



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Timothy Due,

Applicant.

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)
Case No. 13-0805489C

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On October 16, 2013, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue the producer license of Timothy Due. 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. Timothy Due ("Due") is an individual residing in Missouri.
2. On February 4, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Due's Uniform Electronic Application for Individual Insurance Producer License ("Application").
3. In his Application, Due listed his residential, business, and mailing addresses as 1606 Fawn Court, Blue Springs, Missouri 64015.
4. Due was previously licensed as an insurance producer from October 26, 1989, through October 26, 2009. Due was not licensed as an insurance producer in 2010.
5. Jolee Wyatt-Due is Timothy Due's spouse. She was licensed as an insurance producer from July 12, 1999, through July 17, 2011.

Consumer Complaints

6. During the time Due was previously licensed as an insurance producer, the Consumer Affairs Division received at least 21 consumer complaints against Due. Due had not previously responded to the Division's request for information on at least three of those complaints. The Division renewed its investigation of those three complaints when it received Due's Application in February 2013.

7. The complaint filed by Norma Comstock alleged the following:

- a. Due came to Ms. Comstock's home in April 2010 asking that she cancel her current insurance policy with National States Insurance Company ("National States"), and pay him for a new policy with Heartland National that he told her he had already purchased for her.
 - b. Because Due sold her a policy in the past, Ms. Comstock stated, "I thought I could trust him."
 - c. Ms. Comstock alleged that Due asked her for and she paid him \$2,456 for what Due claimed was the yearly premium for the Heartland National policy.
 - d. The check Ms. Comstock gave Due, dated April 19, 2010, indicates that the check was "For Ins."
 - e. Although Due accepted Mrs. Comstock's check and personally cashed it, Mrs. Comstock never received nor did Due ever present her a copy of an insurance application or policy with Heartland National.
8. The complaint filed by Ryland and Doris Sims alleged the following:
- a. Due asked for and borrowed \$200 from Ryland and Doris Sims, his insurance clients. The \$200 check written to Due, dated July 28, 2009, indicates that the payment was "for Loan."
 - b. In the Sims' complaint, Mrs. Sims explained that Due also sold her a Monumental Life Insurance policy under Jolee Wyatt-Due's name rather than his own and represented to her that the policy was "additional medical insurance, not life."
 - c. Mrs. Sims explained that she already had life insurance and did not need an additional policy.
9. The complaint filed by Mary Wilson alleged the following:
- a. As Ms. Wilson's former insurance producer and acquaintance, Due knew that Ms. Wilson's husband had recently passed away, and that Ms. Wilson had received a life insurance payment of approximately \$5,000.
 - b. On two separate occasions following Mr. Wilson's death, Due asked Mary Wilson, one of his insurance clients, for a loan.
 - c. Mrs. Wilson alleged that she loaned Due money on two separate occasions, specifically \$600 on May 28, 2009, and another \$900 on June 5, 2009.
 - d. Due wrote Ms. Wilson a note, dated May 28, 2009, for the first loan, stating that, "I owe you \$600. I will pay you 50 a month starting in June."

e. Due never re-paid either loan.

10. Neither Mary Wilson nor Ryland and Doris Sims were owners, officers, directors, or employees of an institution in the business of providing loans. Each of these individuals was retired. All three individuals were in their eighties when Due approached them for the loans.

11. No relationship existed between Due and Mary Wilson or between Due and Ryland and Doris Sims which gave rise to an insurable interest on either Due's, Mary Wilson's, or Ryland and Doris Sims' behalf at the time Due obtained the personal loans from any of those individuals.

National States Survey

12. Based on the Department's request after receiving consumer complaints regarding Due, National States surveyed 11 of its policyholders who were clients of Jolee Wyatt-Due and asked them who was present when they completed the policy application in 2010. The policyholders were asked to check one of two boxes, as follows:

When I applied for this policy Jolee Wyatt-Due was present as the agent.

When I applied for this policy Jolee Wyatt-Due was not present as the agent.

The agent that completed the application was _____.

13. In all 11 cases, the policyholders checked the second choice – that “Jolee Wyatt-Due was *not* present as the agent.” (emphasis added).

14. Also, in all 11 cases, the individuals surveyed indicated that Tim Due was “the agent that completed the application.”¹

Criminal Complaint

15. On June 14, 2010, a Complaint was filed with the Independence, Missouri Municipal Court against Due alleging the following:

That on the 19th day of April A.D., 2010, ... Timothy W. Due did willfully, wrongfully, and unlawfully ... commit the crime of Stealing by Deceit by stealing miscellaneous U.S. currency belonging to Norma Jean Comstock, with the purpose to deprive her thereof, by means of deceit by purporting to be a licensed insurance agent and accepting a check for \$2456.00 for a policy that did not exist, Contrary to the Revised Ordinance of the City of Independence, Missouri, as amended and against the peace and dignity of the City.

¹ Although some policyholders indicated that Mrs. Due was present at a follow-up meeting, all stated that Tim Due was that agent who actually took and filled out the initial application.

City of Independence v. Timothy W. Due, Independence, Missouri Municipal Court, Case Number 9347396.

16. On or about August 5, 2011, the Prosecuting Attorney filed a one count Complaint in the Jackson County, Missouri Circuit Court against Due alleging the following:

That the defendant, in violation of Section 570.030, RSMo, committed the Class C Felony of Stealing, ... in that on or about April 19, 2010, in the County of Jackson, State of Missouri, the defendant appropriated cash of a value of at least five hundred dollars, which property was in the possession of Norma Jean Comstock, and the defendant appropriated such property without the consent of Norma Jean Comstock and with the purpose to deprive her thereof.

State of Missouri v. Timothy Due, Jackson County, Missouri Circuit Court, Case No. 1116-CR03556.

17. Both the municipal and state criminal cases were dismissed because Due reimbursed Mrs. Comstock \$2,456. *Id.* and *City of Independence v. Due*, Case Number 9347396.

Subpoena Conference

18. Due appeared before the Department on May 15, 2013, pursuant to a subpoena duces tecum and testified under oath ("Subpoena Conference").

19. During the Subpoena Conference, Due made the following statements and admissions:

- a. At all relevant times, his address was 1606 Northwest Fawn Court, Blue Springs, Missouri 64015;
- b. Due's insurance producer license expired October 2009;
- c. Due was not licensed as an insurance producer in 2010;
- d. Due claimed that he accompanied his wife to clients' homes, where she filled out the applications for insurance and answered all insurance-related questions the individuals may have had; and
- e. Due's only explanation as to why the 11 National States' policyholders stated that his wife, Jolee Wyatt-Due, was not present and that only he was present when the applications were completed was that "they associate me with the insurance, not my wife."
- f. With regard to Ms. Comstock's complaint, Due admitted the following:

- i. Ms. Comstock wrote Due a check, dated April 19, 2010, and payable to him, in the amount of \$2,456, which he endorsed and cashed the same day;
 - ii. Due claimed that Ms. Comstock's \$2,456 check was "to buy supplies" for construction work he was going to perform for her;
 - iii. Due could not locate or provide any receipts, bills of sale, construction contracts, or other documentation supporting his contention that he charged Ms. Comstock \$2,456 for construction work or that he purchased any such supplies or materials; and
 - iv. Due knew Ms. Comstock filed a police report against him and that Due spoke with a detective from the Independence Police Department about her complaint.
 - g. With regard to Ms. Wilson's complaint, Due admitted the following:
 - i. Ms. Wilson was Due's insurance client in the spring of 2009;
 - ii. In May 2009, Mrs. Wilson gave Due \$600, for which he gave her a note, dated May 28, 2009, agreeing to pay her back at \$50 per month "starting in June";
 - iii. In June 2009, Mrs. Wilson gave Due \$900;
 - iv. Mrs. Wilson's payments to Due were "to help [him] out" because "times [were] tough" and he was "struggling" financially; and
 - v. Due never repaid Mrs. Wilson any of the \$1,500 that she gave him in May and June 2009, even though she requested reimbursement.
- 20. Due made the following false statements at the Subpoena Conference:
 - a. Due denied he obtained loans from his clients, even though in one instance he wrote an "IOU" to the individual and in another instance, the check he received stated that it was for a loan.
 - b. Due claimed he and Ms. Comstock resolved their matter in "civil court," when, in fact, he was charged criminally for Stealing by Deceit and Felony Stealing based on his actions involving Ms. Comstock.
 - c. Due claimed that Ms. Comstock gave him a check for \$2,456 so that he could buy materials to do construction work on her house, when, in fact, he convinced her that the money was to reimburse him for purchasing a (nonexistent) insurance policy for her.

- d. Due claimed that his wife, Jolee Wyatt-Due, was the insurance producer in attendance at various meetings with clients where insurance applications were completed, when, in fact, he was the only person meeting with the consumers, and he was the individual who attempted to sell insurance policies to those individuals.

CONCLUSIONS OF LAW

21. Section 375.141 (Supp. 2012)² 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;

* * *

(12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person is not licensed[.]

22. Section 374.210.1 provides:

It is unlawful for any person in any investigation, examination, inquiry, or other proceeding under this chapter, chapter 354, and chapters 375 to 385, to:

(1) Knowingly make or cause to be made a false statement upon oath or affirmation or in any record that is submitted to the director or used in any proceeding under this chapter, chapter 354, and chapters 375 to 385; or

² All statutory references are to the 2012 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

(2) Make any false certificate or entry or memorandum upon any of the books or papers of any insurance company, or upon any statement or exhibit offered, filed or offered to be filed in the department, or used in the course of any examination, inquiry, or investigation under this chapter, chapter 354 and chapters 375 to 385.

23. Section 375.144 provides as follows:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

- (1) Employ any deception, device, scheme, or artifice to defraud;
- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

24. Title 20 CSR 700-1.140(3) Minimum Standards of Competency and Trustworthiness for Insurance Producers Concerning Personal Insurance Transactions provides, in part, as follows:

(3) No insurance producer shall obtain or solicit for a loan from an insurance client or former or prospective client.... This prohibition shall not apply –

(A) When it is the usual occupation or practice of the insurance client or former or prospective insurance client to receive and process loan applications and to provide loans to the public as an owner, officer, director, or employee of an institution in the business of providing such loans; or

(B) When there exists a relationship between the insurance client or former or prospective insurance client and the insurance producer which gives rise to an insurable interest.

25. 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).

CAUSE FOR ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

26. The Director may refuse to issue Due's insurance producer license pursuant to § 375.141.1(2) because Due violated 20 CSR 700-1.140(3) by obtaining personal loans from insurance clients, namely Mary Wilson and Doris Sims, whose usual occupation or practice was not to receive and process loan applications or to provide loans to the public and who were not related to Due in any manner which gave rise to an insurable interest. Each loan obtained by Due is a separate and sufficient ground for refusing to issue Due a Missouri insurance producer license pursuant to § 375.141.1(2).

27. The Director may refuse to issue Due's insurance producer license pursuant to § 375.141.1(2) because Due violated § 374.210.1 by making the following false statements under oath or affirmation at the May 15, 2013 Subpoena Conference:

- a. Due denied he obtained loans from his clients, even though in one instance he wrote an "IOU" to the individual and in another instance, the check he received stated that it was for a loan.
- b. Due claimed he and Ms. Comstock resolved their matter in "civil court," when, in fact, he was charged criminally for Stealing by Deceit and Felony Stealing based on his actions involving Mrs. Comstock.
- c. Due claimed that Ms. Comstock gave him a check for \$2,456 so that he could buy materials to do construction work on her house, when, in fact, he convinced her that the money was to reimburse him for purchasing a (nonexistent) insurance policy for her.
- d. Due claimed that his wife, Jolee Wyatt-Due, was the insurance producer in attendance at various meetings with clients where insurance applications were completed, when, in fact, he was the only person meeting with the consumers, and he was the individual who attempted to sell insurance policies to those individuals.

28. Each false statement is a separate and sufficient ground for refusing to issue Due a Missouri insurance producer license pursuant to § 375.141.1(2).

29. The Director may refuse to issue Due's insurance producer license pursuant to § 375.141.1(2) because Due violated § 375.144 by employing a deception, device, scheme, or artifice to defraud, made or used misrepresentations, concealment, or suppression of material facts, engaged in a pattern or practice of making false statements of material fact, or engaged in an act, practice, or course of business which operated as a fraud or deceit upon consumers. Due purported to be a licensed insurance producer and obtained premium checks from Ms. Comstock when he was not licensed as an insurance producer. His actions, misrepresentation, and concealment of the fact that he was not a licensed insurance producer led Ms. Comstock to pay Due over \$2,000 in what she thought were premium payments, when, in fact, no insurance was ever purchased and no premium payment was ever actually made to any insurance company for

coverage. In fact, Due was even charged with the Stealing.³ Due's violation of § 375.144, as alleged above, constitutes a separate and sufficient ground for refusing to issue Due a Missouri insurance producer license pursuant to § 375.141.1(2).

30. The Director may refuse to issue Due's insurance producer license pursuant to § 375.141.1(2) because Due violated § 375.144 by employing a deception, device, scheme, or artifice to defraud, made or used misrepresentations, concealment, or suppression of material facts, engaged in a pattern or practice of making false statements of material fact, or engaged in an act, practice, or course of business which operated as a fraud or deceit upon consumers, in that Due completed and submitted at least 11 applications for insurance policies from individuals while not licensed as an insurance producer. Due's violation of § 375.144, as alleged above, constitutes a separate and sufficient ground for refusing to issue Due a Missouri insurance producer license pursuant to § 375.141.1(2).

31. The Director may refuse to renew Due's insurance producer license pursuant to § 375.141.1(4) because Due, while acting as though he was in the business of insurance, withheld, misappropriated, or converted money collected from a supposed insurance customer, specifically, Ms. Comstock. Under the guise of acting as her insurance producer, Ms. Comstock paid Due what she thought was a premium. Due failed to remit the insurance premium to an insurer and instead cashed the check for his own use. Therefore, sufficient grounds exist to refuse to issue Due a Missouri insurance producer license pursuant to § 375.141.1(4).

32. The Director may refuse to renew Due's insurance producer license pursuant to § 375.141.1(12) because Due knowingly completed and submitted at least 11 applications for insurance policies from individuals while not licensed as an insurance producer. Each application Due completed and submitted while not licensed is a separate and sufficient ground for refusing to issue Due a Missouri insurance producer license pursuant to § 375.141.1(12).

33. The Director may refuse to renew Due's insurance producer license pursuant to § 375.141.1(12) because Due purported to be a licensed insurance producer and obtained a premium check from Ms. Comstock when he was not licensed as an insurance producer. Therefore, sufficient grounds exist to refuse to issue Due a Missouri insurance producer license pursuant to § 375.141.1(12).

34. The Director may refuse to renew Due's insurance producer license to Due pursuant to § 375.141.1(8) because Due used dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state. Due's actions or inactions show an inability or unwillingness to function properly as an insurance producer and demonstrates incompetency, untrustworthiness, and financial irresponsibility in the conduct of business, based on the following facts:

- a. Due violated 20 CSR 700-1.140(3) by obtaining personal loans from insurance clients;

³ Due was charged with Stealing by Deceit and later the Class C Felony of Stealing as it related to his actions relative to Norma Comstock. See *City of Independence v. Due*, Case No. 9347396 and *State v. Due*, Case No. 1116-CR03556.

- b. Due violated § 374.210.1 by making false statements under oath or affirmation at the May 15, 2013 Subpoena Conference;
- c. Due violated § 375.144 when he induced a consumer to pay him over \$2,000 for what he convinced her was insurance coverage, although he was not an insurance producer at the time and never actually procured insurance coverage for her;
- d. Due accepted a premium payment check from a consumer under the guise of acting as a producer in the business of insurance but then failed to remit the payment to the appropriate insurance company and instead cashed the check for his own purported use other than payment of premium; and/or
- e. Due knowingly completed and submitted applications for insurance policies from individuals while not licensed as an insurance producer.

35. The Director has considered Due's history and all of the circumstances surrounding Due's Application. Having done so, the Director exercises his discretion and refuses to issue Due an insurance producer license.

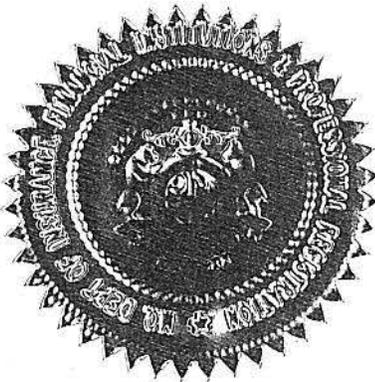
36. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the resident insurance producer license application of TIMOTHY DUE is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 21ST DAY OF OCTOBER, 2013.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

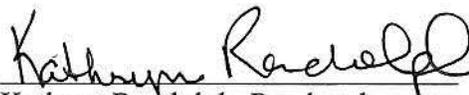
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 22nd day of October, 2013, a copy of the foregoing notice and order was served upon Timothy Due in this matter by UPS and regular mail at the following address:

Timothy Due
1606 Fawn Court
Blue Springs, Missouri 64015

Tracking No. 1Z0R15W84298011176



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