



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

MARVIN ANTONION SMITH,

Applicant.

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Case No. 140311292C

ORDER REFUSING TO ISSUE A NON-RESIDENT INSURANCE PRODUCER LICENSE

On June 17, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a non-resident insurance producer license to Marvin Antonion Smith. After reviewing the Petition and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Marvin Antonion Smith ("Smith") is a Tennessee resident with a residential address of record of 5709 Murphywood Crossing, Antioch, Tennessee 37013.
2. On November 6, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Smith's non-resident insurance producer license application ("Application").
3. The "Attestation" section of the Application, which Smith accepted by his electronic signature dated November 3, 2013, states, in relevant part:

I hereby certify, under penalty of perjury, that 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.

4. Smith answered "No" to Background Question Number 2 of the Application which states, 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. On August 28, 2012, the Tennessee Department of Commerce and Insurance entered a Notice of Suspension against Smith. The "Grounds for Suspension" section reads:

Your insurance producer license is being suspended based upon certification to the Insurance Division by the Department of Human Services that you [are] in arrears on your child support order for ninety (90) days or more, and you have failed to pay the child support arrearage in full or agree to a plan to repay the arrearage with the Department of Human Services as directed in the Notice of License Revocation provided to you by certified mail.

In the Matter of: Marvin Smith, Notice of Suspension, Case No. 12-067 (August 28, 2012).

6. On October 12, 2012, the Nebraska Department of Insurance and Smith entered into a Consent Order in which Smith agreed to pay a \$500 penalty. In the Consent Order, Smith admitted that he violated Neb. Rev. Stat. § 44-1525(11) when he failed to respond to two different letters from an Insurance Investigator employed by the Nebraska Department of Insurance. *State of Nebraska v. Marvin Antonion Smith*, Consent Order, Case No. A-1957 (October 12, 2012).
7. After reviewing the Application, Special Investigator Karen Crutchfield ("Special Investigator Crutchfield"), Consumer Affairs Division ("Division"), mailed an inquiry letter by first class mail to Smith dated November 13, 2013. The letter requested copies of the Nebraska Consent Order and Tennessee Notice of Suspension, as well as Smith's own account of events. The letter further advised Smith that "pursuant to 20 CSR 100-4.100(2)(A), [his] adequate response [was] due twenty days from the postmark of this letter, or by December 3, 2013."
8. The November 13, 2013 inquiry letter was mailed to the address Smith provided on the Application, which is the same address specified in paragraph 1 herein. The United States Postal Service did not return the inquiry letter to the Division as undeliverable. Therefore, it is presumed delivered.
9. Smith failed to provide a response to the Division's November 13, 2013 inquiry letter by December 3, 2013, and failed to demonstrate a reasonable justification for the delay.
10. Special Investigator Crutchfield mailed a follow-up inquiry letter by first class and certified mail to Smith dated December 6, 2013. Special Investigator Crutchfield also emailed a copy of the follow-up inquiry letter to Smith on December 6, 2013. The follow-up inquiry letter contained substantially the same information as the November 13, 2013 inquiry letter but included the header "Second request" and a response date of December 26, 2013 pursuant to 20 CSR 100-4.100(2)(A).
11. The December 6, 2013 follow-up inquiry letter was mailed to the address Smith provided

on the Application, which is the same address specified in paragraph 1 herein. Smith signed for and accepted the follow-up inquiry letter sent by certified mail. The United States Postal Service did not return the follow-up inquiry letter sent by first class mail to the Division as undeliverable. Therefore, it is presumed delivered.

12. Smith failed to provide a response to the Division's December 6, 2013 follow-up inquiry letter by December 26, 2013, and failed to demonstrate a reasonable justification for the delay.

CONCLUSIONS OF LAW

13. Section 375.141 RSMo. (Supp. 2013)¹ provides, in relevant 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;

* * *

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

* * *

(13) Failing to comply with an administrative or court order imposing a child support obligation[.]

14. Title 20 CSR 100-4.100(2)(A) provides, in relevant part:

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.

¹ All statutory references are to RSMo. (2000) as updated by RSMo. (Supp. 2013) unless otherwise noted.

15. “[I]f not returned, the sender [of a letter may] presume that it was received where there is no question about the correctness of the address.” *Schlereth v. Hardy*, 280 S.W.3d 47, 51 (Mo. banc 2009).
16. The principal purpose of § 375.141 is not to punish applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).
17. The Director may refuse to issue a non-resident insurance producer license to Smith under § 375.141.1(1) because Smith intentionally provided materially incorrect, misleading, incomplete or untrue information on the Application. Smith provided untrue information on the Application by falsely answering “No” to Background Question Number 2, and the Application was incomplete because Smith failed to attach or include supporting documentation requested of applicants with prior histories referenced by Background Question Number 2.
18. The Director may refuse to issue a non-resident insurance producer license to Smith under § 375.141.1(3) because Smith attempted to obtain an insurance producer license through material misrepresentation or fraud. Smith falsely answered “No” to Background Question Number 2 of the Application and failed to disclose previous administrative proceedings in Tennessee and Nebraska in order to misrepresent to the Director that he had not been a party to any administrative proceedings and, accordingly, in order to improve the chances that the Director would approve the Application and issue him a non-resident insurance producer license.
19. The Director may refuse to issue a non-resident insurance producer license to Smith under § 375.141.1(2) because Smith failed to respond to two inquiry letters from the Division and failed to provide reasonable justification for the delays, thereby violating 20 CSR 100-4.100(2)(A), a Department regulation.
20. Each instance in which Smith failed to respond to an inquiry letter is a violation of 20 CSR 100-4.100(2)(A) and each violation of a Department regulation constitutes a separate and sufficient cause for refusal under § 375.141.1(2).
21. The Director may refuse to issue a non-resident insurance producer license to Smith under § 375.141.1(2) because Smith violated Neb. Rev. Stat. 44-1525(11), an insurance law of Nebraska, by failing to respond to written inquiry letters by the Nebraska Department of Insurance within fifteen working days. *State of Nebraska v. Marvin Antonion Smith*, Consent Order, Case No. A-1957.
22. The Director may refuse to issue a non-resident insurance producer license to Smith under § 375.141.1(9) because Smith’s Tennessee insurance producer license was suspended on August 28, 2012. *In the Matter of: Marvin Smith*, Notice of Suspension, Case No. 12-067.

23. The Director may refuse to issue a non-resident insurance producer license to Smith under § 375.141.1(13) because Smith failed to comply with the terms of a child support order by being in arrearage thereof for at least ninety days, which fact was certified by the Tennessee Department of Human Services and formed the basis for suspension of Smith's Tennessee insurance producer license. *Id.*
24. The Director has considered Smith's history and all of the circumstances surrounding Smith's Application. Granting Smith a non-resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a non-resident insurance producer license to Smith.
25. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the non-resident insurance producer license application of **Marvin Antonion Smith** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 25TH DAY OF JUNE, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

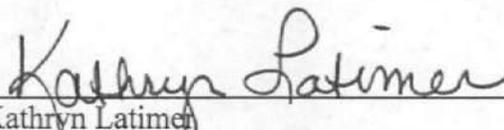
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 June, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Marvin Antonion Smith
5709 Murphywood Crossing
Antioch, Tennessee 37013

No. 1Z0R15W84297896704



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