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MO. DEPT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Corinna Lynn Ponder,	)	Case No.: 100401420C
	)	
Applicant.	)	

ORDER REFUSING TO RENEW INSURANCE PRODUCER LICENSE

On June 15, 2011, Ross A. Kaplan, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Deputy Director ("Director") alleging cause for refusing to renew an insurance producer license to Corinna Lynn Ponder. 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. Corinna Lynn Ponder ("Ponder") is an individual residing in Missouri.

2. On May 10, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Ponder's Uniform Electronic Renewal Application for Individual Insurance Producer License ("Application").

3. In her Application, Ponder listed her residential, business, and mailing addresses as 3463 Summerlyn Dr., Saint Louis, Missouri 63129.

4. Ponder was originally licensed as an insurance producer, license number 0132627, on June 18, 1993, such license has been subsequently renewed and is set to expire on June 18, 2011.

5. At all times relevant to this Order, Ponder was employed as a closing agent[1] for Title Professionals, L.L.C. d/b/a Title Pros ("Title Pros").[2]

6. Title Pros was a title insurance agency that issued title insurance policies, handled escrow accounts, and closed refinance and sale transactions.

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[1] For the purposes of this Order, closing agent and settlement agent are used synonymously.

[2] Ponder worked for Title Pros from November 29, 2006 until the business was shut down by its underwriter, Old Republic National Title Insurance Company ("Old Republic").

7. On March 29, 2007, Ponder acted as a closing agent for Robert and Mary Ann Pierce. The Pierces obtained a refinance for their home through John Stone Mortgage Inc. ("JSM"), a mortgage broker, and Flagstar Bank, FSB ("FSB"), a mortgage lender.[3]

8. During the March 29, 2007 closing, Ponder signed a statement within the "Closing Instructions" verifying to FSB that: "The attached HUD-1 Settlement Statement is a true and accurate account of this transaction. I agree and acknowledge that I will cause the funds to be disbursed in accordance with this statement."

9. The FSB closing instructions for the March 29, 2007 closing also instructed the closing agent that: "Flagstar Bank Funding Department must pre-approve the final HUD 1 Settlement Statement and Truth-in-Lending… Funding will not occur until proper documents have been received."

10. On line 303 of the HUD-1 statement from the March 29, 2007 closing, Ponder stated that the Pierces would provide $3,067.94 as cash from the borrower.

11. On line 1108 of the HUD-1 statement from the March 29, 2007 closing, Ponder stated that $910.00 would be paid to Title Pros for the title insurance.

12. Again, at the end of the HUD-1 statement from the March 29, 2007 closing, Ponder signed a statement verifying that: "The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause funds to be disbursed in accordance with this statement."

13. Additionally, under Ponder's signature on the HUD-1 statement was this warning: "It is a crime to knowingly make false statements to the United States on this or any other similar form."[4]

14. Title Pros produced an Itemized Disbursement Statement ("IDS") from the March 29, 2007 closing, which is a record of how the transaction took place.[5]

15. Title Pro's IDS from the March 29, 2007 closing did not show any funds received from the borrowers as was attested to on the HUD-1 statement.

16. In a subpoena conference held by the Department on October 14, 2009, Special Investigator Larry Leppard ("Leppard") reviewed the March 29, 2007 closing with Ponder and Ponder verified the HUD-1 statement that was submitted to FSB was not accurate as she had attested to.

17. On August 09, 2007, Ponder again acted as a closing agent for Robert and Mary Ann Pierce. The Pierces obtained a refinance for their home through JSM, a mortgage broker,

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[3] The March 29, 2007 closing file number was CP-07-36442 and the loan number ended in xxxxx8696.

[4] Each HUD-1 statement, which Ponder signed and is addressed in this Order, contained this warning.

[5] The HUD-1 statement and the IDS from any transaction should match up identically to reflect that the sums taken in and the sums disbursed were done so in accordance with the HUD-1 as the closing agent attests.

and Bank of America, 133 ("BOA"), a mortgage lender.[6]

18. After the August 09, 2007 closing, Ponder signed a statement within BOA's closing instructions verifying to BOA that: "On 8-9-07, I have closed this loan in accordance with the foregoing Instructions ["Foregoing Instructions"]. I CERTIFY COMPLIANCE WITH ALL OF THE CONDITIONS OUTLINED IN THESE INSTRUCTIONS ["Conditions"]."

19. Within the Foregoing Instructions of the August 09, 2007 closing was the requirement that the closing agent "... must deliver a copy of the final HUD-1 and certify that it is a true copy..."

20. The Conditions of the August 09, 2007 closing required that the closing agent "...disburse to JSM at funding | | $23,633.91."

21. Additionally, BOA's closing instructions stated: "HUD APPROVAL REQUIRED PRIOR TO CLOSINGFUNDING # REQUIRED PRIOR TO DISBURSEMENTS."

22. On line 303 of the HUD-1 statement from the August 09, 2007 closing, Ponder stated that the Pierces would provide $14,842.22 as cash from the borrower.

23. On line 811 of the HUD-1 statement from the August 09, 2007 closing, Ponder stated that JSM would receive $23,678.91 POC[7] by Lender.

24. On line 1108 of the HUD-1 statement from the August 09, 2007 closing, Ponder stated that $910.00 would be paid to Title Pros for the title insurance.

25. At the end of the HUD-1 statement from the August 09, 2007 closing, Ponder signed a statement verifying that: "The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause funds to be disbursed in accordance with this statement."

26. Title Pros produced an IDS from the August 09, 2007 closing.

27. Title Pros' IDS from the August 09, 2007 closing showed $5,842.22 as funds received from the borrowers, which was not the $14,842.22 amount as was attested to on the HUD-1 statement.

28. Title Pros' IDS from the August 09, 2007 closing showed $12,327.51 as funds disbursed to JSM, which was not the $23,678.91 amount as was attested to on the HUD-1 statement nor the amount required by BOS's closing instructions reflected in the Conditions.

29. During the October 14, 2009 subpoena conference, Leppard reviewed the August 09, 2007 closing with Ponder and Ponder verified that the Pierces did not provide the

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[6] The August 09, 2007 closing file number was CP-07-46520 and the loan number ended in xxxxxx6623.
[7] Paid outside of closing.

$14,842.22 as Ponder attested to on the HUD-1 statement that was submitted to BOA but instead provided $5,842.22.

30. On December 20, 2007, Ponder again acted as a closing agent for Robert and Mary Ann Pierce. The Pierces obtained a refinance for their home through JSM, a mortgage broker, and American Mortgage Network, Inc. ("AMN"), a mortgage lender.[8]

31. On line 303 of the HUD-1 statement from the December 20, 2007 closing, Ponder stated that the Pierces would provide $10,852.64 as cash from the borrower.

32. On line 811 of the HUD-1 statement from the December 20, 2007 closing, Ponder stated that JSM would receive $18,256.16 POC by Lender.

33. On line 1108 of the HUD-1 statement from the December 20, 2007 closing, Ponder stated that $921.00 would be paid to Title Pros for the title insurance.

34. At the end of the HUD-1 statement from the December 20, 2007 closing, Ponder signed a statement verifying that: "The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause funds to be disbursed in accordance with this statement."

35. Title Pros produced an IDS from the December 20, 2007 closing.

36. Title Pros' IDS from the December 20, 2007 closing did not show any funds received from the borrowers as was attested to on the HUD-1 statement.

37. Title Pros' IDS from the December 20, 2007 closing showed $4,751.12 as funds disbursed to JSM, which was not the amount as was attested to on the HUD-1 statement.

38. During the October 14, 2009 subpoena conference, Leppard reviewed the December 20, 2007 closing with Ponder, and Ponder verified that the Pierces did not provide the $10,852.64 as Ponder attested to on the HUD-1 statement that was submitted to AMN.

39. During the October 14, 2009 subpoena conference, Leppard also discussed Ponder's personal refinances.

40. Ponder confirmed that she would not "ever have anything to do with closing on [her] own refinances of [her] personal residence."

41. Leppard later provided her with copies of disbursement checks from Title Pros that she signed and Ponder confirmed were her signature.

42. Those disbursement checks that Leppard provided to her for verification were for payments to third parties on her own personal closing.

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[8] The December 20, 2007 closing file number was CP-07-52311 and the loan number ended in xxx-xx8872.

CONCLUSIONS OF LAW

43. Section 375.141, RSMo (Supp. 2010)[9] states, 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:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

44. Section 375.144 states:

> 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;
>
> (3) Engage in any pattern or practice of making any false statement of material fact; or
>
> (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

45. Section 374.210 states, in part:

> 1. It is unlawful for any person in any investigation, examination, inquiry, or other proceeding under this chapter, chapter 354, and chapters 375 to 385, to:
>
> (1) Knowingly make or cause to be made a false statement upon oath or affirmation or in any record that is submitted to the director or used in any proceeding under this chapter, chapter 354, and chapters 375 to 385[.]

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[9] All statutory references are to RSMo (Supp. 2010) unless otherwise indicated. The statutory language that was in place at the time of violations is the same as the language in the 2010 supplement.

46. 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. E.D. 1984).

47. The Director may refuse to renew Ponder's insurance producer license pursuant to §375.141.1(8) because Ponder attested in writing again and again to the accuracy of the HUD-1 statements that she produced and agreed to follow the lenders' instructions. However, the HUD-1 statements were not accurate and the lenders' instructions were not followed. By repeatedly attesting to the accuracy of the HUD-1 statements that were not accurate, Ponder was using dishonest practices. The Director may also refuse to renew Ponder's insurance producer license pursuant to §375.141.1(8) because, through her actions of not following instructions and not accurately producing HUD-1 statements, Ponder has shown a general lack of, or a lack of disposition to use, a professional ability, which demonstrates incompetency.[10] The Director may also refuse to renew Ponder's insurance producer license pursuant to §375.141.1(8) because, through her actions of attesting to the accuracy of the HUD-1 statements that were, in fact, not accurate, Ponder has demonstrated untrustworthiness. Finally, the Director may refuse to renew Ponder's insurance producer license pursuant to §375.141.1(8) because, through her actions of not disbursing the funds in the way instructed and attested to, Ponder has demonstrated financial irresponsibility in the conduct of business.

48. The Director may refuse to renew Ponder's insurance producer license pursuant to §375.141.1(2) because Ponder violated an insurance law of this state. Ponder attested to the accuracy of the HUD-1 statements that she produced. Those HUD-1 statements are relied upon by the lender in deciding whether to fund and disburse a loan.[11] By handling the duties of a closing agent for Title Pros, the title agency, Ponder's actions were in connection with the offer, sale, solicitation or negotiation of insurance. As the closing agent, Ponder, directly or indirectly, misrepresented, concealed, or suppressed a material fact in violation of §375.144(2). Each misrepresentation, concealment, or suppression of any material fact is a separate and sufficient cause for the Director to refuse to renew Ponder's insurance producer license under §375.141.1(2).

49. The Director may refuse to renew Ponder's insurance producer license pursuant to §375.141.1(2) because Ponder violated an insurance law of this state. Ponder attested again and again to the accuracy of the HUD-1 statements that she produced. Each HUD-1 statement she produced can be relied upon by the lender when it decides whether or not to fund and disburse a loan and, hence, is material. By handling the duties of a closing agent for Title Pros, the title agency, Ponder's actions were in connection with the offer, sale, solicitation or negotiation of insurance. As the closing agent, Ponder, directly or indirectly, engaged in any pattern or practice of making any false statement of material fact in violation of §375.144(3).

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[10] *Albanna v. St. Bd. of Registration for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009) (defining incompetency).

[11] *Carnahan v. Am. Fam. Mut. Ins. Co.*, 723 S.W.2d 612, 615 (Mo. App. E.D. 1987) (defining materiality).

50. The Director may refuse to renew Ponder's insurance producer license pursuant to §375.141.1(2) because Ponder violated an insurance law of this state. Ponder attested again and again to the accuracy of the HUD-1 statements that she produced. She made these false statements of fact knowingly or recklessly with the intent that the lender would act upon them.[12] By handling the duties of a closing agent for Title Pros, the title agency, Ponder's actions were in connection with the offer, sale, solicitation or negotiation of insurance. As the closing agent, Ponder, directly or indirectly, engaged in any act, practice, or course of business which operates as a deceit upon any person in violation of §375.144(4).

51. The Director may refuse to renew Ponder's insurance producer license pursuant to §375.141.1(2) because Ponder violated an insurance law of this state. Ponder testified in the subpoena conference that she was not involved with the closing of the refinance on her personal residence. This statement was shown to be false when Ponder later confirmed that she signed disbursement checks for Title Pros for the closing of her personal residence. By knowingly making or causing to be made a false statement under oath that was submitted to the director or used in this proceeding Ponder is in violation of §374.210.1(1).

52. As the closing agent for Title Pros, Ponder attested again and again to the accuracy of the HUD-1 statements that she produced and agreed to follow the lenders' instructions. However, the HUD-1 statements were not accurate and the lenders' instructions were not followed. Those HUD-1 statements can be relied upon by the lender in deciding whether to fund and disburse a loan and are material. Additionally, during the investigation into her actions, Ponder testified in the subpoena conference that she was not involved with the closing of the refinance on her personal residence. This statement was shown to be false when Ponder later confirmed that she signed disbursement checks for Title Pros for the closing of her personal residence. Through her actions, Ponder used dishonest practice, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business. Through her actions, Ponder has directly or indirectly misrepresented, concealed, or suppressed a material fact in connection with the offer, sale, solicitation or negotiation of insurance. Through her actions, Ponder has directly or indirectly engaged in any pattern or practice of making any false statement of material fact. Through her actions, Ponder has directly or indirectly engaged in any act, practice, or course of business which operates as a deceit upon any person. Finally, Ponder knowingly made or caused to be made a false statement under oath that was submitted to the director or used in this proceeding.

53. The Director has considered all of the circumstances surrounding Ponder's application. Each finding of statutory violation committed by Ponder is a separate and sufficient basis for the Order entered below. Granting a renewal of Ponder's Missouri resident insurance producer license would not be in the interest of the public.

54. This Order is in the public interest.

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[12] *Financial Solutions and Assocs. v. Carnahan*, 316 S.W.3d 518, 528 (Mo. App. W.D. 2010) (defining deceit).

ORDER

IT IS THEREFORE ORDERED that the renewal of the insurance producer license of Corinna Lynn Ponder is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 15TH DAY OF JUNE, 2011.

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 §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 16th day of June, 2011, a copy of the foregoing Notice and Order was served upon the Applicant Corinna Lynn Ponder in this matter by certified mail No. 70093410000193493003 at

Corinna Ponder
3463 Summerlyn Dr.
Saint Louis, Missouri 63129

Kathryn Randolph