State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN RE:	)	
	)	**Case No. 130905518C**
Richard L. Messer,	)	
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On October 29, 2013, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue Richard L. Messer's insurance producer license. 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.

FACTUAL BACKGROUND

1. Richard L. Messer ("Messer") is a Missouri resident whose residential and mailing address of record is 202 West Mulberry Street, Huntsville, MO 65259.

2. On or about March 3, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic resident insurance producer license application ("Application") from Messer.

3. In the section of the Application headed "Background Questions," Background Question # 1 asks, in relevant part: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? **Note: 'Crime'** includes a **misdemeanor**, a **felony** or a **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 contendere or no contest, or having been given probation, a suspended sentence, or a fine." [emphasis in original]

4. Messer answered "No" to Question # 1.

5. In the section of the Application headed "Background Questions," Background Question # 7 asks, in relevant part: "Do you have a child support obligation in arrearage?"

6. Messer answered "Yes" to Question # 7, and further answered that he had a child support obligation in arrearage by 331 months.

7. On or about August 22, 2007, Messer pleaded guilty to the Class A Misdemeanor of Passing a Bad Check – Less Than $500, in violation of § 570.120, RSMo. The court entered

judgment against Messer and ordered him to pay court costs, fines, and a Crime Victims Compensation Fund judgment totaling $218.50. *State of Missouri v. Richard Lee Messer Jr.*, Boone County Circuit Court, Case No. 07BA-CR02504.

8. On June 14, 2013, Special Investigator Karen Crutchfield ("Crutchfield") sent a letter by first-class mail to Messer's residential and mailing address asking Messer to provide his child support payment history for the past 24 months, as well as a written, signed statement explaining the arrearage and any documentation showing the arrearage. The letter requested a response by July 5, 2013. The letter was not returned as undeliverable. Messer did not respond with the requested information and did not contact the Department in any way to demonstrate a reasonable justification for a delayed response.

9. On July 9, 2013, Crutchfield sent a letter by first-class and certified mail to Messer's residential and mailing address repeating the requests contained in the June 14, 2013 letter. The letter requested a response by July 29, 2013. The letter mailed by first-class mail was not returned as undeliverable. The certified mail was signed for at Messer's residential and mailing address on July 10, 2013 by a Jeannie Miller. Messer did not respond with the requested information and did not contact the Department in any way to demonstrate a reasonable justification for a delayed response.

10. On July 29, 2013, Messer responded to an April 9, 2013 email from the Department, "wondering if it was to [sic] late to send in my stuff that you need so I can get my license." Crutchfield unsuccessfully attempted to contact Messer by phone on July 29, 2013. Crutchfield subsequently responded to Messer's email and repeated the requests contained in her June 14, 2013 and July 9, 2013 letters. She also requested a certified copy of the court records from the 2007 Passing a Bad Check – Less Than $500 conviction. Messer did not respond to Crutchfield's July 29, 2013 email.

11. Following Messer's failures to respond to Department inquiries, a Department investigation revealed that Messer was in fact current on his child support obligation, of which he was paying $331 a month.

CONCLUSIONS OF LAW

12. Section 375.141.1, RSMo (Supp. 2012),[1] provides, in part:

> 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;

[1] All statutory references are to the Revised Statutes of Missouri (Supp. 2012) unless otherwise noted.

(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[.]

13. Title 20 CSR 100-4.100 Required Response to Inquiries by the Consumer Affairs Division, provides, in part:

* * *

(2)(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.

14. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).

15. 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).

16. Messer may be refused an insurance producer license pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading, incomplete or untrue information in the license application by failing to disclose his conviction for Passing a Bad Check – Less Than $500 on his Application. *State of Missouri v. Richard Lee Messer Jr.*, Boone County Circuit Court, Case No. 07BA-CR02504.

17. Messer may be refused an insurance producer license pursuant to § 375.141.1(2) because he violated a Missouri insurance regulation, namely 20 CSR 100-4.100(2)(A), by failing to respond to at least two inquiries from the Consumer Affairs Division, including letters dated June 14, 2013 and July 9, 2013. Each failure to respond is a separate and sufficient ground to refuse Messer's insurance producer license.

18. Messer may be refused an insurance producer license pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud by failing to disclose his conviction for Passing a Bad Check – Less Than $500 on his Application. *State of Missouri v. Richard Lee Messer Jr.*, Boone County Circuit Court, Case No. 07BA-CR02504.

19. Messer may be refused an insurance producer license pursuant to § 375.141.1(6) because he

has been convicted of passing a bad check, which is a crime involving moral turpitude. *State of Missouri v. Richard Lee Messer Jr.*, Boone County Circuit Court, Case No. 07BA-CR02504. *See State Bd. of Nursing v. Anderson*, No. 11-0254 BN (Mo. Admin. Hearing Comm'n Oct. 3, 2012) ("[P]assing bad checks is a Category 1 crime that necessarily involves moral turpitude.")

20. The Director has considered Messer's history and all of the facts and circumstances surrounding the Application, and for the reasons stated in this Order exercises his discretion in refusing to issue Messer an insurance producer license.

21. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of **Richard L. Messer** is hereby **REFUSED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 31st **DAY OF** October**, 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, 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 1st day of November, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by first-class mail, postage prepaid, and certified mail at the following addresses:

Richard L. Messer
202 West Mulberry Street
Huntsville, MO 65259

Certified No. 1Z0R15W84294482540

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