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MAY 27 2011

MO. DEPT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)		
	)		
Keith L. Monia, Sr.,	)	**Case No.:**	**110428493C**
	)		
Applicant.	)		

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On May 27, 2011, Ross A. Kaplan, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Deputy Director ("Director") alleging cause for refusing to renew an insurance producer license to Keith L. Monia, Sr. 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:

FINDINGS OF FACT

1. Keith L. Monia, Sr. ("Monia") is an individual residing in Missouri.

2. On May 25, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Monia's Uniform Electronic Renewal Application for Individual Insurance Producer License ("Application").

3. In his Application, Monia listed his residential and business addresses as 3719 Carolewood Dr., Cape Girardeau, MO 63701, and his mailing address as PO Box 1899, Cape Girardeau, MO 63702-1899.

4. Monia was originally licensed as an insurance producer, license number 0286278, on January 27, 1984, and such license is set to expire on May 29, 2011.

5. Monia also applied for renewal in 2007. The Director refused to renew Monia's license in 2007, but later reinstated Monia's license retroactive to its expiration date ("interim period").

6. On December 6, 2010, the Department received a complaint from Paul Bollinger ("Bollinger") regarding Monia, which stated: "Producer/Agent Monia converted $80,000.00 of my money for his personal use by failing to apply it toward the purchase of an annuity as promised."

7. Based upon Bollinger's complaint, Special Investigator Ron Harrod ("Harrod") began investigating Monia.

8. During Monia's interim period, an annuity application bearing Monia's name and contract number was submitted on behalf of Bollinger to American Equity Investment Life Insurance Company ("American").

9. American also received a personal check from Bollinger for $80,000.

10. The American application, dated August 17, 2007, was signed by Bollinger.

11. In a letter to Harrod, dated February 8, 2011, American admits that it received the application along with additional forms and the check. Then, "it came to our attention that Mr. Monia's license renewal was refused by the Missouri Department of Insurance. Therefore, we could not issue Mr. Bollinger's contract. On September 10, 2007, we sent a check for $80,000.00 back to Mr. Bollinger at the address indicated on the Annuity Application."

12. In a sworn affidavit, dated March 11, 2011, Bollinger stated that on or about September 12, 2007, he endorsed the check American issued for the remitted funds and gave it to Monia with instructions to obtain an annuity through Washington National Insurance Company.

13. However, Monia did not use the check to obtain an annuity as Bollinger instructed.

14. Instead, Monia endorsed the check and deposited it into his own, personal bank account.

15. In the ensuing two weeks, Monia spent over $73,000 of the $80,000 for his own personal use and benefit.

16. In October 2010, Bollinger filed a civil law suit against Monia claiming Monia stole the $80,000. *See Bollinger v. Monia*, et al., Case No. 10CG-CC00225.

17. In an interrogatory from *Bollinger v. Monia*, Bollinger asked:

> Please state whether you contend that Plaintiff has ever given you a gift of $80,000. If so, please state each and every fact supporting that contention.

In response, Monia recalled a conversation between himself and Bollinger and stated in part:

> [Bollinger said] "Keith, I've done very well financially and I have more money and assets than I will ever need in this lifetime. I know more about you than you think. I know where you bank. You have great kids, wife, and much more. I read the paper and I have ears. Keith I am going to give you that $80,000 check to use as you feel needed. For your benefit[.]"

I (Keith) said "Mr. Bollinger I cannot accept that money from you."

Mr. Bollinger said "It's a gift and it's rude to turn down a gift. Take care of your bills and move forward with your business. If you ever get way ahead then feel free to repay me, but I don't expect any repayment and I don't need it."

18. In a subpoena conference held by the Department on March 10, 2011, Harrod asked Monia if Bollinger had ever given him any money before or after the $80,000 check. Monia said "no."

19. In Bollinger's March 11, 2011 affidavit, Bollinger stated that he intended for Monia to allocate the funds for an annuity, and that he did not intend to make a gift to Monia by endorsing and delivering the $80,000 check. Bollinger stated that he did not make any statement to Monia to the effect of "Keith, I am going to give you that $80,000 check to use as you feel needed. For your benefit[;]" and Monia appropriated the $80,000 check for his own personal use without Bollinger's consent and against his express direction.

CONCLUSIONS OF LAW

20. Section 375.141, RSMo (Supp. 2010)[1] states, 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:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> * * *
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

[1] All statutory references are to RSMo (Supp. 2010) unless otherwise indicated.

21. Section 375.144 states in part:

> It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:
>
> (1) Employ any deception, device, scheme, or artifice to defraud;
>
> * * *
>
> (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

22. Misappropriation has been defined as "[t]he unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended." *Monia v. Melahn*, 876 S.W.2d 709, 713 (Mo. App. E.D. 1994).

23. The principal purpose of §375.141, RSMo 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).

24. The Director may refuse to renew Monia's insurance producer license to Monia pursuant to §375.141.1(4) because, Bollinger gave Monia a check for $80,000 with explicit instructions to procure an annuity for him. Monia then endorsed Bollinger's check, deposited it in his own, personal bank account, and spent the majority of the money, which is an improper withholding, misappropriation or conversion of any moneys in the course of doing insurance business.

25. The Director may refuse to renew Monia's insurance producer license pursuant to §375.141.1(8) because Bollinger gave Monia a check for $80,000 with explicit instructions to procure an annuity for him. Monia, knowing Bollinger expected him to procure the annuity, then endorsed Bollinger's check, deposited it in his own, personal bank account, and spent the majority of the money, which was a fraud, coercion, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business.

26. The Director may refuse to renew Monia's insurance producer license pursuant to §375.141.1(2) because, when Monia accepted Bollinger's $80,000 check, it was with the stated expectation that Monia would procure an annuity for Bollinger. By failing to inform Bollinger that Monia intended to keep the money for himself, Monia directly or indirectly employed a deception, device, scheme, or artifice to defraud in connection with the offer, sale, solicitation or negotiation of insurance in violation of §375.144(1).

27. The Director may refuse to renew Monia's insurance producer license pursuant to §375.141.1(2) because, when Monia accepted Bollinger's $80,000 check, it was with the stated expectation that Monia would procure an annuity for Bollinger. By failing to inform Bollinger that Monia intended to keep the money for himself, Monia directly or indirectly engaged in an act which operates as a fraud or deceit upon any person in connection with the offer, sale, solicitation or negotiation of insurance in violation of

§375.144(4).

28. Monia accepted $80,000 from a client who entrusted those funds to him so that Monia would obtain an annuity for him. Rather than doing as his client wished, Monia kept the money for himself and proceeded to spend nearly all of it in two weeks time. Monia then claimed it was given to him as a gift when there was no indication that his client had ever given him a gift before or after the occurrence, and the client has stated that this was not a gift. Through this act, Monia has improperly withheld, misappropriated or converted his client's money in the course of doing insurance business. Through his actions, Monia used fraud, coercion, or dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. Monia has directly or indirectly employed a deception, device, scheme, or artifice to defraud his client out of $80,000 in connection with the offer, sale, solicitation or negotiation of insurance. Finally, by taking his client's money, Monia has directly or indirectly engaged in an act which operates as a fraud or deceit upon his client in connection with the offer, sale, solicitation or negotiation of insurance.

29. The Director has considered all of the circumstances surrounding Monia's application. Granting a renewal of Monia's Missouri resident insurance producer license would not be in the interest of the public.

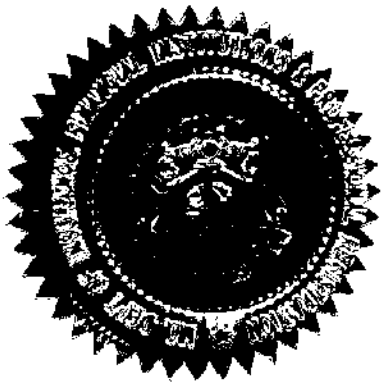
30. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the insurance producer license of Keith L. Monia, Sr. is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 27th **DAY OF** May, 2011.



JAMES R. MCADAMS
DEPUTY 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 27th day of May, 2011, a copy of the foregoing Notice and Order was served upon the Applicant Keith L. Monia, Sr. in this matter by certified mail No. 7009 3410 0001 9349 6462 at

Keith L. Monia, Sr.
PO Box 1899
Cape Girardeau, MO 63702-1899