State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Douglas J. LeVota,	)	**Case No. 100819568C**
	)	
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On March 30, 2011, Mary S. Erickson, Chief Counsel, Insurance Divisions, and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Douglas J. LeVota. 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:

FINDINGS OF FACT

1. Douglas J. LeVota ("LeVota") is an individual residing in the state of Kansas.

A. Past Licensure

2. The Department originally issued LeVota an insurance producer license on July 20, 1989, No. 0219739. Thereafter, LeVota renewed his license until July 20, 2009 at which time he did not renew and the license expired.

3. While a licensed non-resident insurance producer, LeVota sold life insurance policies to three Missouri consumers, Cheryl Hayes-Carson, Adrian Carson, and Brian Carson, in May 2005. As part of the completion of the life insurance applications, LeVota marked "Yes" in the "Agent's Report" section of the applications to the following three questions which involve direct contact with the applicants:

   "Did you see all those to be insured on the date the application was written?"

   "Did you witness the signing of the application?"

   "Did you ask each question in this application exactly as printed?"

4. On December 22, 2005, LeVota appeared before the Department pursuant to subpoena and testified under oath to the following:
   a. He signed the life insurance applications of Cheryl Hayes-Carson, Adrian Carson,

and Brian Carson after the sale was completed by another individual;

b. He did not see the insureds on the date the applications were written;
c. He did not witness the signing of the applications; and
d. He did not ask the insurance applicants the questions on the applications exactly as printed.

B. Current Application

5. On or about March 18, 2010, the Department of Insurance, Financial Institutions & Professional Registration ("Department") received LeVota's Uniform Application for Individual Producer License seeking a non-resident insurance producer license ("Application").

6. The Application lists LeVota's residence, business, and mailing addresses as 6748 Fontana St., Prairie Village, Kansas 66208.

7. LeVota signed the Application in the section entitled "Applicant's Certification and Attestation." Paragraph 1 of that section states:

> 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.

8. In the "Background Questions" section of Application, Question No. 3 asked:

> Has any demand been made or judgment rendered against 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, for overdue monies by an insurer, insured or producer or have you ever been subject to a bankruptcy proceeding? Do not include personal bankruptcies, unless they involve funds held on behalf of others.
>
> If you answer yes, submit a statement summarizing the details of the indebtedness and arrangements for repayment, and/or type and location of bankruptcy.

9. LeVota answered "No" to Question No. 3 on his Application.

10. On August 8, 2006, Midland National Life Insurance Company, d/b/a North American Company for Life and Health Insurance, ("Midland") sued LeVota in Johnson County, Kansas, District Court, for breach of contract and unjust enrichment. *Petition, Midland Nat'l Life Ins. Co. v. Douglas Levota*, Johnson County District Court, No. 06LA7463.

11. In its lawsuit, Midland alleged that LeVota and Midland entered into an agent contract for LeVota to write Midland insurance policies as a writing agent. *Id.* Pursuant to the contract, LeVota was entitled to commissions for policies he wrote for Midland. However, if a payment on a policy was reversed or cancelled, Midland had the right to

reverse commissions paid to the writing agent. Midland alleged that a $250,000.00 premium for one of LeVota's policies was reversed, and therefore, Midland made demand for payment to LeVota for $20,075.00 in unearned commissions. Midland applied all amounts due to LeVota to reduce the principle amount owed to $19,925.00. *Id.* According to court records, LeVota was personally served with the petition on August 23, 2006. Thereafter, LeVota personally appeared before the court on September 14, 2006 and entered a general denial of the petition.

12. On October 12, 2006, the Johnson County, Kansas, District Court entered judgment in favor of Midland and against LeVota for the principle amount of $19,925.00, with interest, and awarded attorney fees. *Judgment Entry, Midland Nat'l Life Ins. Co. v. LeVota,* Johnson County District Court, No. 06LA7463.

13. On August 25, 2010, Special Investigator Les Hogue mailed a letter to LeVota stating, *inter alia,* that questions existed regarding LeVota's Application and his previous insurance transactions. Hogue indicated to LeVota that he would need to appear pursuant to subpoena to address these issues.

14. On August 25, 2010, LeVota emailed Special Investigator Hogue and attached an undated letter which he hoped would answer "all open concerns you and or the department has regarding my renewal of my MO license." In the letter, LeVota discussed the investigative file involving the three applications LeVota signed in the "Agent's Report" section, even though he was not present on the day the applications were signed:

> I have not written any business since this case was opened. I fully take responsibility for my action and I hope and beg that the Insurance Department feels that I have paid my debt for lack of good judgment at that time. I have not since signed off as a witness when in fact I did not actually see any such person sign any such paper work. I will never again make that poor judgment when involving signatures.

15. On or about August 25, 2010, the Department served by certified mail a Subpoena Duces Tecum to LeVota, ordering him to appear before the Director or his appointee on September 22, 2010, for an investigation conference under oath ("subpoena conference").

16. On August 30, 2010, the Department received the certified mail delivery receipt (U.S. Postal Service Form 3811, known as a "green card"), bearing the signature of LeVota, indicating delivery of the subpoena.

17. On September 22, 2010, Special Investigator Hogue, as the Director's appointee, attempted to hold the scheduled subpoena conference, but LeVota failed to appear as ordered.

18. The Consumer Affairs Division has received no further communication from LeVota since the attempted subpoena conference on September 22, 2010.

CONCLUSIONS OF LAW

19. Section 375.141 RSMo (Supp. 2009)[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;
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

20. Section 374.210.2 provides, in relevant part:

> The director may also suspend, revoke or refuse any license ... issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

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

22. LeVota answered "no" to the Application's question regarding whether he had a judgment against him by an insurer for unpaid money. Midland made a demand of LeVota to repay the unearned commissions as a result of a reversal of an insurance premium. When LeVota failed to repay the commissions, Midland sued and received a judgment against LeVota. LeVota knew of Midland's demand and lawsuit because LeVota had been personally served with the petition in the case and LeVota appeared before the Johnson County District Court and entered a general denial.

23. Being personally sued for almost $20,000 arising from the conduct of the business of insurance is a memorable event not likely to be forgotten. LeVota even appeared before the court and denied Midland's claims. Even more memorable is having a judgment of almost $20,000, with interest and attorneys fees awarded. Hence, the evidence supports the conclusion that LeVota intentionally failed to disclose the Midland's judgment on his

[1] All statutory references are to RSMo (Supp. 2010) unless otherwise indicated.

Application in order to improve his chances of succeeding with his Application.

24. By answering "No" to Background Question No. 3 on the Application for licensure for a nonresident producer's license, LeVota intentionally provided materially incorrect, misleading, incomplete or untrue information, which is a cause to refuse LeVota's insurance producer license under § 375.141.1(1).

25. LeVota's failure to acknowledge and explain the judgment against him by Midland shows LeVota's attempt to obtain his non-resident insurance producer license through material misrepresentation or fraud, and is cause to refuse LeVota's insurance producer license under § 375.141.1(3).

26. LeVota improperly withheld $19,925.00 from Midland when a large premium on one of LeVota's policies was reversed. LeVota, by his agent contract with Midland, owed an obligation to Midland to repay the unearned commissions cause by the reversal. Hence, LeVota's insurance producer license may be refused for improperly withholding money received in the course of doing insurance business under § 375.141.1(4), despite a lawful, contractual demand by Midland for the repayment of the commissions.

27. By failing to repay Midland as required by his agent contract, LeVota demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. Therefore, cause exists under § 375.141.1(8) to refuse LeVota an insurance producer license.

28. While a licensed non-resident producer in 2005, LeVota signed three applications for life insurance and marked "yes" on three questions on each application involving direct contact with the insureds. LeVota admitted under oath that he was not present when the applications were completed and signed. Further, LeVota admitted in correspondence with the Department that he showed "poor judgment" involving the signatures. Hence, LeVota used dishonesty and demonstrated incompetence and untrustworthiness in regards to the three insurance applications, which are grounds to refuse his insurance producer license under § 375.141.1(8).

29. The Director ordered LeVota to appear at the Department on September 22, 2010 pursuant to subpoena to testify and produce documents regarding the questions surrounding his Application and his past insurance transactions. LeVota failed to appear at the subpoena conference, which is a failure to obey an order of the Director and constitutes cause to refuse LeVota's insurance producer license under § 375.141.1(2) and § 374.210.2.

30. Despite attesting with his signature to the truth of the information he provided in his Application, LeVota failed to reveal Midland's judgment against LeVota. LeVota admitted under oath that he provided false information with his signature on three insurance applications when he was previously a licensed producer. When questions arose regarding his current Application, LeVota failed to appear before the Director as ordered by subpoena.

31. The Director has considered LeVota's history and all of the circumstances surrounding his application. Granting LeVota a Missouri non-resident insurance producer license would not be in the interest of the public, and accordingly, the Director exercises his discretion by summarily refusing to issue LeVota a Missouri non-resident insurance producer license.

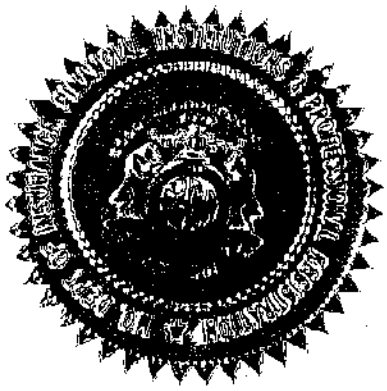
32. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Douglas J. LeVota is hereby summarily **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 5TH **DAY OF** APRIL **, 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 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 25th day of April, 2011 a copy of the foregoing Refusal was served upon the Applicant Douglas J. LeVota in this matter by regular and priority mail No. 03073330000070831435 at

Douglas J. LeVota
6748 Fontana St.
Prairie Village, KS 66208

Kathryn Randolph