

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

Justin P. Jones
Petitioner

Case No. 13-910-L
Docket No. 13-000214-OFIR

v

Department of Insurance and Financial Services
Respondent

Issued and entered
this 26th day of June 2013
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

I. BACKGROUND

This case concerns the application of Justin P. Jones (Petitioner) for a nonresident insurance producer license. The license was denied because the Petitioner was convicted by a military tribunal of misuse of a government travel card and stealing a motor vehicle with a value of \$9,000.00, in 2005.

On December 11, 2012, Respondent issued a Notice of License Denial and Opportunity for Hearing to the Petitioner. Petitioner challenged the license denial by filing a Petition for Contested Case Hearing. The Respondent filed a Motion for Summary Decision on February 4, 2013. A hearing was held May 7, 2013. The Petitioner did not appear for the hearing and has made no further contact with the Department of Insurance and Financial Services. The administrative law judge issued a Proposal for Decision (PFD) on May 9, 2013 granting Respondent's motion and recommending that the license denial be upheld.

The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Comm*, 136 Mich App 52 (1984).

The PFD is attached. The findings and recommendation in the PFD are adopted and made a part of this final decision.

II. FINDINGS OF FACT

The Director finds that the Petitioner was convicted on May 20, 2005 by a military tribunal of misuse of a government travel card and stealing a motor vehicle with a value of \$9,000.00.

III. CONCLUSIONS OF LAW

Section 1239(1)(h) of the Michigan Insurance Code, MCL 500. 1239(1)(h), provides:

(1) In addition to any other powers under this act, the commissioner...shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

* * *

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

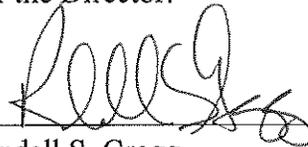
The Director finds that the Petitioner's conviction is evidence of dishonesty and untrustworthiness sufficient to require the denial of an insurance producer license pursuant to section 1239(1)(h) of the Insurance Code.

IV. ORDER

The refusal to issue an insurance producer license to Justin P. Jones is upheld.

R. Kevin Clinton
Director

For the Director:



Randall S. Gregg
Special Deputy Director

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Justin P. Jones,
Petitioner.

v

Office of Financial and Insurance
Regulation,
Respondent

Docket No.: 13-000214-OFIR

Case No.: 13-910-L

Agency: Department of
Insurance and
Financial Services

Case Type: DIFS-Insurance

Filing Type: Appeal

Issued and entered
this 9th day of May, 2013
by: Kandra Robbins
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance of a Notice of Hearing dated February 27, 2013, scheduling a contested case hearing for April 2, 2013. The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on February 14, 2013, and an Order Referring Petition for Hearing and Order to Respond dated February 13, 2013, issued by Annette E. Flood, Chief Deputy Commissioner of the Office of Financial and Insurance Regulation¹.

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated December 11, 2012, a copy of the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, received February 14, 2013; and Respondent's Motion For Summary Decision and Brief In Support, dated February 4, 2013.

On March 21, 2013, Respondent requested an adjournment. This request was granted and the hearing was adjourned to May 7, 2013. The Order Granting Adjournment was sent with Proof of Service to Petitioner at his last known address of record. On

¹ The Office of Financial and Insurance Regulation authority was transferred to the Department of Insurance and Financial Services (DIFS) pursuant to Executive Order 2013-1.

April 9, 2013, Respondent filed a Motion to Convert Hearing to Hearing on Respondent's Motion for Summary Decision. On April 11, 2013, an Order for Adjournment and Order Scheduling Hearing on Motion for Summary Decision was entered granting Respondent's request to convert the currently scheduled hearing to oral argument on the Motion for Summary Decision to be held on May 7, 2013 at 9:00 a.m. This Order was sent with Proof of Service to Petitioner at his last known address of record.

On May 7, 2013, the hearing was held as scheduled. Scott D. Basel, Administrative Law Specialist, appeared as staff attorney on behalf of Respondent. Neither Petitioner, nor an attorney on his behalf, appeared at the hearing. In his Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, Petitioner requested a telephone hearing as he resides in [REDACTED] Texas. Petitioner provided telephone number [REDACTED] as the telephone number to reach him. When the hearing was convened, this telephone number was called. A message indicating that this number is no longer in service was given. The case file was reviewed to determine if Petitioner had provided an alternative phone number. No other number was listed. A check was made with Respondent as well as MAHS support staff to determine if any other number was provided. No other number was provided. It was determined that Petitioner was given proper notice of the hearing.

The undersigned ruled that the hearing would proceed in Petitioner's absence pursuant to Section 72(1) of the Administrative Procedures Act (hereafter "APA"), which states:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.72(1).

Respondent's attorney presented oral argument on the Motion for Summary Decision. The following exhibits were offered by Respondent and admitted into evidence:

1. Respondent's Exhibit No. 1 is a copy of Individual Licensee Application submitted online by Petitioner on October 31, 2012.
2. Respondent's Exhibit No. 2 is a copy of a Notice of License Denial and Opportunity for Hearing in the matter of Justin P. Jones (Petitioner), signed by Jean M. Boven, Deputy Commissioner, dated December 11, 2012.
3. Respondent's Exhibit No. 3 is a copy of a letter submitted by Petitioner, dated November 1, 2012.

The undersigned granted Respondent's Motion for Summary Decision on the record. Respondent's attorney indicated that he withdraws his second claim in the Motion for Summary Decision. He indicated that Petitioner's request was timely as Petitioner was given additional time to file his response by the DIFS staff. In addition, Respondent's attorney requested that a default be granted against Petitioner pursuant to Section 78(2) of the APA for the remaining claim, which states:

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.78(2).

In accordance with Section 78(2) of the APA, a default was granted in Respondent's favor, against Petitioner. Pursuant to the default, the allegations set forth in the Notice of License Denial (Respondent's Exhibit No. 2) were taken as true and proven. No witnesses were presented. The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issue now presented is whether summary decision has been properly granted for Respondent on Petitioner's application for a resident insurance producer license under Sections 1206(a)(1) and 1239(1)(h) of the Insurance Code. These statutory sections provide in pertinent part:

Sec. 1206a. (1) Unless denied licensure under section 1239, a nonresident person shall receive a nonresident insurance producer license * * *.

Sec. 1239. (1) In addition to any other powers under this act . . . the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: * * *

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

FINDINGS OF FACT

Based on the entire record in this matter, including the pleadings and default granted for Respondent, the following findings of fact are established:

1. On or about October 31, 2012, Justin P. Jones, Petitioner herein, submitted an Individual Licensee Application online to become licensed as a non-resident insurance producer in the state of Michigan. [Resp. Exh. 1].
2. Petitioner responded "yes" on the Individual Licensee Application to a question asking whether he had ever been convicted or charged with a crime. [Resp. Exh. 1].
3. On May 20, 2005, Petitioner was convicted, by plea agreement, by a general court martial of willfully failing to use a government travel card only for necessary and reasonable expenses while on official travel, failing to pay expenses wrongfully charged to a government travel card, and stealing a motor vehicle with a value of approximately \$9,000.00.
4. DIFS staff requested additional information from Petitioner regarding the Individual Licensee Application. On November 1, 2012, Petitioner submitted a letter of explanation. In this letter, Petitioner states that he did not want to be in the Army anymore. He states that he committed such petty and foolish crimes in order to be kicked out of the Army. [Resp. Exh. 3, pg 2]
5. Petitioner stated that he plead guilty to the charges and "bargained" a deal with the prosecution for six months confinement in a military installation. [Resp. Exh.3, pg 2]
6. Petitioner's conduct is dishonest practice. Petitioner's conduct demonstrates untrustworthiness and financial irresponsibility.
7. On December 11, 2012, Jean M. Boven, Deputy Commissioner for Respondent, issued a Notice of License Denial and Opportunity for Hearing. [Resp. Exh. 2].
8. On January 18, 2013, Petitioner submitted a petition for contested case hearing to appeal the Notice of License Denial. [Applicant's Petition dated January 18, 2013].
9. On February 4, 2013, Respondent filed a Motion for Summary Decision and Brief in Support along with a Request for Hearing.
10. By Order issued on April 11, 2013, the undersigned Administrative Law Judge allowed Petitioner until April 20, 2013, to file a written response to Respondent's Motion for Summary Decision. [Order for Adjournment and Scheduling Hearing on Motion for Summary Decision, dated April 11, 2013].

11. To date, Petitioner has not filed a written response to Respondent's Motion for Summary Decision.
12. On May 7, 2013, a properly noticed hearing was held, at which Petitioner failed to appear to address Respondent's Motion for Summary Decision or to offer evidence in support of his appeal.
13. Respondent's Motion for Summary Decision was granted on the record at the hearing held on May 7, 2013, and a default ruling entered against Petitioner.

CONCLUSIONS OF LAW

Respondent has the burden of proof in this matter to show by a preponderance of the evidence the legal basis for its action to deny Petitioner's application for licensure. See MCL 500.1239(2). Petitioner has the ultimate burden to establish that he is entitled to licensure. Under Sections 1206a and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a non-resident insurance producer license where an applicant has used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business. See MCL 500.1206a(1) and MCL 500.1239(1)(h).

A default having been granted for Respondent against Petitioner under Section 78(2) of the APA, the allegations set forth in the Notice of License Denial are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all the alleged facts are taken as true. *Smith v Lansing School Dist.*, 428 Mich 248; 406 NW2d 825 (1987).

Under Rule 11(c), summary decision may be granted where there is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law. 1983 AACS, R 500.2111(c).

Based on the above findings of fact, it is concluded that Respondent has shown that there is no genuine issue as to any material fact concerning Petitioner's conduct and that it is entitled to a decision in its favor as a matter of law. Further, it is concluded that Respondent has met its burden of proof. A preponderance of the evidence shows that Petitioner was properly denied licensure as a non-resident insurance producer in the state of Michigan under Sections 1206a(1) and 1239(1)(h) of the Insurance Code. Petitioner has not shown that he is entitled to licensure.

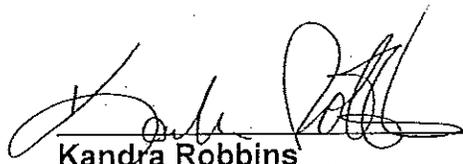
PROPOSED DECISION

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order, including the summary decision ruling in Respondent's favor;
2. That the Commissioner deny Petitioner's application for a non-resident insurance producer license under Sections 1206a(1) and 1239(1)(h) of the Insurance Code; and
3. That the Commissioner take any other action in this matter deemed appropriate under applicable provisions of the Insurance Code.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Department of Insurance and Financial Services, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.


Kandra Robbins
Administrative Law Judge