



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Michael W. Conway,

Applicant.

Serve at:

425 Francis Road
Bonne Terre, MO 63628
(573) 366-1343 (cell)

Case No. 10-0309360-C

Tracking No. 93150

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On October 14th, 2010, Andy Heitmann, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Michael W. Conway. 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 summary order:

FINDINGS OF FACT

1. Michael W. Conway ("Conway") is an individual residing in Missouri, with a mailing address of record of 425 Francis Road, Bonne Terre, Missouri, 63628.
2. On or about January 20, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received a Uniform Application for Individual Producer License submitted by Conway (the "Application").
3. In the Application, Conway provided the address alleged in Paragraph 1 of this Order as his mailing address.
4. At no time since he submitted his Application has Conway informed the Department of any change in his address.
5. In the section of the Application headed "Background Questions," Background Question # 1 asks "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"
6. Conway answered "Yes" to Background Question # 1.

7. Conway attached to the Application certified copies of Judgments in two cases from the Twenty-Third Circuit Court of Jefferson County, Missouri (Case Nos. 07JE-CR03944-01 and 07JE-CR01281-01), along with certified copies of the Information filed in each case.
8. The certified Information in Case No. 07JE-CR03944-01, filed October 2, 2008, alleged that Conway "being required, pursuant to Sections 144.010 to 144.510 RSMo, to pay sales tax, with intent to defraud willfully failed to pay sales tax."
9. The certified Judgment in Case No. 07JE-CR03944-01, dated February 2, 2009, showed that Conway had pleaded guilty to one count of Failure to Pay Sales Tax, a violation of § 144.480, RSMo, and an unclassified felony. The Judgment showed that the court suspended the imposition of Conway's sentence and ordered five years' supervised probation. The Department has received no information indicating that Conway's probation has been completed.
10. The certified Information in Case No. 07JE-CR01281-01, filed October 2, 2008, alleged that Conway "with the purpose to defraud, sold property subject to a security interest, to-wit: two 1999 New Holland 675E loader/backhoes on which the amount remaining to be paid on the secured debt, including interest, was at least five hundred dollars."
11. The certified Judgment in Case No. and 07JE-CR01281-01, dated February 2, 2009, showed that Conway had pleaded guilty to one count of Defrauding Secured Creditors, a violation of § 570.180, RSMo, and a class D felony. The Judgment showed that the court suspended imposition of Conway's sentence and ordered five years' supervised probation. The Department has received no information indicating that Conway's probation has been completed.
12. Conway also attached a letter of explanation to his Application, dated January 16, 2010, in which he explained that both of the criminal cases stemmed from the 2006 failure of Gateway Equipment Co., Inc., a corporation of which Conway was a 50% owner.
13. As to the Failure to Pay Sales Tax case, Conway stated that after his business partner abandoned the business, the business's "taxes remained unpaid from a period of June – December 2006," but offered no further explanation of his failure to pay sales taxes.
14. As to the Defrauding Secured Creditors case, Conway stated in the January 16, 2010 letter that the case "involved the sale of two pieces of equipment that were not paid for upon sale," but did not elaborate.
15. Conway's January 16, 2010 letter states that Conway was, at the time the letter was written, making monthly payments in restitution for both the tax debt and the loss he caused to secured creditors.
16. An Annual Registration Report filed with the Missouri Secretary of State on March 20, 2006, for Gateway Equipment Co., Inc., a Missouri Corporation, lists Michael W. Conway as President and Secretary, and gives the corporation's address as 2545 Hwy South, Festus, Missouri, 63028. Articles of Dissolution for Gateway Equipment Co., Inc., filed on February 13,

2007, showing that dissolution of the corporation was authorized on December 31, 2006, use the same address for the corporation.

17. Conway's failure to pay sales tax and defrauding of secured creditors occurred in the conduct of business in Missouri.

CONCLUSIONS OF LAW

18. Section 375.141, RSMo (Supp. 2009) provides, in part:

1. The director may . . . refuse to issue . . . an insurance producer license for any one or more of the following causes:

* * *

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

19. Section 144.480, RSMo (2000), provides:

Any person required under sections 144.010 to 144.510 to pay any tax, or required by sections 144.010 to 144.510 to make a return, keep any records or supply any information, who with intent to defraud willfully fails to pay such tax, make such return, keep such records or supply such information, at the time or times required by law, shall, in addition to other penalties provided by law and, upon conviction thereof, be fined not more than ten thousand dollars, or be imprisoned in the county jail for not more than one year or by not less than two nor more than five years in the state penitentiary or by both fine and imprisonment together with the cost of prosecution.

20. Section 570.180, RSMo (2000), provides:

1. A person commits the crime of defrauding secured creditors if he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to defraud the holder of the security interest.

2. Defrauding secured creditors is a class A misdemeanor unless the amount remaining to be paid on the secured debt, including interest, is five hundred dollars or more, in which case defrauding secured creditors is a class D felony.

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

22. Conway's guilty plea to one count of Failure to Pay Sales Tax was an admission that, as alleged in the Information filed in Case No. No. 07JE-CR03944-01, Conway "being required,

pursuant to Sections 144.010 to 144.510 RSMo, to pay sales tax, with intent to defraud willfully failed to pay sales tax.” See e.g. *Wallace v. State*, 308 S.W.3d 283, 286-7 (Mo. App. 2010) (“A plea of guilty is an admission as to the facts alleged in the information.”)

23. Accordingly, Conway admitted that he failed to pay taxes he lawfully owed to the State of Missouri and, furthermore, that he did so “willfully” and “with intent to defraud.”

24. In willfully failing to pay approximately seven months’ worth of taxes to the State of Missouri, with intent to defraud the State of Missouri, Conway used fraudulent and dishonest practices and demonstrated untrustworthiness and financial irresponsibility in the conduct of business in Missouri.

25. As a result, the Director may refuse to issue an insurance producer license to Conway under § 375.141.1(8), RSMo (Supp. 2009).

26. Conway’s guilty plea to one count of Defrauding Secured Creditors was an admission that, as alleged in the Information in Case No. 07JE-CR01281-01, Conway “with the purpose to defraud, sold property subject to a security interest, to-wit: two 1999 New Holland 675E loader/backhoes on which the amount remaining to be paid on the secured debt, including interest, was at least five hundred dollars.”

27. Accordingly, Conway admitted that he transferred property subject to a security interest “with the purpose to defraud” the holder of the security interest.

28. In transferring property subject to a security interest with the purpose to defraud the holder of the security interest, Conway used fraudulent and dishonest practices and demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state.

29. As a result, the Director may refuse to issue an insurance producer license to Conway under § 375.141.1(8), RSMo (Supp. 2009).

30. The Director has considered Conway’s history and all of the circumstances surrounding Conway’s Application. Conway admitted, by way of guilty pleas, to conduct involving fraudulent and dishonest practices, which demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state. These offenses are so recent that Conway is apparently still under supervised probation. For these reasons, the Director exercises his discretion and refuses to issue an insurance producer license to Conway.

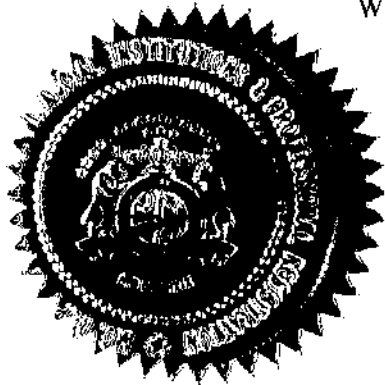
31. An order refusing to issue a license to Conway is in the public interest.

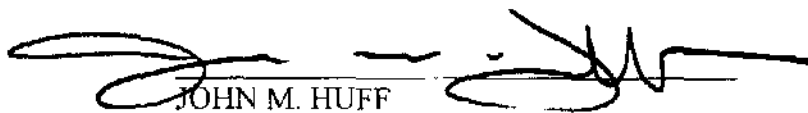
ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Michael W. Conway is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 4TH DAY OF NOVEMBER, 2010.




JOHN M. HUFF
DIRECTOR

NOTICE

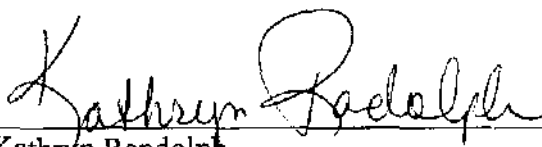
TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to § 621.120, RSMo. Under 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 8th day of November 2010, a duplicate original of the foregoing Order and Notice was served upon the Applicant in this matter by certified/priority mail No. 7007 0710 0002 2055 2824.

Michael W. Conway
425 Francis Road
Bonne Terre, MO 63628
(573) 366-1343 (cell)


Kathryn Randolph
Paralegal