State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
	)	Case No. 11-0315374C
Mathew L. Livingston,	)	
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
120 E. Towerwood Dr. O'Fallon, MO 63366-1780	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On July 1, 2011, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Mathew L. Livingston. 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. Mathew L. Livingston ("Livingston") is an individual residing in Missouri, whose business and mailing address of record is 339 Mid Rivers Mall Drive, St. Peters, Missouri 63376.

2. On or about July 1, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received a Uniform Application for Individual Insurance Producer License ("Application") from Livingston.

3. In the section of the Application headed "Background Questions," Background Question # 1 asks "Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?"

4. Livingston answered "Yes" to Background Question # 1, and submitted by

fax an explanation for leaving the scene of an accident in 2006 and production of a controlled substance in 2002. Livingston also stated that he was 17 years of age when the latter occurred and he would complete the term of his probation and parole in 2012.

5. Livingston disclosed the following in response to Background Question # 1:

    a. On February 18, 2003, Livingston pleaded guilty to the class B felony for attempted manufacturing of a controlled substance with intent to distribute. The court sentenced Livingston to five years' incarceration and suspended the execution of such sentence. Livingston is scheduled to complete probation in May 2012. *State v. Matthew L. Livingston*, Lincoln County Circuit Court, Case No. 02CR858643-01.

    b. On May 2, 2005, Livingston pleaded guilty to failing to yield and improper lane usage. The court ordered Livingston to pay a fine and court costs. *State v. Matthew Livingston*, St. Charles County, Case No. 040225908.

    c. On May 2, 2005, Livingston pleaded guilty the class B misdemeanor of driving while intoxicated. The court sentenced Livingston to two years' incarceration, suspended the execution of sentence, and placed Livingston on probation. On July 23, 2007, the court revoked Livingston's probation and sentenced him to ninety days incarceration. *State v. Matthew L. Livingston*, St. Charles County, Case No. 0511-CR00352

    d. On May 2, 2005, Livingston pleaded guilty to resisting arrest, a class A misdemeanor. The court suspended the imposition of Livingston's sentence and placed him on probation for 2 years. On September 17, 2008, Livingston confessed to violating probation, which the court terminated and ordered that the previously ordered sentence be executed. *State v. Matthew Livingston*, St. Charles County, Case No. 04CR130713.

    e. On September 10, 2007, Livingston pleaded guilty to and was convicted of a class D felony for leaving the scene of an accident. The court sentenced Livingston to three years' incarceration. *State v. Mathew Lance Livingston,* Case No. 0611-CR07297-01.

6. Livingston's response to Background Question # 1 was incomplete in that Livingston failed to disclose two misdemeanor charges that were pending

at the time he submitted his Application:

a. On December 28, 2009, Livingston was charged with possession of up to 35 grams of marijuana. *See State v. Mathew Lance Livingston*, Shannon County, Case No. 09AN-CR01403.

b. On December 28, 2009, Livingston was charged with unlawful use of drug paraphernalia. *See State v. Mathew Lance Livingston*, Shannon County, Case No. 09AN-CR01404.

7. On August 24, 2010, Special Investigator Karen Crutchfield ("Crutchfield") sent a letter by first class mail to Livingston's mailing and business address asking Livingston to provide certified copies of the court documents and detailed information about each charge on his record. The letter was not returned as undeliverable. The letter requested a response on or before September 14, 2010. Livingston did not respond with the requested information and did not contact the Department in any way to provide a reasonable justification for a delayed response.

8. On September 16, 2010, Crutchfield sent a letter by certified mail to Livingston's mailing and business address again asking Livingston to provide certified copies of the court documents and detailed information about each charge on his record.

9. Livingston sent a response on September 20, 2010. The response included an explanation of the charges and paperwork printed from www.courts.mo.gov/casenet. None of the paperwork was certified, therefore, Livingston did not provide the requested response to the previous letter.

10. On September 21, 2010, Crutchfield spoke with Livingston over the phone. Livingston stated that he had just returned from court and his charges were dismissed on the cases that were pending at the time of his Application (Case Nos. 09AN-CR01403 and 09AN-CR01404). Livingston stated that he would try to get the other paperwork showing the charges were dismissed, and thought he had sent in all the court paperwork that was required. Crutchfield told Livingston that certified copies were necessary and he had not yet provided certified copies.

11. Contrary to Livingston's statement to Crutchfield, Livingston pleaded guilty on September 21, 2010 to possession of up to 35 grams of marijuana and unlawful use of drug paraphernalia, both class A misdemeanors, and received a suspended imposition of sentence for the crimes, due to end on September 21, 2012. *See State v. Mathew Lance Livingston*, Shannon

County, Case No. 09AN-CR01403; *State v. Mathew Lance Livingston*, Shannon County, Case No. 09AN-CR01404.

12. On October 12, 2010, Crutchfield again spoke with Livingston. Livingston indicated he would provide the certified documents. Later that day, Crutchfield spoke with Department employee Shelly Stephenson, Licensing Technician, to ask for the original documents that Livingston provided to the Licensing Section. Stephenson indicated that Livingston had faxed all the attachments and did not send any original certified documents. Crutchfield called Livingston again to let him know that he did not send any originals since he faxed the paperwork with his Application.

13. To date, Livingston has not provided the certified documents Crutchfield requested.

CONCLUSIONS OF LAW

14. Section 375.141.1, RSMo (Supp. 2010),[1] provides, in part:

> 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;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]

15. Title 20 CSR 100-4.100 Required Response to Inquiries by the Consumer Affairs Division, provides, in part:

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

(2)(A) 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.

16. "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).

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).

17. Livingston may be refused an insurance producer license pursuant to § 375.141.1(1), because by failing to disclose two pending criminal charges on his Application, Livingston intentionally provided materially incorrect, misleading, incomplete or untrue information on his Application. *See State v. Mathew Lance Livingston*, Shannon County Circuit Court, Case No. 09AN-CR01403; *State v. Mathew Lance Livingston*, Shannon County Circuit Court, Case No. 09AN-CR01404.

18. Livingston may be refused an insurance producer license pursuant to § 375.141.1(2) for violating 20 CSR 100-4.100(2)(A) by failing to respond to the August 24, 2010 letter, and for failing to provide the requested certified copies of court documents in response to the September 16, 2010 letter.

19. Livingston may be refused an insurance producer license pursuant to § 375.141.1(3), because by failing to disclose two pending criminal charges on his Application, Livingston attempted to obtain a license through material misrepresentation or fraud. *See State v. Mathew Lance Livingston*, Shannon County, Case No. 09AN-CR01403; *State v. Mathew Lance Livingston*, Shannon County, Case No. 09AN-CR01404.

Livingston may be refused an insurance producer license pursuant to § 375.141.1(6), because he was convicted of two felonies. *See State v. Mathew Lance Livingston*, Lincoln County, Case No. 02CR858643-01; *State v. Mathew Lance Livingston*, St. Charles County, Case No. 0611-CR07297-01. Livingston is additionally liable under § 375.141.1(6), because he was convicted of attempted manufacture of a controlled

substance with intent to distribute, and drug dealing is a crime of moral turpitude. *See State v. Mathew Lance Livingston*, Lincoln County, Case No. 02CR858643-01; *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 709 (Mo. App., E.D. 1989).

20. The Director has considered Livingston's history and all of the circumstances surrounding Livingston's Application for licensure and exercises his discretion in summarily refusing to grant Livingston's resident insurance producer license.

21. Granting Livingston's insurance producer license would not be in the public interest.

22. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license application of Mathew L. Livingston is hereby summarily REFUSED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1st DAY OF JULY, 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 15th day of August, 2011, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by U.S. priority mail #0307 3330 0000 7083 1541 and certified mail No. 7008 2810 0000 2014 8380 at the following address:

Mathew L. Livingston
2753 Francis Avenue
St. Louis, MO 631114-1105

Kathryn Randolph