



FINAL ORDER
EFFECTIVE
01-16-2018

State of Missouri
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:)
)
RICHARD DALE METCALF JR.,) **Case No. 170807339C**
)
Applicant.)

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On September 25, 2017, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a resident insurance producer license to Richard Dale Metcalf Jr. After reviewing the Petition, Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Richard Dale Metcalf Jr. ("Metcalf") is a Missouri resident with a business, residential, and mailing address of 9414 Mary Glen Drive, Apartment A, Saint Louis, Missouri 63126-2100.
2. On June 1, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Metcalf's completed electronic resident insurance producer license application ("Application").
3. As a condition of submission, Metcalf accepted by his electronic signature the Applicant's Certification and Attestation section of the Application which provided, in relevant part:

I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

4. Metcalf answered "No" to Background Question 1A of the Application, which asked:

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.

You may also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court)[.]

* * *

“Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine.

* * *

If you answer yes ..., you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a copy of the charging document,
- c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

5. Metcalf answered “Yes” to Background Question 1B of the Application which asked, in relevant part: “Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?”
6. Metcalf provided with his Application records from a third-party background check and a written explanation disclosing the following felony convictions:
 - a. On February 1, 1994, Metcalf was convicted, upon an earlier guilty plea, of Stealing, a Class C Felony, in violation of § 570.030, RSMo;¹ the court sentenced him to three years’ incarceration, to be served concurrent with the sentence in *Metcalf II*.² *State v. Richard D. Metcalf, a/k/a Ronald James Reiner*, Franklin Co. Cir. Ct., Case No. CR393-0180FX (“*Metcalf I*”).
 - b. Also on February 1, 1994, Metcalf was convicted, upon an earlier guilty plea, of Stealing, a Class C Felony, in violation of § 570.030; the court sentenced him to three years’ incarceration, to be served concurrent with the sentence in *Metcalf I*. *State v. Ronald James Reiner, a/k/a Richard D. Metcalf*, Franklin Co. Cir. Ct., Case No. CR393-1904FX (“*Metcalf II*”).

¹ All criminal statutory references are to those contained in the version of the Missouri Revised Statutes pursuant to which each judgment was rendered.

² See *infra*, ¶ 6.b.

- c. On September 21, 2001, Metcalf pled guilty to, and was convicted upon, each of two counts of Stealing - Third Offense, Class C Felonies, in violation of §§ 570.030 & 570.040; the court sentenced him to seven years' incarceration, to be served concurrently and concurrent with the sentence in *Metcalf IV*.³ *State v. Richard D. Metcalf*, St. Louis Co. Cir. Ct., Case No. 2101R-02009-01 ("*Metcalf III*").
 - d. Also on September 21, 2001, Metcalf pled guilty to, and was convicted of, Stealing - Third Offense, a Class C Felony, in violation of §§ 570.030 & 570.040; the court sentenced him to seven years' incarceration, to be served concurrent with his sentence in *Metcalf III*. *State v. Richard D. Metcalf*, St. Louis Co. Cir. Ct., Case No. 2101R-00822-01 ("*Metcalf IV*").
7. Metcalf did not provide any court records regarding his criminal history, such as a copy of any charging instrument or judgment, with his Application.
8. Special Investigator Dennis Fitzpatrick of the Department's Consumer Affairs Division ("Special Investigator Fitzpatrick" of the "Division") conducted an investigation into Metcalf's qualifications for licensure and discovered the following misdemeanor convictions which Metcalf had not disclosed as required by the Application:
 - a. On November 20, 1992, Metcalf pled guilty to, and was convicted of, Stealing, a Class A Misdemeanor, in violation of § 570.030; the court sentenced him to 120 days' incarceration, but suspended execution of the sentence and ordered him to complete two years' supervised probation. *State v. Richard D. Metcalf*, Jefferson Co. Cir. Ct., Case No. 23CR192-0762 ("*Metcalf V*").
 - b. On August 11, 1994, Metcalf pled guilty to, and was convicted of, Possession of Drug Paraphernalia With Intent to Use, a Class A Misdemeanor, in violation of § 195.233, and Making a False Declaration, a Class B Misdemeanor, in violation of § 575.060; the court sentenced him to two months' incarceration on each count, to be served concurrently. *State v. Richard D. Metcalf*, St. Louis Co. Cir. Ct., Case No. 2194CR-03315 ("*Metcalf VI*").
9. On March 6, 2017, Special Investigator Fitzpatrick sent Metcalf a letter by first-class mail, postage prepaid, requesting additional information and court records regarding Metcalf's disclosed and undisclosed criminal convictions. The inquiry letter warned that a response was "due [in] twenty days. Failure to respond could result in disciplinary action by this Department."
10. The United States Postal Service did not return the Division's March 6, 2017 inquiry letter as being undeliverable, or for any other reason; therefore, Metcalf is presumed to have received it.

³ See *infra*, ¶ 6.d.

11. Metcalf never responded to the Division's March 6, 2017 inquiry letter.
12. On April 7, 2017, Special Investigator Fitzpatrick sent Metcalf a second inquiry letter by the same method. It was substantially identical to the first inquiry letter, except for the cautionary header "SECOND REQUEST" and the new date.
13. The United States Postal Service did not return the Division's April 7, 2017 inquiry letter as being undeliverable, or for any other reason; therefore, Metcalf is presumed to have received it.
14. Metcalf never responded to the Division's April 7, 2017 inquiry letter.
15. Metcalf did not demonstrate any reasonable justification for his failure to respond to the Division's inquiry letters.
16. It is inferable that Metcalf answered "No" to Background Question 1A of the Application and failed to disclose his convictions from *Metcalf V* and *Metcalf VI* in order to misrepresent to the Director the extent of his criminal history, and thereby increase the chance that the Director would approve of his Application and issue him a resident insurance producer license.

CONCLUSIONS OF LAW

17. Section 375.141.1, RSMo⁴ provides, in relevant part:

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, 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;
- (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud; [or]
- * * *
- (6) Having been convicted of a felony or crime involving moral turpitude[.]

⁴ All civil statutory references are to the 2013 Cumulative Supplement of the Missouri Revised Statutes.

18. "Courts invariably find moral turpitude in the violation of narcotic laws." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (internal citations omitted).
19. "Moral turpitude has also been found in crimes involving fraud and false pretenses." *Id.* (internal citations omitted).
20. "Theft has been held to involve moral turpitude." *Id.* (internal citation omitted).
21. Title 20 CSR 100-4.100(2)(A) is a regulation of the Director and 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.

22. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. E.D. 2000) (internal citation omitted).
23. The Director may refuse to issue Metcalf a resident insurance producer license pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading, incomplete, or untrue information in his Application by answering "No" to Background Question 1A, not disclosing his convictions in *Metcalf V* and *Metcalf VI*, and failing to provide any court records regarding his criminal history, as required.
24. The Director may refuse to issue Metcalf a resident insurance producer license pursuant to § 375.141.1(2) because he twice violated a regulation of the Director, specifically 20 CSR 100-4.100, by failing to respond to either of two Division inquiry letters without reasonable justification.
25. Each of Metcalf's violations of a regulation of the Director is a separate and sufficient cause for refusal pursuant to § 375.141.1(2).
26. The Director may refuse to issue Metcalf a resident insurance producer license pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud by answering "No" to Background Question 1A of his Application and failing to disclose his convictions in *Metcalf V* and *Metcalf VI*, as required.

27. The Director may refuse to issue Metcalf a resident insurance producer license pursuant to § 375.141.1(6) because he has been convicted of five felonies, specifically:
- a. Stealing, a Class C Felony, in violation of § 570.030, *Metcalf I*;
 - b. Stealing, a Class C Felony, in violation of § 570.030, *Metcalf II*;
 - c. Stealing - Third Offense, a Class C Felony, in violation of §§ 570.030 & 570.040, *Metcalf III*;
 - d. Stealing - Third Offense, a Class C Felony, in violation of §§ 570.030 & 570.040, *Id.*; and
 - e. Stealing - Third Offense, a Class C Felony, in violation of §§ 570.030 & 570.040, *Metcalf IV*.
28. The Director may refuse to issue Metcalf a resident insurance producer license pursuant to § 375.141.1(6) because he has been convicted of eight crimes involving moral turpitude, specifically:
- a. Stealing, a Class A Misdemeanor, in violation of § 570.030, *Metcalf V*;
 - b. Possession of Drug Paraphernalia With Intent to Use, a Class A Misdemeanor, in violation of § 195.233, *Metcalf VI*;
 - c. Making a False Declaration, a Class B Misdemeanor, in violation of § 575.060, *Id.*;
 - d. Stealing, a Class C Felony, in violation of § 570.030, *Metcalf I*;
 - e. Stealing, a Class C Felony, in violation of § 570.030, *Metcalf II*;
 - f. Stealing - Third Offense, a Class C Felony, in violation of §§ 570.030 & 570.040, *Metcalf III*;
 - g. Stealing - Third Offense, a Class C Felony, in violation of §§ 570.030 & 570.040, *Id.*; and
 - h. Stealing - Third Offense, a Class C Felony, in violation of §§ 570.030 & 570.040, *Metcalf IV*.
29. Each of Metcalf's convictions for a felony or crime involving moral turpitude is a separate and sufficient cause for refusal pursuant to § 375.141.1(6).
30. The Director has considered Metcalf's history and all of the circumstances surrounding Metcalf's Application. Issuing a resident insurance producer license to Metcalf would not be in the interest of the public. Accordingly, the Director exercises her discretion to refuse to issue a resident insurance producer license to Metcalf.

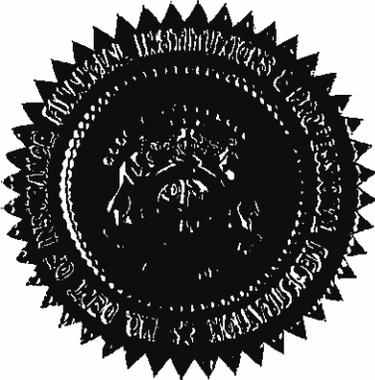
31. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the nonresident insurance producer license application of **Richard Dale Metcalf Jr.** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 12th DAY OF December, 2017.



Chlora Lindley-Myers
CHLORA LINDLEY-MYERS, Director
Missouri Department of Insurance, Financial
Institutions and Professional Registration

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.

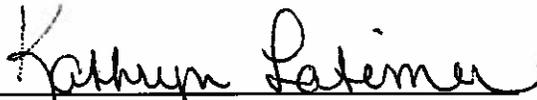
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2017, a copy of the foregoing Order and Notice was served upon the Renewal Applicant in this matter by UPS, signature required service, at the following address:

Richard Dale Metcalf Jr.
9414 Mary Glen Drive, Apartment A
Saint Louis, Missouri 63126-2100

No. 1Z0R15W84297211774



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