



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

RODERICK EARL SMITH,

Applicant.

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Case No. 140429446C

ORDER REFUSING TO ISSUE A RESIDENT INSURANCE PRODUCER LICENSE

On August 13, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a resident insurance producer license to Roderick Earl Smith. 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 order:

FINDINGS OF FACT

1. Roderick Earl Smith ("Smith") is a Missouri resident with a residential address of record of 3731 Tracy Avenue, Kansas City, Missouri 64109.
2. On December 20, 1995, the Missouri Supreme Court issued Smith a license to practice law in Missouri, Bar Number 45574.
3. On February 22, 2006, the Department of Insurance, Financial Institutions and Professional Registration ("Department") issued Smith a resident insurance producer license, license number 0365721.
4. From May 29, 1999 through November 11, 2002, Smith was issued ten admonishments by the Region IV Disciplinary Committee with respect to his law license for violations of the following Rules of Professional Conduct: 4-1.3 ("Diligence"), 4-1.4 ("Communication"), 4-1.5(a) ("Fees," reasonableness), 4-1.8(a) ("Conflict of Interest: Prohibited Transactions"), and 4-1.15(a) ("Safekeeping Property," trust accounts). Information for Interim Suspension and Appointment of Trustee, *In Re: Roderick Smith*, Missouri Supreme Court, Case No. SC87372 (Mo. banc 2006).

5. On January 23, 2006, the Missouri Supreme Court, "finding probable cause to believe that [Smith] is guilty of misconduct or is unable to competently represent the interests of his clients and finding evidence that [Smith] poses a substantial threat of irreparable harm to the public... ordered... that [Smith] [be] suspended from the practice of law." *Id.*
6. On May 29, 2007, the Missouri Supreme Court disbarred Smith. *In Re: Roderick E. Smith*, Missouri Supreme Court, Case No. SC88244 (Mo. banc 2007).
7. The Missouri Supreme Court found that Smith violated the following Missouri Supreme Court Rules, all subparts of Rule 4, titled "Rules Governing the Missouri Bar and the Judiciary – Rules of Professional Conduct:"

a. Rule 4-1.1, which provided:¹

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

b. Rule 4-1.3, which provided:

A lawyer shall act with reasonable diligence and promptness in representing a client.

c. Rule 4-1.5(a), which provided:

A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;

¹ Quoted are the portions of Rule 4 as it was in effect on May 29, 2007, the date of Smith's disbarment; many of the rules have been amended since.

- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

d. Rule 4-1.15(a), which provided:

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

e. Rule 4-1.16, which provided:

1. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the rules of professional conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.
2. Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:
 - (1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (2) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
 - (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

- (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (6) other good cause for withdrawal exists.
- 3. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
 - 4. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

f. Rule 4-3.2, which provided:

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

g. Rule 4-3.3(a), which provided:

A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

h. Rule 4-8.1(b), which provided:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority[.]

Id.; Missouri Supreme Court Rule 4 (Aug. 7, 1985; Aug. 24, 2004).

8. Smith did not report to the Director his disbarment within thirty days, as all licensed insurance producers are required to do in accordance with § 375.141.6.²
9. On April 20, 2006, Smith was indicted for Theft, a State Jail Felony, in violation of Tex. Penal Code § 31.03(E)(4)(A). A pretrial hearing was held on July 26, 2010, and the case was dismissed on that same date. *Texas v. Roderick Earl Smith*, Fannin Co. Dist. Ct., Cause No. 21772.
10. Smith did not report to the Director the criminal prosecution pending against him in Texas within thirty days of the July 26, 2010 pretrial hearing, as all licensed insurance producers are required to do in accordance with § 375.141.7.
11. Smith's resident insurance producer license expired on February 22, 2012.
12. On October 14, 2013, the Department received Smith's application for a resident insurance producer license ("Application").
13. Smith responded "Yes" to Background Question Number 2 of the Application which asks, in relevant part: "Have you ever been named or involved as a party in an administrative proceeding including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?"
14. Along with his Application, Smith submitted a letter addressing his disbarment. Smith enclosed non-certified copies of the Missouri Supreme Court's May 29, 2007 Order and the Information filed for suspension of his law license. Smith's letter also disclosed "a tax issue with the state of Missouri that [he] still dispute[s.]"
15. After reviewing Smith's Application, Special Investigator Dennis Fitzpatrick ("Special Investigator Fitzpatrick"), Consumer Affairs Division ("Division") of the Department, mailed to Smith by first-class mail an inquiry letter dated October 25, 2013 which requested certified copies of court documents in the cases relating to Smith's law license suspension and disbarment, as well as "a copy of the satisfaction of the tax issue."

² All statutory references are to RSMo. (2000) as updated by RSMo. (Supp. 2013) unless otherwise noted.

16. On October 25, 2013, the Division received certified copies of court records in the Missouri Supreme Court Cases No. SC87372 and SC88244 from the Missouri Secretary of State's office.
17. On October 28, 2013, the Division received a copy of a tax compliance letter dated August 23, 2013 and addressed to Smith from the Missouri Department of Revenue.
18. On December 12, 2013, the Division held a Subpoena Conference at which Smith was given the opportunity to explain his disbarment and other matters pertaining to his qualification for licensure and grounds for refusal of his Application. Smith testified under oath, and admitted that he did not report to the Department the criminal proceeding in Texas or his disbarment while he was licensed as an insurance producer. *In Re: Roderick Earl Smith*, DIFP Case No. 140429446C, Subpoena Conference Transcript page 73, lines 3-7.

CONCLUSIONS OF LAW

19. 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; [or]

* * *

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

* * *

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.

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

20. The principal purpose of § 375.141 is not to punish applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).
21. The Director may refuse to issue a resident insurance producer license to Smith under § 375.141.1(2) because Smith violated an insurance law, specifically § 375.141.6, when he failed to report to the Director an administrative action taken against him by another governmental agency in this state within thirty days of the final disposition of the matter. That governmental agency was the Missouri Supreme Court, which finally disposed of the administrative action against Smith by its May 29, 2007 Order disbaring him. *In Re: Roderick E. Smith*, Missouri Supreme Court, Case No. SC88244 (Mo. banc 2007).
22. The Director may refuse to issue a resident insurance producer license to Smith under § 375.141.1(2) because Smith violated an insurance law, specifically § 375.141.7, when he failed to report to the Director within thirty days of the initial pretrial hearing date of his criminal prosecution for a felony or a crime involving moral turpitude, specifically the criminal prosecution against him for Theft in Fannin County, Texas. *Texas v. Roderick Earl Smith*, Fannin Co. Dist. Ct., Cause No. 21772.
23. The Director may refuse to issue a resident insurance producer license to Smith under § 375.141.1(8) because Smith demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state. The Supreme Court of Missouri issued an Order disbaring Smith from the practice of law and made legal conclusions that Smith violated the following Missouri Supreme Court Rules of Professional Conduct:
 - a. Rule 4-1.1: Competence.
 - b. Rule 4-1.3: Diligence.
 - c. Rule 4-1.5(a): Fees.
 - d. Rule 4-3.2: Expediting Litigation.
 - e. Rule 4-1.15(a): Safekeeping Property.
 - f. Rule 4-1.16: Declining or Terminating Representation.
 - g. Rule 4-8.1(b): Bar Admission and Disciplinary Matters.

While the Supreme Court did not set forth the underlying facts in its Order, "disbarment is reserved only for cases of severe misconduct where it is clear the

attorney is not fit to continue in this profession." *In Re: Roderick E. Smith*, Order May 29, 2007, Missouri Supreme Court, Case No. SC88244; *In re Shunk*, 847 S.W.2d 789, 792 (Mo. banc 1993). Prior to being disbarred in 2007, Smith was admonished and found to have violated no fewer than 10 Rules of Professional Conduct. Lawyers and insurance producers both must handle honestly consumer funds and truthfully and competently represent those consumers. The Supreme Court Order disbarring Smith proves that Smith has demonstrated a pattern of incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in this state, thereby supporting refusal of his resident insurance producer license application under § 375.141.1(8). *See, e.g., Culver v. Maryland Ins. Comm'r*, 175 Md. App. 645 (2007).

24. The Director has considered Smith's history and all of the circumstances surrounding Smith's Application. Issuing a resident insurance producer license to Smith would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a resident insurance producer license to Smith.
25. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license application of RODERICK EARL SMITH is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 13TH DAY OF AUGUST, 2014.




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 14th day of August, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Roderick Earl Smith
3731 Tracy Avenue
Kansas City, Missouri 64109

Tracking No. 1Z0R15W84294060148



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