) because he failed to adequately respond to seven (7) inquiries from the Division, thereby violating 20 CSR 100-4.100(2)(A), a department regulation.

38. 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).

39. The Director may refuse to issue a non-resident insurance producer license to Harris pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud when he failed to disclose his delinquent tax obligations in response to Background Question No. 4, to wit:

a. *In re Kenneth R. Harris, Jr.*, Federal Tax Lien, Filing No. 20130745299 (Aug. 15, 2013). (Federal Tax Lien in the amount of $25,519.00.)

b. *In re Kenneth R. Harris and Tammy R. Harris*, Indiana State Tax Warrant, Filing No. 02890664 (June 19, 1997). (State Tax Warrant in the amount of $1,398.00.)

40. Each instance in which Harris attempted to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for refusal pursuant to § 375.141.1(3).

41. The Director may refuse to issue a non-resident insurance producer license to Harris pursuant to § 375.141.1(14) because he failed to comply with an administrative or court order directing payment of state or federal income taxes, to wit:

a. *In re Kenneth R. Harris, Jr.*, Federal Tax Lien, Filing No. 20130745299 (Aug. 15, 2013). (Federal Tax Lien in the amount of $25,519.00.)

b. *In re Kenneth R. Harris and Tammy R. Harris*, Indiana State Tax Warrant, Filing

No. 02890664 (June 19, 1997). (State Tax Warrant in the amount of $1,398.00.)

42. Each failure to comply with an administrative or court order directing payment of state or federal income taxes is a separate and sufficient cause for refusal pursuant to § 375.141.1(14).

43. The above described instances are grounds upon which the Director may refuse to issue a non-resident insurance producer license to Harris. Granting Harris a non-resident insurance producer license would not be in the interest of the public. Harris's failure to disclose his delinquent tax obligations and failures to respond to the Division's multiple inquiries demonstrates a lack of regard for the Director's authority from whom he desires a license.

43. The Director has considered Harris's history and all of the circumstances surrounding Harris's Application. Issuing Harris's individual non-resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue an individual non-resident insurance producer license to Harris.

44. This Order is in the public's interest.

ORDER

IT IS THEREFORE ORDERED that the individual non-resident insurance producer license renewal application of **Kenneth R. Harris Jr.** is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 22 DAY OF June, 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 June 23rd, 2015 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Kenneth R. Harris Jr.
14415 South 50th Street
Suite 150
Phoenix, Arizona 85044

Tracking No. 1Z0R15W84294564327

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