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DEPT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

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BEFORE THE MISSOURI DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

In Re:	)	
	)	Case No. 090420499C
TITAN TITLE & CLOSING OF MISSOURI, LLC.	)	
	)	

And

In Re:	)	
	)	Case No. 110310359C
TITAN TITLE & CLOSING OF MISSOURI, LLC.	)	
	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Tamara W. Kopp, and Titan Title & Closing of Missouri, LLC, through legal counsel Chuck Hatfield, have reached a settlement in this matter and have consented to the issuance of this Consent Order.

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter, "Director") whose duties, pursuant to Chapters 374, 375, and 381, RSMo,[1] include the supervision, regulation, and discipline of title insurance producers.

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

2. The Consumer Affairs Division has the duty of conducting investigations into the acts of insurance producers under the insurance laws of this state and is authorized to investigate, recommend, and pursue disciplinary and/or enforcement action for violations of the insurance laws of this state.

3. Titan Title & Closing of Missouri, LLC (Titan) is a business entity insurance producer first licensed by the Department on March 28, 2009. (License No. 8024283). Titan's license is currently active and set to expire on March 28, 2012.

4. On April 6, 2010, the Director filed his First Amended Complaint with the Administrative Hearing Commission against Titan alleging that cause existed to discipline Titan's business entity producer license pursuant to § 375.141.1(2) RSMo Supp. 2009 because Titan violated § 381.141.1(1) and (2) RSMo Supp. 1999.

5. The Administrative Hearing Commission issued a Decision that found Titan violated § 381.141.1(1) and (2) RSMo Supp. 1993, and that the Director had established cause to discipline Titan's business entity producer license pursuant to § 375.141.1(2). *Director of Dep't Ins., Fin. Insts. & Prof'l Reg'n v. Titan Title & Closing of Missouri, LLC*, 10-0490 DI (Mo. Admin. Hrg. Comm'n November 15, 2010). The Director scheduled a disciplinary hearing in the matter pursuant to § 621.110. *In Re: Titan Title & Closing of Missouri, LLC*, Case No. 090420499C.

6. Titan contests the jurisdiction of the Administrative Hearing Commission to enter the above order and Titan specifically denies there is cause to

discipline Titan's license. Titan further denies that the order of the Administrative Hearing Commission was lawful or accurate.

7. On or about March 10, 2011, the Division filed a Verified Statement of Charges with the Director that sought penalties, investigation costs, and prosecution costs pursuant to § 374.046. *In Re: Titan Title & Closing of Missouri, LLC*, Case No. 110310359C.

8. On March 13, 2011, the Director issued an Order to Show Cause why he should not grant the Division's requested relief. The Director served the Order to Show Cause and the Verified Statement of Charges on Titan's registered agent by certified mail on or about March 14, 2011.

9. Titan denies the allegations raised by the Consumer Affairs Division.

10. Titan stipulates and agrees to waive any rights that it may have to a hearing before the Administrative Hearing Commission or the Director and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever releases and holds harmless the Department, the Director and his agents, and the Consumer Affairs Division from any and all liability and claims arising out of, pertaining to, or relating to this matter, including a release from all attorney fees.

11. Each party shall bear its own costs and attorney's fees and no party shall be deemed the prevailing party in this matter.

12. Titan has the right to consult counsel at its own expense.

13. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

14. The Director is authorized to settle this matter and issue this Consent Order in the public interest pursuant to §§ 374.046.15, 374.280, and 621.045 and § 536.060, RSMo 2000.

15. The Director is authorized to enforce this Consent Order and should Titan fail to comply with any of the conditions set forth herein, the Director or his successors, without any limitation, may initiate any action authorized by law.

16. The terms set forth in this Consent Order are an appropriate and complete disposition of this matter and entry of this Consent Order is in the public interest.

ORDER

IT IS ORDERED THAT, pursuant to the agreement of the Division and Titan Title & Closing to resolve their disputes, Titan Title & Closing of Missouri, LLC shall pay five thousand dollars ($5000.00) payable to the Missouri State School Fund to fully and finally resolve all allegations arising from the Division's investigation, and Case Nos. 090420499C and 110310359C. Such payment shall be immediately due and payable by money order or cashier's check and shall be forwarded with this executed Consent Order to the Department of Insurance, Financial Institutions and Professional Registration, Attention Tamara W. Kopp, Senior Enforcement Counsel, P.O. Box 690, Jefferson City, Missouri 65102. Any correspondence and/ or checks shall reference Case Nos. 090420499C and 110310359C.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 9TH DAY OF NOVEMBER, 2011.

JOHN M. HUFF
Director, Missouri Department of Insurance, Financial Institutions and Professional Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Titan Title & Closing of Missouri, LLC has the right to a hearing, but that Titan Title & Closing of Missouri, LLC has waived the hearing and consented to the issuance of this Consent Order.

11/4/2011
Date

Titan Title & Closing of
Missouri, LLC
Respondent
2974 East Battlefield
Springfield, Missouri 65804
Telephone: 918-299-5069

11/4/2011
Date

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11-7-11
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CONSENT OF MANAGER
OF
TITAN TITLE & CLOSING OF MISSOURI, LLC

The undersigned, being a Manager of Titan Title & Closing of Missouri, LLC, a Missouri Limited Liability Company, does hereby consent to and adopts the following resolutions:

RESOLVED, that Christina Baird, as Authorized Representative of Titan Title & Closing of Missouri, LLC, is hereby authorized and directed to take any and all such action in the name of and on behalf of the Company as may be necessary in order to file the Consent Order before the Missouri Department of Insurance, Financial Institutions and Professional Registration (Case Nos. 090420499C and 110310359C), including, without limitation, the execution and delivery of Consent Order and all necessary documents and instruments in connection therewith.

NOW, THEREFORE BE IT RESOLVED, that said Resolutions are adopted, ratified, and approved and that Joe Passanise, a Manager of the Company, is hereby authorized and directed to take any and all action in the name of and on behalf of the Company as may be necessary to consummate said transactions.

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the Manager has executed this Consent effective this 3rd day of March, 2011.

MANAGER:

Joe Passahise

Before the
Administrative Hearing Commission
State of Missouri

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NOV 15 2010
DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

DIRECTOR OF DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION,	)	
Petitioner,	)	
vs.	)	No. 10-0490 DI
TITAN TITLE & CLOSING OF MISSOURI, LLC,	)	
Respondent.	)	

DECISION

Titan Title & Closing of Missouri, LLC ("Titan") is subject to discipline because it violated the insurance laws of Missouri. We grant the motion for summary decision filed by the Director of the Department of Insurance, Financial Institutions and Professional Registration ("the Director" or "the Department, as appropriate") and cancel the hearing.

Procedure

The Director filed a complaint on April 2, 2010, then filed an amended complaint on April 6, 2010, seeking this Commission's determination that cause exists to discipline Titan's business entity insurance producer license. Titan filed an answer on May 14, 2010.

On September 14, 2010, the Director filed a motion for summary decision. We gave Titan until October 6, 2010, to respond to the motion, but it did not respond. Our Regulation 1 CSR 15-3.446(5)(A) provides:

> The commission may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.

Findings of Fact

1. On March 28, 2008, the Director issued Titan a business entity insurance producer license.

2. Titan's license was active at all relevant times.

3. In October 2008, the Department's Consumer Affairs Division received a complaint about a marketing flyer that offered free closings to consumers who purchased title insurance through Titan in the month of November 2008.

4. The flyer was printed on Titan letterhead and stated, among other things, "SAVE $300 AT CLOSING In November at Titan Title and Closing," and "we are…offering your buyers and sellers a free closing with the purchase of title insurance through Titan Title in the month of November."

5. On October 24, 2008, the Department sent Titan a letter informing Titan that the flyer "appears to be a violation of § 381.141 RSMo." Titan received the letter on October 28, 2008.

6. One of Titan's owners, Joseph Passanise, responded to the Department's letter on November 7, 2008. In that letter, he acknowledged printing and disseminating the flyer and stated that the closings were valued at $300.

Conclusions of Law

We have jurisdiction to hear the complaint.[1] We may grant the Director's motion for summary decision if the Director establishes facts that entitle it to a favorable decision and Titan fails to genuinely dispute such facts.[2] But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline.[3] Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Director argues that there is cause to discipline Titan's license under § 375.141.1(2), which reads as follows:

> 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[.]

This subdivision creates a cause for discipline of Titan's license if it violated the insurance laws of Missouri. The Director alleges that Titan violated § 381.141.1(1) and (2),[4] which we discuss below.

Validity of §§ 381.031 and 381.141

The threshold issue in this case is whether §§ 381.031 and 381.141 were valid statutes at the time of the events at issue. The General Assembly enacted §§ 381.031 and 381.141 in 1987.[5] The General Assembly then repealed §§ 381.031 and 381.141 through its enactment of Senate

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[1]Section 621.045. Statutory references are to RSMo Supp. 2009, unless otherwise noted.
[2]1 CSR 15-3.446(5)(A).
[3]***Kennedy v. Missouri Real Estate Commission***, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).
[4]RSMo Supp. 1993.
[5]1987 Mo. Laws S.B. 251, §§ 5 and 16.

Bill 894 in 2000. The Supreme Court, in ***Home Builders Ass'n of Greater St. Louis v. State***,[6] subsequently declared S.B. 894 unconstitutional in its entirety.

Because the Supreme Court declared S.B. 894 unconstitutional, it necessarily follows that any legislation established by S.B. 894 is void.[7] S.B. 894 repealed §§ 381.031 and 381.141; but, having been repealed by an unconstitutional measure, §§ 381.031 and 381.141 remain valid.

Violation of § 381.141.1

The Director alleges that Titan violated § 381.141.1,[8] which provides in relevant part:

> No title insurer or title agent or agency shall:
>
> (1) Pay, directly or indirectly, to the insured or to any other person any commission, any part of its premiums, fees, or other charges; or any other consideration as inducement or compensation for the referral of title business or for performance of any escrow or other service by the title agent or agency; or
>
> (2) Issue any title insurance policy or perform any service in connection with any transaction in which it has paid or intends to pay any commission, rebate or inducement which it knows to be in violation of this section.

Section 381.141 contains a number of terms that are defined in § 381.031, such as "title insurer,"[9] "title agent,"[10] "agency,"[11] "charge,"[12] and "title insurance policy."[13] Of these terms, however, we see no need to set out those definitions, except for "charge," which is defined as follows:

> [A]ny fee billed by a title agent, agency, or title insurer for the performance of services other than fees that fall within the

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[6]72 S.W.3d 267, 268 (Mo. banc. 2002).

[7]***Nixon v. City of Oregon***, 77 S.W.3d 107, 108-09 (Mo. App., W.D. 2002); *see also* ***State ex rel. Miller v. O'Malley***, 117 S.W.2d 319, 324 (Mo. banc 1938).

[8]RSMo Supp. 1993.

[9]Section 381.031(21).

[10]Section 381.031(17).

[11]Section 381.031(18).

[12]Section 381.031(4).

[13]Section 381.031(20).

> definition of premium in [§ 381.031(14)]. "Charge" includes, but is not limited to, fees for document preparation, fees for the handling of escrows, settlements, or closing, and fees for charges commenced but not completed. "Charge" does not include fees collected by a title insurer, title agency, or title agent in an escrow, settlement or closing when the fees are limited to the amount billed for services rendered by an entity independent of the title insurer, title agent, or agency[.]

The "closing fee" referred to in Titan's flyer is a "charge" for purposes of § 381.141.1, since the above definition of "charge" includes "fees for . . . closing."[14]

In this case, Titan's offer to provide free closings to customers who obtained title insurance through it constituted an indirect payment to the customer of its closing fee as inducement for the referral of title business to Titan. The marketing flyer states, specifically, that the free closing is available "with the purchase of title insurance through Titan in the month of November."

Further, Titan performed a service in connection with any transaction (in this case, a closing) in which it paid a rebate or inducement that it knew to be in violation of § 381.141.1. Here, the Director's staff notified Titan of the violation by a letter that Titan received on October 28, 2008. By the time Passanise responded to that letter on November 7, 2008, one person had accepted Titan's free closing offer and had scheduled a November 2008 closing. In total, Titan conducted 24 closings in November 2008, and Titan did not charge its closing fee for any of them. Titan is therefore subject to discipline for violation of § 381.141.1(1) and (2).

[14]See also Black's Law Dictionary 291, where "closing" is defined as "the final transaction between the buyer and seller, whereby the conveyancing documents are concluded and the money and property transferred."

Summary

There is cause to discipline Titan's business entity insurance producer license under § 375.141.1(2). We cancel the hearing.

SO ORDERED on November 15, 2010.

SREENIVASA RAO DANDAMUDI
Commissioner