State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
	)	**Case No. 12-1212643C**
James E. Otto,	)	
	)	
Renewal Applicant.	)	

ORDER REFUSING TO RENEW INSURANCE PRODUCER LICENSE

On December 13, 2012, the Consumer Affairs Division submitted a Petition to the Deputy Director alleging cause for refusing to renew James E. Otto's nonresident insurance producer license. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Deputy Director issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. James E. Otto ("Otto") is an individual residing in Kansas, whose residential and mailing address of record is 13425 W. 128th Street, Overland Park, Kansas 66213.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued Otto a nonresident insurance producer license on December 15, 1986 (License No. 0232499). Otto's insurance producer license is set to expire on December 15, 2012.

3. On or about November 26, 2012, the Department received a Uniform Application for Individual Producer License Renewal/Continuation ("Application") from Otto.

4. The "Attestation" section of the Application, 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.

5. Otto signed the "Attestation" section.

6. In the section of the Application headed "Background Information," Question # 2 asks, in relevant part:

   Have you been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to this insurance department?

   "Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation, sanctioned or surrendering a license to resolve an administrative action. "Involved" also means having a license, or registration, application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions in your capacity as an owner, partner, officer or director, or member or manager of a Limited Liability Company. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

7. Otto answered "No" to Question # 2.

8. On November 4, 2009, the United States Securities and Exchange Commission ("SEC") issued its Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Order Instituting Administrative and Cease-and Desist Proceedings"). *In the Matter of James E. Otto*, SEC File No. 3-13674.

   a. The SEC alleged that Otto willfully violated Sections 15(a) and 10(b) of the Securities Exchange Act of 1934, and Sections 206(1) and (2) of the Investment Advisers Act of 1940.

   b. The SEC Order Instituting Administrative and Cease-and Desist Proceedings ordered that a public hearing be held for the purpose of taking evidence on the questions set forth in the Order Instituting Administrative and Cease-and Desist Proceedings and that Otto file an Answer to the allegations contained in the Order Instituting Administrative and Cease-and Desist Proceedings.

   c. Otto was a party to this administrative proceeding.

9. On May 26, 2010, the SEC issued an Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order"). *In the Matter of James E. Otto*, SEC File No. 3-13674.

   a. The Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order stated that the SEC accepted an Offer of Settlement submitted by Otto.

b. The Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order found that Otto willfully violated Sections 15(a) and 10(b) of the Securities Exchange Act of 1934, and Sections 206(1) and (2) of the Investment Advisers Act of 1940.

c. The Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order ordered that Otto cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Sections 206(1) and (2) of the Investment Advisers Act of 1940, and be barred from association with any broker, dealer, or investment adviser.

d. Otto failed to disclose this administrative proceeding on his Application.

e. Otto failed to report this administrative action to the Director within 30 days of the final disposition of the matter.

10. On July 14, 2010, the Missouri Securities Division of the Office of Secretary of State ("MO SOS") issued an Order To Cease And Desist And Order To Show Cause Why Civil Penalties And Costs Should Not Be Imposed ("MO Cease and Desist Order"). *In the Matter of James E. Otto, CRD No 1566081; and Michael Lees, CRD No. 867965*, MO SOS Case No. AP-10-11.

a. The MO Cease and Desist Order found that Otto: (1) violated § 409.4-401(a) when he effected purchases or sales of securities from the State of Missouri without being registered or exempt from registration as a broker-dealer; (2) violated § 409.4-403(a) when he provided advice to customers relating to their securities in the State of Missouri without being registered or exempt from registration as an investment advisor; (3) violated § 409.5-501(2) when, in connection with the offer and sale of securities, he omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (4) violated § 409.5-501(2) when, in connection with the offer and sale of securities, he made untrue statements of material fact.

b. The MO Cease and Desist Order ordered that Otto be prohibited from transacting business as an unregistered broker-dealer or investment adviser and from making untrue or misleading statements of material fact or engaging in any fraudulent or deceitful actions in the course of business. It further ordered that the Commissioner would determine whether to grant the Enforcement Section's petition for civil penalties, restitution, and costs.

c. Otto was a party to this administrative proceeding.

11. On January 18, 2011, the MO SOS issued a Consent Order ("MO Consent Order"). *In the Matter of James E. Otto*, MO SOS Case No. AP-10-11.

a. The Commissioner of Securities found that Otto transacted business in Missouri as an unregistered agent and as an unregistered broker-dealer, and that this conduct constituted grounds to issue an order pursuant to §409.6-604.

b. The MO Consent Order ordered that Otto:

   i. Be prohibited from applying as a securities agent or an Investment Adviser Representative in Missouri for five (5) years;

   ii. Be prohibited from selling variable annuities, transacting business as an investment adviser representative or transacting business as an investment adviser in Missouri; and

   iii. Pay ten thousand dollars ($10,000) as the cost of the investigation. Nine thousand dollars ($9,000) of this amount was suspended on the provision that Otto comply with the provisions of the Consent Order and with the Missouri Securities Act.

c. Otto failed to disclose this administrative proceeding on his Application.

d. Otto failed to report this administrative action to the Director within 30 days of the final disposition of the matter.

12. On March 9, 2011, the Securities Commissioner of the State of Kansas ("Kansas Securities Commissioner") issued a Notice of Intent to Impose Administrative Sanctions ("Kansas Notice of Intent"). *In the Matter of James E. Otto and JOTTO, Inc.*, Kansas Securities Commissioner Case No. 2010-5671.

   a. The Kansas Notice of Intent alleged that Otto transacted business as a broker-dealer while not registered with the Office of the Kansas Securities Commissioner, in violation of K.S.A. 17-12a401 and provided investment advice for compensation while not registered with the Office of the Kansas Securities Commissioner, in violation of K.S.A. 17-12a403.

   b. Otto was a party to this administrative proceeding.

13. On August 17, 2011, the Kansas Securities Commissioner entered into a Stipulation for Consent Order with Otto. *In the Matter of James E. Otto and JOTTO, Inc.*, Kansas Securities Commissioner Case No. 2010-5671.

   a. The Stipulation for Consent Order alleged that Otto transacted business as a broker-dealer while not registered with the Office of the Kansas Securities Commissioner, in violation of K.S.A. 17-12a401 and provided investment advice for compensation while not registered with the Office of the Kansas Securities Commissioner, in violation of K.S.A. 17-12a403.

b. The Kansas Securities Commissioner and Otto stipulated and agreed that Otto would pay one thousand dollars ($1,000) as the cost of the investigation and permanently cease and desist from: (1) transacting business in Kansas as a broker-dealer, investment adviser or investment adviser representative; (2) associating with any broker-dealer or investment adviser transacting business in Kansas unless registered under the Kansas Uniform Securities Act; and (3) engaging in other acts or practices which constitute violation of the Kansas Uniform Securities Act.

14. On August 17, 2011, the Kansas Securities Commissioner entered into a Consent Order with Otto. *In the Matter of James E. Otto and JOTTO, Inc.*, Kansas Securities Commissioner Case No. 2010-5671.

a. The Kansas Securities Commissioner adopted the Allegations of Fact set forth in the Stipulation for Consent Order as true and correct Findings of Fact and adopted the Allegations of Law contained in the Stipulation for Consent Order as true and correct Conclusions of Law.

b. The Consent Order ordered that Otto pay one thousand dollars ($1,000) as the cost of the investigation and permanently cease and desist from: (1) transacting business in Kansas as a broker-dealer, investment adviser or investment adviser representative; (2) associating with any broker-dealer or investment adviser transacting business in Kansas unless registered under the Kansas Uniform Securities Act; and (3) engaging in other acts or practices which constitute violation of the Kansas Uniform Securities Act.

c. Otto failed to disclose this administrative proceeding on his Application.

d. Otto failed to report this administrative action to the Director within 30 days of the final disposition of the matter.

CONCLUSIONS OF LAW

15. Section 375.141.1, RSMo (Supp. 2011),[1] provides, in part:

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;

[1] All statutory references are to the Revised Statutes of Missouri (Supp. 2011) unless otherwise noted.

* * *

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

16. 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).

17. Otto may be refused the renewal of his nonresident insurance producer license pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading, incomplete or untrue information on a license application by failing to disclose that he had been involved as a party in three (3) administrative proceedings. *In the Matter of James E. Otto*, SEC File No. 3-13674; *In the Matter of James E. Otto*, MO SOS Case No. AP-10-11; *In the Matter of James E. Otto and JOTTO, Inc.*, No. 2010-5671, Kansas Securities Commissioner Case No. 2010-5671.

18. Each failure to disclose is a separate and sufficient cause for refusal pursuant to § 375.141.1(1).

19. Otto may be refused the renewal of his nonresident insurance producer license pursuant to § 375.141.1(2) because he violated § 375.141.6 by failing to report the administrative actions of the SEC, the MO SOS, and the Kansas Securities Commissioner to the Director within thirty (30) days of the final dispositions of those matters. *In the Matter of James E. Otto*, SEC File No. 3-13674; *In the Matter of James E. Otto*, MO SOS Case No. AP-10-11; *In the Matter of James E. Otto and JOTTO, Inc.*, No. 2010-5671, Kansas Securities Commissioner Case No. 2010-5671.

20. Each failure to report is a violation of § 375.141.6 and a separate and sufficient cause for refusal pursuant to § 375.141.1(2).

21. Otto may be refused the renewal of his nonresident insurance producer license pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud by failing to disclose that he had been involved as a party in three (3) administrative proceedings. *In the Matter of James E. Otto*, SEC File No. 3-13674; *In the Matter of James E. Otto*, MO SOS Case No. AP-10-11; *In the Matter of James E. Otto and JOTTO, Inc.*, No. 2010-5671, Kansas Securities Commissioner Case No. 2010-5671.

22. Each failure to disclose is a separate and sufficient cause for refusal pursuant to § 375.141.1(3).

23. The Deputy Director has considered Otto's history and all of the circumstances surrounding Otto's Application for renewal of his license and for the reasons stated in this Order exercises his discretion in refusing to renew Otto's nonresident insurance producer license.

24. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the nonresident insurance producer license of **James E. Otto** is hereby **REFUSED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 14th **DAY OF DECEMBER, 2012.**

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, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to § 621.120, RSMo. Under 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 14th day of December, 2012, a copy of the foregoing Order and Notice was served upon the Renewal Applicant in this matter by certified mail No. 7009 3410 0001 9255 5900.

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