



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN RE:

Justin Lee Duley,

Renewal Applicant.

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Case No. 140618520C

ORDER REFUSING TO RENEW INSURANCE PRODUCER LICENSE

On July 18, 2014, the Consumer Affairs Division, through counsel, submitted a Petition to the Deputy Director alleging cause for refusing to renew Justin Lee Duley's insurance producer license. After reviewing the Petition, the Investigative Report, and the entirety of the file, James R. McAdams, Deputy Director, issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Justin Lee Duley ("Duley") is a Missouri resident with a residential address of 405 Mason Ridge Dr., St. Charles, Missouri 63304-7214, and a mailing address of P.O. Box 271, St. Peters, Missouri 63376-0005.
2. On July 17, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an electronic resident insurance producer license renewal application ("Application") from Duley.
3. The Department most recently issued Duley a resident insurance producer license on July 18, 2008 (License No. 0311704), which was subsequently renewed and is set to expire today, July 18, 2014.¹
4. The Department previously issued Duley Consulting Group, LLC ("DCG"), for which Duley is the designated responsible licensed producer, a business entity producer license on September 29, 2009 (License No. 8036262), which was subsequently renewed, and was then voluntarily surrendered on May 16, 2014.
5. On or about October 1, 2013, Duley submitted a check for \$125.00 with the renewal application for DCG's business entity producer license to the Department, at which time the license was renewed. The check was presented three times and returned by the bank with a

¹ Duley was previously licensed as an insurance producer in Missouri from July 10, 1997 to July 10, 1999, and from July 3, 2003 to October 7, 2005.

notation indicating insufficient funds.

6. Duley ultimately paid the \$125.00 due with DCG's October 1, 2013 application on or about June 9, 2014.
7. The Department of Financial Services in the State of Florida previously licensed Duley as a nonresident life, health and variable annuity agent. That license was revoked on February 7, 2014.
 - a. On August 19, 2013, the Department of Financial Services, Division of Legal Services filed an Administrative Complaint before the Chief Financial Officer alleging misrepresentations, false statements, failures to make timely payments with moneys held in trust, the submission of fraudulent documents, and the issuance of checks on behalf of insured customers which were subsequently returned for nonsufficient funds, resulting in multiple instances of consumer harm. *In the Matter of: Justin Lee Duley*, Department of Financial Services, State of Florida, Case No. 123872-13-AG. The Administrative Complaint alleged violations of Florida statutes, including one or more violations of each of the following:
 - i. Three counts alleged the violation of section 626.561(1), Florida Statutes, requiring a licensee to hold funds belonging to insurers or others "in a fiduciary capacity," keep such funds "in a separate account," and "account for and pay the same to the insurer, insured, or other person entitled thereto;"
 - ii. Two counts alleged the violation of section 626.611(5), Florida Statutes, which provides for compulsory discipline or refusal of a license for "[w]illful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising;"
 - iii. Five counts alleged the violation of section 626.611(7), Florida Statutes, which provides for compulsory discipline or refusal of a licensee who has "[d]emonstrated lack of fitness or trustworthiness to engage in the business of insurance;"
 - iv. Five counts alleged the violation of section 626.611(9), Florida Statutes, which provides for compulsory discipline or refusal of a license for "[f]raudulent or dishonest practices in the conduct of business under the license or appointment;"
 - v. Three counts alleged the violation of section 626.611(10), Florida Statutes, which provides for compulsory discipline or refusal of a license for "[m]isappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment;"

- vi. Five counts alleged the violation of section 626.621(2), Florida Statutes, which provides for discretionary discipline or refusal of a license for a “[v]iolation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or appointment;” and
 - vii. Two counts alleged the violation of section 626.9521(1), Florida Statutes, regarding unfair trade practices, through violations of sections 626.9541(1)(a)1., 626.9541(1)(a)5., 626.9541(1)(a)6., and 626.9541(1)(ee), Florida Statutes. Each of the four listed statutes was alleged to be violated in two counts of the Administrative Complaint. The four listed statutes implicate the following acts, respectively: “misrepresent[ing] the benefits, advantages, conditions, or terms of any insurance policy,” “us[ing] any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof,” “inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy” through misrepresentation, and “[w]illfully submitting to an insurer on behalf of a consumer an insurance application or policy-related document bearing a false or fraudulent signature.”
- b. The Administrative Complaint notified Duley of his right to request a proceeding to contest the action. Duley did not exercise that right. *In the Matter of: Justin Lee Duley*, Department of Financial Services, State of Florida, Case No. 123872-13-AG.
 - c. On February 7, 2014, the Chief Financial Officer of the State of Florida entered an Order of Revocation (together with the Administrative Complaint and the accompanying administrative process, the “Florida Revocation”). The Order of Revocation “fully incorporated by reference” the “factual allegations in the Administrative Complaint,” “conclude[d] that JUSTIN LEE DULEY violated the specific statutes and rules charged in each count of the attached Administrative Complaint,” and imposed penalties, which included the revocation of “[a]ll licenses, appointments and eligibility for licensure heretofore issued to Licensee, JUSTIN LEE DULEY, within the purview of the Department of Financial Services.” *Id.*
 - d. The Order of Revocation provided notice to Duley of his right to appeal and seek review of the Order of Revocation within 30 days of its rendition, or by March 10, 2014. *Id.* Duley did not exercise that right.
8. Duley did not report the Florida Revocation to the Director within 30 days of February 7, 2014, the date of the final disposition of the matter.

CONCLUSIONS OF LAW

9. Section 375.141, RSMo (Supp. 2013),² provides, in part:

² All statutory references are to the Revised Statutes of Missouri (Supp. 2013) unless otherwise noted.

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;

(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;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

* * *

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(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[.]

* * *

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

10. 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).

11. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(2) because Duley violated an insurance law, § 375.141.6, when he failed to report to the Director an administrative action taken against him in Florida within 30 days of the final disposition of the matter. *In the Matter of: Justin Lee Duley*, Department of Financial Services, State of Florida, Case No. 123872-13-AG.

12. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(2) because Duley – as reflected in paragraph 7.a.i. above – three times violated an insurance law, § 626.561(1), Florida Statutes, when he failed to hold all premiums, return premiums, or other funds belonging to insurers or others in a fiduciary capacity and failed to account for and pay the same to the insurer, insured, or other person entitled thereto, as detailed in the Florida Revocation. *Id.*
 - a. Each violation of § 626.561(1), Florida Statutes, found in the Florida Revocation is a separate and sufficient ground for refusal pursuant to § 375.141.1(2).
13. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(2) because Duley – as reflected in paragraph 7.a.vii. above – two times violated an insurance law, § 626.9521(1), Florida Statutes, when he engaged in unfair trade practices under §§ 626.9541(1)(a)1., 626.9541(1)(a)5., 626.9541(1)(a)6., and 626.9541(1)(ee), Florida Statutes. *Id.*
 - a. Each violation of § 626.9521(1), Florida Statutes, found in the Florida Revocation is a separate and sufficient ground for refusal pursuant to § 375.141.1(2).
14. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(3) because Duley obtained a license through material misrepresentation or fraud when he submitted a \$125.00 bad check to the Department. The submission of the check was a representation as to the sufficiency of funds to honor the check in the listed account. Relying on that representation, the Department renewed the business entity producer license of DCG upon receipt of the renewal application and check, a check that was ultimately returned by the bank with a notation indicating insufficient funds.
15. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(4) because Duley – as reflected in paragraph 7.a.v. above – three times misappropriated, converted, or unlawfully withheld moneys received in the course of doing insurance business. *In the Matter of: Justin Lee Duley*, Department of Financial Services, State of Florida, Case No. 123872-13-AG.
16. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(5) because Duley – as reflected in paragraph 7.a.ii. above – two times willfully misrepresented an insurance policy or annuity contract, or engaged in willful deception with regard to any such policy or contract. *Id.*
17. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(7) because Duley was – as reflected in paragraph 7.a.vii. above – found to have committed four different insurance unfair trade practices, each on at least two occasions, in the Florida Revocation. *Id.*
 - a. Each finding of the commission of an unfair trade practice is a separate and sufficient ground for refusal pursuant to § 375.141.1(7).


18. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(8) because Duley – as reflected in paragraphs 7.a.iii. and iv. above – has five times engaged in fraudulent or dishonest practices, or demonstrated a lack of trustworthiness in the conduct of business in Florida. *Id.*
19. Renewal of Duley's insurance producer license may be refused pursuant to § 375.141.1(9) because Duley had an insurance producer license, or its equivalent, revoked in Florida. *Id.*
20. The Director has considered Duley's history and all of the circumstances surrounding the Application. Renewing Duley's individual resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to renew Duley's individual resident insurance producer license for each of the reasons stated in paragraphs 11 through 19 above.
21. This Order is in the public's interest.

ORDER

IT IS THEREFORE ORDERED that the individual resident insurance producer license renewal application of **Justin Lee Duley** is hereby **REFUSED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 18th DAY OF JULY, 2014.




JAMES R. McADAMS
DEPUTY 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 18th day of July, 2014, a copy of the foregoing Order and Notice was served upon the Applicant's attorney in this matter by UPS with signature required at the following addresses:

Justin Lee Duley
405 Mason Ridge Dr.
St. Charles, MO 63304-7214

Tracking No: 1Z0R15W84291707400

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