

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**James Karolak,**  
**Petitioner**

**v**

**Office of Financial and Insurance Regulation**  
**Respondent**

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**Case No. 11-817-L**  
**Docket No. 2011-519**

**Issued and entered**  
**this 20<sup>th</sup> day of January 2012**  
**by R. Kevin Clinton**  
**Commissioner**

**FINAL DECISION**

**I. BACKGROUND**

This matter concerns the application of James Karolak (Petitioner) for a resident insurance producer license. Petitioner filed his application with the Office of Financial and Insurance Regulation (OFIR) in September 2010. On the application, Petitioner indicated that he had never been the subject of an administrative proceeding regarding a professional or occupational license. During the pre-licensing review, OFIR staff discovered that Petitioner's Michigan insurance agent license had been revoked on January 26, 1993.<sup>1</sup>

Section 1239(1)(a) of the Insurance Code, MCL 500.1239(1)(a), requires that the Commissioner refuse to license an individual who provides "incorrect, misleading, incomplete, or materially untrue information in the license application." Section 1239(1)(b) of the Insurance Code, MCL 500.1239(1)(b), requires that the Commissioner refuse to license an individual who violates any insurance law or an order of the Commissioner. On January 3, 2011, OFIR licensing staff denied the requested insurance producer license based on the existence of, and Petitioner's failure to disclose, the prior administrative action.

Petitioner challenged the license denial and a hearing was held on May 24, 2011. On July 22, 2011, the presiding administrative law judge issued a Proposal for Decision (PFD) recommending that the Commissioner affirm the license denial.

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<sup>1</sup> Michigan Insurance Bureau Case No. 92-15236-LJUA, Docket No. 92-0905.

The 1993 revocation order has recently been vacated.

## II. APPLICABLE LAW

Consideration of the Petitioner's request for an insurance producer license requires the application of section 1239(1) of the Insurance Code, MCL 500.1239(1), which provides, in pertinent part, as follows:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- (b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

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## III. ISSUES

1. Did the Petitioner's insurance producer license application include "incorrect, misleading, incomplete, or materially untrue information" which would require the denial of a producer license under section 1239(1)(a) of the Insurance Code?
2. Did the Petitioner violate any insurance law, regulation, subpoena, or order of the Commissioner which would require the denial of a producer license under section 1239(1)(b) of the Insurance Code?

## IV. FINDINGS OF FACT

In the PFD, the administrative law judge made 32 numbered findings of fact. (PFD, 14-20) Findings of Fact 1 through 29 are adopted and made a part of this Final Order. Findings of Fact 30, 31, and 32 are not adopted.

## V. CONCLUSIONS OF LAW

The PFD offered two conclusions of law:

- The Petitioner provided “incorrect, incomplete or materially untrue information” as those terms are used in section 1239(1)(a) of the Insurance Code and, for that reason, Petitioner should not be granted an insurance producer license.
- The 1993 revocation established that the Petitioner violated the insurance laws of Michigan and demonstrated “incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere” which, under sections 1239(1)(b) and (h) of the Insurance Code, precludes the Petitioner from receiving a resident producer license.

The Commissioner declines to adopt the PFD’s conclusions of law for the reasons stated below.

Section 1239(1)(a)

The Commissioner recently considered a producer licensing case applying section 1239(1)(a). In that case, *Jason Gatt v OFIR*, Case No. 11-819-L, November 8, 2011, the Commissioner wrote:

The purpose of a license application is to provide the licensing authority with the information needed to determine whether an applicant meets the licensing standards established by law. An individual who subverts the licensing process by concealing disqualifying information will be denied that license. Mistaken or inadvertent omission of information requested should not, by itself, automatically result in license denial.

\* \* \*

Context is crucial in determining whether a license should be denied pursuant to subsection (a).

Section 1239(1)(a) is not concerned with inadvertent errors, typographical mistakes and inconsequential inaccuracies. In assessing licensing applications, OFIR staff has focused on whether the error, inaccuracy or mistake appears to have been inadvertent or if it [was] instead employed as a means to enhance the applicant’s chance of licensure by misleading the agency. Applicants who, by their false statements, attempt to mislead the agency, can be expected to similarly mislead the public when self-interest is at stake. Inadvertent errors, by comparison, do not suggest an applicant presents a similar risk.

In the 2011 hearing, the Petitioner testified that he had stopped working in the insurance business in 1990 and moved to Montana in 1992. He testified that he did not attempt to renew his insurance license. He testified that he did not receive any mail regarding the enforcement

case or the hearing. In evaluating the Petitioner's testimony, the administrative law judge made the following findings (PFD, 19):

Petitioner credibly testified that he had not seen the November 12, 1992 Notice of Hearing and Order to Respond; the January 26, 1993 Motion for Issuance of Default Judgment; and the January 26, 1993 Order of Default and Final Decision documents prior to April 2011, and that he had not intended to mislead Respondent in completing the September 17, 2010 on-line license application.

In light of the specific finding by the administrative law judge that there was no intent to mislead, Petitioner's failure to disclose his earlier license revocation does not require the denial of a producer license under section 1239(1)(a).

Sections 1239(1)(b)

OFIR staff, in its letter denying Petitioner a license, cited section 1239(1)(b) of the Insurance Code which requires the Commissioner to deny a license to an individual who has violated an insurance law, regulation, or order of the Commissioner. The 1993 revocation order was the basis for concluding that the petitioner's license application must be denied under section 1239(1)(b). As noted above, the 1993 revocation order has been vacated. It is, therefore, no longer required that the Petitioner be denied a license pursuant to that provision of the Insurance Code.

**VI. ORDER**

It is ordered that:

1. The refusal to issue an insurance producer license to Petitioner James Karolak is reversed.
2. The Petitioner's application for an insurance producer license shall be reconsidered in light of this order. If the Petitioner is in all other respects qualified to hold a resident producer license, such license may be issued.



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R. Kevin Clinton  
Commissioner

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

In the matter of	Docket No.	2011-519
James D. Karolak, Petitioner	Agency No.	11-817-L
v	Agency:	Office of Financial and Insurance Regulation
Office of Financial and Insurance Regulation, Respondent	Case Type:	Intent to Deny Refusal to License

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Issued and entered  
this 22<sup>nd</sup> day of July, 2011  
by Lauren G. Van Steel  
Administrative Law Judge

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

Appearances: James D. Karolak, Petitioner, appeared on his own behalf. William R. Peattie appeared as Staff Attorney on behalf of the Office of Financial and Insurance Regulation, Respondent.

This proceeding commenced with the filing of a Notice of Hearing dated April 22, 2011, scheduling the contested case hearing for May 24, 2011. The Notice of Hearing was issued pursuant to a Request for Hearing received by the State Office of Administrative Hearings and Rules (now the Michigan Administrative Hearing System) and an Order Referring Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License and Order to Respond, dated April 11, 2011, issued by Stephen R. Hilker, Chief Deputy Commissioner of the

Office of Financial and Insurance Regulation, under the provisions of the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code").

Attached to the Request for Hearing was a Notice of License Denial and Opportunity for Hearing, dated January 3, 2011; Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, received January 6, 2011; and Agency Response to Applicant's Appeal of License Denial, dated April 7, 2011.

On May 24, 2011, the hearing was held as scheduled. Respondent called Michele Riddering, Director of Insurance Licensing, and Petitioner to testify. The following exhibits were offered by Respondent and admitted as evidence into the record:

1. Respondent's Exhibit A is a copy, with redaction, of the Individual Licensee Application, dated September 17, 2010.
2. Respondent's Exhibit B is a copy of a National Association of Insurance Commissioners (NAIC) background check, dated September 23, 2010.
3. Respondent's Exhibit C is a copy of a Motion for Issuance of Default Judgment, dated January 26, 1993; and Order of Default and Final Decision by the Commissioner of Insurance, State of Michigan, dated January 26, 1993.
4. Respondent's Exhibit D is a copy of a letter to Petitioner from Jennifer Fletcher for the Licensing Division of the Office of Financial and Insurance Regulation (Respondent), dated September 23, 2010.

5. Respondent's Exhibit E is a copy of correspondence from Petitioner to Jennifer Fletcher for Respondent, dated September 24, 2010.
6. Respondent's Exhibit F is a copy of a Notice of License Denial and Opportunity for Hearing, dated January 3, 2011.

Petitioner testified on his own behalf. No other witnesses were presented. Petitioner offered the following exhibits, which were admitted as evidence into the record:

1. Petitioner's Exhibit No. 1 is a copy of a newspaper notice or obituary for Chester L. Karolak's death on July 27, 2002, offered to show the daughter-in-law status of "Margaret Karolak", sister-in-law to Petitioner.
2. Petitioner's Exhibit No. 2 is a copy of a Birth Record for Liberty Karolak, Petitioner's daughter, offered to show Petitioner's Troy, Michigan address on February 27, 1991.
3. Petitioner's Exhibit No. 3 is a copy of an Enlistment/ Reenlistment Document, Armed Forces of the United States – Air National Guard, offered to show Petitioner's Troy, Michigan address on April 30, 1991.
4. Petitioner's Exhibit No. 4 is a copy of a Marriage License, State of Michigan, dated January 14, 1991, offered to show Petitioner's Troy, Michigan address, and Certificate of Marriage, dated January 18, 1991.
5. Petitioner's Exhibit No. 5 is a copy of a Montana Eighteenth Judicial District Court Decree of Dissolution (page 1), dated August 31, 1993.
6. Petitioner's Exhibit No. 6 is a copy of Applicant's Petition for Contested Case Hearing, dated January 6, 2011.

The record was closed at the conclusion of the hearing.

**ISSUE AND APPLICABLE LAW**

The central issue presented in this matter is whether Respondent has properly denied Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1) of the Insurance Code, which provide in pertinent part as follows:

Sec. 1205. (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following: \* \* \*

(b) Has not committed any act listed in section 1239(1).  
MCL 500.1205(1)(b).

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:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

\* \* \*

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. MCL 500.1239(1)(a), (b) & (h).

**SUMMARY OF EVIDENCE**

The following is a summary of the pertinent evidence presented at hearing in this matter:

*Testimony of Michele Riddering*

Michele Riddering testified as a witness for Respondent. Ms. Riddering stated that she has been the Director of Insurance Licensing for the Office of Financial and Insurance Regulation (Respondent) since September 2010. She was previously the Insurance Licensing Manager for Respondent. In her current position, she oversees the handling of license applications and works with licensing technicians concerning license denials.

Ms. Riddering stated that Respondent's Exhibit A is a copy of the electronic application received on September 17, 2010, in which Petitioner applied on-line, answered the same questions as on the paper application, and submitted an electronic signature.

Ms. Riddering indicated that when a license application is received, Respondent's staff performs a background check for criminal history. It is also standard practice to check the National Producer Database for prior administrative action. In this case, it was reported on a Database printout that Petitioner had a previous insurance producer license that was revoked by the State of Michigan in 1993 for "misappropriation of premium". [Resp. Exh. B]. Respondent's staff then pulled the enforcement file concerning Petitioner, which contained a Motion for Issuance of Default Judgment and Order of Default and Final Decision, dated January 26, 1993. [Resp. Exh. C].

The Proof of Service for the Order of Default and Final Decision shows the signature of "Margaret Karolak" as the "authorized agent" for Petitioner and is dated November 18, 1992. [Resp. Exh. C].

After this background check, Respondent's licensing technician, Jennifer Fletcher, sent a letter of inquiry to Petitioner via E-mail on September 23, 2010, asking why the prior administrative action had not been disclosed on the license application. [Resp. Exh. D]. On September 24, 2010, Petitioner telephoned Ms. Fletcher. Petitioner also submitted correspondence regarding the correct spelling of his last name (indicating that it was "Karolak" not "Karolek"). [Resp. Exh. E]. Petitioner's correspondence did not satisfy the concerns in Respondent's letter of inquiry. [Resp. Exh. D]. On the Order of Default and Final Decision, Petitioner's last name had been spelled correctly as "Karolak" and everything in Respondent's system is based on Social Security number. There was a match of the Social Security number and other identifying information with the prior administrative documents shown in Respondent's Exhibit C. Petitioner's last name was noted to be misspelled as "Karolek" on the electronic application and on the National Producer Database printout. [Resp. Exh. A & B].

Ms. Riddering stated that at the time of his application, Petitioner did not supply any of the administrative documents contained in Respondent's Exhibit C. On his on-line application, Petitioner answered "No" to the question of whether he had ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license. Ms. Riddering testified that "No" was not a correct

answer, and she is not aware of any reason why Petitioner would have thought that "No" was a correct answer.

It is Ms. Riddering's opinion, as Licensing Director and as the person who reviewed the application material, that Petitioner should not be granted an insurance producer license based on his failure to correctly or completely answer the questions on the license application. She believes that there are grounds to deny the application based on Petitioner supplying incorrect or incomplete information, and based on the prior administrative action. She made a recommendation to Jean Boven, the Deputy Commissioner for the Licensing & Product Review Division, that Petitioner's application be denied. A Notice of License Denial and Opportunity for Hearing was subsequently issued, which is a standard document. Ms. Riddering believes that the Notice of License Denial accurately states the reason for denial of the license application. [Resp. Exh. F].

Testimony of Petitioner

James D. Karolak, Petitioner, was first called to testify by Respondent, and then testified on his own behalf. He stated that he has resided in Gregory, Michigan for the past five years. He received a Bachelor's degree from the University of Michigan in 1981.

Petitioner testified that in 1986, he started working in the insurance industry as a resident insurance producer. He worked as a "captured agent" for Allstate Insurance in Novi, Michigan. He stated that he left Allstate Insurance voluntarily in September 1989. He had been an insurance producer for auto, homeowners and life

insurance products. When he left Allstate Insurance, he sold his book of business back to the company.

Petitioner stated that when he left Allstate Insurance, he did not give authority to anyone there to continue to sell insurance in his name or capacity. He was going through a divorce at the time from Michelle Karolak. After his divorce, he continued to live in the marital home at 3427 Woodland in Royal Oak, Michigan, which was a rental house. In 1989, Petitioner moved out of the Royal Oak house and his brother, Kenneth Karolak, and sister-in-law, Margaret Karolak, moved in. (Petitioner indicated that although Margaret and Kenneth were later in the process of divorcing, Kenneth died while they were still married.) He then moved to the address of 5858 Niles in Troy, Michigan.

Petitioner testified that after 1989, he did a lot of "handyman" work on his own. He had left his job with Allstate Insurance, because he "didn't have the drive" anymore. He stated that in order to sell insurance, one has to have enthusiasm and the divorce took everything out of him. He cashed in his business with the company for a \$2,000 payout. He does not recall who his supervisor was at Allstate Insurance.

According to Petitioner, after he left Allstate Insurance in 1989, he did not receive any residual commission amounts. He was still getting phone calls from car dealers to sell insurance, however. For about one month around January and February 1990, he tried to become an independent agent working with car dealerships in "high-risk" insurance. He testified that he wrote a couple pieces of insurance during that time. He assumed that he was still licensed as an insurance producer at the time, because otherwise the insurance companies (Citizens Insurance and a couple of other

companies) would not have accepted his applications. When he had worked for Allstate Insurance, the company took care of the licensing requirements. He thought that the license period was for five years. He did not ever pay a renewal fee.

Petitioner testified that he did not write any insurance after January and February of 1990. He does not know what timeframe the allegation of \$131.80 as set forth in Respondent's Exhibit C involves. He sold insurance for Citizens Insurance in a pool system. He was not selling insurance for Citizens Insurance in 1993, however. He did not attempt to work in insurance in Michigan or any other state after 1990.

For a period of time, Petitioner worked as a regional manager for a franchise business, Service Brands. He then worked in cable sales for 10 years.

On September 17, 2010, Petitioner signed and submitted an on-line application for an insurance producer's license in Michigan. He submitted the application because he wants to return to the insurance business, and would like to work at the Combined Insurance Company in Okemos, Michigan selling health and accident insurance. He testified that he has gone to school for the license, but has not solicited insurance.

Petitioner testified that he answered "No" on the on-line application to the question of whether he had ever been named or involved as a party in an administrative action regarding any professional or occupational license or registration. He answered "No" to the best of his knowledge at the time. He testified that "No" was a "very correct answer" because he only became aware in April 2011 of the prior administrative proceeding shown in Respondent's Exhibit C. The first time that he saw the 1993 documents revoking his insurance producer license was in April 2011. When Jennifer

Fletcher from Respondent's office first asked him to explain the matter from the prior proceeding, he said that he had no idea what it was about. At the time, he thought that it must have been an issue of identity theft. [Pet. Exh. 6]. He was completely "clueless" about the prior administrative action against him.

On the Notice of License Denial and Opportunity for Hearing, Petitioner indicated identity theft as an explanation for why the background check showed a prior administrative action. [Pet. Exh. 6]. Respondent would not tell him at the time what the matter was about, so he assumed there was identity theft. He told Ms. Fletcher to pull the record. However, when the record was pulled, he was not told what the matter was about.

Petitioner testified that he has not sold insurance since September 1989. He does not know whether he was licensed in 1992; he thought his license had lapsed out. He left Allstate Insurance in September 1989. He did not receive any type of commission for insurance sales after September 1989. He thinks he signed a written resignation as an employee of Allstate Insurance. There are two divisions in Allstate, and one division did not communicate with the other division. It was Allstate's responsibility to notify its divisions that he was no longer employed. He does not know why Celtic Insurance Company would think that he was an active agent after 1989.

Petitioner stated that in the late 1980's, he participated in the Auto Placement Facility for high risk insurance. In that capacity, he would receive a commission from the insurance company. He recalls that he received commission from Citizens Insurance Company. He does not know whether his address of record with the Office of Financial and Insurance Regulation (or its predecessor agency) in 1992

was 3427 Woodland, Royal Oak, Michigan, but it was not his legal address. His driver's license reflected differently. He was not aware that he had to supply the Office of Financial and Insurance Regulation with his new address of record, because he had left the insurance industry. He does not recall having notified the Office of Financial and Insurance Regulation in writing that he was leaving the insurance industry. He thinks that the State of Michigan would have known that he had left the business because the State would not see any more documentation from the companies that he worked with. He thinks that he can dispute that he had valid insurance appointments until 1993.

Petitioner testified that he recalls that in 1991, he rode with an insurance company (which might have been Celtic Insurance Company), for two weeks but he did not write any insurance or receive any compensation at that time. He recalls that he did not like the way that the company did business, so he walked away. He did not receive any compensation from his time with the company. He did not supply the company with a resignation notice because it was an independent agent, rather than an employee, situation. He did not have an appointment with Global Life and Accident Insurance Company, and he did not write insurance for that company. He recalls that he was "just riding with people" to see if he wanted to work with them. He does not know who "Mega Life" is, and does not recall requesting an appointment with that company in 1991. He does not recall seeking an accident, health and life appointment between May and December 1990 with United American Insurance Company. When he wrote "identity fraud," on the petition for hearing, he thought that those folks had done something funny with his name. The company he rode with temporarily was just

someone in Michigan who worked out of his house. Petitioner testified that he did not trust the person.

In 1992 and 1993, Petitioner's "ex-sister-in-law", Margaret Karolak, was living at 3427 Woodland in Royal Oak, Michigan. He did not have a relationship with her at the time. In 1992, Petitioner was still living in Troy, Michigan. In the spring of 1992, he moved to Montana. He did not give the State of Michigan notice of his change of address. He did not notify the library of his change of address for his library card either. He testified that he did not realize the importance of notifying Respondent of his change of address, because he was not writing any more insurance. There was nothing to be sent to him, because he had no further dealings with writing insurance. His "ex-sister-in-law" did not forward any mail to him, or tell him that any documents had been received. He had no relationship with the family. He did not have a corresponding relationship with Margaret Karolak in November 1992. His family had a problem with his girlfriend at the time, and that is why they left the state of Michigan. He did not ever authorize Margaret Karolak to sign for him.

Petitioner testified that he has recently asked Margaret Karolak why she signed the certified mail receipt for him, and she could not answer the question. She did not remember the documents. She should not have signed for him, because she had no authorization to do so. Petitioner's brother and Margaret Karolak were separated at the time in 1992, and she had a different address in Rochester, Michigan, as shown on the certified mail receipt contained on Respondent's Exhibit C. He thinks that Margaret Karolak must have been visiting his brother at the 3427 Woodland, Royal Oak address at the time. He was not aware at that time that Respondent could send

notices to his last known address of record. Margaret Karolak should not have signed for the documents as his "authorized agent". If she had not signed, the documents would have been sent back so that Respondent would have been then aware that he had not been served. [Resp. Exh. C]. Respondent would not have known his correct address without checking with the Secretary of State for his driver's license address; he understands now that Respondent would not have checked with the Secretary of State

Petitioner testified that in 1992 and 1993, he was not working in the insurance industry at all. He was doing odd jobs and was enlisted in the Air Force. In 1993, Petitioner's mail was not being forwarded to another address. He did not receive any notice of charges or a scheduled conference or hearing. Allstate Insurance did not notify him of any pending charges. The post office only forwards mail for a year, and would have stopped in this case in 1990. At the beginning of 1992, he was living at 5858 Niles in Troy, Michigan. He has provided Respondent with a copy of a Marriage License from January 1991 and Birth Certificate from 1991, and an enlistment papers from the U.S. Air Force from 1991. In 1993, he was living in Montana. He has documentation showing his divorce decree in Montana in 1993. [Pet. Exh. 1-5].

Respondent denied the license application on the belief that he supplied incorrect and incomplete information, based on his previous revocation. At the time that he submitted the application, it was a true statement that he had no prior administrative action because he was unaware of the previous revocation. He did not think that there was any problem with his prior insurance license. He never stole any money or touched any type of inappropriate funds. He did everything "right and legal". He saw no reason

to check his license history. The next time, he will know that he has to supply an updated address to Respondent.

Petitioner testified that he never received any notice of allegations against him by Respondent. He never granted Margaret Karolak the authority to act on his behalf. Petitioner's Exhibit No. 1 is a death notice or obituary showing Margaret Karolak as his sister-in-law, not his wife or blood relative. He did not notify Respondent of his new address when he moved. He married Kristin on January 18, 1991; his Certificate of Marriage shows a Troy, Michigan address on that date. [Pet. Exh. 4]. Petitioner's Exhibit No. 2 is a Birth Record for Petitioner's daughter on February 21, 1991, which shows a Troy, Michigan address. His enlistment document (for weekends) on April 30, 1991, shows a Troy, Michigan address. [Pet. Exh. 3]. In August 1993, he was divorced from Kristin in Montana. He offered the first page of the divorce decree, which shows that his wife had been domiciled in Montana for more than 90 days (but does not show his own address). [Pet. Exh. 5]. Petitioner testified that later that year, he came back to Michigan.

#### FINDINGS OF FACT

Based on the entire record in this matter, the following findings of fact are established:

1. James Karolak, Petitioner, was previously licensed as a resident insurance agent in the state of Michigan. For purposes of licensure with Respondent, the Office of Financial and Insurance Regulation or its predecessor agency (the Insurance Bureau), Petitioner's address of record was 3427 Woodland in Royal Oak, Michigan, which was

Petitioner's home with his wife at the time, Michelle Karolak.

2. In the late 1980's, Petitioner was employed with Allstate Insurance, selling auto, homeowners and life insurance products.
3. In or around 1988, Petitioner became divorced from Michelle Karolak, but he continued to live for a period of time at the 3427 Woodland, Royal Oak, Michigan address.
4. In or around September 1989, Petitioner ended his employment with Allstate Insurance and he sold his book of business to the company.
5. In or around 1989, Petitioner moved out of the 3427 Woodland, Royal Oak, Michigan address, and his brother, Kenneth Karolak and sister-in-law, Margaret Karolak, moved in.
6. In January or February 1990, Petitioner worked for about one month as an independent insurance agent selling "high risk" auto insurance. Petitioner acknowledged in his hearing testimony having sold some insurance policies for Citizens Insurance during this timeframe.
7. Petitioner credibly testified that for about two weeks in 1991 he tried out another company, but he did not become its employee or write insurance through that company.
8. In January 1991, Petitioner became married to Kristin Keenan. In 1991, Petitioner was living at the address of 5858 Niles in Troy, Michigan. [Pet. Exh. 2, 3 & 4].
9. In the spring of 1992, Petitioner moved to Montana.

10. On August 13, 1993, a court in the state of Montana entered a divorce decree by default, after Petitioner did not appear in court. Petitioner's wife was found to have been domiciled in Montana for more than 90 days. [Pet. Exh. 5].
11. Petitioner acknowledged in his hearing testimony that prior to the 2010 license application at issue, he did not update or change his address of record with Respondent from the 3427 Woodland, Royal Oak, Michigan address.
12. Respondent was authorized under the provisions of the Insurance Code to send notices of hearing or service of process to Petitioner's last known address of record. [Resp. Exh. C]. As such, Respondent reasonably relied upon the address of record information that had been supplied to it by Petitioner.
13. In or around the fall of 1992, Respondent received an allegation against Petitioner concerning his having failed to return \$131.80 in unearned commissions to Citizens Insurance. [Resp. Exh. C].
14. Respondent sent notice to Petitioner of an opportunity to respond to the allegation at a scheduled compliance conference. The notice of compliance conference was likely sent to Petitioner at his last known address of record for purposes of his insurance producer license, being 3427 Woodland, Royal Oak, Michigan. [Resp. Exh. C].
15. Petitioner did not appear at the scheduled compliance conference. [Resp. Exh. C].

16. On November 12, 1992, the Commissioner issued an Order for Notice of Hearing, Order to Respond, and Designation of Administrative Law Judge, with an attached Notice of Hearing that set February 1, 1993, as the scheduled hearing date. These documents were sent by certified mail to Petitioner at his last known address of record for purposes of his resident insurance producer license, being 3427 Woodland, Royal Oak, Michigan. [Resp. Exh. C].
17. On November 18, 1992, Petitioner's then sister-in-law, Margaret Karolak, signed as his "authorized agent" for receipt of the certified mailing that contained the Notice of Hearing, Order to Respond and Designation of Administrative Law Judge.
18. Margaret Karolak stated on the November 18, 1992 certified mail receipt that her address was "511 Marquette, Rochester, Michigan". She and Petitioner's brother were likely separated at the time, but she apparently returned at times to the 3428 Woodland, Royal Oak address, and received mail sent to that address. [Pet. Exh. 1; Resp. Exh. C].
19. It is more likely than not that at times relevant, Petitioner had not expressly authorized Margaret Karolak to be his "authorized agent" for purposes of receiving mail sent to him from Respondent, but he likely gave her such authorization on a *de facto* basis because he knew that she had earlier moved in to the 3427 Woodland, Royal Oak, Michigan address and he allowed the address to remain his address of record for purposes of his license with Respondent. [Resp. Exh. C].

20. Petitioner did not respond to the November 12, 1992 Notice of Hearing within 20 days of the signing of the certified mail receipt on November 18, 1992, as required by the Commissioner's Order to Respond. [Resp. Exh. C].
21. On January 26, 1993, Respondent's staff petitioned the Commissioner to enter a default judgment and final order for the reason that Petitioner had failed to answer or appear or otherwise respond to the Notice of Hearing as required in the Order to Respond. [Resp. Exh. C].
22. On January 26, 1993, the Commissioner issued an Order of Default and Final Decision, in which Petitioner was ordered to cease and desist from operating in such a manner as to violate the Insurance Code, and to make restitution to Citizens Insurance Company in the amount of \$131.80 within 30 days. The Commissioner's Order of Default and Final Decision further revoked Petitioner's insurance producer license and dismissed the pending administrative hearing. [Resp. Exh. C].
23. On September 17, 2010, Petitioner submitted an on-line Application for an Individual Producer License/Registration to the Office of Financial and Insurance Regulation, Respondent. [Resp. Exh. A].
24. On the on-line Application, Petitioner answered "No" to Question #2, which asked whether he had ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration. [Resp. Exh. A].

25. The on-line Application information received by Respondent contained a misspelling of Petitioner's last name as "Karolek," rather than "Karolak". [Resp. Exh. A].
26. By letter dated September 23, 2010 sent by E-mail, Jennifer Fletcher, a licensing technician for Respondent, requested that Petitioner verify information found in a background check on the National Producer Database through Social Security number match regarding prior administrative or regulatory action. Petitioner telephoned Ms. Fletcher in response, and indicated that he was not aware of any prior administrative action against him. [Resp. Exh. A, B & D].
27. On September 24, 2010, Petitioner submitted correspondence to Respondent concerning the correct spelling of his name and also supplied a photocopy of his Michigan driver's license. [Resp. Exh. E].
28. On January 3, 2011, Jean M. Boven, Deputy Commissioner for the Licensing & Product Review Division within the Office of Financial and Insurance Regulation, Respondent, issued a Notice of License Denial and Opportunity for Hearing. [Resp. Exh. F].
29. Petitioner credibly testified at hearing that he had not seen the November 12, 1992 Notice of Hearing and Order to Respond; the January 26, 1993 Motion for Issuance of Default Judgment; and the January 26, 1993 Order of Default and Final Decision documents prior to April 2011, and that he had not intended to mislead Respondent in completing the September 17, 2010 on-line license application.

30. Nevertheless, the information provided by Petitioner on the on-line license application was incorrect, incomplete and materially untrue. Petitioner answered "No" to the question of whether he had ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration, and that answer was not materially true or complete.
31. Having held a resident insurance producer license to sell or write insurance in the state of Michigan, Petitioner had reason to know the status of his license at the time of his application for a new license.
32. The underlying basis for Petitioner's license revocation was an alleged failure to return \$131.80 in unearned commissions to Citizens Insurance, which was found by default to be proven and is reasonably construed to constitute a demonstration of incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. [Resp. Exh. C].

#### 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). Under Sections 1205 and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a resident insurance producer license where an applicant has provided incorrect, misleading, incomplete, or materially untrue information in a license application, violated any insurance law or order of the Commissioner, and/or demonstrated incompetence,

untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. See MCL 500.1205(1)(b) and MCL 500.1239(1)(a), (b) and (h), as amended by 2008 PA 422 & 423, which amendments became effective on January 6, 2009, prior to the license application at issue here.

Based on the above findings of fact, Respondent has shown by a preponderance of the record evidence that Petitioner, in submitting his September 17, 2010 on-line license application, provided information concerning his relevant license status and history that was "incorrect," "incomplete" or "materially untrue" within the meaning of Section 1239(1)(a), which now precludes his licensure as a resident insurance producer under Section 1205(1)(b) of the Insurance Code.

Further, Respondent has shown by a preponderance of evidence that Petitioner's license history in this state includes a revocation by the Commissioner based on a default determination of alleged facts that are reasonably construed to constitute a demonstration of "incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere" within the meaning of Sections 1239(1)(b) and (h) of the Insurance Code, which now precludes his licensure as a resident insurance producer under Section 1205(1)(b) of the Insurance Code.

#### 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 in this matter; and

2. That the Commissioner take action on the Notice of License Denial under MCL 500.1205(1)(b), consistent with the above findings of fact and conclusions of law; and
3. That the Commissioner take any other action in this matter deemed appropriate by the Commissioner under the provisions of the Insurance Code.

**EXCEPTIONS**

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

  
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Lauren G. Van Steel  
Administrative Law Judge