STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
LAM MINH PHAN,	)	**Case No. 131125599C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE INDIVIDUAL NAVIGATOR LICENSE

On January 6, 2014, Mary S. Erickson, counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an individual navigator license to Lam Minh Phan. 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. Lam Minh Phan ("Phan") is an individual residing in Missouri.

2. On October 4, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Phan's Application for Navigator License ("Application").

3. In her Application, Phan listed her residential and mailing address as 4500 NE Vivion Rd., Kansas City, Missouri, 64119, and her business address as 825 Euclid Ave., Kansas City, Missouri, 64124.

4. Phan's Application became complete on or about October 10, 2013, when, after an inquiry by the Department's Licensing Section, Kelly Baker, with Samuel U. Rodgers Health Center, supplemented Phan's Application with an additional document.

5. In signing her Application, Phan certified and attested 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 . . . denial of the license and may subject me to civil or criminal penalties.

6. In the section of Application entitled "Background Questions," Background Question No. 2 asks, in relevant part:

> Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?
>
> "Involved" means having a license censured, suspended, revoked, canceled, terminated; or being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You must INCLUDE any business so named because of your actions, in your capacity as an owner, partner, officer, 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. Phan answered "No" to Background Question No. 2.

8. Contrary to Phan's "No" to Background Question No. 2, Phan in fact has been named or involved as a party in two administrative actions against a professional license:

a. On July 12, 2010, the Kansas Department of Insurance revoked Phan's nonresident insurance agent's license for improperly withholding, misappropriating, or converting money received in the course of doing insurance business and using dishonest practices and demonstrating untrustworthiness or financial irresponsibility in the conduct of business pursuant to Kansas Statute 40-4909(a). *Summary Order, In the Matter of the Kansas Nonresident Insurance Agent's License of Lam M. Phan,* Kansas Commissioner of Insurance, (Final Order effective August 9, 2010), Docket No. 4175-SO.

   i. In the Summary Order, Kansas found that Farmers Insurance Group ("Farmers") terminated Phan's agency contract following an audit which detailed that Phan "had, over a period of months, credited premium payments made by insureds and delayed deposits of cash and check payments, using cash for other purposes and depositing premium payments in arrears." *Id.*

   ii. Phan admitted that she had "lost" premium payments but "intended to repay the premiums but she did not have the funds to do so and she used new premium payments to cover outstanding obligations." *Id.*

   iii. Phan did not appeal the Kansas order revoking her license.

b. On September 13, 2011, the Director issued a Consent Order, signed by Phan, revoking Phan's resident insurance producer license under § 375.141.1(2), (4), (7), (8), and (9). *Consent Order, In the Matter of: Lam M. Phan,* Missouri Dep't of Ins., Fin. Insts. & Prof'l Registr., Case No. 101213746C. Specifically, the Director found and Phan agreed that her resident insurance producer's license was subject to discipline on the following grounds:

i. Improperly withholding, misappropriating or converting any moneys received in the course of doing insurance business and using dishonest practices, or demonstrating untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere in violation of Kansas Statute 40-4909(a) which is a ground to discipline under § 375.141.1(2) RSMo (Supp. 2009).[1]

ii. Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business pursuant to § 375.141.1(4).

iii. Having admitted to committing any insurance unfair trade practice or fraud pursuant to § 375.141.1(7). "Fraud is defined as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." *Fin. Solutions and Assocs. v. Carnahan*, 316 S.W.3d 518, 528 (Mo. App. W.D. 2010). Phan concealed from Farmers that she had "lost a significant amount of money". This concealed, material fact induced Farmers to act to its detriment by not correcting the situation sooner or by not terminating Phan's employment sooner.

iv. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere pursuant to § 375.141.1(8).

v. Having an insurance producer license, or its equivalent, denied, suspended or revoked in Kansas pursuant to § 375.141.1(9).

vi. Failing to report to the Director the administrative action in Kansas within 30 days of the final disposition of the matter, as required by §375.141.6, which is grounds to discipline under § 375.141.1(2).

[1] The September 13, 2011 Consent Order references § 375.141.1 RSMo (Supp. 2009). Because there have been no substantive statutory changes to that statute referenced herein, all subsequent references are to RSMo (Supp. 2013) unless otherwise indicated.

vii. Phan did not appeal the September 13, 2011 Consent Order to the Administrative Hearing Commission as allowed by § 621.045 RSMo (Supp. 2009).

9. On October 21, 2013, Special Investigator Jodi Lehman, Consumer Affairs Division, mailed Phan an inquiry requesting an explanation of Phan's "No" answer to Background Question No. 2 in light of the Missouri and Kansas revocations.

10. In her October 22, 2013 email, Phan responded to the inquiry, verbatim:

> Good morning.
> I probably make a mistake when marked "no" on that question. The way that question worded was misleaded me. I thought it is referred to an officer of an insurance company, which I am not.
> Thank you.

11. Phan's explanation that she answered "No" to Background Question No. 2 and failed to disclose the two administrative actions against her[2] because the wording of the question misled her is not credible. The language of Background Question No. 2 is plain and unambiguous: "Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?"

12. Background Question No. 2 clearly called for a "Yes" answer by Phan based on the two administrative actions, by Kansas and Missouri, to revoke her insurance agent license and insurance producer license, respectively.

13. Phan's response that she was misled by Background Question No. 2 is also not sincere or reliable because Phan is a former Missouri resident insurance producer who was aware, both as a producer and specifically through the September 2011 Consent Order, that it is grounds for the Director to revoke or refuse a license under § 375.141.1(9) for having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state.

14. It is inferable, and hereby found as fact, that Phan falsely answered "No" to Background Question No. 2 and failed to disclose the administrative actions against her professional licenses in order to materially misrepresent to the Director that she had never been named or involved as a party in an administrative proceeding regarding any professional license. Phan materially misrepresented by omission her prior administrative actions in order to improve the chances that the Director would approve her Application and issue her an individual navigator license.

15. Phan made materially incorrect, misleading, incomplete, or untrue statements on her Application for the purpose of inducing the Director to issue her an individual navigator

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[2] *In the Matter of the Kansas Nonresident Insurance Agent's License of Lam M. Phan,* Kansas Commissioner of Insurance, Docket No. 4175-SO; *Consent Order, In the Matter of: Lam M. Phan,* Missouri Dep't of Ins., Fin. Insts. & Prof'l Registr., Case No. 101213746C.

license.

16. Background Question No. 5 asks, in relevant part: "Have you ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct?"

17. Phan marked "Yes" to Background Question No. 5, but failed to submit documentation as required by the Application. After an inquiry by the Department's Licensing Section, Kelly Baker, with Samuel U. Rodgers Health Center, supplemented Phan's Application with a February 5, 2010 letter from Farmers to the Department providing notice regarding Lam Phan's termination of appointment with Farmers because "Phan mishandled premiums belonging to the Company."

CONCLUSIONS OF LAW

18. Section 376.2004 RSMo (Supp. 2013) provides, in relevant part:

> 1. An individual applying for a navigator license shall make application to the department on a form developed by the director and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual:
>
> * * *
>
> (3) Is not disqualified for having committed any act that would be grounds for refusal to issue, renew, suspend, or revoke an insurance producer license under section 375.141[.]

19. Section 375.141 provides, in part, as follows:

> 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:
>
> (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;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

* * *

(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 state, province, district or territory[.]

* * *

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.

20. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, 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), the purpose of § 376.2004 is not to punish applicants for an individual navigator license, but to protect the public.

CAUSE FOR ORDER TO REFUSE TO ISSUE INDIVIDUAL NAVIGATOR LICENSE

21. The Director may refuse to issue Phan an individual navigator license pursuant to § 375.141.1(1), as incorporated by § 376.2004.1(3), because she intentionally provided materially incorrect, misleading, incomplete or untrue information in her Application when she failed to disclose the administrative actions taken against her by Kansas and Missouri. Given the fact that these actions against Phan occurred recently, in 2010 and 2011, respectively, it is not credible that Phan forgot about the administrative actions revoking her licenses nor is it credible that Phan misunderstood Background Question No. 2. Rather, based upon the circumstances, it can be concluded that Phan intentionally provided materially incorrect, misleading, incomplete or untrue information in her Application in hopes that the Director did not discover the administrative actions so that the Director would issue her a license.

22. Each failure to disclose an administrative action on her Application is a separate and sufficient cause to refuse to issue Phan a navigator license pursuant to § 375.141.1(1), as incorporated by § 376.2004.1(3).

23. The Director may refuse to issue Phan an individual navigator license pursuant to § 375.141.1(2), as incorporated by § 376.2004.1(3), because she violated the insurance laws of Kansas and Missouri, specifically:

a. Improperly withholding, misappropriating or converting any moneys received in the course of doing insurance business and using dishonest practices, or demonstrating untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere in violation of Kansas Statute 40-4909(a). *In the Matter of the Kansas Nonresident Insurance Agent's License of Lam M. Phan,* Kansas Commissioner of Insurance, (Final Order effective August 9, 2010), Docket No. 4175-SO; and

b. Failing to report to the Director the administrative action in Kansas within 30 days of the final disposition of the matter, as required by § 375.141.6.

24. Each violation of law is a separate and sufficient cause to refuse to Phan's navigator license pursuant to § 375.141.1(2), as incorporated by § 376.2004.1(3).

25. The Director may refuse to issue Phan an individual navigator license pursuant to § 375.141.1(3), as incorporated by § 376.2004.1(3), because she attempted to obtain a license through material misrepresentation or fraud, when she failed to disclose the administrative actions taken against her by Kansas and Missouri. Based upon the circumstances described above, it can be concluded that Phan made material misrepresentations on her Application to induce the Director to issue her a license.

26. Each failure to disclose an administrative action on her Application is a separate and sufficient cause to refuse to Phan a license pursuant to § 375.141.1(3), as incorporated by § 376.2004.1(3).

27. Phan's individual navigator license may also be refused because she improperly withheld, misappropriated or converted money or property received in the course of doing insurance business pursuant to § 375.141.1(4), as incorporated by § 376.2004.1(3). Phan admitted and the Kansas Department of Insurance found as a matter of fact and law that Phan, *inter alia*, "lost" premiums owed an insurer on behalf of consumers and that she used the premium money for other purposes.

28. Because Phan both admitted to and has been found to have committed an insurance unfair trade practice or fraud, the Director may refuse to issue Phan an individual navigator license § 375.141.1(7), as incorporated by § 376.2004.1(3).

29. Phan may be refused a license because she used fraudulent or dishonest practices or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere pursuant to § 375.141.1(8), as incorporated by § 376.2004.1(3), based upon Phan's unlawful conduct set forth above.

30. Finally, the Director may refuse to issue Phan an individual navigator license pursuant to § 375.141.1(9), as incorporated by § 376.2004.1(3), because Phan's insurance producer license, or its equivalent, was revoked in Kansas.

31. Pursuant to § 376.2004.1(3), Phan is disqualified from having an individual navigator's license because she committed numerous acts that would be grounds to refuse to issue Phan an insurance producer license under § 375.141.1, specifically § 375.141.1(1), (2), (3), (4), (7), (8), and (9).

32. The Director has considered Phan's history and all of the circumstances surrounding her Application. As such, granting Phan an individual navigator license would not be in the interest of the public. For all of the reasons stated in this Order, the Director exercises his discretion by refusing to issue Phan an individual navigator license.

33. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the application for an individual navigator license of LAM MINH PHAN is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 8th **DAY OF JANUARY, 2014.**

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 § 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 10th day of January, 2014, a copy of the foregoing notice and order was served upon Lam Minh Phan in this matter by certified mail, through UPS with signature required, electronic tracking, at the following addresses:

Lam Minh Phan
4500 NE Vivion Rd.
Kansas City, MO 64119

Tracking No. 1Z0R15W84298041563

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