



FINAL ORDER
EFFECTIVE
02-05-2019

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

IN RE:)
)
ORLANDO SWEARINGEN,) Case No. 180223344C
)
Applicant.)

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On April 10, 2018, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse the resident insurance producer license application of Orlando Swearingen. 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. Orlando Swearingen (“Swearingen”) is a Missouri resident with an address of 1124 Country Meadows Road, Ozark, Missouri 65721-7928.
2. On August 11, 2017, the Department of Insurance, Financial Institutions and Professional Registration (“Department”) received Swearingen’s electronic application for a resident insurance producer license (“Application”).
3. On July 10, 1987, Swearingen was convicted after pleading guilty to Stealing, a Class C felony in violation of § 570.030.¹ The court sentenced him to two years’ incarceration, but suspended execution of the sentence and ordered Swearingen to complete five years’ supervised probation. *State v. Swearingen*, Greene Co. Cir. Ct., Case No. CR386-1188F.
4. On March 26, 1999, Swearingen was convicted after pleading guilty to Driving While Intoxicated - Persistent Offender, a Class D felony in violation of § 577.010. The court sentenced him to two years’ incarceration, but suspended execution of the sentence and ordered Swearingen to complete five years’ supervised probation. *State v. Swearingen*, Greene Co. Cir. Ct., Case No. 31398CF4849.

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

5. On September 20, 2004, Swearingen pleaded guilty to, and was convicted of, Driving While Revoked, a Class D felony in violation of § 302.321. The court sentenced him to four years' incarceration, but suspended execution of the sentence and ordered Swearingen to complete five years' supervised probation. *State v. Swearingen*, Greene Co. Cir. Ct., Case No. 3103CF11489.
6. In the employment history section of his Application, Swearingen indicated that from August 2008 through June 2015 he was employed by "United Health Care" in Springfield, Missouri.
7. UnitedHealthcare is a company that conducts insurance business in Missouri.
8. Further explaining his employment, Swearingen indicated that he had been "processing claims and faxing ER claims[.]"
9. The Director has never granted Swearingen the specific consent pursuant to 18 U.S.C. § 1033(e) to engage in the business of insurance.
10. On December 4, 2017, Special Investigator Karen Crutchfield of the Department's Consumer Affairs Division ("Special Investigator Crutchfield" of the "Division") sent Swearingen an inquiry letter by first-class mail, postage prepaid, requesting additional information regarding his qualifications to conduct insurance business and warning that "failure to adequately respond within twenty days may be a violation of the law and a ground for discipline, including refusal, of your insurance license."
11. The United States Postal Service did not return the Division's December 4, 2017 inquiry letter as being undeliverable, or for any other reason; therefore, Swearingen is presumed to have received it.
12. Swearingen never responded to the Division's December 4, 2017 inquiry letter.
13. On January 4, 2018, Special Investigator Crutchfield sent Swearingen a second inquiry letter by the same method, substantially identical to the prior letter except for the new date and a cautionary header: "Second Notice[.]"
14. The United States Postal Service did not return the Division's January 4, 2018 inquiry letter as being undeliverable, or for any other reason; therefore, Swearingen is presumed to have received it.
15. Swearingen never responded to the Division's January 4, 2018 inquiry letter.
16. Swearingen has not demonstrated reasonable justification for failing to respond to the Division's December 4, 2017 and January 4, 2018 inquiry letters.

CONCLUSIONS OF LAW

17. Section 375.141.1, RSMo² 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:

* * *

(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]

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

18. Title 18 U.S.C. § 1033(e) is an insurance law and provides:

(1) (A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

² All civil statutory references are to the 2016 Missouri Revised Statutes.

19. 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.

20. "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).

21. The Director may refuse to issue Swearingen a resident insurance producer license pursuant to § 375.141.1(2) because he violated an insurance law, specifically 18 U.S.C. § 1033, by engaging in insurance business without the Director's specific consent.

22. The Director may refuse to issue Swearingen a resident insurance producer license pursuant to § 375.141.1(2) because he twice violated a regulation of the Director, 20 CSR 100-4.100, by failing to respond, without reasonable justification, to either of two inquiry letters from the Consumer Affairs Division.

23. Each of Swearingen's violations of an insurance law or regulation of the Director is a separate and sufficient ground for refusal pursuant to § 375.141.1(2).

24. The Director may refuse to issue Swearingen a resident insurance producer license pursuant to § 375.141.1(6) because he has been convicted of felonies and crimes involving moral turpitude, specifically:

- a. Stealing, in violation of § 570.030, *State v. Swearingen*, Greene Co. Cir. Ct., Case No. CR386-1188F;
- b. Driving While Intoxicated - Persistent Offender, in violation of § 577.010, *State v. Swearingen*, Greene Co. Cir. Ct., Case No. 31398CF4849; and
- c. Driving While Revoked, in violation of § 302.321, *State v. Swearingen*, Greene Co. Cir. Ct., Case No. 3103CF11489.

- 25. The Director has considered Swearingen's history and all of the circumstances surrounding Swearingen's Application. Issuing Swearingen a resident insurance producer license would not be in the interest of the public. Accordingly, the Director exercises her discretion to refuse to issue Swearingen a resident insurance producer license.
- 26. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license application of **Orlando Swearingen** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 31st **DAY OF** October, 2018.



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 28th day of December, 2018, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, first class mail, at the following address:

Orlando Swearingen
1124 Country Meadows Road
Ozark, Missouri 65721-7928



Kathryn Latimer, Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-6515
Facsimile: (573) 526-5492
Email: Kathryn.Latimer@insurance.mo.gov