State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
SHANELLE M. FRANCIS,	)	**Case No. 160303133C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE AN INSURANCE PRODUCER LICENSE

On July 28, 2016 the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause for refusing to issue a non-resident insurance producer license to Shanelle M. Francis. 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. Shanelle M. Francis ("Francis") is a Kentucky resident with a residential address of 526 South Wooldridge Road Apartment B, Hopkinsville, Kentucky 42240 and a mailing address of 4000 Fort Campbell Boulevard Suite D Hopkinsville, Kentucky 42240.

2. Francis's national producer number is 17726858.

3. On October 29, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Francis's non-resident insurance producer license application ("Application").

4. Francis's Application was submitted by Kari Koznick ("Koznick") of UHC Medicare and Retirement, an Authorized Submitter.

5. By submitting the Application on Francis's behalf, Koznick certified as follows:

   As the authorized submitter, I declare that the applicant provided all the information submitted on this application.

6. The "Attestation" section of the Application states, in relevant part:

   1. I hereby certify that, under penalty of perjury, 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 license revocation or denial of the license and may subject me to civil or criminal penalties.

7. Francis accepted the "Attestation" section of the Application.

8. Background Question No. 1A of the Application asks the following, in relevant part:

   Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?

9. Francis answered "Yes" in response to Background Question No. 1A on her Application and provided a letter and court documents related to the following misdemeanor convictions:

   a. On January 5, 1998, Francis was convicted of Theft by Unlawful Taking, a Misdemeanor, in violation of Ky. Rev. Stat. § 514.030.[1] *Commonwealth of Kentucky v. Shanelle Marie Francis*, Christian Co. Dist. Ct., Case No. 98-M-00045.

   b. On February 20, 1998, Francis was convicted of Theft by Deception, a Misdemeanor, in violation of Ky. Rev. Stat. § 514.040. *Commonwealth of Kentucky v. Shanelle Marie Francis*, Christian Co. Dist. Ct., Case No. 98-M-00389.

   c. On February 20, 1998, Francis was convicted of Theft by Deception, a Misdemeanor, in violation of Ky. Rev. Stat. § 514.040, and Receiving Stolen Property, a Misdemeanor, in violation of Ky. Rev. Stat. § 514.110. *Commonwealth of Kentucky v. Shanelle Marie Francis*, Christian Co. Dist. Ct., Case No. 98-M-00395.

10. Background Question No. 1B of the Application asks the following, in relevant part:

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[1] All references to the Kentucky Revised Statutes are to the criminal statutes in effect at the time the court rendered judgement.

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?

11. Francis answered "Yes" in response to Background Question No. 1B on her Application.

12. Francis did not address her response to Background Question No. 1B nor did she provide any court records related to her felony convictions with the letter attached to her Application.

13. Further investigation by the Consumer Affairs Division ("Division") revealed that on November 26, 1997, Francis was convicted of four (4) counts of Obtaining a Controlled Substance by Fraud, First Degree, a Felony, in violation of Ky. Rev. Stat. § 218A.140(1A). *Commonwealth of Kentucky v. Shanelle M. Francis*, Christian Co. Cir. Ct., Case No. 97-CR-00315. The court suspended execution of a five (5) year sentence of incarceration and placed Francis on supervised probation for five (5) years. *Id.*

14. Background Question No. 1B1 of the Application asks the following, in relevant part:

    If you have a felony conviction involving dishonesty or breach of trust, have you applied for written consent to engage in the business of insurance in your home state as required by 18 USC 1033?

15. Francis answered "Yes" in response to background Question No. 1B1 on her Application.

16. Background Question No. 1B2 asks the following, in relevant part:

    If so, was consent granted? (Attach copy of 1033 consent approved by home state.)

17. Francis answered "No" in response to Background Question 1B2 on her Application indicating she was not granted consent to engage in the business of insurance in her home state of Kentucky.

18. On November 6, 2015, a Special Investigator for the Division sent an inquiry letter to Francis's mailing address listed on her Application. Said inquiry letter requested a detailed account of the circumstances that led to Francis's felony convictions and certified court documents related to Francis's felony convictions. In addition, the Division's inquiry letter requested specific information regarding the circumstances related to Francis's conviction for Receiving Stolen Property in

Commonwealth of Kentucky v. Shanelle Marie Francis, Christian Co. Dist. Ct., Case No. 98-M-00395, and Francis's response to Background Question 1B2 on her Application regarding her inability to obtain consent to engage in the business of insurance in her home state. The Division's inquiry letter requested a response within twenty (20) days pursuant to 20 CSR 100-4.100(2)(A) and warned that Francis's failure to respond could result in the refusal of her license application.

19. The United States Postal Service did not return the November 6, 2015 inquiry letter to the Division, and therefore it is presumed received by Francis.

20. Francis did not provide a written response to the Division's November 6, 2015 inquiry and failed to demonstrate a reasonable justification for the delay.

21. On December 2, 2015, a Special Investigator for the Division sent another inquiry letter to Francis at the residential, mailing, and email addresses listed on Francis's Application. Said inquiry letter sought the same information as the previous inquiry letter, requested a response within twenty (20) days pursuant to 20 CSR 100-4.100(2)(A), and warned that Francis's failure to respond could result in the refusal of her license application.

22. On December 3, 2015, Francis responded to the Division's inquiry letter via email. In her response, Francis related that she "provided and turned in all information (explanation letter and certified documents) regarding my charges (that I was able to remember and obtain from the courts)[.]"

23. In her December 3, 2015 email to the Special Investigator, Francis did not provide any information or court records related to her felony convictions in *Commonwealth of Kentucky v. Shanelle M. Francis*, Christian Co. Cir. Ct., Case No. 97-CR-00315.

24. Similarly, Francis's email did not provide any of the requested information regarding her Receiving Stolen Property conviction in *Commonwealth of Kentucky v. Shanelle Marie Francis*, Christian Co. Dist. Ct., Case No. 98-M-00395 or her failure to obtain consent to engage in the business of insurance in her home state.

25. On December 3, 2015, the Special Investigator replied to Francis's email and notified Francis that her response to the inquiry letter was inadequate. In the email response to Francis, the Special Investigator provided Francis with the definition of "adequate response" as found in 20 CSR 100-4.010(1)(A), included specific directions regarding how to obtain the appropriate certified court records, and suggested a method of responding to the inquiries within the December 2, 2015 inquiry letter.

26. Francis did not reply to the December 3, 2015 email from the Special Investigator.

27. On December 28, 2015, a Special Investigator for the Division sent inquiry letters to Francis at the residential and mailing addresses listed on Francis's Application. Said inquiry letters sought the same information as the previous inquiry letters, requested a response within twenty (20) days pursuant to 20 CSR 100-4.100(2)(A), and warned that Francis's failure to respond could result in the refusal of her license application.

28. The United States Postal Service did not return either of the December 28, 2015 inquiry letters to the Division, and therefore they are both presumed received by Francis.

29. Francis did not provide a written response to the Division's December 28, 2015 inquiry letters and failed to demonstrate a reasonable justification for the delay.

30. It is inferable, and hereby found as fact, that Francis did not disclose information related to her felony convictions on her application and failed to provide an adequate response to inquiries of the Division regarding her felony convictions in order to misrepresent to the Director that she had no felony convictions in an effort to improve the chances that the Director would approve her Application for a non-resident insurance producer license.

CONCLUSIONS OF LAW

31. Section 375.141 RSMo (Supp. 2013)[2] 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:
>
> (1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the licensing 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; [or]

[2] All civil statutory references are to the RSMo (2000) as updated by the 2013 Supplement, unless otherwise indicated.

* * *

> (6) Having been convicted of a felony or crime involving moral turpitude[.]

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

> 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.

33. Title 20 CSR 100-4.010 provides, in relevant part:

> (1) As used in this division, the following terms and phrases shall be interpreted as follows:
>
> > (A) "Adequate response," a written response answering each inquiry with reasonable specificity. A person's acknowledgment of the division's inquiry is not an adequate response.

34. "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 citation omitted).

35. Moral turpitude is:

> [A]n act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals .... Theft has been held to involve moral turpitude.

Michael S. Ide v. Dir. of Dep't of Ins., Fin. Inst. & Prof'l Reg'n, Mo. Admin. Hrg. Comm., Case No. 12-0105 DI (Apr. 2, 2012), quoting *Brehe v. Mo. Dep't of Elem. & Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007), citing *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

35. The Director may refuse to issue a non-resident insurance producer license to Francis pursuant to § 375.141.1(1) because she intentionally provided materially incorrect, misleading, incomplete or untrue information in the license application when she did not provide information regarding her four (4) felony convictions in Case No. 97-CR-00315 in response to Background Question No. 1B on her Application. *See Commonwealth of Kentucky v. Shanelle M. Francis*, Christian Co. Cir. Ct., Case No. 97-CR-00315.

36. The Director may refuse to issue a non-resident insurance producer license to Francis pursuant to § 375.141.1(2) because she did not respond to two (2) inquiries from the Division or provide a reasonable justification for the delays, thereby violating 20 CSR 100-4.100(2)(A), a regulation of the Director.

37. The Director may refuse to issue a non-resident insurance producer license to Francis pursuant to § 375.141.1(2) because she failed to provide an adequate response, as defined in 20 CSR 100-4.010, to an inquiry from the Division, thereby violating 20 CSR 100-4.100(2)(A), a regulation of the Director.

38. Each failure to provide a response, adequate or otherwise, or failure to provide a reasonable justification for the delays in violation of a regulation of the Director is a separate and sufficient cause for refusal pursuant to § 375.141.1(2).

39. The Director may refuse to issue a non-resident insurance producer license to Francis pursuant to § 375.141.1(3) because Francis attempted to obtain a license through material misrepresentation or fraud when she did not provide information regarding her four (4) felony convictions in Case No. 97-CR-00315 in response to Background Question No. 1B on her Application. *See Commonwealth of Kentucky v. Shanelle M. Francis*, Christian Co. Cir. Ct., Case No. 97-CR-00315.

40. The Director may refuse to issue a non-resident insurance producer license to Francis pursuant to § 375.141.1(6) because she has been convicted of four (4) felonies. *Id.*

41. The Director may refuse to issue a non-resident insurance producer license to Francis pursuant to § 375.141.1(6) because she has been convicted of four (4) felony counts of Obtaining a Controlled Substance by Fraud, First Degree, which are also crimes involving moral turpitude. *Id.*

42. The Director may refuse to issue a non-resident insurance producer license to Francis pursuant to § 375.141.1(6) because she has been convicted of three (3) misdemeanors which are crimes involving moral turpitude, to wit:

    a. Theft by Unlawful Taking, a Misdemeanor, in violation of Ky. Rev. Stat.

§ 514.030. *Commonwealth of Kentucky v. Shanelle Marie Francis*, Christian Co. Dist. Ct., Case No. 98-M-00045.

b. Theft by Deception, a Misdemeanor, in violation of Ky. Rev. Stat. § 514.040. *Commonwealth of Kentucky v. Shanelle Marie Francis*, Christian Co. Dist. Ct., Case No. 98-M-00389.

c. Theft by Deception, a Misdemeanor, in violation of Ky. Rev. Stat. § 514.040. *Commonwealth of Kentucky v. Shanelle Marie Francis*, Christian Co. Dist. Ct., Case No. 98-M-00395.

43. Each conviction for a felony or crime involving moral turpitude is a separate and sufficient cause for refusal pursuant to § 375.141.1(6).

44. The above described instances are grounds upon which the Director may refuse to issue a non-resident insurance producer license to Francis. Granting Francis a non-resident insurance producer license would not be in the interest of the public. Francis's failure to provide information related to her felony convictions and failures to respond to the Division's multiple inquiries demonstrates a lack of regard for the Director's authority from who she desires a license.

45. The Director has considered Francis's history and all of the circumstances surrounding Francis's Application. Issuing Francis individual non-resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue an individual non-resident insurance producer license to Francis.

46. This Order is in the public's interest.

ORDER

IT IS THEREFORE ORDERED that the individual non-resident insurance producer license application of **Shanelle M. Francis** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 5th **DAY OF** August**, 2016.**

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.

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2016 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by United Parcel Service, signature required, at the following address:

Shanelle M. Francis
526 B South Wooldridge Road
Hopkinsville, Kentucky 42240

Tracking No. 1Z0R15W84298842377

Shanelle M. Francis
4000 Fort Campbell Boulevard
Suite D
Hopkinsville, Kentucky 42240

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