



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:)
)
 PAUL H. FLOWERS,) Case No. 14-0107012C
)
 Renewal Applicant.)

ORDER REFUSING TO RENEW AN INSURANCE PRODUCER LICENSE

On February 11, 2014, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause for refusing to renew Paul H. Flowers' individual resident insurance producer license. After reviewing the Petition, the Investigative Report, and the entirety of the file, James R. McAdams, Deputy Director, issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Paul H. Flowers, ("Flowers") is a Missouri resident with a residential address of 4051 Jeffco Boulevard, Suite 2, Arnold, Missouri 63010.
2. The Department of Insurance, Financial Institutions, and Professional Registration ("Department") issued Flowers an individual resident insurance producer license (License No. 0222967) on February 2, 1973, which was most recently renewed on February 16, 2012. Said license is set to expire on February 15, 2014.
3. On May 1, 2013, the Department received a Consumer Complaint Report from Carol Boettcher ("Boettcher") that states, in part:

I was told by Paul Flowers the price of the policy for insurance on my cottages was \$1992.45. I gave him a check for 1100.00. He said I could make payments for the balance and the interest would be about \$50.00. I then got a finance agreement in the mail from IPFS Corp. It showed my total premium of 1686.50 with a down payment of \$600.00. I called them and told them I knew nothing about this agreement and the figures did not ad[d] up. They said I signed the agreement and they had a copy. I asked them to email it to me. I did not sign it or even see it.

...

At no time did Paul Flowers mention a brokers fee. I thought the \$1100.00 check was going as payment for my cottage insurance.

...

After I called Paul he sent the letter breaking down the costs along with a copy of the finance agreement.

...

He showed my down payment of 1100.00. The down [] payment he showed of \$500 went to the insurance company. He said the finance company required 600.00.

4. Boettcher's Consumer Complaint Report also had attachments that include, but are not limited to the following:

a. Certificate of Insurance, Commercial Lines Certificate, Common Declarations, No. LLG064759. Effective from February 12, 2013 to February 12, 2014. The "Premium" is broken down as follows:

Commercial General Liability Coverage Part	\$485.00
Policy Fee	\$335.00
State Tax	\$28.50
Total	\$848.50

b. Common Policy Declarations, Policy No. GLP004283, Renewal of GLP003306. Effective from February 11, 2013 to February 11, 2014. The "Premium" is broken down as follows:

Commercial Property Coverage Part	\$754.00
Policy Fee	\$325.00
State Tax	\$41.95
Total	\$1,120.95

c. A copy of the Premium Finance Agreement that Boettcher received from Flowers. This copy is unsigned and includes a handwritten note by the total that states "Broker Fee \$258.05". The form does include a column for broker's fees, but that column shows a "broker fee" of "\$0.00."

d. A second copy of the Premium Finance Agreement that Boettcher received directly from IPFS Corporation. This copy does not include a handwritten note regarding broker's fees and the column for broker's fees includes a typewritten "\$0.00." This copy is signed by Flowers and "C. Boettcher". Boettcher states that she did not sign this document.

5. On May 3, 2013, the Consumer Affairs Division ("Division") informed Flowers via standard mail of Boettcher's allegations against him and requested a detailed letter of explanation regarding the allegations in the attached copy of Boettcher's Consumer Complaint Report.
6. Flowers responded in a letter dated May 14, 2013. However, Flowers response failed to address all issues listed in Boettcher's Consumer Complaint Report.
7. On May 22, 2013, the Division sent a letter and a copy of Boettcher's Consumer Complaint Report to Jaeger + Haines, Inc., the company who writes policies for Flowers. The Division's letter asked that Jaeger + Haines, Inc. review the Consumer Complaint Report, advise the Division of its findings, and attach any documentation that explains the matters at issue.
8. Jaeger + Haines, Inc. responded to the Division in a letter dated May 29, 2013. The letter included a breakdown of the premiums, fees, and taxes of the policies Jaeger + Haines, Inc. had written for Boettcher and included copies of the Certificates of Insurance and declarations pages.

- a. Certificate of Insurance, Commercial Lines Certificate, Common Declarations, No. LLG064759. Effective from February 12, 2013 to February 12, 2014. The "Premium" is broken down as follows:

Commercial General Liability Coverage Part	\$485.00
Policy Fee	\$85.00 ¹
State Tax	\$28.50
Total	\$598.50

- b. Common Policy Declarations, Policy No. GLP004283, Renewal of GLP003306. Effective from February 11, 2013 to February 11, 2014. The "Premium" is broken down as follows:

Commercial Property Coverage Part	\$754.[00]
Policy Fee	\$85.00 ²
State Tax	\$41.95
Total	\$880.95

9. On June 5, 2013, the Division emailed Jaeger + Haines, Inc. regarding the discrepancy in the premiums listed on the Certificates of Insurance that Jaeger + Haines, Inc. and Flowers issued to Boettcher.

¹ The Insured copy that Flowers provided to Boettcher listed the policy fee at \$335.00 and the total at \$848.50. See ¶ 4.a.

² The Insured copy that Flowers provided to Boettcher listed the policy fee at \$325.00 and the total at \$1,120.95. See ¶ 4.b.

10. On June 6, 2013, the Sr. Vice President of Jaeger + Haines, Inc. responded via email, in part, as follows:

All policies referenced in my May 29th letter to you were issued in our office. The retail agent does not issue these policies or any policies on our behalf.

The certificates of insurance we provided you, "General Agent" shown at the bottom, is an exact duplicate of the "Insured" certificates of insurance that we sent to the retail agent, with the exception of Mike's signature on the Insured copy. It appears that the "Policy Fee" and "Total" section of the Premium column on the "Insured" copies that you sent me have been altered. The total premium amounts shown on the General Agent certificates of insurance are the amounts we billed the retail agent.

11. On June 13, 2013, the Division sent a second letter to Flowers via standard mail that requested specific information, including but not limited to, who signed Boettcher's name to the finance agreement, an explanation as to why the policy was altered, and a copy of the Producer Service Fee Agreement.
12. Flowers responded to the Division in a letter dated July 1, 2013. In his letter, Flowers claimed that Boettcher signed her own name, that Flowers altered the declaration sheet of the policy to add his agency fee, and stated that he does not have a Producer Service Fee Agreement. Flowers further explained that he "did not break down the figures until Carol Boettcher questioned the pricing."
13. On October 2, 2013, Flowers appeared before the Division at a Subpoena Conference where he testified, under oath, regarding the circumstances that led to Boettcher's Consumer Complaint Report. Flowers testified that:
 - a. He does not have a schedule of the broker's fees that he charges;
 - b. He did not have a Producer Service Fee Agreement with Boettcher and it is not his general business practice to obtain one;
 - c. He did not disclose his broker's fee to Boettcher prior to her purchase;
 - d. He altered the Certificates of Insurance issued by Jaeger + Haines, Inc., without their authorization, to include his broker's fee in the column titled "Policy Fee";
 - e. He altered the Certificates of Insurance by making a copy of the Certificates, putting white-out over the fee section, making a second copy of the document, and then typing in the new amount;

- f. He did not disclose his broker's fee to Boettcher prior to her purchase because he didn't want her to try to negotiate the fee and argue with him; and
 - g. No one else in his office physically witnessed Boettcher signing the Finance Agreement.
14. On October 24, 2013, the Division received an email from Flowers with a letter addressed to Boettcher attached and a copy of a \$500.00 check attached. The check was made payable to Carol Boettcher and the Memo of the check stated "Return Broker Fee".
 15. On December 2, 2013, the Department received Flower's "Application for Resident License Renewal" ("Renewal Application").

CONCLUSIONS OF LAW

16. Section 375.141 RSMo (Supp. 2013)³ states, 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 another insurance commissioner in another 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;
 - * * *
 - (10) Signing the name of another to an application for insurance or to any document related to an insurance transaction without authorization[.]

³ All statutory references are to the RSMo (2000) as updated by the 2013 Supplement, unless otherwise indicated.

17. Section 375.116.3 RSMo states:

No insurance producer shall have any right to compensation other than commissions deductible from premiums on insurance policies or contracts from any applicant for insurance or insured for or on account of the negotiation or procurement of, or other service in connection with, any contract of insurance made or negotiated in this state or for any other services on account of insurance policies or contracts, including adjustment of claims arising therefrom, unless the right to compensation is based upon a written agreement between the insurance producer and the insured specifying or clearly defining the amount or extent of the compensation. Nothing contained in this section shall affect the right of any insurance producer to recover from the insured the amount of any premium or premiums for insurance effectuated by or through the insurance producer.

18. Section 375.144 RSMo states, in relevant 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;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression[.]

19. Section 375.934 RSMo states, in relevant part:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

- (1) It is committed in conscious disregard of sections 375.930 to 375.948 or any rules promulgated under sections 375.930 to 375.948[.]

20. Section 375.936 RSMo states, in relevant part:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

- (7) "Misrepresentation in insurance applications", making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, agency, broker or other person[.]

21. Section 375.991.2 RSMo states:
- (2) For the purposes of sections 375.991 to 375.994, a person commits a "fraudulent insurance act" if such person knowingly presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any oral or written statement including computer generated documents as part of, or in support of, an application for the issuance of, or the rating of, an insurance policy for commercial or personal insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance, which such person knows to contain materially false information concerning any fact material thereto or if such person conceals, for the purpose of misleading another, information concerning any fact material thereto.
22. 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).
23. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Flowers violated a Missouri insurance law, namely § 375.116.3, when he took compensation from Boettcher, an insured, without having a written agreement with Boettcher specifying or clearly defining the amount or extent of the compensation.
24. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Flowers violated a Missouri insurance law, namely § 375.144(1), when he employed any deception, device, scheme, or artifice to defraud in connection with the offer, sale, solicitation or negotiation of insurance when he failed to disclose his broker's fee to Boettcher prior to her purchase and altered the Certificates of Insurance issued by Jaeger + Haines, Inc., without their authorization, to include his broker's fee. Each deception, device, scheme or artifice to defraud is a separate violation of § 375.144(1), and therefore, separate grounds for refusal under § 375.141.1(2).
25. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Flowers violated a Missouri insurance law, namely § 375.144(2), when he misrepresented, concealed, or suppressed a material fact in connection with the offer, sale, solicitation or negotiation of insurance when he failed to disclose his broker's fee to Boettcher prior to her purchase and altered the Certificates of Insurance issued by Jaeger + Haines, Inc., without their authorization, to include his broker's fee. Each misrepresentation, concealment, or suppression of a material fact is a separate violation of § 375.144(2), and therefore, separate grounds for refusal under § 375.141.1(2).

26. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Flowers violated a Missouri insurance law, namely § 375.934, by engaging in an unfair trade practice under § 375.936(7), when he, in conscious disregard of the law, made false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee from Boettcher when he altered the Certificates of Insurance issued by Jaeger + Haines, Inc. to include his broker's fee, which had not been disclosed to Boettcher.
27. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(2) because Flowers violated a Missouri insurance law, namely § 375.991.2, because he committed a "fraudulent insurance act" when he knowingly presented in support of an insurance policy an altered Certificate of Insurance and an altered Common Policy Declarations page which Flowers knew contained materially false information concerning any fact material thereto, namely the altered fee amounts on said documents, or concealed, for the purpose of misleading another, information concerning any fact material thereto, namely the altered fee amounts on said documents.
28. Each instance in which Flowers violated an insurance law or regulation is a separate and sufficient cause to refuse renewal of Flowers' individual resident insurance producer license pursuant to § 375.141.1(2).
29. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(4) because Flowers improperly withheld, misappropriated, or converted money received in the course of doing insurance business when he took a portion of Boettcher's payment and applied it towards his broker's fee without disclosing said broker's fee to Boettcher prior to her purchase.
30. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(10) because Flowers signed the name of another, Boettcher, to a document related to an insurance transaction without authorization, namely Boettcher's Premium Finance Agreement.
31. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(8) because Flowers used dishonest practices and demonstrated incompetence and untrustworthiness in the conduct of business when he took a portion of Boettcher's payment and applied it towards his broker's fee without disclosing said broker's fee to Boettcher prior to her purchase.
32. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(8) because Flowers used dishonest practices and demonstrated incompetence and untrustworthiness in the conduct of business when he altered dollar amounts on Boettcher's Certificates of Insurance to include his broker's

fees.

33. Renewal of Flowers' individual resident insurance producer license may be refused pursuant to § 375.141.1(8) because Flowers used dishonest practices and demonstrated incompetence and untrustworthiness in the conduct of business when he signed Boettcher's name to the Premium Finance Agreement without her authorization.
34. Each instance in which Flowers used dishonest practices and demonstrated incompetence and untrustworthiness in the conduct of business is a separate and sufficient cause to refuse renewal of Flowers' individual resident insurance producer license pursuant to § 375.141.1(8).
35. The Director has considered Flowers' history and all the circumstances surrounding Flowers' Renewal Application. Renewing Flowers' individual resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to renew Flowers' individual resident insurance producer license for each of the reasons stated in paragraphs 23 through 33 above.
36. This Order is in the public's interest.

ORDER

IT IS THEREFORE ORDERED that the individual resident insurance producer license renewal application of **Paul H. Flowers** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 13th DAY OF FEBRUARY, 2014.





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 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 13th day of February, 2014 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required of the addressee, at the following address:

Paul H. Flowers
4051 Jeffco Boulevard
Suite 2
Arnold, Missouri 63010

No. 1ZOR15W82993686946

Lori Eggen
Lori Eggen, Administrative Assistant
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: lori.eggen@insurance.mo.gov