State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Sylvia Yancy,	)	Case No. 110104002C
	)	
Applicant.	)	

REFUSAL TO ISSUE PUBLIC ADJUSTER SOLICITOR LICENSE

On January 27, 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 Sylvia Yancy. 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. Sylvia Yancy ("Yancy") is an individual residing in Missouri.

2. On or about October 18, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Yancy's Uniform Application for Public Adjuster, Public Adjuster Solicitor, or Surplus Lines ("Application").

3. Yancy listed her residence address on the Application as 1706 E. 18th St. #209, Kansas City, Missouri 64108. She listed her mailing address as P.O. Box 280066, Kansas City, Missouri 64128.

4. In the section of the Application headed "Background Information," Background Question # B asks: "Has any disciplinary action, including but not limited to, refusal, suspension, revocation, ever been taken by any regulatory agency in any state or province of Canada against you or any business with which you have been directly connected?"

5. Yancy answered Background Question # B with a "Yes."

6. In response to Background Question # B, Yancy attached the following documents to her Application:

   a. An unsigned Consent Order dated September 7, 2006, before the Missouri Administrative Hearing Commission ("AHC") finding cause to discipline Yancy's

professional license. *Missouri Real Estate Commission v. Sylvia Yancy*, No. 06-0413 RE (Mo. Admin. Hrg. Comm'n, Sept. 7, 2010);

b. A signed and notarized letter, dated October 12, 2010, from Yancy explaining the disciplinary action against her real estate broker's license, No. 1999076617 and real estate broker associate license, No. 2005 007998; and

c. Certified copies from the AHC regarding the disciplinary action against Yancy's real estate license in *Missouri Real Estate Commission v. Sylvia Yancy*, No. 06-0413 RE. The documents included a Consent Order dated September 7, 2006, and signed by Commissioner June Striegel Doughty, and a Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and the Missouri Real Estate Commission and Disciplinary Order with Joint Proposed Findings of Fact and Conclusions of Law ("Joint Motion and Stipulation") showing the document filed with the AHC on September 5, 2006. The Joint Motion and Stipulation indicates that Yancy and her attorney signed it on August 26, 2006, and that Janet Carder, Missouri Real Estate Commission Executive Director, and Kathleen Robertson, counsel for the Missouri Real Estate Commission, signed it on September 1, 2006.

7. According to information received from the Division of Professional Registration, dated December 7, 2010, Yancy's real estate broker license (#1999076617) was placed on a three year probationary period from September 7, 2006 until September 7, 2009. The Missouri Real Estate Commission place her license on inactive status on January 10, 2007, and the probation was stopped until such time as the license was reactivated. The license expired on June 30, 2008, for Yancy's failure to renew.

8. Yancy's real estate broker license (#1999076617) was active during the year 2002.

9. Yancy conducted business as Fortress Realty between May 6, 2002, and November 4, 2004.

10. George Kimble ("Kimble") and Tom Thompson ("Thompson") contracted with Yancy as a real estate agent, who was doing business as Fortress Realty, to assist them in the purchase of real property located at 6014-16 Virginia Avenue, Kansas City, Missouri 64110 (the "property").

11. On December 10, 2002, Thompson entered into a sales contract for the purchase of the property.

12. Although Kimble did not enter into the sales contract for the purchase of the property, he and several other subcontractors were employed to rehabilitate the property, including Enrique Washington ("Washington").

13. A settlement statement for the sale of the property reflected payment of $4,650 to Washington to be paid from the seller's funds at settlement.

14. Yancy submitted an invoice in the amount of $4,650 for work performed by Washington on the property to North American Savings Bank ("NASB"). The invoice authorized "Sylvia Yancy with Fortress Realty" to pick up remittance for Washington.

15. NASB issued a check in the amount of $4,650 to "Enrique Washington Forty Acres Contractor & Devel. C/O Fortress Realty," and forwarded the check to Yancy at Fortress Realty.

16. The check was endorsed "Enrique Washington/Forty Acres make payable to Sylvia Yancy."

17. Yancy endorsed the check with her name.

18. Yancy cashed the check.

19. Yancy did not deposit the funds into her escrow or trust account.

CONCLUSIONS OF LAW

20. Section 339.100.2, RSMo (2000), provides, in relevant part:

> 2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:
>
> (1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;
>
> * * *
>
> (3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others[.]

21. Section 339.105.1, RSMo (2000) provides:

> 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest

in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

22. Section 339.740.1, RSMo (2000) provides, in relevant part:

1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

* * *

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity;

* * *

(4) To account in a timely manner for all money and property received[.]

23. In 2002 and 2003, 4 CSR 250-8.120(1), provided, in relevant part:

All money received by a licensee as set out in section 339.100.2(1), RSMo shall be deposited in the escrow or trust account maintained by the broker no later than ten (10) banking days following the last date on which the signatures or initials, or both, of all the parties to the contract are obtained, unless otherwise provided in the contract.

24. Section 325.035, RSMo (Supp. 2009)[1] provides, in relevant part:

1. Whenever the director shall be satisfied that an applicant for a license does not have the necessary qualifications to engage in the public adjustment business, or when he shall be satisfied that a holder of such license has engaged in false, fraudulent or misleading business practices, the director may refuse to issue the license or may revoke or suspend the license. Such refusal, revocation or suspension shall be accomplished pursuant to the provisions of chapter 621 and shall be based on one or more of the following grounds:

* * *

(2) Any ground under subdivisions (2) to (12) of subsection 1 of section 375.141.

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

25. Section 375.141, 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:
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

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

27. "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).

28. 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. E.D. 1984).

CAUSE FOR ORDER REFUSING TO ISSUE PUBLIC ADJUSTER SOLICITOR LICENSE

29. Yancy received a check on behalf of someone else, in her capacity as a real estate broker, endorsed the check and cashed it instead of placing it in her real estate agency's escrow account.

30. Yancy was acting in a fiduciary capacity, in accordance with § 339.740.1, and failed to safeguard funds that she was required by law, specifically, §§339.100.2, 339.105.1, and 4 CSR 250-8.120(1), to deposit into an escrow or special account separate from any of her own person accounts.

31. The Director may refuse to issue a public adjuster solicitor license to Yancy pursuant to § 325.035.1(2) because Yancy's conduct in receiving a check on behalf of someone else, endorsing and cashing it, but not placing it in her real estate escrow account as required by law is financially irresponsible and untrustworthy, which is a ground for refusal pursuant to §375.141.1(8).

32. The Director has considered Yancy's history and all of the circumstances surrounding her Application. Yancy's conduct demonstrates untrustworthiness and financial irresponsibility. Therefore, granting Yancy a public adjuster solicitor license would not be in the interest of the public. For all of the reasons stated in this Order, the Director exercises his discretion by refusing to issue Yancy a public adjuster solicitor license.

33. The requested order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the a public adjuster solicitor license of SYLVIA YANCY is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 2ND DAY OF FEBRUARY, 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 4th day of February, 2011, a copy of the foregoing notice and order was served upon Syvia Yancy in this matter by certified mail at the following address:

Syvia Yancy
P.O. Box 280066
Kansas City, MO 64128

Certified Mail # 7007 0710 0002 2055 2312

Kathryn Radolpl