State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Philip A. Schmidt	)	**Case No. 11-1014738C**
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On March 6, 2012, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Philip A. Schmidt. 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. Philip A. Schmidt ("Schmidt") is an individual residing in Missouri.

2. On or about July 11, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Schmidt's Uniform Application for Individual Producer License/Registration Application ("Application").

3. In his Application, Schmidt listed his residential and mailing addresses as 412 W. College Ave., Shelbina, Missouri 63468.

4. In the section the Applications headed "Background Questions," Background Question No. 1 asks: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"

5. Schmidt answered "Yes" to Background Question No. 1.

6. Schmidt attached a July 11, 2011, letter to his Application "to explain the circumstances surrounding my criminal background in association with obtaining my license as an Insurance Producer in the State of Missouri."

7. In Schmidt's July 11, 2011 letter submitted with his Application, he explained that his 1995 stealing, bad check, and forgery convictions stemmed from actions he took while an "owner of a construction company that operated in the Columbia area."

8. An eight-count First Amended Information, filed in the Circuit Court of Boone County, Missouri on February 27, 1995, against Schmidt charged him with five counts of the Class C felony of stealing, in violation of 570.030, and three counts of the Class D felony of

passing bad checks, in violation of § 570.120. *State of Missouri v. Philip Alexander Schmidt*, Case No. CR0195-045254F. The First Amended Information stated, in pertinent part, as follows:

> Count I: In violation of Section 570.030, RSMo, committed the Class C Felony of Stealing, … in that on or about the 22nd day of August, 1994, … the defendant, acting in concert with Christopher D. Auxier, appropriated United States currency of a value of at least one hundred fifty dollars, which said property was in the possession of First National Bank and Trust Company, and defendant, acting in concert with Christopher D. Auxier, appropriated such property from First National Bank and Trust Company, and with the purpose to deprive it thereof by deceit, in that defendant, acting in concert with Christopher D. Auxier, presented check #1139 drawn on the account of Phil Schmidt with the Exchange National Bank of Missouri in the amount of $1,342.53 to Christopher D. Auxier thereby representing that said check was a valid check that was drawn on a checking account containing sufficient funds to pay said check, and defendant knew such representation was false at the time of the transaction as check #1139 was written on a closed checking account, and First National Bank and Trust Company relied upon said representation; and
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> Count IV: In violation of Section 570.030, RSMo, committed the Class C Felony of Stealing, … in that on or about the 12th day of August, 1994, … the defendant, acting in concert with Christopher D. Auxier, appropriated United States currency of a value of at least one hundred fifty dollars, which said property was in the possession of First National Bank and Trust Company, and defendant, acting in concert with Christopher D. Auxier, appropriated such property from First National Bank and Trust Company, and with the purpose to deprive it thereof by deceit, in that defendant, acting in concert with Christopher D. Auxier, presented check #1134 drawn on the account of Phil Schmidt with the Exchange National Bank of Missouri in the amount of $1,468.67 to Christopher D. Auxier thereby representing that said check was a valid check that was drawn on a checking account containing sufficient funds to pay said check, and defendant knew such representation was false at the time of the transaction as check #1134 was written on a closed checking account, and First National Bank and Trust Company relied upon said representation; and
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> Count VII: In violation of Section 570.120, RSMo, committed the Class D Felony of passing bad checks, … in that on or about the 20th day of April, 1994, … the defendant, with the purpose to defraud, passed a check in the amount of $600, drawn on the Exchange Bank of Missouri, dated April 20,

1994, and payable to Boatmen's Bank of Mid-Missouri, knowing that such check would not be paid; and

Count VIII: In violation of Section 570.120, RSMo, committed the Class D Felony of passing bad checks, ... in that on or about the 29th day of April, 1994, ... the defendant, with the purpose to defraud, passed a check in the amount of $1,100, drawn on the Exchange Bank of Missouri, dated April 29, 1994, and payable by endorsement to Boatmen's Bank of Mid-Missouri, knowing that such checks would not be paid, and all against the peace and dignity of the State.

9. Section 570.030, RSMo (1986), states, in part:

1. A person commits the crime of stealing if he appropriates property or services of another with the purpose to deprive him thereof, either without his consent or by means of deceit or coercion.

* * *

3. Stealing is a class C felony if:

(1) The value of the property or services appropriated is one hundred fifty dollars or more[.]

10. Section 570.120, RSMo (1994), states, in part:

1. A person commits the crime of passing a bad check when,

(1) With the purpose to defraud, he makes, issues or passes a check or other similar sight order for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee; or

(2) He makes, issues, or passes a check or other similar sight order for the payment of money knowing that there are insufficient funds in his account or that there is no such account or no drawee and fails to pay the check or sight order within ten days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

* * *

4. Passing bad checks is a class A misdemeanor, unless

(1) The face amount of the check or signed order or the aggregated amounts is one hundred fifty dollars or more; or

(2) The issuer had no account with the drawee or if there was no such drawee

at the time the check or order was issued, in which cases passing bad checks is a class D felony.

11. On February 27, 1995, Schmidt entered a plea of guilty to two counts of the class C felony of stealing and two counts of the class D felony of passing a bad check over $150.00. The court accepted his plea and sentenced Schmidt to four years on each count in the custody of the Missouri Department of Corrections ("MDOC"), to run concurrently. *State v. Schmidt*, Case No. CR0194-044289F.

12. An Information, filed in the Circuit Court of Boone County, Missouri on February 17, 1995, against Schmidt charged him with one count of the Class C felony of forgery, in violation of § 570.090.1(4). *State of Missouri v. Philip Alexander Schmidt*, Case No. CR0195-045254F. The Information stated, in pertinent part, as follows:

> On or about the 4th day of January, 1995, ... the defendant, with the purpose to defraud, transferred with the knowledge or belief that it would be used as genuine, a writing, to wit: a check on Clark Transport Company with Boone County National Bank, and at that time knew that this writing had been completed so that it purported to have been made by authority of one who did not give such authority, all against the peace and dignity of the State.

13. Section 570.090, RSMo (1986), states, in part:

> 1. A person commits the crime of forgery if, with the purpose to defraud, he
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> * * *
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> (4) Uses as genuine, or possesses for the purpose of using as genuine, or transfers with the knowledge or belief that it will be used as genuine, any writing or other thing which the actor knows has been made or altered in the manner described in this section.
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> 2. Forgery is a class C felony.

14. On February 27, 1995, Schmidt entered a plea of guilty to the class C felony of forgery. The court accepted his plea and sentenced Schmidt to four years in the custody of the MDOC to run concurrently with the sentence Schmidt received for his convictions in case number CR0194-044289F. *State v. Schmidt*, Case No. CR0195-045254F.

15. A Felony Information, filed in the Circuit Court of Saline County, Missouri on December 15, 1994, against Schmidt charged him with one count of the Class C felony of stealing, in violation of § 570.030, RSMo. *State of Missouri v. Philip Alexander Schmidt*, Case No. CR694-490FX. The Information stated, in pertinent part, as follows:

> On or about September 2, 1994, ... the defendant appropriated property of a combined value of more than one hundred and fifty dollars, ... which said

property was owned by Mercantile Bank, and defendant appropriated such property from Mercantile Bank and with the purpose to deprive it thereof by deceit by opening a savings account with a check drawn on a closed account, in the amount of $1,469.72, and then withdrawing $100.00 U.S. currency from the savings account, thereby causing Mercantile Bank to deliver said U.S. currency to the defendant, and defendant made such representation knowing that it was false, and knowing that Mercantile Bank relied on such statement and was thereby induced to part with such property, and

On or about September 2, 1994, ... the defendant appropriated property of a combined value of more than one hundred and fifty dollars, ... which said property was owned by Wood & Huston Bank, and defendant appropriated such property from Wood & Huston Bank and with the purpose to deprive it thereof by deceit by opening a savings account with a check drawn on a closed account, in the amount of $1,469.72, and then withdrawing $100.00 U.S. currency from the savings account, thereby causing Wood & Huston Bank to deliver said U.S. currency to the defendant, and defendant made such representation knowing that it was false, and knowing that Wood & Huston Bank relied on such statement and was thereby induced to part with such property.

16. On March 9, 1995, Schmidt entered a plea of guilty to the class C felony of stealing. The court accepted his plea and sentenced Schmidt to three years in the custody of the MDOC to run concurrently with the sentences Schmidt received for his convictions in Boone County, Missouri. *State v. Schmidt*, Case No. CR694-490FX.

17. On July 1, 2001, Schmidt was charged in the Circuit Court of Callaway County, Missouri, with one count of the class A misdemeanor of criminal non-support, in violation of §568.040. *State of Missouri v. Philip Alexander Schmidt*, Case No. 02CR168341.

18. Section 568.040, RSMo (1994), states, in part:

1. A person commits the crime of nonsupport if he knowingly fails to provide, without good cause, adequate support for his spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide, without good cause, adequate support which such parent is legally obligated to provide for his child or stepchild who is not otherwise emancipated by operation of law.

* * *

4. Criminal nonsupport is a class A misdemeanor, unless the person obligated to pay child support commits the crime of nonsupport in each of six individual months within any twelve-month period, or the total arrearage is in excess of five thousand dollars, in either of which case it is a class D felony.

* * *

6. Persons accused of committing the offense of nonsupport of the child shall be prosecuted:

(1) In any county in which the child resided during the period of time for which the defendant is charged; or

(2) In any county in which the defendant resided during the period of time for which the defendant is charged.

19. On December 20, 2002, Schmidt entered a plea of guilty to the class A misdemeanor of criminal non-support. The court accepted his plea and sentenced Schmidt to six months in the Callaway County Jail. The execution of Schmidt's sentence was stayed pending two years of unsupervised probation. *State v. Schmidt*, Case No. 02CR168341.

20. The Circuit Court of Greene County, Missouri, entered a Child Support Order ("Support Order") against Schmidt ordering him to pay $242.00 per month for child support, effective April 30, 1996. *State of Missouri ex rel. Stephanie Rena Turley (Schmidt) v. Philip Alexander Schmidt*, Case No. 194DR1908.

21. On June 20, 2002, the Family Court Commissioner of Circuit Court of Greene County, Missouri entered Findings and Recommendations for Judgment in *State ex rel. Schmidt v. Schmidt*, Case No. 194DR1908. The Commissioner's Findings stated, in pertinent part, as follows:

a. [Schmidt] was aware of the Judgment ordering child support at or near the time of Judgment was entered and of said child support payments to be paid...;
b. [T]he total amount of child support that has accrued to this date is $3,071.08 with accrued interest being $0;
c. [Schmidt] had the ability to comply with the Judgment and failed to do so, or he voluntarily placed himself in a position so that he could not comply with the Judgment; and
d. [Schmidt's] failure to comply with the Judgment and Order to pay child support was willful, intentional, and contumacious.

State ex rel. Schmidt v. Schmidt, Case No. 194DR1908.

22. In the Judgment and Judgment of Contempt entered on June 21, 2002, the Family Court Judge of Greene County Circuit Court adopted the Family Court Commissioner's Findings and Recommendations for Judgment against Schmidt. *Id.*

23. The June 21, 2002 Judgment of Contempt entered against Schmidt found Schmidt "to be in contempt of Court" and ordered him "committed to custody of Sheriff of Greene

County" until Schmidt paid off his child support obligation. The court stayed the execution of the "Warrant and Order of Commitment ... so long as [Schmidt] pays the balance of the Judgment in the amount of $3,071.08 to be paid at $158 per month beginning July 15, 2001." *Id.*

CONCLUSIONS OF LAW

24. Section 375.141, RSMo (Supp. 2010)[1] 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:
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> (6) Having been convicted of a felony or crime involving moral turpitude;
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> * * *
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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;
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> * * *
>
> (13) Failing to comply with an administrative or court order imposing a child support obligation[.]

25. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruiett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972). "A licensee's guilty plea may lead to collateral estoppel, a doctrine that precludes a licensee from denying charges against him." *Stanton v. State Brd. of Nursing*, Mo. Admin. No. 05-1661BN (Mo. Admin. Hrg. Commn.).

26. A crime involving "moral turpitude" is a crime involving "an 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'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

27. The court in *Brehe v. Mo. Dept. of Elementary & Secondary Education*, referred to three categories of moral turpitude crimes:

> (1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);

[1] All statutory references are to the 2010 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

(2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" ("category 2" crimes); and

(3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes).

Brehe v. Missouri Dept. of Elementary & Secondary Educ., 213 S.W.3d 720, 725 (Mo. App. W.D. 2007).

28. Category 1 crimes, since they necessarily involve moral turpitude, require no analysis beyond their elements to show moral turpitude. They require only a showing of a conviction or guilty plea. *Id.*

29. Stealing and crimes involving fraud and false pretenses are crimes of moral turpitude. *Frick*, 694 S.W.2d at 479

30. "The willful failure to discharge one's responsibility to support his children without good cause is an act of moral turpitude." *Brehe,* 213 S.W.3d at 726, citing *In re Warren*, 888 S.W.2d 334, 335-36 (Mo. banc1994).

31. "To establish cause to discipline ... under §375.141.1(8), the licensee's conduct must have occurred 'in the conduct of business.'" *Director, Dept. of Insurance, Financial Institutions and Professional Registration v. Louderback*, No. 07-1376 DI (Mo. Admin. Hrg. Comm'n, May 21, 2009). To establish cause for discipline, that "business" does not have to be the business of insurance, as long as the conduct was "in the course of any business – insurance or otherwise." *Id.*

32. 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 ISSUE PUBLIC ADJUSTER SOLICITOR LICENSE

33. The Director may refuse to issue an insurance producer license to Schmidt pursuant to § 375.141.1(6), RSMo, because the crimes of stealing, in violation of § 570.030, RSMo (1986), forgery, in violation of § 570.090, RSMo (1986), and passing bad checks, in violation of § 570.120, RSMo (1994) are felonies.

34. The Director may refuse to issue an insurance producer license to Schmidt pursuant to § 375.141.1(6), RSMo, because the crimes of stealing, in violation of § 570.030, RSMo (1986), forgery, in violation of § 570.090, RSMo (1986), passing bad checks, in violation of § 570.120, RSMo (1994), and criminal nonsupport, in violation of § 568.040, RSMo (1994) are crimes of moral turpitude.

35. The Director may refuse to issue an insurance producer license to Schmidt pursuant to § 375.141.1(8) RSMo, because Schmidt demonstrated fraudulent, coercive, or dishonest practices, or demonstrate incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state by committing the crimes of stealing, forgery, and passing bad checks stemming from actions he took while he was the owner and operator of a construction company in Missouri.

36. Schmidt may be refused an insurance producer license pursuant to §375.141.1(13) RSMo, because Schmidt failed to fail to comply with an administrative or court order imposing a child support obligation.

37. The Director has considered Schmidt's history and all of the circumstances surrounding Schmidt's Application. For the reasons set forth in this Order, the Director exercises his discretion and refuses to issue an insurance producer license to Schmidt.

38. The requested order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of PHILIP A. SCHMIDT is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 07th DAY OF MARCH, 2012.

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 13th day of March, 2012, a copy of the foregoing notice and order was served upon Philip A. Schmidt in this matter by U.S. regular mail and certified mail No. 7009 3410 0001 9831 2660 at the following address:

Philip A. Schmidt
412 W. College Ave.
Shelbina, MO 63468

Kathryn Randolph

Kathryn Randolph
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