State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Michael A. Spillman,	)	Case No. 100803557C
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On May 17th, 2011, 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 Michael A. Spillman. 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. Michael A. Spillman ("Spillman") is an individual residing in Missouri.

2. On or about June 10, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Spillman's Uniform Application for Individual Producer License / Registration ("2010 Application").

3. In his 2010 Application, Spillman listed his residential address as 65 Copper Ridge Ct. #3A, Lake Ozark, Missouri 65049. He listed P.O. Box 216, Lake Ozark, Missouri 65049 as his business and mailing addresses.

4. In completing the 2010 Application, Spillman attested under penalty of perjury to the truthfulness and completeness of the information he provided in the Application, including his answers to the questions in the section relating to the applicant's disciplinary history ("Background Questions").

5. In the section of 2010 Application headed "Background Questions," Background Question No. 2 asks: "Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?"

6. Spillman answered "Yes" to Background Question No. 2.

7. With his 2010 Application, Spillman provided the following documents:

   a. A letter explaining the allegations leading to the 2006 Stipulation of Facts and Consent to Finding of Cause for Discipline and Waiver of Hearing entered

against him relative to his Missouri producer license, PR283629, and requesting that his producer license be reinstated;

b. A copy of the Order and Judgment of Dismissal With Prejudice from the Circuit Court of Miller County, Missouri, relating to *Elver and Joyce Johnson and Elver Johnson's Excavating, Inc. v. Michael Spillman d/b/a Michael Spillman Insurance*, Case No 06ML-CC00106 (Oct. 7, 2009);

c. A copy of the Receipt and Satisfaction of Settlement, dated December 2, 2009, filed with the Circuit Court of Miller County, Missouri in the *Johnson, et al., v. Spillman* case, noted above; and

d. A copy of a letter indicating that Spillman passed the Property and Casualty Producer test on March 9, 2010.

8. On April 17, 2006, the Department filed a Complaint with the Missouri Administrative Hearing Commission ("AHC") against Spillman alleging the following:

a. That Spillman "improperly withheld, misappropriated or converted moneys or properties received in the course of doing insurance business" in that Spillman received funds from an insurance client for insurance premium payments but "appropriated such funds for his own use or diverted such funds for a use other than that intended, ... [and] issued a phony insurance identification card and a phony certificate of insurance coverage," leaving his insurance client without insurance coverage;

b. That Spillman "violated a regulation of the Director" by soliciting a personal loan from one of his insurance clients, in violation of 20 CSR 700-1.140(4); and

c. That Spillman "used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere" based on the actions alleged in Counts I and II of the Complaint.

W. Dale Finke v. Michael Spillman, No. 05-0923339C.

9. On August 21, 2006, the Department filed a Stipulation of Facts and Consent to Finding of Cause for Discipline and Waiver of Hearing ("Stipulation") in the above-referenced case with the AHC. *Finke v. Spillman*, No. 06-0480DI (August 21, 2006).

10. According to the Stipulation, executed by Spillman and his attorney and by Stephen R. Gleason, Attorney for the Department, Spillman admitted that he "improperly withheld money received in the course of doing insurance business" and diverted "such funds for a use other than that intended" in violation of §375.141.1(4), RSMo (Supp. 2005)[1], waived his

[1] Section 375.141.1(4), RSMo (Supp. 2005) is identical to §375.141.1(4), RSMo (Supp. 2010) in effect today.

right to a disciplinary hearing concerning the allegations, consented "to a finding of cause to discipline the insurance producer license of Respondent Spillman," and agreed "that the Director shall enter he [sic] revocation order after the AHC's finding."

11. The Director of the Department issued his Findings of Fact, Conclusions of Law and Order of Discipline on September 1, 2006, finding that "[b]ased on the nature and severity of the aforementioned conduct, sufficient grounds exist for revoking the insurance producer license of Spillman pursuant to §375.141.1(4), RSMo (Cum. Supp. 2005)." *In re: Michael Spillman*, MDI Case No. 05-0923339C/AHC Case No. 06-0480DI.

12. By executing the Stipulation and agreeing to the facts as alleged in the Complaint, Spillman acknowledged and admitted the findings of fact made by both the Department and the AHC relative to his actions as an insurance producer which led to the disciplinary action against his license in 2006.

13. On or about January 17, 2008, the Ohio Department of Insurance ("Ohio Department") issued notice to Spillman advising him that the Ohio Department "indends to suspend, revoke, or refuse to renew ... and/or impose any other sanction" against his Ohio non-resident insurance agent license. The Ohio Department served the Notice of Opportunity for Hearing ("Notice") via certified mail, regular mail, and by publication.

14. Although given 30 days to request a hearing following the third date of publication of the Ohio Department's Notice, Spillman failed to respond or otherwise request a hearing.

15. On July 15, 2008, the Ohio Department entered Findings, Order and Journal Entry against Spillman revoking his insurance agent license "pursuant to the authority granted in section 3905314(D) of the Ohio Revised Code." *In re: Suitability of Michael A. Spillman, DOB 8/17/1946, to be Licensed as an Insurance Agent in the State of Ohio.*

16. Spillman did not disclose the Ohio Department's action revoking his non-resident producer license when he submitted his 2010 Application to the Department.

17. Spillman intentionally provided materially incorrect, misleading, incomplete or untrue information in his 2010 Application when he failed to include the 2008 administrative revocation of his Ohio insurance agent license.

18. Spillman made an incomplete statement on his 2010 Application for the purpose of misleading the Department into granting him an insurance producer license in Missouri.

19. Spillman had an opportunity to provide a complete answer to Background Question # 2 of his 2010 Application when he sent his letter of explanation along with that application, but he did not provide full disclosure of all of the administrative actions against him.

20. In the section of 2010 Application headed "Background Questions," Background Question No. 3 asks: "Has any demand been made or judgment rendered against you or any

business in which you are or were an owner, partner, officer or director, or member or manager of a limited liability company, for overdue monies by an insurer, insured or producer ...?"

21. Spillman answered "No" to Background Question No. 3.

22. On November 2, 2006, Elver and Joyce Johnson, husband and wife, and Elver Johnson's Excavating, Inc., filed a three-count Petition against Spillman in the Circuit Court of Miller County, Missouri alleging breach of contract, breach of general covenant of good faith and fair dealing, and misrepresentation. *Johnson, et al. v. Spillman*, Miller County Circuit Court, No. 06ML-CC00106.

23. The Petition alleged the following:

a. That Joyce Johnson contacted Spillman, an insurance producer licensed at the time in Missouri and doing business as Michael Spillman Insurance "for the purpose of purchasing an insurance contract for 'Johnson Excavating;'"

b. "That Spillman agreed to provide a policy of insurance for 'Johnson Excavating' for insurance coverage," including workers' compensation;

c. That "'Johnson Excavating' paid insurance premiums to Spillman ... totaling $15,835.00" for that coverage;

d. That "Spillman provided a Certificate of Insurance indicating that 'Johnson Excavating' was insured" between 2003 and 2004;

e. That a workers' compensation claim was filed against Johnson Excavating in 2004;

f. That although "all premiums were paid in full as of the date of the above incident and resulting property loss and injury," the Johnsons and Johnson Excavating "were informed there was no insurance policy in place when the losses were reported to the insurance company";

g. That as a result of having no insurance coverage, the plaintiffs suffered financial losses.

24. Although Spillman submitted a copy of the "Order and Judgment of Dismissal with Prejudice" and "Receipt and Satisfaction of Settlement" in *Johnson, et al. v. Spillman* with his 2010 Application, he failed to include a copy of the Petition that was filed in that case which outlined the allegations against him.

25. Spillman explained in the letter he submitted with his 2010 Application that the *Johnson, et al. v. Spillman* case "was a professional liability claim, not a fraudulent, coercive or dishonest act." Nothing in the aforementioned Petition alleges a professional liability claim against Spillman, but does, in fact, allege in Count II, "Breach of General Covenant of Good

Faith and Fair Dealing" and in Count III, "Misrepresentation."

26. Spillman did not disclose the fact that a demand had been made and a judgment rendered against him for damages based on his actions while an insurance producer when he submitted his 2010 Application to the Department.

27. Spillman intentionally provided materially incorrect, misleading, incomplete or untrue information in his 2010 Application when he failed to disclose the fact that a demand had been made and a judgment rendered against him for damages based on his actions while an insurance producer.

28. Spillman made an incomplete statement on his 2010 Application for the purpose of misleading the Department into granting him an insurance producer license in Missouri.

29. Spillman had an opportunity to provide a complete answer to Background Question #3 of his 2010 Application when he sent his letter of explanation along and copies of two of the documents filed in *Johnson, et al. v. Spillman* with that Application, but he did not provide accurate and full disclosure of all of the allegations against him.

CONCLUSIONS OF LAW

30. Section 375.141 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 of another insurance commissioner in any other state;
>
> (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;
>
> (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;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

31. Section 3901-5-09(D)(7) of the Ohio Administrative Code requires producers licensed in Ohio to maintain an agent license in their state of residence and provides that the Superintendent of Insurance for the Ohio Department of Insurance may revoke an agent's license for failing to maintain his license in his state of residence.

32. When an applicant reveals that the severe administrative action of revocation has been taken against him in another state, the Department is likely to refuse the application.

33. When an applicant otherwise qualifies for a license and does not reveal that he has been subject to any administrative action or other adverse history, the application is likely to be approved without extensive investigation.

34. The dictionary definition of "material" is "having real importance or great consequences[.]" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 765 (11th ed. 2004). *Missouri Board of Cosmetology and Barber Examiners v. Yolanda Cuellar*, No. 08-0750 CB (Mo. Admin. Hrg. Comm'n, December 31, 2008).

35. The dictionary definition of "misrepresentation" is "a falsehood or untruth made with the intent and purpose of deceit." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 794 (11th ed. 2004). *Director of Insurance, Financial Institutions, and Professional Registration v. Frank S. Norphy*, No. 09-0530 DI (Mo. Admin. Hrg. Comm'n, March 15, 2011). *See also, Hernandez v. State Board of Registration for the Healing Arts*, 936 S.W.2d 894, 899 n. 3 (Mo. App. W.D. 1997).

36. "Deception" is defined as "the act of causing someone to accept as true what is not true." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 321 (11th ed. 2004). *Id.* It "contemplates an act designed to deceive, to cheat someone by inducing their reliance on clever contrivance or misrepresentation." *Id.*, citing *State ex rel. Nixon v. Telco Directory Publishing*, 863 S.W.2d 596, 600 (Mo. banc 1993). *See also, Financial Solutions and Associates v. Carnahan*, 316 S.W.3d 518, 528 (Mo. App. W.D. 2010).

37. The definition of "trustworthy" is "worthy of confidence" or "dependable." *Stith v. Lakin*, 129 S.W. 3d 912, 918 (Mo. App. S.D. 2004).

38. Incompetency is a "state of being" amounting to an inability or unwillingness to function properly. *Albanna v. State Bd. of Regis'n for the Healing Arts*, 293 S.W.3d 423, 436 (Mo. banc 2009). It is "general lack of, or lack of disposition to use, a professional ability." *Id.*, citing *Forbes v. Missouri Real Estate Comm'n*, 798 S.W.2d 227, 230 (Mo. App. 1990).

39. "Irresponsible" is defined as "not mentally or financially fit to assume responsibility" or "lacking a sense of responsibility." THE AMERICAN HERITAGE DICTIONARY 678 (2d. College Ed. 1985).

40. "Dishonesty includes actions that reflect adversely on trustworthiness." *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

41. 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. 1984).

CAUSE FOR ORDER REFUSING TO ISSUE PUBLIC ADJUSTER SOLICITOR LICENSE

42. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading incomplete or untrue information in his 2010 Application, in that Spillman failed to disclose the fact that his insurance agent license had been revoked in Ohio. The fact that another state revoked his license is a material fact which the Department would take into consideration when determining whether or not to issue Spillman an insurance producer license.

43. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading, incomplete, or untrue information in his 2010 Application, in that Spillman indicated that the demand, judgment and settlement against him in *Johnson, et al. v. Spillman* "was a professional liability claim, not a fraudulent, coercive or dishonest act," when the plaintiffs actually alleged breach of contract, breach of general covenant of good faith and fair dealing, and misrepresentation, which has been defined as "a falsehood or untruth made with the intent and purpose of deceit." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 794 (11th ed. 2004).

44. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(2) for violating the insurance laws of another state, in that Spillman failed to maintain an agent license in his resident state, Missouri, while he was licensed as an insurance agent in Ohio, a violation of Section 3901-5-09(D)(7) of the Ohio Administrative Code.

45. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud, in that Spillman failed to disclose the fact that his insurance agent license had been revoked in Ohio, a material fact upon which the Department relies on in determining whether or not an applicant should be granted a producer license.

46. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud, in that Spillman failed to fully and accurately disclose in his 2010 Application the cause of action filed against Spillman in *Johnson, et al. v. Spillman* alleged breach of contract, breach of general covenant of good faith and fair dealing, and misrepresentation and not "a professional liability claim," as he indicated in his letter to the Department.

47. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(4) because his actions relative to the improper withholding, misappropriation and/or conversion of premium payments from his insurance clients and the diverting of those funds for a use other than that intended violated his fiduciary duties to his clients from whom he received the premium payments and the insurer to whom he owed the payments.

48. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(8) because his actions relative to the improper withholding, misappropriation and/or conversion of premium payments from his insurance clients and the diverting of those funds for a use other than that intended demonstrated incompetence, untrustworthiness, and irresponsibility.

49. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(8) because it is a dishonest practice and demonstrates untrustworthiness, incompetency, and irresponsibility for Spillman to fail to fully disclose all administrative actions taken against him as an insurance producer, in that the revocation of his nonresident insurance agent license by the Ohio Department qualifies as a material fact that the Department would take into consideration in determining whether it should grant Spillman an insurance producer license, and Spillman's failure to disclose such material information indicates that he was not truthful in the information he provided the Department with his 2010 Application.

50. The Director may refuse to issue an insurance producer license to Spillman pursuant to § 375.141.1(9) because his insurance producer license was revoked in another state.

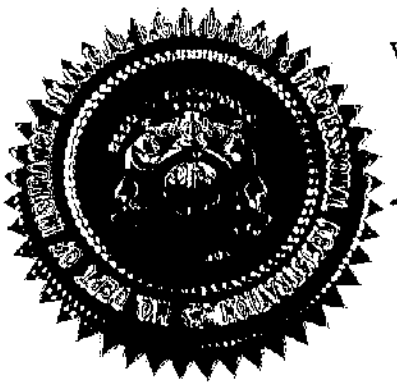
51. The Director has considered Spillman's history and all of the circumstances surrounding Spillman's 2010 Application for licensure and, for all of the reasons given in this Petition, exercises his discretion and refuses to issue an insurance producer license to Spillman.

52. The requested order is in the public interest.

ORDER

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

SO ORDERED.



WITNESS MY HAND THIS 18TH DAY OF MAY, 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 14th day of June, 2011, a copy of the foregoing notice and order was served upon Michael A. Spillman in this matter by U.S. regular mail at the following address:

Michael A. Spillman
65 Copper Ridge Ct. #3A
Lake Ozark, MO 65049

Michael A. Spillman
P.O. Box 216
Lake Ozark, MO 65049

Kathryn Randolph