State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
SHARITA NICOLE LINDSEY,	)	**Case No. 160202059C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE AN INSURANCE PRODUCER LICENSE

On April 7, 2016, the Consumer Affairs Division ("Division") submitted a Petition to the Director alleging cause for refusing to issue an insurance producer licensed to Sharita Nicole Lindsey. 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. Sharita Nicole Lindsey ("Lindsey") is an Arkansas resident with a residential address of 306 Allen Street, Jonesboro, Arkansas 72401.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") received Lindsey's application for a non-resident insurance producer license ("Application") on August 19, 2015.

3. Background Question No. 1B of the Application asked the following, in part:

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

4. Lindsey answered "Yes" in response to Background Question No. 1B.

5. Lindsey submitted a letter with her Application to further explain her response to Background Question No. 1B, in which she stated, verbatim:

   2005 – I wass 22. I wrote a check for food to feed my kids. It was a bad decision at a young age. forgery 2 counts. I had to pay fines. Fines + restitution paid off.

   Sharita lindsey
   7-21-15

2008 – I was 25. This decision ruined my young life. But I've changed my life around since then. I'm almost 33 now. I haven't been in any trouble since and will not. possession of cannibus and non magazined weapon. Both non violent convictions. Since then April 25 2014 I became a certified PCA (personal care Aide). I have 2 lil babies 2, 7 mo, 17, 15 as well. Just wana work and start a career as I should have done years ago. No current probation to be served. All served.

6. Lindsey also included non-certified court records with her Application regarding her convictions:

   a. In 2009, after a bench trial, the court found Lindsey guilty of and convicted her on two counts of Forgery II, a Felony, in violation of A.C.A. 5-37-201.[1] *State of Arkansas v. Sharita N. Lindsey*, Craighead County, Arkansas Circuit Court, Case No. CR-2005-721. She was sentenced pursuant to A.C.A. 5-4-104(e)(3)(A) and 5-4-301(d)(1)(B) on each of the two counts to 36 months in the Arkansas Department of Correction followed by a 5-year suspended imposition of sentence. *Id.*

   b. In 2009, Lindsey pled guilty to Possession of a Controlled Substance, Marijuana, with Intent to Deliver, a Felony, in violation of A.C.A. 5-64-401, and Felon in Possession of a Firearm, a Felony, in violation of A.C.A. 5-73-103. *State of Arkansas v. Sharita N. Lindsey*, Craighead County, Arkansas Circuit Court, Case No. CR-2008-661. She was sentenced pursuant to A.C.A. 5-4-104(e)(3)(A) and 5-4-301(d)(1)(B) to 36 months in the Arkansas Department of Correction followed by a 5-year suspended imposition of sentence on the drug charge, and a 60-month suspended imposition of sentence on the gun charge. *Id.*

7. After reviewing Lindsey's Application and her criminal record, Division Special Investigator Jodi Lehman ("Lehman") sent an inquiry letter dated August 24, 2015 to Lindsey at her residential address, 306 Allen Street, Jonesboro, Arkansas 72401, as listed on her Application. In the inquiry letter, Lehman asked Lindsey to provide certified copies of records related to her criminal convictions. The inquiry letter requested a response within 20 days pursuant to 20 CSR 100-4.100(2)(A).

8. The United States Postal Service did not return the August 24, 2015 inquiry letter to the Division, and therefore it is presumed received by Lindsey.

9. Lindsey failed to provide a written response to the Division's August 24, 2015 letter within 20 days pursuant to 20 CSR 100-4.100(2)(A), and failed to demonstrate a

[1] All criminal statutory references are to the version of the statute under which the court rendered its judgment.

reasonable justification for the delay.

10. On September 14, 2015, Lehman sent another inquiry letter to Lindsey at her residential address. In the letter, Lehman once again asked Lindsey to provide certified copies of records related to her criminal convictions, within 20 days per 20 CSR 100-4.100(2)(A).

11. The United States Postal Service did not return the September 14, 2015 inquiry letter to the Division, and therefore it is presumed received by Lindsey.

12. Lindsey failed to provide a written response to the Division's September 14, 2015 inquiry letter within 20 days pursuant to 20 CSR 100-4.100(2)(A), and failed to demonstrate a reasonable justification for the delay.

13. Lehman attempted to obtain additional, alternative addresses for Lindsey, by contacting the employer that Lindsey listed on her Application, both by phone and by e-mail, and by consulting on-line databases. Based upon what she found, Lehman sent several additional inquiry letters to Lindsey on November 12, 2015.

14. First, on November 12, 2015, Lehman sent an inquiry letter to Lindsey at 207 Scott Street, Jonesboro, Arkansas 72401, via certified mail through the United States Postal Service. This inquiry letter requested that Lindsey send certified copies of documents related to her criminal convictions to the Division within 20 days, per Missouri regulation.

15. The United States Postal Service returned this November 12, 2015 inquiry letter, sent to 207 Scott Street, to the Department as unclaimed.

16. Second, and also on November 12, 2015, Lehman sent an inquiry letter to Lindsey at 1300 Falls Street 12, Jonesboro, Arkansas 72401, via certified mail through the United States Postal Service. Again, the inquiry letter requested that Lindsey send certified copies of documents related to her criminal convictions to the Division within 20 days, per Missouri regulation.

17. The United States Postal Service returned this November 12, 2015 inquiry letter, sent to 1300 Falls Street 12, to the Department as unclaimed, unable to forward.

18. Third and finally, on November 12, 2015, Lehman sent a copy of the September 14, 2015 inquiry letter that she had originally sent to Lindsey via regular, first class mail, to Lindsey at 306 Allen Street, Jonesboro, Arkansas 72401, via certified mail through the United States Postal Service.

19. The Department received a United States Postal Service Form 3811, commonly known as the "green card," for the third inquiry letter that Lehman mailed on

November 12, 2015 to Lindsey at the 306 Allen Street address, indicating that the letter had been received. The signature on the green card, however, is illegible.

20. Lindsey failed to provide a written response to the Division's November 12, 2015 inquiry letter sent via certified mail to Lindsey at 306 Allen Street within 20 days pursuant to 20 CSR 100-4.100(2)(A), and failed to demonstrate a reasonable justification for the delay.

21. On December 30, 2015, the Arkansas Insurance Commissioner revoked Lindsey's Arkansas resident insurance producer license because she had a felony conviction and did not accurately portray her felony criminal history on her application for an Arkansas insurance producer license. *In the Matter of: Sharita Lindsey, Respondent NPN 17658799, and Order No. 2015-101*, Insurance Commissioner for the State of Arkansas, December 30, 2015.

CONCLUSIONS OF LAW

22. Section 375.141, RSMo Supp. 2013,[2] 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:
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> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude;
>
> * * *
>
> (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

23. 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

[2] All statutory references are to RSMo Supp. 2013 unless otherwise indicated.

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.

24. "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. E.D. 2000) (internal citations omitted).

25. Lindsey may be refused a non-resident insurance producer license under § 375.141.1(2) because she failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for delay, thereby violating 20 CSR 100-4.100(2)(A), a regulation of the Director. Lindsey failed to respond to an inquiry letter sent on August 24, 2015 via first class mail from the United States Post Office to the residential address listed on Lindsey's Application. Lindsey failed to demonstrate reasonable justification for delay.

26. Lindsey may be refused a non-resident insurance producer license under § 375.141.1(2) because she failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for delay, thereby violating 20 CSR 100-4.100(2)(A), a regulation of the Director. Lindsey failed to respond to an inquiry letter sent on September 14, 2015 via first class mail from the United States Post Office to the residential address listed on Lindsey's Application. Lindsey failed to demonstrate reasonable justification for delay.

27. Lindsey may be refused a non-resident insurance producer license under § 375.141.1(2) because she failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for delay, thereby violating 20 CSR 100-4.100(2)(A). Lindsey did not respond to the November 12, 2015 inquiry letter sent to Lindsey at 306 Allen Street (*i.e.*, the residential address listed on Lindsey's Application) via certified mail from the United States Post Office, which returned the green card to the Department. Lindsey failed to demonstrate reasonable justification for delay.

28. Each failure to adequately respond to an inquiry letter constitutes separate and sufficient cause to refuse to issue an insurance producer license to Lindsey under § 375.141.1(2).

29. Lindsey may be refused a non-resident insurance producer license under § 375.141.1(6) because of her four felony convictions:

    a. In 2009, Lindsey was convicted following a bench trial on two counts

of Forgery II, a Felony, in violation of A.C.A. 5-37-201. *State of Arkansas v. Sharita N. Lindsey*, Craighead County, Arkansas Circuit Court, Case No. CR-2005-721.

b. In 2009, Lindsey pled guilty to Possession of a Controlled Substance, Marijuana, with Intent to Deliver, a Felony, in violation of A.C.A. 5-64-401, and Felon in Possession of a Firearm, a Felony, in violation of A.C.A. 5-73-103. *State of Arkansas v. Sharita N. Lindsey*, Craighead County, Arkansas Circuit Court, Case No. CR-2008-661.

30. Lindsey may be refused a non-resident insurance producer license under § 375.141.1(6) because she has been convicted of crimes involving moral turpitude. As to Lindsey's conviction for Possession of a Controlled Substance, Marijuana, with Intent to Deliver, "[c]ourts invariably find moral turpitude in the violation of narcotic laws." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985). *See also State Board of Nursing v. Rawlings*, No. 09-0282 BN (Mo. Admin. Hrg. Comm'n Oct. 7, 2009) (possession of marijuana is a crime of moral turpitude); *Dir. of Dep't of Ins., Fin. Insts. and Prof'l Reg'n v. Moore*, No. 14-0285 DI (Mo. Admin. Hrg. Comm'n Aug. 11, 2014) (distribution or delivery of a controlled substance or possession of a controlled substance with intent to distribute or deliver are crimes of moral turpitude).

31. Lindsey was also convicted of Forgery II.[3] Forgery is a crime of moral turpitude because it involves fraud and dishonesty. *State Board of Nursing v. Williams*, No. 08-0463 BN (Mo. Admin. Hrg. Comm'n Oct. 21, 2008); *State Board of Nursing v. Dann*, No. 09-0472 BN (Mo. Admin. Hrg. Comm'n Sept. 14, 2009).

32. Each of Lindsey's convictions constitute separate and sufficient cause to refuse to issue an insurance producer license to Lindsey under § 375.141.1(6).

33. Lindsey may be refused a non-resident insurance producer license under § 375.141.1(9) because Lindsey has had an insurance producer license revoked in another state, *i.e.*, Arkansas. *In the Matter of: Sharita Lindsey, Respondent NPN 17658799, and Order No. 2015-101*, Insurance Commissioner for the State of Arkansas, December 30, 2015.

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[3] Pursuant to A.C.A. 5-37-201, the statute under which Lindsey was convicted, "[a] person forges a written instrument if, **with purpose to defraud**, the person makes, completes, alters, counterfeits, possesses, or utters any written instrument that purports to be or is calculated to become or to represent if completed the act of:

(1) A person who did not authorize that act;

(2) A fictitious person; or

(3) A person who authorized an act that was not authorized by law.

(Emphasis supplied). Also under that statute, the degree of forgery (first or second degree) depends upon the nature of the instrument forged; forging a check, as Lindsey did, is forgery in the second degree. A.C.A. 5-37-201(c).

34. Granting Lindsey a non-resident insurance producer license would not be in the interest of the public.

35. The Director has considered Lindsey's history and all of the circumstances surrounding Lindsey's Application. Accordingly, the Director exercises his discretion to refuse to issue a non-resident insurance producer license to Lindsey.

36. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the non-resident insurance producer license Application of **Sharita Nicole Lindsey** is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 20th **DAY OF** APRIL**, 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 this 20th day of April, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required, at the following address:

Sharita Nicole Lindsey
306 Allen Street
Jonesboro, Arkansas 72401

Tracking No. 1Z0R15W84299751731

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