

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF )  
INSURANCE, FINANCIAL INSTITUTIONS )  
AND PROFESSIONAL REGISTRATION, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
PAMELA S. JORDAN, )  
 )  
Respondent. )

No. 13-1458 DI

**ORDER**

We grant in part and deny in part the motion for summary decision filed by the Director (“the Director”) of the Department of Insurance, Financial Institutions and Professional Registration (“the Department”). There is cause to discipline Pamela C. Jordan’s license as a resident insurance producer under § 375.141.1(2)<sup>1</sup> because she solicited and obtained a loan from a client. The Director has failed to show that there is cause under § 375.141.1(8).

**Procedure**

On August 12, 2013, the Director filed a complaint. Jordan was served with the complaint by certified mail on August 19, 2012. She did not file an answer. The Director filed a motion for summary decision on November 25, 2013. Jordan filed a response on December 23, 2013. The Director filed a reply on January 10, 2014.

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<sup>1</sup>Statutory references are to RSMo Supp. 2012 unless otherwise noted.

Under 1 CSR 15-3.446(6)(A),<sup>2</sup> we may grant summary decision “if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.” The parties must establish the facts by admissible evidence. 1 CSR 15-3.446(6)(B). The Director submitted an affidavit from Brenda Otto, manager of the licensing section of DIFP (Exhibit 1), and an affidavit from Investigator Linda Kammeier (Exhibit 3). The Director also submitted the transcript of a “subpoena conference” before DIFP during which Jordan testified under oath (Exhibit 4). These documents are admissible under 1 CSR 15.3446(6)(B).

The Director also submitted a request for admissions to which Jordan did not timely respond (Exhibit 2). The Director served the request for admissions on Jordan on September 23, 2013, and informed her that she had thirty days to respond. Jordan filed a completed, but unsigned and unnotarized, response to the request for admissions on December 23, 2013. She did not file a motion to withdraw her admissions, a motion for leave to file out of time, or any other motion. The Director asks us to find that Jordan untimely filed her response to the requests for admission and to deem the requests admitted.

We deem Jordan’s filing of the response to the request for admissions as a motion to withdraw the admissions. Supreme Court Rule 59.01(b) allows for “withdrawal or amendment” of admissions when “the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy [us] that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits.” We find that allowing her to withdraw her admissions will serve the interests of justice and will not prejudice the Director in maintaining the action on the merits. We therefore will consider Jordan’s admissions withdrawn. But, because her responses were neither signed nor sworn, we will not consider them as evidence. We note, however, that many of her responses are contained in a slightly different form in the admissible material submitted by the Director.

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<sup>2</sup> References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

With her response, in addition to the response to the request for admissions, Jordan submitted two uncertified documents: a receipt for \$1,500 from Dennis Smith and a reminder that the Director of Revenue would withdraw money from Jordan's bank account as part of an installment plan. Both of these documents are hearsay and therefore inadmissible. Additionally, the document from the Director of Revenue is irrelevant to any issue in this case.

The following facts, based on the evidence in Exhibits 1, 3 and 4, are undisputed.

### **Findings of Fact**

1. The Director issued a resident insurance producer license to Jordan on June 19, 2000.
2. Jordan's license was active and valid at all times relating to this action.
3. Jordan was appointed with Bankers Life and Casualty Company ("Bankers Life") with the authority to sell its insurance products from January 2, 2001 to June 1, 2009.
4. Jordan sold various Banker Life deferred annuity products<sup>3</sup> totaling over \$150,000, to Dennis Smith.
5. Smith was a retired maintenance worker.
6. Smith's usual occupation or practice was not receiving and processing loan applications or providing loans to the public.
7. Jordan is not related to Smith in any way. They became friends over the course of their business dealings.
8. In 2012, Jordan asked Smith for a loan. He loaned her \$1,500.00

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<sup>3</sup> Deferred annuities are a type of insurance product.

## Conclusions of Law

We have jurisdiction to hear this case. §§ 374.051.2 and 621.045. The Director has the burden of proof. § 374.051.2. The Director alleges that there is cause to discipline Jordan's license under § 375.141:

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;

\* \* \*

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

### Violation of Regulation – Subdivision (2)

Section 375.141(2) allows for discipline if Jordan violated any insurance regulations.

The Director argues that Jordan violated 20 CSR 700-1.140(3), which states:

No insurance producer shall obtain or solicit for a loan from an insurance client or former or prospective insurance 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.

The Director argues that Jordan both solicited and obtained a loan from Dennis Smith. In her subpoena conference with the Director, Jordan admitted to both:

Q ... [at] any point in your relationship with Mr. Smith did you ask to borrow money from him.

A Yes, I did. This year, yes ... he ended up loaning me \$1500.<sup>4</sup>

Jordan requested to borrow money from Smith. Smith was a former insurance client who had purchased at least \$150,000 in deferred annuities via Jordan. He loaned her \$1,500. Thus, Jordan solicited and obtained a loan from a former insurance client.

Neither of the exceptions to 20 CSR 700-1.140(3) applies in this case. Smith was a retired maintenance worker; it was not Smith's usual occupation or practice to receive and process loan applications or to provide loans to the public. And, the only relationship Jordan had with Smith was one of friendship. "Stated concisely, an insurable interest in the life of a person is an interest in having the life continue; a person has an insurable interest in the life of another where there is a reasonable probability that he will gain by the latter's remaining alive or lose by his death." *Poland v. Estate of Fisher*, 329 S.W.2d 768, 772 (Mo. 1959), quoting 44 C.J.S. Insurance § 203. Jordan's friendship with Smith did not rise to the level of an insurable interest because she did not have a financial stake in his continued life.

Jordan violated 20 CSR 700-1.140(3), an insurance regulation adopted by the Director, by both soliciting and obtaining a loan from a former insurance client. There is cause to discipline her license under § 375.141.1(2).

#### Improper Practices – Subdivision (8)

Section 375.141.1(8) allows for discipline under two scenarios: first, when an insurance producer uses "fraudulent, coercive, or dishonest practices" and second, when an insurance provider "demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."

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<sup>4</sup> Pet. Ex. 4 at 74.

Fraud is “generally under the common law as an intentional perversion of truth to induce another, or to act in reliance upon it.” *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W. 2d 894, 899, n. 2 (Mo. App. W.D. 1997). Coercion is the “use of physical or moral force to compel to act or assent.” WEBSTER’S THIRD NEW INT’L DICTIONARY 439 (unabr. 1986). Dishonesty is “a disposition to defraud, deceive, or betray.” *Id.* at 650.

The Director has not put forth any evidence that Jordan used fraud, coercion, or dishonest means to obtain the loan. The admissible evidence contains only one version of how Jordan obtained the loan: her sworn statement before the Director. In that statement, Jordan stated that she needed the money to pay utility bills and that she asked Smith for the loan as a friend. That evidence, standing alone, does not demonstrate fraud, coercion, or dishonesty. The Director put forth no evidence that Jordan lied to Smith, used force to compel the loan, or deceived Smith in any way.

The second part of § 375.141.1(8) requires the Director to show that Jordan “demonstrate[d] incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.” Again, the Director relies on the fact that Jordan obtained a loan from Smith. The Director argues that 20 CSR 700-1.140(3) defines minimum standards of competency and trustworthiness for insurance producers and explicitly bans soliciting and receiving a loan from a current or former insurance client.

Regulation 20 CSR 700-1.140 is titled “Minimum Standards of Competency and Trustworthiness for Insurance Producers Concerning Personal Insurance Transactions.” The regulation contains a section entitled “purpose,” which states that the regulation “aids in the interpretation of of the provisions of section 375.141.1(8).” The Director is authorized to enact regulations to “aid in the interpretation of any law of this state pertaining to the business of insurance,” § 374.045.1(3), RSMo 2000, and to codify “professional standards of producer

competency and trustworthiness in ... conflicts of interest[.]” § 375.143. We agree that the regulation assists in our interpretation of § 375.141.1(8).

Regulation 20 CSR 700-1.140 sets out minimum standards of competency and trustworthiness as set out in § 375.141.2(8). We thus conclude that a violation of 20 CSR 700-1.140(3) demonstrates a lack of competency and trustworthiness.

That conclusion, however, is not enough for the Director to satisfy his burden under § 375.141.1(8). The Director must also show that Jordan’s lack of competency and trustworthiness was “in the conduct of business.” § 375.141.1(8). The evidence the Director submitted shows only that the loan was a private matter between Jordan and Smith.<sup>5</sup> The Director produced no evidence that the loan was related to Jordan’s insurance business or any other business. The two cases in which this Commission has previously applied § 375.141.2(8) to reach a contrary conclusion, both involved loans disguised as insurance investments. *See Director of Ins. v. Scott. P. Richmond*, no. 05-1223 (Mar. 1, 2006); *Director of Ins. v. James A. Bayer*, no. 11-0142 (Nov. 9, 2011).

Based on the record before us, the Director is not entitled to summary decision on this allegation.

#### Jordan’s arguments

Jordan submitted a letter to us on December 23, 2013, that we interpret as a response to the Director’s motion for summary decision. In that letter, Jordan states that she was recently the victim of a crime, that she suffers from post-traumatic stress disorder due to the crime, and that she has been unable to work for the past year. She asks that her license not be revoked so that she can work part time while winding down her career and professional life. These arguments do not address cause for discipline, which is the sole issue that we consider here. These arguments are proper to determine the appropriate discipline, and Jordan may present them to the Director.

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<sup>5</sup> Pet. Ex. 4 at 74-75.

### **Summary**

There is cause to discipline Jordan's license under § 375.141.1(2). We grant the Director's motion for summary decision in part.

On the record provided to us, we find that there is no cause to discipline Jordan's license under § 375.141.1(8). We deny the Director's motion for summary decision on that ground. We order the Director to inform us by February 6, 2014, whether he intends to pursue discipline under § 375.141.1(8) in a hearing.

SO ORDERED on January 30, 2014.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner