State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
MICHAEL HOLDEN,	)	**Case No. 141204769C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE A NON-RESIDENT INSURANCE PRODUCER LICENSE

On June 30, 2015, Tamara W. Kopp, counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an individual non-resident insurance producer license to Michael Holden. 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. Michael Holden ("Holden") is an Ohio resident with a residential address of 23004 Chandlers Lane, Suite 344, Olmsted Falls, OH 44138, and a business address of 7550 Lucerne, Suite 401, Middleburg Heights, OH 44130. Holden is licensed as a title insurance producer in Ohio.

2. Holden was first licensed as a Missouri insurance agent on September 6, 1990. Holden's license was converted to a title insurance producer license on January 1, 2003, and remained active until he cancelled his license on August 11, 2008.

3. On May 4, 2009, Holden applied for a Missouri title insurance producer license ("2009 Application"). On June 11, 2010, the Director of the Department of Insurance, Financial Institutions and Professional Registration ("Department") denied Holden's license ("2010 Denial") citing §§ 375.141.1(1), (2), (3), and (12). Holden appealed the 2010 Denial to the Administrative Hearing Commission ("AHC").

4. The AHC upheld the Director's 2010 Denial, finding the Director had cause to deny Holden's 2009 Application because Holden "transacted business as a title insurance agent without a license and because he intentionally provided materially incorrect, misleading, incomplete or untrue information on his [2009] Application." The AHC held the Director had cause to deny Holden's 2009 Application under §§ 375.141.1(1) and (2) without making a clear legal conclusion concerning §§ 375.141.1(3) and (12). *Michael Holden v. Department of Ins.,*

Fin. Insts. & Prof'l Reg'n, No. 10-1343 DI, (Mo. Admin. Hrg. Comm'n April 25, 2013). The AHC's decision, including its findings of facts and legal conclusions, is incorporated by reference. A copy of the Decision is attached hereto as Exhibit 1. Specifically, the AHC found the following:

a. While unlicensed, "Holden advised insurance agents thirteen separate times that they could insure certain properties." *Decision, p. 5.*

b. "Holden transacted business as an insurance producer without an individual insurance producer license in violation of §§ 381.115.1 and 381.115.2(2) by calculating insurance rates and determining insurability. We do not hesitate to find that calculating rates for title insurance is part of soliciting or negotiating a title insurance policy." *Decision, p. 7.*

c. On the 2009 Application, Holden responded "No" to the following question:

> Have you or any business in which you were an owner, partner, officer or director, or member or manager of [a] limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license or registration?

d. The AHC agreed with the Director's assertion that "when Holden answered "no" to that question, he intentionally provided materially incorrect, misleading, incomplete or untrue information on his application." *Decision, p. 11.* The AHC further found that three VFAs (voluntary forfeiture agreements) Holden signed on behalf of a former employer were administrative proceedings, the undisclosed information was material, and the non-disclosure was intentional. *Decision, pp. 13-14.* The three VFAs settled allegations that Holden's former employer accepted business from unlicensed people. *Id.*

e. On the 2009 Application, Holden failed to disclose his employment with Guaranty, the same employer on whose behalf he had signed three voluntary forfeiture agreements. The AHC found that the non-disclosure was material and intentional. *Decision, p. 15.*

5. Holden appealed the AHC decision and the Cole County Circuit Court upheld the AHC decision. *Michael Holden v. Director of Dept. of Ins., Fin. Insts. & Prof'l Reg'n*, Cole Co. Cir. Ct. Case No. 13AC-CC00318, Judgment, Aug. 11, 2014.

6. On September 18, 2014, Holden appealed the Cole County Circuit Court Judgment to the Missouri Court of Appeals, Western District. *Michael Holden v. Director of Dept. of Ins.*, WD77955. This appeal is pending and the parties are currently briefing.

7. The Department received Holden's "Uniform 2014 Application for Individual Producer License/Registration" on or about October 23, 2014 ("2014 Application").

CONCLUSIONS OF LAW

8. Section 375.141 RSMo (Supp. 2013)[1] states, in pertinent 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 licensing 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;
>
> * * *
>
> (12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person in not licensed[.]

9. 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. E.D. 1984).

10. The Director may refuse Holden's individual non-resident insurance producer license pursuant to § 375.141.1(1) because Holden intentionally provided materially incorrect, misleading, incomplete, or untrue information in the 2009 Application when he misrepresented his employment history and failed to disclose multiple voluntary forfeiture agreements he signed on behalf of a former employer. *Holden v. Department of Ins,* No. 10-1343 DI, (Mo. Admin. Hrg. Comm'n April 25, 2013), upheld by *Holden v. Director of Dept. of Ins*, Cole Co. Cir. Ct. Case No. 13AC-CC00318, Judgment, Aug. 11, 2014, appeal pending in *Holden v. Director of Dept. of Ins.*, WD77955.

11. The Director may refuse Holden's individual non-resident insurance producer license pursuant to § 375.141.1(3) because Holden attempted to obtain a license through material misrepresentation or fraud when he misrepresented his employment history and failed to disclose multiple VFAs he signed on behalf of a former employer on the 2009 Application. The AHC found that Holden's non-disclosure of his employment history and the VFAs on the 2009 Application was material and intentional when it found cause to refuse Holden's license pursuant to § 375.141.1(1). *Holden v. Department of Ins,* No. 10-1343 DI, pp. 11, 13-14 (Mo. Admin. Hrg. Comm'n April 25, 2013).

[1] All statutory references are to the RSMo (2000) as updated by the 2013 Supplement, unless otherwise indicated.

12. The Director may refuse Holden's individual non-resident insurance producer license pursuant to § 375.141.1(2) because Holden violated an insurance law of Missouri when, in 2008 and 2009, he acted as an insurance producer without a license, namely § 381.115, when Holden determined insurability and calculated insurance rates. *Holden v. Department of Ins,* No. 10-1343 DI, (Mo. Admin. Hrg. Comm'n April 25, 2013), upheld by *Holden v. Director of Dept. of Ins*, Cole Co. Cir. Ct. Case No. 13AC-CC00318, Judgment, Aug. 11, 2014, appeal pending in *Holden v. Director of Dept. of Ins.*, WD77955.

13. The Director may refuse Holden's individual resident insurance producer license pursuant to § 375.141.1(12) because Holden knowingly engaged in unlicensed activity in violation of § 381.115 when he determined insurability and calculated insurance rates. The knowing nature of Holden's conduct is ascertainable from the facts that he had been previously licensed and been involved in administrative proceedings that alleged unlicensed activity.

14. In light of the foregoing facts and stated cause, issuing an individual non-resident insurance producer license to Holden is contrary to the public interest of this state. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding each of the enumerated disqualifying events and refuses to issue Holden an individual non-resident insurance producer license.

15. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the application for an individual non-resident insurance producer license of **MICHAEL HOLDEN** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 7 DAY OF July, 2015.

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 § 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 7th day of July, 2015, a copy of the foregoing notice and order was served upon Michael Holden in this matter by UPS, at the following address:

Michael Holden
23004 Chandlers Lane, Suite 344
Olmsted Falls, OH 44138

UPS: 1Z0R15W84294813423

And a courtesy copy, by first class mail, postage prepaid, to:

Diana C. Carter
Brydon, Swearengen & England P.C.
312 E. Capitol Ave.
P.O. Box 456
Jefferson City, MO 65102-0456

Kimberly Landers
Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Email: Kimberly.Landers@insurance.mo.gov