State of Missouri

Department of Insurance, Financial Institutions & Professional Registration

IN RE:	)	
	)	Case No. 110531528C
Mitchell S. Kenvin,	)	
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
5908 Newgate Lane	)	
Plano, Texas 75093	)	

ORDER REFUSING TO ISSUE NON-RESIDENT INSURANCE PRODUCER LICENSE

On July 21, 2011, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue Mitchell S. Kenvin a Non-Resident Insurance Producer License. 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.

FACTUAL BACKGROUND

1. Mitchell S. Kenvin ("Kenvin") is an individual residing in Texas whose mailing address of record is 5908 Newgate Lane, Plano, Texas 75093.

2. On June 11, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic non-resident insurance producer application ("Application") from Kenvin.

3. On the Application, in the section titled "Background Questions," Background Question # 2 asks, "Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration, which has not been previously reported to this state?" Kenvin answered "No." to Background Question # 2.

4. On June 24, 2008, the Financial Industry Regulatory Authority ("FINRA") accepted a Letter of Acceptance, Waiver and Consent ("AWC") from Kenvin whereby Kenvin neither admitted nor denied that he violated National

Association of Securities Dealers ("NASD") Conduct Rules 2110 and 3030 by engaging in outside activities involving the sale of equity-indexed annuities issued by other companies without providing prompt written notice of those sales to the member firms he was employed by. FINRA imposed a fine of $10,000 and suspended Kenvin from association with any FINRA member for eighteen months.

5. On April 5, 2011, Investigator Crutchfield sent a letter requesting more information regarding the FINRA suspension and fine to Kenvin at the address of record listed on his Application by first class mail as well as certified mail. The certified mail was unclaimed, however the first class mail was not returned as undeliverable. Kenvin's reply was due on or before April 26, 2011. Kenvin did not respond and did not contact the Department in any way to provide a reasonable justification for a delayed response.

CONCLUSIONS OF LAW

6. Section 375.141 RSMo (Supp. 2010),[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 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;

7. 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 can demonstrate that there is reasonable justification for that delay.

[1] All statutory references are to the Revised Statutes of Missouri (Supp. 2010) unless otherwise noted.

8. NASD Conduct Rule 3030 provides:

> No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member.

9. NASD Conduct Rule 2110 requires that FINRA members shall, in conducting their business, "observe high standards of commercial honor and just and equitable principles of trade." *Cummins v. Suntrust Capital Markets, Inc.*, 649 F.Supp.2d 224, 236 n. 6 (S.D.N.Y. 2009).

10. "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).

11. 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).

12. The Director may refuse to issue Kenvin a non-resident insurance producer license pursuant to § 375.141(1) because by failing to disclose the FINRA AWC, Kenvin intentionally provided materially incorrect, misleading, incomplete or untrue information on the Application.

13. The Director may refuse to issue Kenvin a non-resident insurance producer license pursuant to § 375.141(3) because by failing to disclose the FINRA AWC on the Application, Kenvin attempted to obtain a license through material misrepresentation or fraud.

14. The Director may refuse to issue Kenvin a non-resident insurance producer license pursuant to § 375.141(2) because by failing to adequately respond to the April 5, 2011 inquiry from the Consumer Affairs Division, Kenvin violated a Missouri insurance regulation, namely 20 CSR 100-4.100(2)(A).

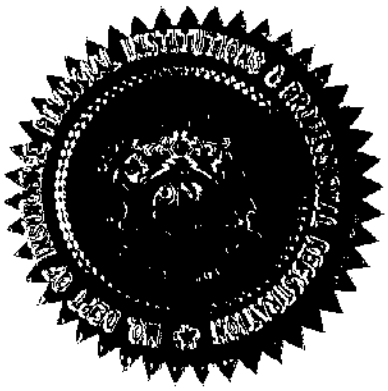
15. The Director has considered Kenvin's history and all of the facts and circumstances surrounding the Application, and for the reasons stated in this Order refuses to issue Kenvin a non-resident insurance producer license.

16. Granting Kenvin's non-resident insurance producer license would not be in the public interest. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the non-resident insurance producer license of Mitchell S. Kenvin is hereby summarily REFUSED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1ST DAY OF AUGUST, 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 2nd day of August, 2011, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by U.S. regular and certified mail No. 7009 3410 0001 9349 2808.

Mitchell S. Kenvin
5908 Newgate Lane
Plano, Texas 75093

Kathryn Randolph
Kathryn Randolph