State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
	)	Case No. 111128810C
Kelly R. Sprague,	)	
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
100 Osage Hill Road Lake Ozark, Missouri 65049	)	
	)	
And	)	
	)	
P.O. Box 1812 Lake Ozark, Missouri 65049	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On December 21, 2011, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Kelly R. Sprague. 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.

FACTUAL BACKGROUND

1. Kelly R. Sprague ("Sprague") is an individual residing in Missouri whose residence and business address is 100 Osage Hill Road, Lake Ozark, Missouri 65049. Sprague's mailing address is P.O. Box 1812, Lake Ozark, Missouri 65049.

2. On or about April 28, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic Uniform Application for Individual Insurance Producer License ("Application") from Sprague.

3. In the section of the Application headed "Background Questions," Background Question #1 asks, "Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime? . . . Conviction includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered plea of guilty or nolo contendere, or having been given probation, or suspended sentence or a fine." Sprague answered "No" to Background Question #1.

4. On June 7, 2011, Sprague submitted documents, including a letter, in which he disclosed that he had been arrested in 2001 and convicted in 2004, and claimed he did not report the information on his Application because he was told it would not show up on any background checks.

5. Sprague disclosed the following information in his June 7, 2011 communication:

   a. On September 4, 2004, the prosecuting attorney for St. Clair County, Illinois filed an Information alleging that Sprague:

      > committed the offense of UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE, in violation of Section 402(c), Act 570.0, Chapter 720, ILCS 1992, in that KELLY R. SPRAGUE, knowingly and unlawfully had in his possession less than 15 grams of a substance containing cocaine, a controlled substance, other than as authorized in the Controlled Substance Act. A class 4 Criminal Felony

   b. On December 7, 2004, Sprague pled guilty to felony possession of a controlled substance and was ordered to complete two years probation and 30 hours community service, and pay a fine. Sprague successfully completed probation on December 8, 2006.

   c. On February 1, 2007, the Circuit Court of St. Clair County, Illinois issued an Order discharging Sprague's probation without an adjudication of guilt and without a conviction.

   State of Illinois v. Sprague, Case No. 04CR0117701.

6. Sprague never disclosed the following information concerning his criminal history:

   a. In 1998, Sprague was charged with battery in Madison County, Illinois, though adjudication was withheld. *State of Illinois v.*

Sprague, Case No. 98-CM-201266.

b. On April 26, 2001, the prosecuting attorney for Madison County, Illinois filed misdemeanor complaints charging that Sprague committed the crimes of resisting a peace officer and obstructing a peace officer. Sprague pled guilty to resisting a peace officer. The court ordered Sprague to complete 90 days probation and withheld further adjudication. *State of Illinois v. Sprague*, Case Nos. 01-CM-200354 and 01-CM-200355.

c. In 2003, Sprague was charged with passing bad checks. Sprague was convicted on October 11, 2005. The court ordered Sprague to pay restitution and complete one year probation. *State of Illinois v. Sprague*, Case No. 03-CF-003275.

7. On July 29, 2011, Consumer Affairs Division Investigator Karen Crutchfield ("Crutchfield") sent a letter to Sprague at his mailing address with sufficient postage attached. Crutchfield's letter inquired into Sprague's criminal history and required a response by August 19, 2011. The letter was not returned as undeliverable. Sprague contacted Crutchfield by telephone on August 4, 2011 and August 16, 2011 to ask for a two-week extension, which Crutchfield granted. Sprague never provided a written response or justification for a delayed response.

8. On October 4, 2011, Crutchfield sent a letter to Sprague at his mailing address with sufficient postage attached. Crutchfield's letter inquired into Sprague's criminal history and required a response by October 25, 2011. The letter was not returned as undeliverable and Sprague never provided a written response or justification for a delayed response.

JURISDICTION AND STATUTORY GROUNDS FOR REFUSAL

9. Section 375.141.1 RSMo Supp. 2011,[1] provides, in part:

> 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,

[1] All statutory references are to the 2011 Supplement to the Revised Statutes of Missouri, unless otherwise indicated.

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[.]

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

> (2)(A) 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.

11. "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 citations omitted).

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

13. Sprague may be refused an insurance producer license pursuant to §375.141.1(1), because by answering "No" to Background Question #1 on the Application, Sprague provided materially incorrect, misleading, incomplete, or untrue information in the license application in that Sprague had been convicted of a crime and had judgments withheld or deferred, but Sprague failed to disclose such facts. *State of Illinois v. Sprague*, Case No. 98-CM-201266 battery, judgment withheld); *State of Illinois v. Sprague*, Case No. 01-CM-200354 (resisting peace officer, judgment withheld); *State of Illinois v. Sprague*, Case No. 03-CF-003275 (passing bad checks, conviction); and *State of Illinois v. Sprague*, Case No. 04CR0117701(unlawful possession of controlled substance, probation discharged and judgment withheld). Such information is material in that Sprague's criminal history may reflect negatively on his Application.

14. Sprague may be refused an insurance producer license pursuant to §375.141.1(3), because by failing to disclose the passing bad checks conviction, the guilty pleas entered concerning charges of battery, resisting a peace officer, and drug possession, Sprague attempted to

obtain a license through material misrepresentation or fraud. The conviction and guilty pleas are material to Sprague's Application because it appears Sprague was trying to conceal matters that may reflect negatively on his Application.

15. Sprague may be refused an insurance producer license pursuant to §375.141.1(2), because by failing to respond to two inquiries dated July 18, 2011 and October 4, 2011, from the Consumer Affairs Division concerning his criminal history, Sprague violated a Missouri insurance regulation, namely 20 CSR 100-4.100(2)(A).

16. The Director has considered Sprague's history and all of the circumstances surrounding Sprague's Application for licensure and exercises his discretion in summarily refusing to grant Sprague's insurance producer license.

17. Granting Sprague's insurance producer license would not be in the public interest.

18. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license application of Kelly R. Sprague is hereby summarily REFUSED.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 21st DAY OF December, 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, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to §621.120, RSMo. Under 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 22nd day of December, 2011, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Kelly R. Sprague
100 Osage Hill Road
Lake Ozark, Missouri 65049

Certified Mail No. 7008 2810 0000 2014 9127

And

Kelly R. Sprague
P.O. Box 1812
Lake Ozark, Missouri 65049

Certified Mail No. 7008 2810 0000 2014 9134

Kathryn Randolph

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