



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:)

Sheldon Anthony Gray,)
Renewal Applicant.)

Case No. 13-0809494C

ORDER REFUSING TO RENEW NON-RESIDENT INSURANCE PRODUCER LICENSE

On December 30, 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 non-resident producer license of Sheldon Anthony Gray. 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. Sheldon Anthony Gray ("Gray") is an individual residing in Kansas.
2. On or about November 14, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Gray's Uniform Application for Individual Produce License Renewal/Continuation ("Renewal Application").
3. In his Renewal Application, Gray listed his residential and mailing addresses as 12612 Cambridge Rd. Leawood, Kansas 66209 and his business address as 6430 Troost Ave., Kansas City, Missouri 64131.
4. Gray was originally licensed as an insurance producer, license number 0268547, on August 17, 1999, and such license expired on August 17, 2013.

S. G. Insurance Agency

5. The Department issued a business entity insurance producer license (No. 8017316) to S. G. Insurance Agency (the "Agency") on December 31, 2003. The Agency's license is currently active, with an expiration date of December 31, 2013.
6. The Missouri Secretary of State ("SOS") records show S. G. Insurance Agency is a business registered as a Fictitious Name. The Registration of Fictitious Name was filed November 4, 2010, and expires on November 4, 2015. The SOS records show Sheldon Gray and Charles W. White, Sr., as owners.

7. The Missouri SOS records also show SG Insurance Agency, LLC, as a domestic limited liability company, created on October 20, 2005, by Sheldon A. Gray. The SOS records show that the Registered Agent was changed on September 4, 2013, from Sheldon A. Gray to Allen Arceneaux, who is also listed as owner.

8. The S. G. Insurance Agency's website lists "Zurich Small Business" as "one of the companies we use to write commercial (business) insurance through." <http://1sginsurance.com/links2.html>.

9. Gray was appointed with Zurich North America ("Zurich") from October 7, 2004, until November 13, 2008, when Zurich terminated its producer agreement with Gray.

10. No other producer working at the Agency is appointed with Zurich.

Consumer Complaint

11. On November 19, 2012, the Department received a Consumer Complaint Report from Scott Bothwell at Group Security North America on behalf of Zurich stating the following:

Since 2006, Gray has been remiss in making timely or complete premium payments. Gray has submitted \$141,314.84 in payments; however he has failed to designate to which policies the funds were to be applied. This amount has been generally applied against the agency balance. Gray's current outstanding balance is \$25,489.95.

12. Mr. Bothwell made the following statements in his report, which was attached to the Consumer Complaint Report he sent to the Department:

- a. Gray's Producer Agreement with Zurich required Gray "to hold all premium payments collected pursuant to the agreement in trust for Zurich and ... to remit insurance premium payments to Zurich."
- b. Gray quit making "timely or complete premium payments" in 2006.
- c. Zurich filed suit against Gray for breach of contract "for failing to remit premium payments in the amount of \$26,542.28."
- d. As part of the judgment entered against Gray, Gray "agreed to pay \$20,000 to [Zurich] by October 11, 2012 to satisfy as paid in full, the \$38,815.72 judgment."
- e. "Gray failed to make the \$20,000 in payments."
- f. "Gray's current outstanding balance is \$25,469.95."
- g. Bothwell concluded "that the funds were improperly transferred, secreted or allocated for use other than to pay Zurich for policies."

Assurance v. Gray, Case No. 0916-CV29063

13. Zurich¹ filed a Petition for Breach of Contract on September 9, 2009, against Gray, alleging that Gray failed "to make payments to [Zurich] as required by the contract,² and [Zurich] has therefore been damaged in the amount of \$26542.28." *Assurance Co. of America, et al. v. Sheldon Gray d/b/a Sheldon Gray Insurance*, Jackson Co., Cir. Ct., Case No. 0916-CV29063.³

14. The court entered its Judgment Entry on January 11, 2012 finding that Zurich/Assurance "is justly entitled to recover" a total of \$38,815.72 from Gray, which included interest on the principle balance and attorneys' fees. *Id.*

15. A handwritten paragraph on the court's Judgment Entry reads as follows:

Execution stayed pending payments by Defendant to Plaintiff \$20,000.00 by October 11, 2012, upon timely receipt of such sum, said judgment shall be considered satisfied and paid in full. In the event of default, let execution issue thereon.

Id.

16. Zurich/Assurance's attorney's initials, along with Gray's signature and that of John Williams, Gray's attorney, appear under the aforementioned handwritten paragraph on the court's Judgment Entry. *Id.*

17. To date, Zurich/Assurance has not received any payments from Gray on the premium balance owed to Zurich/Assurance as a result of the Judgment against Gray in *Assurance v. Gray*, Case No. 0916-CV29063.

18. According to the court records in *Assurance v. Gray*, Case No. 0916-CV29063, the judgment has not been satisfied.

¹ Zurich North America includes Zurich Insurance Services, Inc., which is collectively referred to herein as "Zurich."

² Refers to the Producer Agreement entered into between Zurich and Gray on September 28, 2004.

³ The Petition on Breach of Contract, filed on September 9, 2009, was given case number 0916-CV29063, and lists the parties as "*Zurich Insurance Services Inc., a Corporation v. Sheldon A. Gray d/b/a Sheldon Gray Insurance.*" Gray's Answer names the same parties, as does the Associate Circuit Judge's Civil Docket. However, the Judgment Entry, entered on January 11, 2012, in the same case number, 0916-CV29063, lists the parties as "*Assurance Company of America, Maryland Casualty Company, and Northern Insurance Company of New York, a Corporation v. Sheldon Gray d/b/a Sheldon Gray Insurance.*" The plaintiff filed a Motion for Leave to File an Amended Petition, stating that Zurich Insurance Services, Inc. was the incorrect name for the entity listed as the plaintiff in case number 0916-CV29063. The plaintiff's name was then changed in the Plaintiff's First Amended Petition and in subsequent filings to Assurance Company of America, Maryland Casualty Company, and Northern Insurance Company of New York. In all filings by the plaintiff, the law office of Kramer and Frank, P.C., represented the plaintiff. For convenience, references to the plaintiffs in case number 0916-CV29063 will be to "Zurich/Assurance."

Subpoena Conference

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

20. During the Subpoena Conference, Gray admitted the following:

- a. He "quit doing business with Zurich [in] 2008;"
- b. He owed Zurich/Assurance a balance due of \$25,469.95 as a result of the Judgment against him in *Assurance v. Gray*, Case No. 0916-CV29063; and
- c. He did not pay any portion of the balance due to Zurich/Assurance as a result of the Judgment against him in *Assurance v. Gray*, Case No. 0916-CV29063.

21. During the Subpoena Conference, Gray submitted an "Agency Account Summary" dated June 30, 2013, to the Department as evidence that he no longer owed a balance due to Zurich. The Agency Account Summary indicated that the beginning balance was \$24,566.65, and that a "Transfer Balance to STG" was posted June 2013 for \$24,566.65, leaving an ending balance of \$.00.

22. According to Zurich's records, however, the \$24,566.65 has never been paid nor has it been "written off."

Kansas Insurance Department Administrative Action

23. In the section of the Renewal Application headed "Background Information," Background Question # 2 asks in relevant part: "Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license, or registration, which has not been previously reported to this insurance department?" The Renewal Application requires the applicant to attach the following documents if he answers yes to Background Question # 2:

- a. A written statement identifying the type of license and explaining the circumstances of each incident,
- b. A copy of the Notice of Hearing or other document that states the charges and allegations, and
- c. A copy of the official document which demonstrates the resolution of the charges or any final judgment.

24. Gray answered "Yes" to Background Question # 2, but did not attach any documents to his Renewal Application explaining his affirmative answer to that question.

25. On September 11, 2013, Gray appeared in person and by counsel at an administrative hearing before the Kansas Insurance Department (“KID”) Commissioner. Evidence and testimony was adduced and the parties submitted written briefs to the Commissioner. *In the Matter of the Kansas Resident Insurance Agent’s License of Sheldon A. Gray*, Docket No. 4571-SO.

26. On October 28, 2013, the KID entered a Final Order placing Gray’s insurance agent license “in probationary status for the next 24 months.” *Id.*

27. In its Order, the KID made the following Conclusions of Law:

- a. Gray “failed to report the judgment of the Circuit Court of Jackson County, Missouri to the KID as required by K.A.R. 40-7-9;” and
- b. Gray “improperly withheld moneys from Zurich in violation of K.S.A. 40-4909(a)(4).”

Id.

28. The October 28, 2013 Order informed Gray of his “right to judicial review” in accordance with Kansas law.

29. Gray did not appeal the October 28, 2013 Order.

30. Because Gray did not appeal the October 28, 2013 Order, and because he had a full and fair opportunity to litigate the issues pending before the KID, Gray is collaterally estopped from challenging the Findings of Fact and Conclusions of Law and Order of the KID. *Id.*; *Denny v. Director of Insurance*, Mo. Admin. Hrg. Comm., Case No. 06-0207 DI (Dec. 12, 2006) (where factual and legal bases for denying the application were the same as in prior administrative case, prior decision reached the merits of the dispute, person against whom action was being taken was a party to prior case, and party “had a full and fair opportunity to litigate the issues, ... including his representation by an attorney.”)

CONCLUSIONS OF LAW

31. Section 375.141 (Supp. 2013)⁴ 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:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

⁴ All statutory references are to the 2013 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

32. Section 374.210 provides, in part, as follows:

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; or

(2) Make any false certificate or entry or memorandum upon any of the books or papers of any insurance company, or upon any statement or exhibit offered, filed or offered to be filed in the department, or used in the course of any examination, inquiry, or investigation under this chapter, chapter 354 and chapters 375 to 385[.]

33. K.S.A. 40-4909(a) provides, in relevant part:

The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has:

* * *

(2) Violated:

(A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;

* * *

(4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business [or]

* * *

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

34. K.A.R. 40-7-9(c) requires a licensed agent to report to the Commissioner each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit, or misrepresentation, or a violation of any insurance law within 30 days of the judgment.

35. Pursuant to K.S.A. 40-4909(b), the Commissioner may revoke any license issued under the Insurance Agents Licensing Act if the Commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license.

36. Pursuant to K.S.A. 40-4909(c), any agency action which affects any license or imposes any administrative penalty shall be taken only after notice and opportunity for hearing in accordance with the Kansas Administrative Procedure Act.

37. The principal purpose of § 375.141 is not to punish licensees, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

**CAUSE FOR ORDER REFUSING TO
RENEW NON-RESIDENT INSURANCE PRODUCER LICENSE**

38. The Director may refuse to renew Gray's non-resident insurance producer license pursuant to § 375.141.1(2) because Gray violated § 374.210.1, by knowingly submitting a false record to the Director and/or making a false entry upon a statement or exhibit offered or filed with the Department, or used in the course of an inquiry or investigation. Gray submitted an "Agency Account Summary" dated June 2013 to the Department during the Subpoena Conference, which purported to show a balance due to Zurich of \$.00. He also testified during the Subpoena Conference that he no longer owed Zurich any money. However, according to Zurich's records, Gray's balance was never paid off or written off. Furthermore, the court records do not show that Gray satisfied Zurich's judgment. Gray's false statement and submission of false information to the Director and Department are separate and sufficient grounds for refusing to renew Gray's non-resident insurance producer license pursuant to § 375.141.1(2).

39. The Director may refuse to renew Gray's non-resident insurance producer license pursuant to § 375.141.1(2) because Gray violated the insurance laws of Kansas, specifically K.S.A. 40-4909(a)(4), by improperly withholding moneys from Zurich, and K.A.R. 40-7-9, by failing to report the judgment in *Assurance Co. of America, et al. v. Sheldon Gray d/b/a Sheldon Gray Insurance*, Jackson Co., Cir. Ct., Case No. 0916-CV29063 against him to the KID.

40. The Director may refuse to renew Gray's non-resident insurance producer license pursuant to § 375.141.1(4) because Gray improperly withheld, misappropriated, or converted

premiums collected from his insurance clients and which were owed to Zurich.⁵ Gray owes Zurich over \$24,000 in premium payments based on Gray's Producer Agreement with Zurich.⁶

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

- a. The circuit court⁷ and the KID⁸ found and concluded that Gray improperly withheld premium from Zurich by failing to forward funds owed to Zurich in the course of doing the business of insurance;
- b. Gray failed to remit premiums collected from his insurance clients to Zurich and/or deposit premiums into Zurich's designated bank account;
- c. Gray failed to remit premiums to Zurich and/or deposit premiums into Zurich's designated bank account as required by his employment contract with Zurich; and/or
- d. Gray'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.

42. The Director has considered Gray's history and all of the circumstances surrounding Gray's Renewal Application. Therefore, the Director exercises his discretion and refuses to renew Gray's non-resident insurance producer license.

43. This order is in the public interest.

⁵ The KID also made a specific finding that Gray withheld money from Zurich in its October 28, 2013 Order in *In the Matter of the Kansas Resident Insurance Agent's License of Sheldon A. Gray*, Docket No. 4571-SO.

⁶ The Consumer Complaint Report submitted by Scott Bothwell in November 2012 on behalf of Zurich indicates that Gray's balance due was \$25,469.95. The Direct Bill Commission Statement provided to the Department by Zurich (which, as of July 1, 2013, is US Assure) shows an amount due of \$24,566.65.

⁷ *Assurance Co. of America, et al. v. Sheldon Gray d/b/a Sheldon Gray Insurance*, Jackson Co., Cir. Ct., Case No. 0916-CV29063.

⁸ *In the Matter of the Kansas Resident Insurance Agent's License of Sheldon A. Gray*, Docket No. 4571-SO.

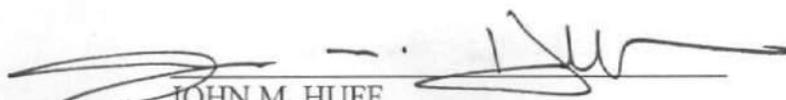
ORDER

IT IS THEREFORE ORDERED that the RENEWAL of SHELDON ANTHONY GRAY'S non-resident insurance producer license (No. 0268547) is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 31ST DAY OF DECEMBER, 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 3rd day of January, 2014, a copy of the foregoing notice and order was served upon Sheldon Anthony Gray in this matter by UPS at the following address:

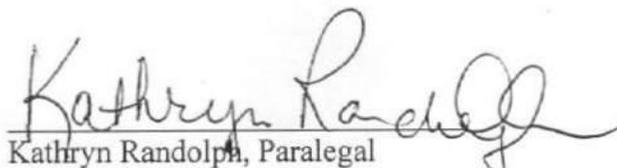
Sheldon Anthony Gray
12612 Cambridge Rd.
Leawood, Kansas 66209

Tracking No.: 1Z0R15W84296519882

and

Sheldon Anthony Gray
6430 Troost Ave.
Kansas City, Missouri 64131

Tracking No.: 1Z0R15W84298126696



Kathryn Randolph, Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Kathryn.Randolph@insurance.mo.gov