State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
MARK EDWARD ELLEFSEN,	)	**Case No. 160404210C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On June 29, 2016, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Mark Edward Ellefsen. 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. Mark Edward Ellefsen ("Ellefsen") is a Missouri resident with a residential, business, and mailing address of 298 Cedar Heights Drive, Unit 2D, Camdenton, Missouri 65020.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") received Ellefsen's electronic application for an individual resident insurance producer license ("Application") on October 21, 2015.

3. With his Application, Ellefsen also submitted an "Application to the Missouri Department of Insurance, Financial Institutions and Professional Registration For Written Consent To Engage In The Business Of Insurance Pursuant To 18 U.S.C. § 1033" ("Section 1033 Application").

4. On his Application and his Section 1033 Application, Ellefsen disclosed that he had been convicted of four (4) federal felonies in *United States of America v. Ellefsen et al.*, United States District Court, Western District of Missouri, Case No. 07-05015-02-CR-SW-DGK, *aff'd*, 655 F.3d 769 (2011). Ellefsen also provided copies of the Indictment and Judgment entered in the above-referenced case.

5. On April 12, 2007, Ellefsen was charged with one (1) count of Conspiracy to Defraud

the United States, a Class D Felony,[1] in violation of 18 U.S.C. § 371, and three (3) counts of Aiding and Assisting the Preparation of False Income Tax Returns, all Class E Felonies,[2] and all in violation of 26 U.S.C. § 7206(2). *United States of America v. Ellefsen et al.*, United States District Court, Western District of Missouri, Case No. 07-05015-02-CR-SW-DGK, *aff'd*, 655 F.3d 769 (2011).

6. The Indictment charged Ellefsen as follows (original enumeration included):

> 1. From a date unknown to the Grand Jury, but at least as early as on or about August 19, 1997, and continuing until at least on or about August 7, 2003, in the Western District of Missouri, and elsewhere, **BRIAN KEITH ELLEFSEN** and **MARK EDWARD ELLEFSEN**, defendants herein, did unlawfully, willfully and knowingly conspire, combine, confederate and agree with each other, and with other persons, known and unknown to the Grand Jury, to defraud the United States by impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of the United States Treasury Department in the ascertainment, computation, assessment, and collection of federal taxes.
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> * * *
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> 3. **MARK EDWARD ELLEFSEN** (hereinafter, "M. ELLEFSEN"), defendant herein, at various times a resident of Carthage, Missouri and Arnold, Missouri, was the brother of Defendant **B. ELLEFSEN**, and was the officer manager of Southwest Missouri Bone and Joint, Inc., located in Carthage, in Jasper County, in the Western District of Missouri.
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> 4. **Southwest Missouri Bone and Joint, Inc.** (hereinafter, "B&J Corp."), a Missouri corporation, was Defendant **B. ELLEFSEN'S** medical practice.
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> * * *
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> 7. **Strategic Management Services, LLC** (hereinafter, "Strategic

[1] The offense of Conspiracy to Defraud the United States, punishable by imprisonment of not more than five (5) years under 18 U.S.C. § 371, is a Class D Felony pursuant to 18 U.S.C. § 3559(a)(4) (2006).

[2] The offense of Aiding and Assisting the Preparation of False Income Tax Returns, punishable by imprisonment of not more than three (3) years under 26 U.S.C. § 7206(2), is a Class E Felony pursuant to 18 U.S.C. § 3559(a)(5) (2006).

LLC") was a limited liability corporation ("LLC") established by Defendant **M. ELLEFSEN** on or about February 21, 2001, which Defendants used to receive funds from B&J Corp., make payments for the benefit of Defendant **B. ELLEFSEN**, and hold title to assets for the benefit of Defendant **B. ELLEFSEN**. Defendants used Strategic LLC to hold title to [two bank accounts], on both of which accounts Defendant **M. ELLEFSEN** was the sole signatory.

* * *

MANNER AND MEANS

Defendants conspired to divert funds from B&J Corp., totaling approximately $1,567,100, for the benefit, use and enjoyment of Defendant **B. ELLEFSEN**, without paying any taxes on the diverted funds that should have been paid to the United States Treasury. Among the manner and means used to achieve the conspiracy were the following:

13. Defendants established accounts at various financial institutions ... held in the names of various entities, including, among others, B&J Trust, Strategic LLC, Stekadash AMT, Stekadash Int'l, and Stekadash SCL. Using those accounts and entities, Defendants would and did engage in a series of sham paper transactions having no economic substance or business purpose, which resulted in the concealment of funds from the IRS and the attempted illegal reduction or elimination of federal tax liability.

* * *

15. Defendants would and did further attempt to conceal their diversion of funds from B&J Corp. by providing misleading and false information to the accounting firm preparing the corporate income tax returns for B&J Corp., and the personal tax returns of Defendant **B. ELLEFSEN**, and by filing and causing to be filed false and fraudulent corporate income tax returns for B&J Corp., and false and fraudulent joint personal income tax returns for Defendant **B. ELLEFSEN** and Sandra K. Ellefsen.

* * *

34. On or about February 14, 2001, Defendant **M. ELLEFSEN** sent an email to K.B. at the accounting firm preparing the 2000 corporate tax return for B&J Corp., instructing the firm not to prepare and

issue an IRS Form 1099 to the B&J Trust, which would have also reported the $650,000 payments described as "management fees" to the IRS.

* * *

41. On or about the dates hereinafter set forth, in the Western District of Missouri, and elsewhere, **MARK EDWARD ELLEFSEN**, defendant herein, did willfully aid and assist in, and procure, counsel, and advise in the preparation and presentation under the Internal Revenue Laws, of the joint U.S. Individual Income Tax Return, IRS Form 1040, of Brian Keith Ellefsen and Sandra K. Ellefsen, including schedules, for each calendar year hereinafter specified, each of which was false and fraudulent as to a material matter in that each said return reported that the total income (line 22) was in the amount hereinafter specified whereas, as he then and there well knew and believed, Brian Keith Ellefsen and Sandra K. Ellefsen had received income substantially in excess of the amount reported.

Id (emphasis in original).

7. On May 15, 2009, a jury found Ellefsen guilty of all four (4) counts. *Id.*

8. On August 6, 2010, United States District Judge Greg Kays entered a Judgment sentencing Ellefsen as follows:

   a. The court committed Ellefsen to the United States Bureau of Prisons to be imprisoned for a total of fourteen (14) months' confinement on each count, to be served concurrently.

   b. The court ordered Ellefsen to complete supervised release upon his release from imprisonment for a term of three (3) years on Ellefsen's Conspiracy to Defraud the United States conviction and one (1) year on each of Ellefsen's Aiding and Assisting the Preparation of False Income Tax Returns convictions, to be served concurrently.

   c. The court also ordered Ellefsen to pay restitution to the Internal Revenue Service in the amount of $50,000.00.

   Id.

9. Under Section IV: Criminal History, Question No. 6 of the Section 1033 Application asks:

> Are there mitigating or extenuating circumstances surrounding your commission of the offenses listed herein? If yes, explain.

10. In response, Ellefsen explained, in part:

> The taxes in question were those of my brother who was and is currently a licensed orthop[]edic surgeon. My brother took the advice of a company that offered trust arrangements to protect personal assets and to reduce personal income taxes. The promoter of the trust arrangement, the Aegis Company, was formally engaged to set up the trust. My brother also engaged CPAs to prepare both business and personal tax returns during the period of his involvement with the Aegis trust.
>
> From 1996-2009, I worked for my brother as the office manager of his medical practice. In this role, I made deposits and wrote checks on the medical practice checking account. I kept track of funds and directed payment of funds under the guidance of CPAs my brother had hired. I used Quickbooks to keep track of the income and would give the set of Quickbooks to these accountants.
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> Per the IRS, this case was not one that involved unreported income. Instead, this case involved invalid deductions taken by the medical practice to "fund" the trust. The trust, set up by a licensed attorney, was subsequently deemed to be improper and invalid for federal tax purposes.

11. Under Section VII: Grounds Relied Upon For Application For Written Consent, Question No. 1 of the Section 1033 Application states:

> Provide a complete explanation of the reasons or grounds the applicant relies upon to establish that the applicant's insurance activities for which written consent is sought will not be contrary to the intent and purpose of 18 U.S.C. § 1033, and will not pose a risk to the insurance consumers or the insurance companies[.]

12. In response, Ellefsen states:

> The facts are clear that I did not set up my brothers trust nor did I prepare his tax returns. I performed my job under the guidance of the licensed professionals he hired. The facts are clear that I did not benefit at all by the way he chose to conduct his business.[ ]I only have this one conviction on my record and it has nothing to do [with] my personal actions or how I personally conduct business. It has to do with

how my employer, brother, chose how to conduct his business[.]

This conviction does not make sense if one looks at my background, history and service. I have no other criminal history, I have served with integrity as an officer in the US Army as well as a police officer and my personal taxes have never been in question. I will not and do not pose a risk to the insurance consumers or the insurance companies.

CONCLUSIONS OF LAW

13. Section 375.141 RSMo (Supp. 2013)[3] 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:
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> * * *
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> (6) Having been convicted of a felony or crime involving moral turpitude;
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> * * *
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> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

14. The Director may refuse to issue an insurance producer license to Ellefsen pursuant to § 375.141.1(6) because he has been convicted of four (4) federal felonies:

    a. Conspiracy to Defraud the United States, a Class D Felony, in violation of 18 U.S.C. § 371. *United States of America v. Ellefsen et al.*, United States District Court, Western District of Missouri, Case No. 07-05015-02-CR-SW-DGK, *aff'd*, 655 F.3d 769 (2011).

    b. Aiding and Assisting the Preparation of False Income Tax Returns, a Class E Felony, in violation of 26 U.S.C. § 7206(2). *Id.*

    c. Aiding and Assisting the Preparation of False Income Tax Returns, a Class E Felony, in violation of 26 U.S.C. § 7206(2). *Id.*

[3] All civil statutory references are to RSMo (2000) as updated by the 2013 Supplement unless otherwise noted.

d. Aiding and Assisting the Preparation of False Income Tax Returns, a Class E Felony, in violation of 26 U.S.C. § 7206(2). *Id.*

15. The Director may refuse to issue an insurance producer license to Ellefsen pursuant to § 375.141.1(6) because he has been convicted of four (4) crimes involving moral turpitude:

    a. Conspiracy to Defraud the United States, a Class D Felony, in violation of 18 U.S.C. § 371. *United States of America v. Ellefsen et al.*, United States District Court, Western District of Missouri, Case No. 07-05015-02-CR-SW-DGK, *aff'd*, 655 F.3d 769 (2011).

    b. Aiding and Assisting the Preparation of False Income Tax Returns, a Class E Felony, in violation of 26 U.S.C. § 7206(2). *Id.*

    c. Aiding and Assisting the Preparation of False Income Tax Returns, a Class E Felony, in violation of 26 U.S.C. § 7206(2). *Id.*

    d. Aiding and Assisting the Preparation of False Income Tax Returns, a Class E Felony, in violation of 26 U.S.C. § 7206(2). *Id.*

16. Each felony conviction or conviction of a crime involving moral turpitude is a separate and sufficient ground for refusal pursuant to § 375.141.1(6).

17. The Director may refuse to issue an insurance producer license to Ellefsen pursuant to § 375.141.1(8) because he used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere when he actively participated in a series of sham transactions during his employment as the office manager of Southwest Missouri Bone and Joint, Inc. which resulted in the concealment of income from the Internal Revenue Service and assisted in the preparation of his co-defendant's tax returns which contained materially false information regarding the total amount of taxable income.

18. The above described instances are grounds upon which the Director may refuse to issue Ellefsen an insurance producer license.

19. Ellefsen's explanation for his actions that led to his federal felony convictions is inconsistent with the court records in *United States of America v. Ellefsen et al.*, United States District Court, Western District of Missouri, Case No. 07-05015-02-CR-SW-DGK, *aff'd*, 655 F.3d 769 (2011). Ellefsen paints himself as an innocent bystander who was merely performing his job duties as directed by licensed professionals. However, the underlying facts make it clear that Ellefsen knew of the illegal nature of the trust arrangements and that Ellefsen supplied information to the

accountants who prepared tax returns for Ellefsen's co-defendant. While Ellefsen may not have received any direct monetary benefits from the illegal business model he participated in, he certainly was not an oblivious employee.

20. The Director has considered Ellefsen's history and all of the circumstances surrounding Ellefsen's Application. Granting Ellefsen an insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue an insurance producer license to Ellefsen.

21. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that Mark Edward Ellefsen's application for an individual resident insurance producer license is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 30TH DAY OF JUNE, 2016.

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 30th day of June, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Mark Edward Ellefsen
298 Cedar Heights Drive
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Tracking No. 1Z0R15W84296822482

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