



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In re:

LEE DeLEARY

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Case No. 130520324C

AHC Case No. 14-0170 DI

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration, takes up the above-referenced matter for consideration and disposition. The Consumer Affairs Division, through counsel, Cheryl C. Nield, and Lee DeLeary, have reached a settlement in this matter, and DeLeary has consented to the issuance of this Consent Order.

Findings of Fact

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions, and Professional Registration (the "Director" of the "Department")

whose duties, pursuant to Chapters 374 and 375 RSMo,¹ include supervision, regulation, and discipline of insurance producers.

2. The Department's Consumer Affairs Division ("Division") has the duty of conducting investigations into the unfair or unlawful acts of insurance producers and companies under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

3. The Department issued Lee DeLeary ("DeLeary") a non-resident insurance producer license (No. 0246401) that expired on September 21, 2012.

4. The Division seeks to discipline DeLeary's non-resident insurance producer license based upon the following:

- a. On November 14, 2012, the Division received a complaint from Caralee Richterkessing against DeLeary for misappropriation of premium.
- b. More specifically, Richterkessing complained that in July 2011, in an effort to purchase life insurance, she gave DeLeary a \$5200 check made payable to John Hancock.² This check was never cashed.
- c. Approximately two weeks later, DeLeary asked Richterkessing to provide another check, payable to him, because, according to him, the original check was "stale," though he did not return the original, allegedly "stale" check to her. DeLeary indicated to Richterkessing that he would wire the funds to John Hancock on her behalf as premium for a life insurance policy.

¹ All statutory references are to the 2013 Supplement to the Revised Statutes of Missouri unless otherwise noted.

² In July 2011, Richterkessing was 70 years old.

Richterkessing provided DeLeary another \$5200 check, but now payable to DeLeary.

- d. DeLeary cashed this check, but told his broker, Brokers Alliance in Fountain Hills, Arizona, that Richterkessing's policy was not taken. Instead, DeLeary diverted these funds to his own personal use. A representative from John Hancock confirmed that the company never received any funds relative to Richterkessing, so her life insurance policy was never placed.
- e. On November 15, 2012, following receipt of the complaint from Richterkessing, Lynda Kammeier, Special Investigator with the Division, sent a letter, via regular mail, to DeLeary's address of record with the Department. The letter was not returned as undeliverable. In this letter, Kammeier indicated that a complaint had been filed against DeLeary for misappropriation of premium. Kammeier asked DeLeary to provide documentation regarding where he deposited the funds that were intended for the purchase of life insurance for Richterkessing. DeLeary did not respond to this letter or demonstrate a reasonable justification for the delay.
- f. On December 12, 2012, and on January 24, 2013, Kammeier sent additional letters to DeLeary at his address of record. Kammeier sent these letters via both regular and certified mail. Kammeier asked for DeLeary's explanation as to what happened to the \$5200 that Richterkessing had provided in the check payable to DeLeary that was meant to purchase life insurance for her. Both certified letters were returned unsigned by the United States Postal Service, but the letters sent by regular mail were not returned as undeliverable.

DeLeary did not respond to these letters or demonstrate a reasonable justification for the delay.

- g. On August 5, 2013, DeLeary pleaded guilty to the Class C Felony of Stealing based upon the above-described incident and a charge that he “appropriated U.S. currency of a value of at least five hundred dollars which property was in the possession of Caralee Richterkessing, and the defendant appropriated such property from Caralee Richterkessing and with the purpose to deprive her thereof.” *State v. Lee Edward DeLeary*, St. Charles Co. Cir. Ct., No. 1311-CR02548. The court sentenced DeLeary pursuant to a plea agreement with the state, wherein DeLeary received a suspended imposition of sentence, supervised probation for a period of five years, and was required to pay restitution and a restitution fee within two years in equal monthly installments and to have no contact with the victim.

5. On January 31, 2014, the Director filed a complaint with the Administrative Hearing Commission, alleging the above-referenced facts and circumstances. On July 2, 2014, the Director filed a Motion for Summary Decision and Suggestions in Support. On August 4, 2014, the Administrative Hearing Commission issued its Decision, granting the Director’s Motion for Summary Decision and finding cause to discipline DeLeary’s license on the following grounds:

- a. DeLeary’s failure to respond to three written inquiries of the Division from November 15, 2012, December 12, 2012, and January 24, 2013, or to demonstrate a reasonable justification for the delay, is a violation of 20 CSR 100-4.100(2)(A) and constitutes grounds to discipline his non-resident

insurance producer license under § 375.141.1(2) for violating an insurance regulation.

- b. DeLeary's withholding, misappropriating, or converting of Richterkessing's money intended as premium on a life insurance policy is grounds to discipline his non-resident insurance producer license under § 375.141.1(4).
- c. DeLeary's actions in obtaining a check from Richterkessing payable to him, under false pretenses, and his actions in withholding, misappropriating, or converting those moneys to his personal use, and in failing to pay a premium with John Hancock such that Richterkessing's desired life insurance policy was never written, is grounds to discipline his non-resident insurance producer license under § 375.141.1(8) because in so doing, DeLeary used fraudulent and dishonest practices and demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state.

Dir. of the Dep't of Ins., Fin. Insts. and Prof'l Regis'n v. DeLeary, No. 14-0170 DI (Mo. Admin. Hrg. Comm'n).

6. DeLeary admits the facts as outlined in this Consent Order and as found by the Administrative Hearing Commission in its Decision. *See id.*

7. DeLeary agrees that these facts constitute grounds to discipline his insurance producer license pursuant to § 375.141.1(2), (4) and (8) as found by the Administrative Hearing Commission. *Id.*

8. DeLeary acknowledges that he understands that he has the right to consult an attorney at his own expense.

9. DeLeary stipulates and agrees to waive any rights that he may have 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, his agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

10. DeLeary acknowledges and understands that this Consent Order is an administrative action and will be reported by the Department to other states. DeLeary further acknowledges and understands that this administrative action should be disclosed on future applications and renewal applications, and that it is his responsibility to comply with the reporting requirements of each state in which he is licensed.

11. 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

12. 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:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(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[.]

* * *

4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

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

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.

14. The expiration of DeLeary's license does not deprive the Director of jurisdiction to discipline the license. *See* § 375.141.4.

15. The facts as outlined by the Consumer Affairs Division, as found by the Administrative Hearing Commission in *Dir. of the Dep't of Ins., Fin. Insts. and Prof'l Regis'n v. DeLeary*, No. 14-0170 DI (Mo. Admin. Hrg. Comm'n), and as admitted to herein by DeLeary, are grounds to discipline DeLeary's insurance producer license pursuant to § 375.141.1(2), (4) and (8).

16. The Director is authorized to settle this matter and issue this Consent Order in the public interest pursuant to §§ 374.046, 536.060, and 621.045.


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

ORDER

IT IS ORDERED THAT Lee DeLeary's non-resident insurance producer license (No. 0246401) is hereby **REVOKED**.

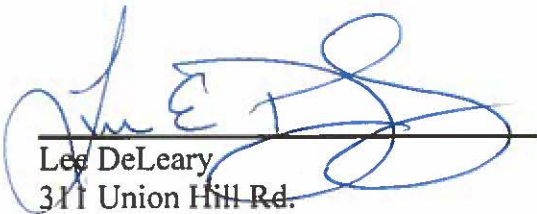
SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 14th **DAY**
OF OCTOBER, 2014.




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

CONSENT

The undersigned persons hereby consent to the issuance of this Consent Order.



Lee DeLeary
311 Union Hill Rd.

Fairview Heights, IL 62208
Telephone: (708) 289-0060

9/11/2014

Date

Counsel for Lee DeLeary

Name: _____


Missouri Bar No. _____

Address: _____

Phone: _____

Fax: _____

Date



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10/9/14

Date