State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Robert John Middleton,	)	**Case No. 12-1212642C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On December 21, 2012, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Robert John Middleton. 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. Robert John Middleton ("Middleton") is an individual residing in Missouri.

2. On or about September 27, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Middleton's Uniform Electronic Application for Individual Producer License ("Application").

3. In the Application, Middleton listed his residential, business and mailing address as P.O. Box 383, Grover, Missouri 63040.

4. In the section of the Application headed "Background Questions," Background Question # 2 asks, 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. Middleton answered "Yes" to Background Question # 2.

6. Middleton provided the following documents to supplement his Application relating to Background Question #2:

   a. A letter dated November 26, 2012, describing the administrative action taken against him by the Texas Department of Insurance ("TDI");

b. A certified copy of the Notice of Public Hearing dated August 26, 2003, which was served upon Middleton, *In the Matter of Robert John Middleton of Irving, Texas*, SOAH Docket No. 454-03-4523.C; and

c. A certified copy of the Official Order No. 03-0979 entered by the TDI, dated October 3, 2003, *In the Matter of Robert John Middleton of Irving, Texas*, SOAH Docket No. 454-03-4523.C.

7. Effective October 3, 2003, the TDI revoked Middleton's General Life, Accident, Health and HMO License based on the following violations of the Texas insurance code: [1]

a. Middleton "violated Tex. Ins. Code Ann. § 101.102 by acting as an agent on behalf of entities and individuals who did not hold an insurance license or other authorization issued by TDI to directly and/or indirectly do acts which constitute the business of insurance;"

b. Middleton violated Tex. Ins. Code Ann. art. 21.01-2 § 2A(b), in that he "accepted commissions from unlicensed entities and individuals, for services as an insurance agent;"

c. Middleton violated Tex. Ins. Code Ann. arts. 21.01-2 § 2A(d)(2) and 21.07 § 1(a) by soliciting a contract of insurance or acting "as an agent without having been appointed by an authorized insurance company;"

d. Middleton violated Tex. Ins. Code Ann. art. 21.01-2 § 3A(c)(5), in that he "engaged in fraudulent or dishonest acts or practices;" and

e. Middleton "willfully violated a provision of the insurance laws of [Texas] ... by violating Tex. Ins. Code Ann. art. 21.21 §§ 1, 3, and 4, Tex. Ins. Code Ann. § 101.102 and 28 Tex. Admin. Code §§ 19.902, 19.906, 21.3 and 21.112."

8. Based upon Middleton's violations of Texas insurance statutes, the TDI entered the following orders: [2]

a. The TDI ordered Middleton to "pay an administrative penalty" of $10,000;

b. The TDI ordered Middleton to "immediately CEASE AND DESIST from engaging in the business of insurance in the State of Texas" (emphasis in original); and

c. The TDI revoked Middleton's insurance producer license.

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[1] Default Order, *In the Matter of Robert John Middleton of Irving, Texas*, SOAH Docket No. 454-03-4523.C (Oct. 3, 2003).
[2] *Id.*

9. Tex. Ins. Code Ann. § 101.102 (2003)[3] stated as follows:

> (a) A person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute.
>
> (b) With respect to insurance of a subject that is resident, located, or to be performed in this state, this section does not prohibit an act performed outside this state, including the collection of premiums, by a person, including an insurer, authorized to do business in this state if the transaction and insurance contract otherwise comply with statute.

10. Tex. Ins. Code Ann. art. 21.01-2 §§ 2A(b) and (d)(2) and 3A(c)(5) stated, in relevant part, as follows:

> Sec. 2A.
>
> (b) An insurer or licensed insurance agent engaged in the business of insurance in his state may not pay, directly or indirectly, and may not accept, any commission or other valuable consideration to or from any person for services performed by that person as an insurance agent in this state unless the person holds a license to act as an insurance agent as required by the laws of this state. This subsection does not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because the person has ceased to hold a license to act as an insurance agent.
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> * * *
>
> (d) In addition to any other penalty imposed under this code, a person who is determined by the department to have committed conduct described by this subsection is barred from receiving a license as an insurance agent before the fifth anniversary of the date of the determination. This subsection applies to a person who:
>
> * * *
>
> (2) solicits a contract of insurance or acts as an insurance agent without having been appointed or designated by an authorized insurance company, association, or organization to do so as provided by this code[.]
>
> * * *

[3] Because the TDI action against Middleton occurred in 2003, the Texas statutes cited herein refer to the versions that were in effect at that time.

Sec. 3A.

(c) The department may discipline a license holder or deny a license application under this article if the department determines that the applicant or license holder, individually or through any officer, director, or shareholder:

* * *

(5) has engaged in fraudulent or dishonest acts or practices[.]

11. Tex. Ins. Code Ann. art. 21.07 § 1(a) stated as follows:

(a) No person shall act as an agent of any insurance company, health maintenance organization, or other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of this code unless that person shall have first procured a license from the department as provided by this subchapter, and no such insurance carrier shall appoint any person to act as its agent unless such person shall have obtained a license under the provisions of this subchapter, and no such person who obtains a license shall engage in business as an agent until that person shall have been appointed to act as an agent by some duly authorized insurance carrier designated by the provisions of this code and authorized to do business in the State of Texas.

12. Tex. Ins. Code Ann. art. 21.21 stated, in pertinent part, as follows:

Sec. 3. No person shall engage in this state in any trade practice which is defined in this Act as, or determined pursuant to this Act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

* * *

Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and False Advertising of Policy Contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;

(2) False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading;

* * *

(11) Misrepresentation of Insurance Policy. Misrepresenting an insurance policy by:

(a) making an untrue statement of material fact;

(b) failing to state a material fact that is necessary to make other statements made not misleading, considering the circumstances under which the statements were made;

(c) making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of a material fact;

(d) making a material misstatement of law; or

(e) failing to disclose any matter required by law to be disclosed, including a failure to make disclosure in accordance with another provision of this code.

13. 28 Tex. Admin. Code § 21.3 stated as follows:

(a) Misrepresentation of insurance policies, unfair competition, and unfair practices by insurers, agents, and other connected persons are prohibited by Article 21.20 and Article 21.21 or by other provisions of the Insurance Code and by these sections of the State Board of Insurance. No person shall engage in this state in any trade practice that is a misrepresentation of an insurance policy, that is an unfair method of competition, or that is an unfair or deceptive act or practice as defined by the provisions of the Insurance Code or as defined by these sections and other rules and regulations of the State Board of Insurance authorized by the Code.

(b) Irrespective of the fact that the improper trade practice is not defined in any other section of these rules and regulations, no person shall engage in this state in any trade practice which is determined pursuant by law to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

14. 28 Tex. Admin. Code § 21.112 stated as follows:

> Failure to abide by §§21.101-21.122 of this title (relating to Insurance Advertising and Certain Trade Practices, and Solicitation) is prohibited. An omission of information, false implication, or impression which is misleading or deceptive or has the tendency or capacity to be misleading or deceptive is prohibited. The requirements of these sections apply to either or both insurers and agents irrespective of whether acts or practices are performed directly or indirectly by the insurers or agents or in conjunction with or through non-insurers or non-agents.

CONCLUSIONS OF LAW

15. Section 375.141, RSMo (Supp. 2012)[4] 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:
>
> > (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
> >
> > * * *
> >
> > (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
> >
> > (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
> >
> > (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

16. Practices consist of "a succession of acts of a similar kind or in like employment." *Director of Insurance v. VMG & Glass*, Mo. Admin. Hearing Comm'n, No. 09-1524 DI (April 7, 2011), *citing Davis v. Director of Ins.*, 879 S.W.2d 556, 560 (Mo. App., W.D. 1984).

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

[4] All statutory references are to the 2012 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

CAUSE FOR ORDER
REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

18. Middleton pursuant to § 375.141.1(2), because Middleton violated the insurance laws of Texas, namely:

a. Tex. Ins. Code Ann. § 101.102;

b. Tex. Ins. Code Ann. art. 21.01-2 §§ 2A(b) and (d)(2) and 3A(c)(5);

c. Tex. Ins. Code Ann. art. 21.07 § 1(a);

d. Tex. Ins. Code Ann. art. 21.21 §§ 3 and 4(1), (2), and (11); and

e. 28 Tex. Admin. Code §§ 21.3 and 21.112.

19. The Director may refuse to issue an insurance producer license to Middleton pursuant to § 375.141.1(7), because the TDI found that Middleton had committed insurance unfair trade practices. The TDI found that Middleton "disseminated, circulated and placed before the public false, deceptive and misleading solicitation materials, applications, and plan description summaries regarding … healthcare plans," and "false, deceptive and misleading solicitation materials and documents regarding … healthcare plans," in violation of Texas insurance statutes. *In the Matter of Robert John Middleton of Irving, Texas*, SOAH Docket No. 454-03-4523.C.

20. The Director may refuse to issue an insurance producer license to Middleton pursuant to § 375.141.1(9), because the TDI revoked Middleton's insurance producer license, or its equivalent. *Id.*

21. The Director may refuse to issue an insurance producer license to Middleton pursuant to § 375.141.1(8), because Middleton's conduct of business, which was the cause for TDI's revocation of his producer license, was dishonest, demonstrated "untrustworthiness and financial irresponsibility, and shows that he generally lacks the ability" to act in an honest manner with respect to his business dealings, as an insurance producer. *See*, *Director of Insurance v. Soriano*, Mo. Admin. Hrg. Comm'n, No. 04-0067 DI (August 26, 2004).

22. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding Middleton's Application for licensure and, for all of the reasons given in this Order, exercises his discretion in refusing to grant Middleton's license.

23. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of ROBERT JOHN MIDDLETON is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 21st DAY OF DECEMBER, 2012.

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 28th day of December, 2012, a copy of the foregoing notice and order was served upon Robert John Middleton in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Robert John Middleton
P.O. Box 383
Grover, Missouri 63040

Certified Mail # 7009 3410 0001 8931 9089

Kimberly Landers

Kimberly Landers
Missouri Department of Insurance,
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