State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Carl L. Rykard Jr.,	)	Case No. 10-1213747C
	)	
Applicant.	)	

REFUSAL TO ISSUE NONRESIDENT INSURANCE PRODUCER LICENSE

On or about May 23, 2011, Kristen E. Paulsmeyer, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue a nonresident insurance producer license of Carl L. Rykard Jr. 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 summary order:

FINDINGS OF FACT

1. Carl L. Rykard Jr. ("Rykard") is an individual residing in Pennsylvania.

2. On or about October 15, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Rykard's electronic nonresident insurance producer license application ("Application") which was supplemented by Rykard on October 19, 2010.

3. In his Application, Rykard listed his business and mailing address as 475 Sentry Park East, Blue Bell, PA 19422 and his residence address as 923 E Mt. Pleasant Ave., Philadelphia, PA 19150.

4. Background Question No. 2 of the Application asks whether the applicant has ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration.

5. Rykard answered "No" to Question No. 2.

6. The following regulatory actions were taken against Rykard:

a. On or about January 26, 2004, the Office of the Commissioner of Insurance for the State of Wisconsin ("Wisconsin") denied Rykard's license application based on Rykard's failure to respond to written requests for information from Wisconsin, a ground for denial under § 601.42 Wis. Stat. and s. Ins. 6.59(d) Wis. Adm. Code, and Rykard's response on the application indicating a child support obligation in arrearage, a mandatory ground for refusal pursuant to § 628.097(1)(a) Wis. Stats. Case No. 04-C28862.

b. On or about October 11, 2005, in the Final Determination and Order, the State of New York Insurance Department ("New York") revoked all licenses issued by the Insurance Department to Rykard and denied all pending applications for licenses. In the Hearing Officer's Report and Recommendation, New York found Rykard's application was denied by Wisconsin for failing to respond promptly to inquiries from Wisconsin regarding court-ordered child support payments and Rykard failed to respond to three letters from New York regarding his license denial in Wisconsin thereby hampering and impeding the New York investigation. Rykard failed to appear at the Hearing. New York found that Rykard's failure to respond to the three Department letters demonstrated untrustworthiness to act as an insurance agent within the meaning of N.Y. Ins. Law § 2110(a)(4)(C). *In the Matter of the Applications of and/or Licenses of Carl L. Rykard*, Docket No. 2005-0064-C.

c. On or about November 5, 2010, in the Preliminary Administrative Order and Notice of License Denial, the Indiana Commissioner of Insurance denied Rykard's request for licensure pursuant to Indiana Code 27-1-15.6-12(b) because Rykard had provided incorrect, misleading, incomplete, or materially untrue information in the license application in that he answered "no" in response to question regarding involvement in previous administrative proceedings when the records showed that Rykard was the subject of previous administrative actions in Wisconsin and New York. *In the Matter of: Insurance Agent License Application of: Carl S. Rykard, Jr.,* Cause No.: 9824-AD10-1027-032.

d. On or about December 28, 2010, Wisconsin denied Rykard's license application of October 16, 2010 based on Rykard's answer "no" in response to the question on the application regarding administrative action taken in any state when Rykard had previous administrative actions by the states of Wisconsin and New York that were undisclosed on his application. Case No. 10-C33615.

7. On or about October 27, 2010, the Division of Consumer Affairs ("Division") sent Rykard written correspondence to the residential address provided on the Application requesting Rykard discuss why the information regarding New York and Wisconsin was omitted from his application and requesting Rykard provide certified documentation verifying child support payment history for the last two years.

8. The Division's October 27, 2010 correspondence was not returned to the Department as undeliverable. Rykard failed to respond to the Division's October 27, 2010 correspondence or contact the Division in any other way to demonstrate a reasonable justification for the delayed response.

CONCLUSIONS OF LAW

9. Section 375.141 RSMo (Supp. 2010) provides, 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:
>
> (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;
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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;
>
> (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

10. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division provides:

> (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.

11. Fraud is a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. *Financial Solutions and Assocs. v. Carnahan*, 316 S.W.3d 518, 528 (Mo. App. W.D. 2010). "Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him. It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceit. Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit." *State Bd. of Nursing v. Kinkade*, No. 10-1602 BN (Mo. Admin. Hrg. Comm'n, February 22, 2011) (internal citations omitted). "'Material' means 'having real importance or great consequences[.]'" *Director of Dept. of Ins., Fin. Inst. and Prof. Regist. v. Louderback and Premier Financial Services,* No. 07-1376 DI (Mo. Admin. Hrg. Comm'n, May 21, 2009) (internal citations omitted).

12. 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).

13. The Director may refuse to issue a nonresident insurance producer license to Rykard pursuant to § 375.141.1(2), RSMo (Supp. 2010) because Rykard violated the insurance laws of Wisconsin, New York and Indiana each of which is a separate and independent ground for refusal.

14. The Director may refuse to issue a nonresident insurance producer license to Rykard pursuant to § 375.141.1(2), RSMo (Supp. 2010) because Rykard violated the insurance regulations of Missouri by failing to respond to a Division inquiry within 20 days or by demonstrating a reasonable justification for his delayed response as required by 20 CSR 100-4.100(2)(A), which is cause to discipline under § 375.141.1(2).

15. The Director may refuse to issue a nonresident insurance producer license to Rykard pursuant to § 375.141.1(1) RSMo (Supp. 2010) because Rykard intentionally provided materially incorrect, misleading, incomplete or untrue information in the Application, in that he answered "no" to Background

Question No. 2, which asked whether he had ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration when, in fact, he had been involved in at that time administrative proceedings in Wisconsin and New York.

16. The Director may refuse to issue a nonresident insurance producer license to Rykard pursuant to § 375.141.1(3), RSMo (Supp. 2010) because Rykard attempted to obtain a license through material misrepresentation or fraud, in that he failed to disclose the Wisconsin license denial and New York Final Determination and Order which are material because the Department uses that information in determining whether or not to issue, renew, or revoke a license.

17. The Director may refuse to issue a nonresident insurance producer license to Rykard pursuant to § 375.141.1(8), RSMo (Supp. 2010) because Rykard demonstrated untrustworthiness in the conduct of business in this state or elsewhere in that the Insurance Department of the State of New York found Rykard demonstrated untrustworthiness to act as an insurance agent by his failure to respond to the three letters. *In the Matter of the Applications of and/or Licenses of Carl L. Rykard*, Docket No. 2005-0064-C.

18. The Director may refuse to issue a nonresident insurance producer license to Rykard pursuant to § 375.141.1(9), RSMo (Supp. 2010) because Rykard had his insurance producer license or its equivalent denied or revoked in Wisconsin, Indiana, and New York, each of which is a separate and sufficient ground to refuse Rykard's license.

19. Rykard violated the insurance laws of the states of Wisconsin, Indiana and New York. On his Application, Rykard failed to disclose the denial of his license in Wisconsin and the denial or revocation of his license in New York. Rykard provided incorrect or untrue information to the Department in response to Background Question No. 2, and by doing so, attempted to obtain a license through material misrepresentation. Additionally, the State of New York found that Rykard demonstrated untrustworthiness, and Rykard has had his license or equivalent denied or revoked by New York, Wisconsin and Indiana. Finally, Rykard failed to respond to a Division inquiry within 20 days or demonstrate a reasonable justification for his delayed response as required by regulation. Granting Rykard a nonresident insurance producer license would not be in the interest of the public. For all of the reasons given in the Petition, the Director has considered Rykard's history and all of the circumstances surrounding Rykard's Application and exercised his discretion in summarily refusing Rykard's nonresident insurance producer license.

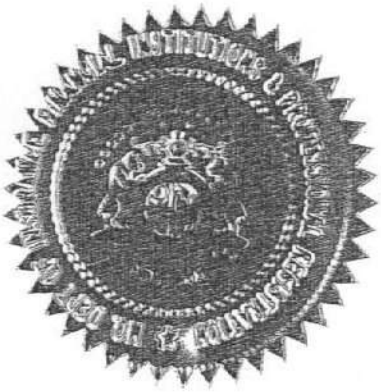
20. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the nonresident insurance producer license of Carl L. Rykard Jr. is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 1ST DAY OF JUNE, 2011.



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 15th day of August, 2011, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by United States Postal Service priority mail #0307 3330 0000 7083 1534 and certified mail #7008 2810 0000 2014 8373 to:

Carl L. Rykard Jr.
923 E. Mount Pleasant Ave.
Philadelphia, PA 19150

Kathryn Randolph

Kathryn Randolph, Paralegal