



**BEFORE THE DEPARTMENT OF COMMERCE AND INSURANCE
STATE OF MISSOURI**

In re:) DCI No. 2001160033H
)
Donna Kay Means) AHC No. 19-0406

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE**

Based on the competent and substantial evidence on the whole record, I, Chlora Lindley-Myers, Director of the Missouri Department of Commerce and Insurance (“Director” of the “Department”),¹ hereby issue the following findings of fact, conclusions of law, and order:

Findings of Fact

1. Chlora Lindley-Myers is the duly appointed Director of the Department whose duties, pursuant to Chapters 374 and 375, RSMo², include the supervision, regulation, and discipline of insurance producers.

2. On March 26, 2019, the Director filed a Complaint with the Administrative Hearing Commission (“Commission”) seeking a finding that cause existed for disciplining Donna Kay Means’ (“Means”) insurance producer license.

¹ The Department was formerly known as the Department of Insurance, Financial Institutions and Professional Registration. See Executive Order No. 19-02.

² All references are to RSMo 2016 unless otherwise noted.

3. On March 28, 2019, the Commission served Means with the notice of complaint/notice of hearing and a copy of the complaint by certified mail. Means never filed an Answer to the Complaint.

4. On July 2, 2019, the Director filed a motion for summary decision, with exhibits. The Commission gave Means until July 17, 2019, to file a response, but she did not respond.

5. On May 7, 2019, prior to filing the motion for summary decision, the Director served Means with requests for admissions, which Means never answered. Pursuant to Rule 59.01 of the Missouri Supreme Court Rules of Civil Procedure, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required. *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App. W.D. 1985). Such a deemed admission can establish any fact or any application of law to fact. *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App. W.D. 1976). The rule applies to all parties, including those proceeding *pro se*. *Research Hosp. v. Williams*, 651 S.W. 2d 667, 669 (Mo. App. W.D. 1983). Section 536.073 and 1 CSR 15-3.420(1) apply that rule to this case.

6. On November 8, 2019, the Commission issued a Decision finding cause to discipline Means' insurance producer license pursuant to § 375.141.1(1), (2), and (3).³ *Director of Dep't of Comm. and Ins. v. Donna Kay Means*, No. 19-0406 (Mo. Admin. Hrg. Comm'n November 8, 2019).

³ The Commission also found that there was not cause to discipline Means' insurance producer license pursuant to § 375.141.1(12) or (14).

7. On or about August 10, 2017, and as required by § 381.023 and 20 CSR 500-7.080, Agents National Title Insurance Company (“Agents National”) performed an annual title insurer’s statutory onsite review of Coffelt Land Title, Inc. (“Coffelt”), a Missouri licensed title insurance company. Following the review, Agents National submitted the Missouri Title Insurer’s Statutory Onsite Review Report (“Report”) to the Department. The Report identified two instances where it took more than forty-five days to issue the policy following compliance with the requirements of the commitment for insurance, file numbers 16012252 and 16007106.

8. Section 381.038.3 provides:

A title agent and a title agency shall remit premiums to the title insurer under the term of the agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. A title insurer, title agency, or title agent shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance.

9. Because this was the second year in a row Coffelt had failed to issue title insurance policies within the statutorily required forty-five day period, Marjorie Thompson (“Thompson”), Special Investigator with the Department’s Division of Consumer Affairs (“Division”), initiated an investigation of the circumstances surrounding the two files identified above in paragraph 7.

10. Thompson requested information from Coffelt, including copies of the two files. In response to the request, Coffelt identified the individuals who were involved in the issuance of the two title insurance policies. In a March 17, 2018 email, David Coffelt,

the Qualified Principal for Coffelt, identified Means as the person who had performed the title search and who determined insurability for file number 16012252.

11. Section 381.115.1 provides as follows:

It is unlawful for any person to transact the business of title insurance unless authorized as a title insurer, title agency or title agent.

12. Section 381.115.2(2) provides as follows:

It is unlawful for any person to transact business as:

A title agent, unless the person is a licensed individual insurance producer under subsection 1 of section 375.015 or is exempt from licensure under subsection 3 of this section.

13. Section 381.115.3 provides in pertinent part as follows:

A salaried employee of a title insurer, title agency, or title agent is exempt from licensure as a title agent if the employee does not materially perform or supervise others who perform any of the following:

* * *

(3) Determine insurability:

* * *

(5) Conduct title search or examinations[.]

14. Because Means had both determined insurability and conducted the title search, Thompson checked the Department's records to determine the status of Means' insurance producer license.

15. According to the Department's records, Means' insurance producer license

expired on October 13, 2012.

16. Consequently, in 2016, when she determined insurability and conducted the title search for file number 16012252, Means did not have a current insurance producer license.

17. On April 2, 2018, Means submitted an electronic application for an insurance producer license (“Application”). When she submitted the Application, Means certified, under penalty of perjury, that the information contained therein was true and complete.

18. Based on its review of the Application and the statements contained therein, on April 2, 2018, the Department issued an insurance producer license to Means, effective April 2, 2018. Means’ current insurance producer license expired on April 2, 2020.

19. Background Question No. 1.A. on the Application states in relevant part:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor? You may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving or driving with a suspended or revoked license.

20. Means answered “No” to Background Question No. 1.A. on her Application.

21. Thompson initiated an investigation of the Application submitted by Means and discovered that on May 23, 2006, Means pled guilty to a Class A Misdemeanor,

Passing Bad Check — Less than \$500. *State v. Donna Means*, Barton Co. Cir. Ct., Case No. 06BE-CR00348. On that same date, the court sentenced Means to pay a fine. *Id.*

22. On May 24, 2018, Thompson sent Means an inquiry letter pursuant to 20 CSR 100-4.100. The May 24, 2018 inquiry letter sought information regarding a Department of Revenue certificate of tax lien and the work Means had done for Coffelt on file number 16012252.

23. Because Means did not respond to the May 24, 2018 inquiry letter within the time frame provided in 20 CSR 100-4.100, Thompson sent a second inquiry letter dated June 20, 2018. The June 20, 2018 inquiry letter sought a response to the same questions raised in the original May 24, 2018 inquiry letter.

24. Thompson initially believed Means was an employee of Coffelt, but in a telephone conference and an August 20, 2018 email, counsel for Coffelt informed Thompson that Means was not a salaried employee of Coffelt.

25. Additionally, in a July 25, 2018 email, Means also stated that she was not an employee of Coffelt and was in fact an independent contractor.

26. Section 381.115.8 provides as follows:

If the title insurer, title agency, or title agent delegates the title search to a third party, such as an abstract company, the insurer, agency, or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the insurer, agency, or agent with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period.

27. Means was not a licensed individual insurance producer under subsection 1 of section 375.015 and was not exempt from licensure under subsection 3 of section 381.115.

28. Neither of the inquiry letters was returned to the Division. “There is a presumption that a letter duly mailed has been received by the addressee.” *Clear v. Mo. Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. E.D. 2000) (internal citation omitted).

29. On December 12, 2019, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

30. Thereafter, the Director served the Notice of Hearing upon Means by certified mail and regular mail, which set the disciplinary hearing for 2:00 p.m., March 3, 2020, in the offices of the Department, 301 West High Street, Room 530, Jefferson City, Missouri. The certified mail receipt was signed and returned to the Director.

31. Means did not appear at the disciplinary hearing. Shelley A. Woods appeared as counsel for the Division. *Disciplinary Hearing Transcript (“Tr.”)* 3.

32. The Division’s evidence consisted of Exhibits 1 through 3 and the testimony of Marjorie Thompson, Special Investigator with the Division. *Tr.* 7-12.

33. The hearing officer, Cheryl C. Nield, admitted the Division’s Exhibit 1, the Commission’s certified record; Exhibit 2, the UPS tracking information for the Notice of Hearing; and Exhibit 3, the Proof of Delivery of the Notice of Hearing.

34. At the hearing, the Division, through counsel, recommended that Means' insurance producer license be revoked. *Tr.* 7.

35. The Director hereby adopts and incorporates the November 8, 2019 Decision of the Administrative Hearing Commission referenced herein and does hereby find in accordance with the same. *Director of Dep't of Comm. and Ins. v. Donna Kay Means*, No. 19-0406 (Mo. Admin. Hrg. Comm'n November 8, 2019).

36. After the disciplinary hearing, the Division submitted proposed findings of fact, conclusions of law and order.

37. The Hearing Officer provided a briefing schedule that allowed Means to file proposed findings of fact, conclusions of law, and an order, or a response to the Division's proposed findings of fact, conclusions of law, and order, by May 4, 2020, but Means did not file anything.

Conclusions of Law

38. Section 621.110 outlines the procedure after the Commission finds cause to discipline a license. That statute provides, in relevant part:

Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee . . . , the commission shall deliver or transmit by mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. . . . Within thirty days after receipt of the record of the proceedings before the commission and the findings of fact, conclusions of law, and

recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing[.] . . . The licensee may appear at said hearing and be represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law. . . .

39. Where an agency seeks to discipline a license, the Commission “finds the predicate facts as to whether cause exists” for the discipline, and then the agency “exercises final decisionmaking authority concerning the discipline to be imposed.” *State v. Board of Reg'n for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 267-68 (Mo. App. W.D. 2012) (citing § 621.110).

40. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, the director shall refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

41. Section 375.141 states, in pertinent 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:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

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

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud[.]

42. Section 375.141.4 provides that “[t]he 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.”

43. The Director has discretion to discipline Means’ insurance producer license, including the discretion to revoke such license. Sections 374.051.1 and 2, 375.141, and 621.110.

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

45. Section 375.141.1 provides that the Director may “suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one of” the listed grounds.

46. Section 621.110 allows the Director to receive evidence relevant to the appropriate disciplinary action.

47. Means’ misrepresentation of her criminal history on her Application was intentional. Direct evidence of intent is rarely susceptible to direct proof and therefore must generally be established by circumstantial evidence. *State v. Agee*, 37 S.W.3d 834,

837 (Mo.App. S.D. 2001). One may infer the requisite mental state from the conduct of the licensee “in light of all surrounding circumstances.” *Missouri Bd. For Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, 744 S.W.2d 524, 533 (Mo. App. E.D. 1988). The fact that Means had been previously licensed makes it improbable that Means’ response to Background Question No. 1.A. was inadvertent. Further, Means separately attested to the truth and completeness of her Application and was thereby made aware of the consequences of giving false or misleading information.

48. And Means’ omission of her criminal history was material. Information is “material” if it “[has] real importance or great consequences[.]” Merriam-Webster’s Collegiate Dictionary 765 (11th ed. 2004). Clearly, an applicant’s criminal history has real importance in the Director’s decision whether to issue the applicant a license.

49. A “misrepresentation” is defined as a falsehood or untruth made with the intent and purpose to deceive. Merriam-Webster’s at 359.

50. Means made an intentional incorrect statement of a material fact on her application, that she had not been convicted of a crime. Therefore, there is cause to discipline Means’ insurance producer license under § 375.141.1(1).

51. “Fraud is the intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.” *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

52. Means’ deliberate concealment of her criminal history on her Application was a material misrepresentation that was clearly aimed at gaining licensure, a goal she

managed to achieve.

53. Further, Means did not attempt at any time to correct her misstatement. If Thompson had not learned from Coffelt that Means was the person who performed the title search and who determined insurability for file number 16012252, the Department might never have learned the full extent of her criminal history and other misstatements on her Application. Means, under penalty of perjury, denied having ever been convicted of a crime. She knew that statement to be false, misleading and material to the Director's decision to renew Means' insurance producer license. The clear inference from these circumstances is that Means obtained her insurance producer license renewal through material misrepresentation and fraud. There is cause to discipline Means' insurance producer license pursuant to § 375.141.1(3).

54. Means transacted the business of title insurance by doing both a title search and determining insurability for Coffelt without having a valid insurance producer license. She also failed to respond to the May 24, 2018, and June 20, 2018, inquiry letters within the 20 days required by 20 CSR 100-4.100. Consequently, there is cause to discipline Means' insurance producer license under § 375.141.1(2) because Means violated insurance laws, §§ 381.115.1, 381.115.2(2) and 374.210, and an insurance regulation, 20 CSR 100-4.100.

55. Based on the nature and severity of the aforementioned conduct, sufficient grounds exist for revoking the insurance producer license of Means pursuant to §§ 375.141.1(1), (2), and (3).

ORDER

Based on the foregoing findings and conclusions, the insurance producer license of **Donna Kay Means** (License No. 336799) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 14th
DAY OF March, 2022.



Chlora Lindley Myers
Chlora Lindley-Myers, Director
Missouri Department of
Commerce and Insurance

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2022, a copy of the foregoing Proposed Findings of Fact, Conclusions of Law and Order of Discipline, was served by regular mail, postage pre-paid, and by UPS, to the following:

Donna Kay Means
23058 Black Oak Church Road
Lincoln, Missouri 65338

Tracking No. 1ZOR15W8A897950752

Kathryn Ratimer