State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Patrick Moore,	)	**Case No. 13-0111028C**
Applicant.	)	

ORDER REFUSING TO RENEW INSURANCE PRODUCER LICENSE

On January 28, 2013, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to renew the insurance producer license of Patrick Moore. 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. Patrick Moore ("Moore") is an individual residing in Missouri.

2. On November 5, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Moore's Uniform Electronic Renewal Application for Individual Insurance Produce License ("Application").

3. In his Application, Moore listed his residential, business, and mailing addresses as 465 Naomi Ave. Florissant, Missouri 63031.

4. Moore was originally licensed as an insurance producer, license number 0104309, on January 31, 2001, and such license is set to expire on January 31, 2013.

5. At all relevant times, Moore was appointed with Monumental Life Insurance Company ("Monumental") until December 31, 2008.

6. On August 31, 2009, the Department received a letter from Monumental stating that it conducted a "final audit" of Moore's business upon his departure from the company "which revealed shortages in the amount of $4,212.62." In that letter, Moore's indebtedness to Monumental broke down as follows:

   a. $3,391.02 in "Policyholder Premiums collected from insureds but not remitted to the company;"

   b. $524.60 in "Policyholder Premiums collected from insureds but not deposited in the bank;" and

c. $297.00 in "Unreturned Equipment."

7. Moore's employment or agent contract with Monumental authorized him to collect premiums from policyholders assigned to his agency and required him to then deposit the premiums into Monumental's account. A final audit of Moore's accounts by Monumental revealed premium shortages owed to Monumental in the amount of $3,915.62.

8. To date, Monumental has not received any payments from Moore on the premium shortages owed to Monumental.

9. Special Investigator Dennis Fitzpatrick, Consumer Affairs Division, mailed Moore the following letters, requesting information about the allegations made by Monumental against him:

a. Letter dated September 1, 2009, and addressed to Moore at 465 Naomi Ave., Florissant, Missouri 63031. This letter required a response by September 22, 2009. This letter was not returned to the Department as undeliverable or with notice of any forwarding address.

b. Letter dated October 21, 2009, and addressed to Moore at 465 Naomi Ave., Florissant, Missouri 63031. This letter required a response by November 12, 2009. This letter was not returned to the Department as undeliverable or with notice of any forwarding address.

c. Letter dated January 31, 2011, and addressed to Moore at 465 Naomi Ave., Florissant, Missouri 63031. This letter required a response by February 22, 2011. This letter was not returned to the Department as undeliverable or with notice of any forwarding address.

d. Letter dated March 10 2011, and addressed to Moore at 465 Naomi Ave., Florissant, Missouri 63031. This letter required a response by March 31, 2011. This letter was not returned to the Department as undeliverable or with notice of any forwarding address.

e. Three letters dated March 29, 2012, and addressed to Moore at the following addresses:

i. 465 Naomi Ave., Florissant, Missouri 63031;

ii. GMAC Insurance Marketing, PO Box 3199, Winston-Salem, NC 27102-3199; and

iii. GMAC Insurance Marketing, Inc., 13736 Riverport Dr., Ste. 700, Maryland Heights, MO 63043.

iv. Each of these letters required a response by April 20, 2012.

v. None of these letters were returned to the Department as undeliverable or with notice of any forwarding address.

f. Letter dated July 31, 2012, and addressed to Moore at 465 Naomi Ave., Florissant, Missouri 63031. This letter required a response by August 20, 2012. This letter was not returned to the Department as undeliverable or with notice of any forwarding address.

10. Although Moore contacted Special Investigator Fitzpatrick by telephone on September 22, 2009, regarding the September 1, 2009 letter and asked for additional time to respond and provide the requested documents, Moore never responded in writing or provided the requested documents to Special Investigator Fitzpatrick and failed to demonstrate a reasonable justification or the delay or lack of response.

11. Moore failed to respond to the September 1, 2009, October 21, 2009, January 31, 2011, March 10 2011, March 29, 2012, or July 31, 2012 letters within 20 days from the date the letters were mailed and failed to demonstrate a reasonable justification for the delay or the lack of response.

12. Moore appeared before the Department on October 17, 2012, pursuant to a September 19, 2012 subpoena duces tecum and testified under oath ("Subpoena Conference").

13. During the Subpoena Conference, Moore admitted the following:

a. That as all relevant times, his address was 465 Naomi Ave., Florissant, Missouri 63031;

b. That he regularly received mailed at 465 Naomi Ave., Florissant, Missouri 63031;

c. That he received all of the letters Special Investigator Fitzpatrick mailed to him at 465 Naomi Ave., Florissant, Missouri 63031;

d. That, other than his September 22, 2009 phone call, he did not respond in any way to any of Special Investigator Fitzpatrick's letters on or before the date requested;

e. That he did not produce or submit any of the requested documentation to Special Investigator Fitzpatrick as requested in any of the letters mailed to him at 465 Naomi Ave., Florissant, Missouri 63031;

f. That he failed to bring all of the documentation requested by Special Investigator Fitzpatrick to the subpoena conference as requested in the September 19, 2012 subpoena duces tecum; and

g. That as of October 17, 2012, he had made no payments to Monumental nor had any contact with Monumental to resolve any of the payment issues that were the basis of Monumental's August 27, 2009 report to the Department.

CONCLUSIONS OF LAW

14. Section 375.141 (Supp. 2012)[1] provides, 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:
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> * * *
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> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
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> * * *
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;
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> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

15. Section 374.210.2 provides:

> 2. If a person does not appear or refuses to testify, file a statement, **produce records**, or otherwise does not obey a subpoena as required by the director, the director may apply to the circuit court of any county of the state or any city not within a county, or a court of another state to enforce compliance. The court may:
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> (1) Hold the person in contempt;
>
> (2) Order the person to appear before the director;
>
> (3) Order the person to testify about the matter under investigation or in question;
>
> (4) Order the production of records;
>
> (5) Grant injunctive relief;

[1] All statutory references are to the 2012 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

(6) Impose a civil penalty of up to fifty thousand dollars for each violation; and

(7) Grant any other necessary or appropriate relief.

The director may also suspend, revoke or refuse any license or certificate of authority issued by the director **to any person who does not** appear or refuses to testify, file a statement, **produce records**, or does not obey a subpoena.

(emphasis added).

16. Title 20 CSR 100-4.100(2)(A) provides, in part, as follows:

(2) Except as required under subsection (2)(B)—

(A) Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

17. Title 20 CSR 700-1.140(1)(D) provides, in part, as follows:

Insurance producers shall remit all premium payments associated with a personal insurance policy to those persons entitled to them as soon as is reasonably possible after their receipt by the licensee, but in no event later than thirty (30) days after the date of receipt, provided, however, that premiums may be remitted at a later point in time if the licensee is so authorized under a written agreement between the licensee and the person legally entitled to the premiums.

18. Under Missouri law, when a letter is duly mailed by first class mail, there is a rebuttable presumption that the letter was delivered to the addressee in the due course of the mails. *Hughes v. Estes*, 793 S.W.2d 206, 209 (Mo. App. 1990).

19. 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 REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

20. The Director may refuse to renew Moore's insurance producer license pursuant to § 375.141.1(2) because Moore violated 20 CSR 100-4.100(2)(A) by failing to respond to the September 1, 2009, October 21, 2009, January 31, 2011, March 10 2011, March 29, 2012, or

July 31, 2012 letters and failed to demonstrate a reasonable justification for the delay. Each failure to respond to the Department's inquiries are separate and sufficient grounds for disciplining Moore's Missouri insurance producer license pursuant to § 375.141.1(2).

21. The Director may refuse to renew Moore's insurance producer license pursuant to § 375.141.1(2) because Moore violated § 374.210.2 by failing to produce sufficient documentation to fully answer or respond to the September 19, 2012 subpoena duces tecum served on him.

22. The Director may refuse to renew Moore's insurance producer license pursuant to § 375.141.1(2) because Moore violated a subpoena of the director by failing to produce sufficient documentation to fully answer or respond to the September 19, 2012 subpoena duces tecum served on him.

23. The Director may refuse to renew Moore's insurance producer license pursuant to § 375.141.1(2) because Moore violated 20 CSR 700-1.140(1)(D), in that Moore failed to remit premiums collected from his insurance clients to Monumental within 30 days after the date of receipt.

24. The Director may refuse to renew Moore's insurance producer license to pursuant to § 375.141.1(4) because Moore withheld premiums collected from his insurance clients to Monumental.

25. The Director may refuse to renew Moore's insurance producer license to Moore pursuant to § 375.141.1(8) because Moore used dishonest practices and/or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state, based on the following facts:

a. Moore failed to remit premiums collected from his insurance clients to Monumental and/or deposit premiums into the Monumental's designated bank account;

b. Moore failed to respond timely and with the requested documentation to Special Investigator Fitzpatrick's multiple letters as required by Missouri law;

c. Moore failed to produce all documentation as required by the September 19, 2012 subpoena duces tecum served on him as required by Missouri law; or

d. Moore failed to remit premiums to Monumental and/or deposit premiums into the Monumental's designated bank account as required by his employment contract with Monumental.

e. Moore's actions or inactions show an inability or unwillingness to function properly as an insurance producer and demonstrates incompetency, untrustworthiness, and financial irresponsibility in the conduct of business.

26. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding Moore's Application for renewal and, for all of the reasons given in this Order, exercises his discretion in refusing to renew Moore's insurance producer license.

27. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of PATRICK MOORE'S insurance producer license of is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 29th DAY OF JANUARY, 2013.

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 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 30th day of January, 2013, a copy of the foregoing notice and order was served upon Patrick Moore in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Patrick Moore
465 Naomi Ave.
Florissant, Missouri 63031

Certified Mail # 7009 3410 0001 9255 5955

Kathryn Randolph
Missouri Department of Insurance,
Financial Institutions and Professional Registration
P.O. Box 690
Jefferson City, Missouri 65102
Telephone: (573) 751-2619