State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Denise Rachelle Lacy,	)	**Case No. 13-0131103C**
Applicant.	)	

ORDER REFUSING TO ISSUE NON-RESIDENT INDIVIDUAL INSURANCE PRODUCER LICENSE

On February 13, 2013, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue the non-resident insurance producer license of Denise Rachelle Lacy. 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. Denise Rachelle Lacy ("Lacy") is an individual residing in Kansas.

2. On or about December 12, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Lacy's Uniform Electronic Application for Non-Resident Individual Producer License ("Application").

3. In the Application, Lacy listed her residential and mailing address as 617 Laughlin St., Tonganoxie, Kansas 66086-9590, and her business address as 211 E. 8th St., Suite D, P.O. Box 1813, Lawrence, Kansas 66044.

4. In the section of the Application headed "Background Questions," Background Question # 2 asks, in relevant part: "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?"

5. Lacy answered "Yes" to Background Question # 2.

6. Lacy provided the following documents to supplement her Application relating to Background Question #2:

   a. A letter dated March 14, 2012, to the Kansas Department of Insurance ("KID") requesting a hearing and explaining her actions relevant to the action pending

against her relating to *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 4419-SO[sic];

b. A copy of the Summary Order dated September 5, 2008, against her by the KID. *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 3921-SO;

c. A copy of the Consent Agreement and Final Order dated July 13, 2012, against her by the KID. *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 4419-L; and

d. A letter dated January 11, 2013, in which she responded to a letter sent to her by Special Investigator Karen Crutchfield requesting additional information about the KID's administrative actions.

7. Effective September 5, 2008, the KID entered a Summary Order[1] revoking Lacy's resident agent's license based on the following violations of the Kansas insurance code:

a. Lacy's "conduct in preparing a false invoice for repair work and submitting the same as a claim on a homeowner's policy is a violation of K.S.A. 2007 Supp. 40-2,118[;]" and

b. Lacy's "actions in preparing a false invoice and submitting the same as a claim on a homeowner's policy demonstrating a dishonest practice or untrustworthiness a violation of K.S.A. 2007 Supp. 40-4909(a)(8)."

8. Based upon Lacy's violations of Kansas insurance statutes, the KID entered the following orders:[2]

a. It revoked Lacy's resident insurance agent's license; and

b. It ordered Lacy to "CEASE and DESIST from the sale, solicitation or negotiation of insurance and/or receiving compensation deriving from the sale, solicitation or negotiation of insurance conducted after the effective date of [the] Order" (emphasis in original).

9. Effective July 13, 2012, the KID entered a Consent Agreement and Final Order[3] issuing Lacy a probationary license under supervision and monitoring, and making the following findings:

a. That Lacy's application for licensure "may be denied pursuant to K.S.A. 40-4909(a)(8) because [Lacy] committed a fraudulent or dishonest act;" and

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[1] Summary Order, *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 3921-SO (Sept. 5, 2008).

[2] *Id.*

[3] Consent Agreement and Final Order, *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 4419-L (July 13, 2012).

b. That "the Commissioner has determined that [Lacy] is presently fit to hold a probationary license under supervision and monitoring."

10. K.S.A 2006 Supp. 40-4909 stated as follows:

(a) The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has:

* * *

(2) Violated:

(A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;

* * *

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

* * *

(b) In addition, the commissioner may suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license[.]

11. K.S.A. 40-2,118 stated, in relevant part, as follows:

[C]ommitted a fraudulent act by knowing and with intent to defraud presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer … any written statement in as part of or in support of … a claim for payment or other benefit pursuant to an insurance policy … which such person knows to contain materially false information concerning any fact material thereto.

CONCLUSIONS OF LAW

12. Section 375.141 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:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing business;

* * *

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

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

13. "Misappropriation is '[t]he unauthorized, improper, or unlawful use of funds or other property for [a] purpose other than that for which intended." *Lawrence v. Dir., Dep't of Ins., Fin. Insts. and Professional Registration*, No. 10-2190 DI (Mo. Admin. Hrg. Comm'n, Dec. 4, 2012)

14. "Conversion is the diversion of another's funds, by the holder of such funds, for the purpose other than that specified by the owner." *Id.*

15. The principal purpose of § 375.141 is not to punish licensees, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

CAUSE FOR ORDER
REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

16. The Director may refuse to issue an insurance producer license to Lacy pursuant to § 375.141.1(2), because Lacy violated the insurance laws of Kansas, namely, K.S.A. 2007 Supp. 40-2,118.

17. The Director may refuse to issue an insurance producer license to Lacy pursuant to § 375.141.1(4), because Lacy improperly misappropriated or converted money or property received in the course of doing the business of insurance. The KID found that Lacy prepared a false invoice for repair work and submitted it to an insurance company for payment. The KID found that Lacy admitted that "she had fabricated the insurance claim and that when the checks

arrived she deposited them into a joint account held by herself and RC Lacy and that she then immediately withdrew the funds."[4]

18. The Director may refuse to issue an insurance producer license to Lacy pursuant to § 375.141.1(7), because the KID found that Lacy had committed a fraudulent insurance act. The KID found that Lacy prepared "a false invoice for repair work" and submitted it "as a claim on a homeowner's policy" in violation of K.S.A. 2007 Supp. 40-2,118. *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 3921-SO.

19. The Director may refuse to issue an insurance producer license to Lacy pursuant to § 375.141.1(8), because Lacy's actions in submitting a fraudulent insurance claim on a homeowner's policy, which was the cause for TDI's revocation of her producer license, was dishonest and demonstrated "untrustworthiness and financial irresponsibility" with respect to her business dealings as an insurance producer. *See Director of Insurance v. Soriano*, Mo. Admin. Hrg. Comm'n, No. 04-0067 DI (August 26, 2004).

20. The Director may refuse to issue an insurance producer license to Lacy pursuant to § 375.141.1(9), because the KID revoked Lacy's insurance producer license, or its equivalent. *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 3921-SO.

21. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding Lacy's Application for an insurance producer license and, for all of the reasons given in this Order, exercises his discretion in refusing to issue Lacy's non-resident insurance producer license.

22. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the non-resident insurance producer license application of DENISE RACHELLE LACY is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 25th DAY OF FEBRUARY, 2013.

JOHN M. HUFF
DIRECTOR

[4] Findings of Fact, paragraph 10, *In the Matter of the Kansas Resident Insurance Agent's License of Denise R. Lacy*, Docket No. 3921-SO

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 27th day of February, 2013, a copy of the foregoing notice and order was served upon Denise Rachelle Lacy in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Denise Rachelle Lacy
617 Laughlin St.
Tonganoxie, Kansas 66086-9590

Certified Mail # 7009 3410 0001 9255 6105

And

Denise Rachelle Lacy
211 E. 8th St., Suite D
P.O. Box 1813
Lawrence, Kansas 66044

Certified Mail # 7009 3410 0001 9255 6129

Kathryn Randolph

Kathryn Randolph
Missouri Department of Insurance,
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