State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Teresa Sjostrom,	)	
a/k/a Teresa Mae Ovsak,	)	**Case No. 11-1014739C**
	)	
Applicant.	)	
Serve at:	)	
	)	
919 Ampere Place	)	
Lake St. Louis, Missouri 63367	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On May 30, 2012, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Teresa Sjostrom, a/k/a Teresa Mae Ovsak. 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.

FACTUAL BACKGROUND

1. Teresa Sjostrom, a/k/a Teresa Mae Ovsak ("Sjostrom") is an individual residing in Missouri.

2. On or about October 22, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Sjostrom's Uniform Application for Individual Producer License / Registration ("Application").

3. In her Application, Sjostrom listed her residential, business, and mailing addresses as 919 Ampere Place, Lake St. Louis, Missouri 63367.

4. In completing the Application, Sjostrom attested under penalty of perjury to the truthfulness and completeness of the information she provided in the Application, including her answers to the questions in the section relating to the applicant's criminal history ("Background Questions").

5. In the section of Application headed "Background Questions," Background Question No. 1 asks: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? 'Crime' includes a

misdemeanor, felony or military offense.... 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contender, or having been given probation, a suspended sentence or a fine."

6. Sjostrom answered "Yes" to Background Question No. 1.

7. Sjostrom attached a "Short Form Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. § 1033 and 1034" ("Request for 1033 Waiver") with her Application and disclosed the following criminal history:

a. "Convicted in the Eastern District of Missouri Federal Court on May 4, 2011 of filing fraudulent tax returns for 2004 and 2005, totaling $76,060...;"

b. "Currently under 1 year of probation until May 3, 2012...."

8. On or about April 8, 2010, an Indictment was filed against Sjostrom in the United States District Court, Eastern District of Missouri, alleging, in pertinent part, the following:

> [Sjostrom] did willfully make and subscribe and file with the Internal Revenue Service a Form 1040 for the tax year 2004, which was verified by a written declaration that it was made under the penalties of perjury, which she did not believe to be true and correct as to every material matter ....
>
> In violation of title 26, United States Code, Section 7206(1).
>
> * * *
>
> [Sjostrom] did willfully make and subscribe [sic] file with the Internal Revenue Service a Form 1040 for the tax year 2005, which was verified by a written declaration that it was made under the penalties of perjury, which she did not believe to be true and correct as to every material matter ....
>
> In violation of title 26, United States Code, Section 7206(1).

United States of America v. Teresa Ovsak, U.S.D.Ct., E.D. Mo., Case No. 4:10CR00209 CDP.

9. On or about February 28, 2011, Sjostrom pleaded guilty to two counts of Felony Filing a False Income Tax Return for tax years 2004 and 2005, in violation of 26 USC § 7206(1), in accordance with a Plea Agreement. The court entered a judgment on May 4, 2011, against Sjostrom and sentenced her to "time served," placed her on supervised probation for a term of one year, ordered her to pay "restitution in the total amount of $76,060 to the Internal Revenue Service," and assessed costs of $200 against her. *Plea Agreement* and *Judgment*, *United States of America v. Teresa Ovsak*, U.S.D.Ct., E.D. Mo., Case No. 4:10CR00209 CDP.

10. Sjostrom's supervised probation ended on May 3, 2012. However, her obligation to continue to pay the restitution "will last for 20 years from the date [she was] sentenced," or

May 4, 2011. *United States of America v. Teresa Ovsak*, U.S.D.Ct., E.D. Mo., Case No. 4:10CR00209 CDP

11. By the terms of the Plea Agreement, Sjostrom admitted knowingly violating 26 USC § 7206(1) and the following facts:

a. On or about April 15, 2005, [Sjostrom] prepared an income tax return for the tax year 2004 claiming that she had received $242,673.00 in wages during 2004 from AOL.com, had paid $58,974.00 in tax withholding payments and was entitled to a refund of $37,085.00. [Sjostrom] received said refund from the IRS. However, in fact, as [Sjostrom] knew, [Sjostrom] had not been employed by AOL.com during 2004 and had not made tax withholding payments. Therefore, [Sjostrom] was not entitled to a refund from the IRS. [Sjostrom]'s false return was supported by a counterfeit W-2 Form from AOL.com reflecting wages claimed in said return.

b. Similarly, on or about April 17, 2006, [Sjostrom] filed a false income tax return for tax year 2005, this time claiming $256,453.00 in wages, $63,913.00 in withholding and a refund of $38,975.00, which she received from the IRS. This return was also supported by a false W-2 Form from AOL.com. Both returns were signed by [Sjostrom] under penalties of perjury.

c. [Sjostrom] did not have any earned income for the years in question.

d. The total amount of loss to the IRS is $76,060.00.

United States of America v. Teresa Ovsak, U.S.D.Ct., E.D. Mo., Case No. 4:10CR00209 CDP.

12. By the terms of the Plea Agreement, Sjostrom admitted the following elements of the crime with which she was charged:

a. [Sjostrom] filed an income tax return which was signed under penalties of perjury;

b. [Sjostrom] reported material information on said return which [Sjostrom] did not believe to be true and was not true;

c. [Sjostrom] did so knowingly.

United States of America v. Teresa Ovsak, U.S.D.Ct., E.D. Mo., Case No. 4:10CR00209 CDP.

13. On December 6, 2005, the St. Charles County prosecuting attorney filed an Information against Sjostrom alleging the class C felony of forgery, in violation of § 570.090, RSMo. On February 16, 2006, the court accepted Sjostrom's guilty plea to the class C felony of

forgery. The court suspended the imposition of her sentence, and placed her on probation for a period of five years. Sjostrom competed her SIS probation on or about February 16, 2011. *State of Missouri v. Teresa Mae Ovsak*, St. Charles County Circuit Court, Case No. 0511-CR04590-01.

14. Sjostrom did not disclose the fact that on February 16, 2006, she pled guilty to the Class C Felony of Forgery (*State v. Ovsak*, Case No. 0511-CR04590-01) when she submitted her Application to the Department.

15. Sjostrom intentionally provided materially incorrect, misleading, incomplete or untrue information in her Application when she failed to include information about the felony forgery conviction, as the term "conviction" is defined in the Application.

16. Sjostrom made incomplete statement on her Application for the purpose of misleading the Department into granting her a insurance producer license in Missouri.

17. Sjostrom had an opportunity to provide a complete answer to Background Question # 1 of her Application when she submitted her Application and Request for 1033 Waiver, but she did not provide full disclosure of all of her criminal convictions.

CONCLUSIONS OF LAW

18. Section 375.141 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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> * * *
>
> (1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;
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> * * *
>
> (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]

19. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to her fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man

and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

20. In *Brehe v. Missouri Dept. of Elementary & Secondary Education*, the Missouri Court of Appeals referred to three categories of crimes, the categories being drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):

> (1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);
>
> (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" ("category 2" crimes); and
>
> (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes)

See Brehe v. Missouri Dept. of Elementary & Secondary Education, 213 S.W.3d 720, 725 (Mo. App. 2007)

21. Category 1 crimes require only a showing of a conviction or guilty plea. *Id.*

22. Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved. *Id.*

23. "Moral turpitude has also been found in crimes involving fraud and false pretenses," including filing false tax returns. *In re Frick*, 694 S.W.2d at 479 (citation omitted); *See also*, *State Board of Nursing v. Williams*, No. 08-0463 BN (Mo. Admin. Hrg. Comm'n, Oct. 21, 2008).

24. Title 26 USC § 7206 provides, in pertinent part, as follows:

> Any person who –
>
> (1) Declaration under penalties of perjury
>
> Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter;
>
> * * *
>
> shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

25. Sjostrom's crime of felony filing false tax returns, in violation of 26 USC §7206(1), is a crime involving moral turpitude, in that its essential elements include dishonesty and an intent to defraud. *In re Moon*, 310 S.W.2d 935, 936-37 (Mo. banc 1958); *State Board of Nursing v. Williams*, No. 08-0463 BN (Mo. Admin. Hrg. Comm'n, Oct. 21, 2008).

26. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruiett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972). "A licensee's guilty plea may lead to collateral estoppel, a doctrine that precludes a licensee from denying charges against him." *State Board of Nursing v. Stanton*, No. 05-1661BN (Mo. Admin. Hrg. Comm'n, June 23, 2006).

27. The dictionary definition of "material" is "having real importance or great consequences[.]" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 765 (11th ed. 2004). *Missouri Broad of Cosmetology and Barber Examiners v. Yolanda Cuellar*, No. 08-0750 CB (Mo. Admin. Hrg. Comm'n, December 31, 2008).

28. "A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake." *State Bd. of Cosmetology v. Eddings-Schapeler*, No. 05-0288 CS (Mo. Admin. Hrg. Comm'n, June 29, 2006), citing *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo.App. W.D. 1997).

29. Because Background Question #1 on Sjostrom's Application clearly asked the applicant to report all guilty pleas even if imposition of sentence was suspended, Sjostrom was untruthful and attempted to obtain a producer's license through material misrepresentation or fraud when she failed to disclose her guilty plea to felony forgery on her Application. *Missouri Real Estate Comm'n v. Morgan*, No. 08-1495 RE (Mo. Admin. Hrg. Comm'n, March 3, 2009).

30. Title 18 U.S.C. § 1033(e) states as follows:

> **(e) (1) (A)** Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.
>
> **(B)** Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.
>
> **(2)** A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

31. 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. 1984).

CAUSE FOR ORDER TO REFUSE AN INSURANCE PRODUCER'S LICENSE

32. The Director may refuse to issue an insurance producer license to Sjostrom pursuant to § 375.141.1(1) because she intentionally provided materially incorrect, misleading incomplete or untrue information in her Application, in that Sjostrom failed to disclose the guilty plea for the class C felony of forgery for which she received a suspended imposition of sentence ("SIS") (*State v. Ovsak*, Case No. 0511-CR04590-01).

33. The Director may refuse to issue an insurance producer license to Sjostrom pursuant to § 375.141.1(3) because she attempted to obtain a license through material misrepresentation or fraud, in that Sjostrom failed to disclose the fact that she had pled guilty to the class C felony of forgery and received and SIS (*State v. Ovsak*, Case No. 0511-CR04590-01), a material fact upon which the Department relies in determining whether or not an applicant should be granted a producer license.

34. The Director may refuse to issue an insurance producer license to Sjostrom pursuant to § 375.141.1(6) because the crimes of filing false federal tax returns, in violation of 26 USC § 7206(1), are felonies.

35. The Director may refuse to issue an insurance producer license to Sjostrom pursuant to §375.141.1(6), because the crimes of filing false federal tax returns, in violation of 26 USC § 7206(1), are a crimes of moral turpitude.

36. The Director has considered Sjostrom's history and all of the circumstances surrounding Sjostrom's Application for licensure and exercises his discretion in summarily refusing to grant Sjostrom's resident insurance producer license.

37. The Director has considered Sjostrom's history and all of the circumstances mentioned in the Petition and exercises his discretion in summarily refusing to grant Sjostrom's application for written consent to engage in the business of insurance in accordance with 18 U.S.C. §1033.

38. Granting Sjostrom's insurance producer license or written consent to engage in the business of insurance would not be in the public interest.

39. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license application of **Teresa Sjostrom, a/k/a Teresa Mae Ovsak** is hereby **REFUSED**.

IT IS FURTHER ORDERED that Teresa Sjostrom, a/k/a Teresa Mae Ovsak's application for written consent to engage in the business of insurance in accordance with 18 U.S.C. §1033 is hereby denied.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 7th DAY OF June, 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, 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 7th day of June, 2012, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Teresa Sjostrom
919 Ampere Place
Lake St. Louis, Missouri 63367

Certified Mail No.7009 3410 0001 8931 3261

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