

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

Kevin Konen,
Petitioner

v

Office of Financial and Insurance Regulation
Respondent

Case No. 11-832-L
Docket No. 2011-1103

Issued and entered
this 16th day of May 2012
by R. Kevin Clinton
Commissioner

FINAL DECISION

I. BACKGROUND

This matter concerns the application of Kevin Konen (Petitioner) for a resident insurance producer license. Petitioner filed his application with the Office of Financial and Insurance Regulation (OFIR) in June 2010. On the application, Petitioner failed to disclose that he had two misdemeanor convictions, one in 1990 for indecent exposure and one in 1997 for “Disorderly – Engaging in Indecent or Obscene Conduct in Public.” During the pre-licensing review the convictions were discovered. The license application was denied under MCL 500.1239(1)(a) based on Petitioner’s failure to disclose the convictions.

Petitioner challenged the denial and a hearing was held on November 16, 2011. On January 13, 2012, the presiding administrative law judge issued a Proposal for Decision (PFD) recommending that the Commissioner reverse the license denial. OFIR staff filed exceptions to the PFD.

II. ISSUE

Did the Petitioner enter on his insurance producer license application “incorrect, misleading, incomplete, or materially untrue information” which would require the denial of the license?

III. APPLICABLE LAW

Section 1205(1)(b) of the Insurance Code, MCL 500.1205(1)(b), provides:

(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).

Section 1239(1) of the Insurance Code, MCL 500.1239(1), relevant portions of which are reprinted below:

(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.

* * *

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

IV. FINDINGS OF FACT

In the PFD, the administrative law judge made 17 numbered findings of fact. (PFD, pp. 11-15) Findings of Fact 1, 2, 4-9, 11, 15 are adopted and made a part of this Final Order. Findings of Fact 3, 10 and 17 are not relevant to the issues in this case and, for that reason, are not adopted. Findings of Fact 12, 13, 14 and 16 are not adopted in light of the analysis below in Part V of this Final Decision.

The adopted findings of fact appear below with their original numbering from the PFD indicated in brackets at the end of each paragraph.

- Petitioner is 45 years old and resides in Lansing, Michigan. He currently works as a loan specialist in the financial aid office at Lansing Community College. [PFD #1]
- Petitioner has an Associate's degree from Lansing Community College and is working on completing a Bachelor's degree from Siena Heights University. [PFD #2]
- On April 12, 1990, Petitioner was convicted in the 65-8 Judicial District Court of the State of Michigan of the misdemeanor offense of "Indecent Exposure." He was sentenced on the offense on May 14, 1990. [PFD #4]
- On October 1, 1997, Petitioner was convicted in the 54-8 Judicial District Court of the State of Michigan of the misdemeanor offense of "Disorderly - Engage in Indecent or Obscene Conduct in Public." He was sentenced on November 21, 1997. [PFD #5]
- On June 3, 2010, Petitioner submitted an online Application for an Individual Producer License/Registration to the Office of Financial and Insurance Regulation. [PFD #6]
- On the application, Petitioner answered "No" to Question #1, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" The application form provided the following clarification regarding what types of crimes were to be disclosed:
- "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine. [PFD #7]
- In a letter dated June 9, 2011, OFIR staff requested that Petitioner verify information regarding his possible criminal history of convictions in 1990 and 1997. [PFD #8]
- In a letter to OFIR dated June 14, 2010, Petitioner explained his understanding of the circumstances of the two misdemeanor offenses. [PFD #9]
- On July 15, 2010, Jean M. Boven, Deputy Commissioner for the Licensing and Product Review Division, issued a Notice of License Denial, indicating that Peti-

tioner's license application was denied based on his having provided "incorrect and materially untrue information in the license application." [PFD #11]

- When Petitioner was contacted by Respondent regarding his criminal history, he timely provided all of the relevant court documents with a written explanation. [PFD #15]

V. CONCLUSION OF LAW

The PFD offered the following conclusions of law:

1. OFIR has not shown by a preponderance of evidence that the Petitioner, on his application, intentionally provided incorrect and material untrue information as those terms are used in section 1239(1)(a) of the Insurance Code.
2. OFIR has not shown by a preponderance of evidence that the Petitioner intended to mislead OFIR when he submitted his application.
3. The failure of OFIR to prove that the Petitioner intended to provide incorrect and misleading information with the intention of misleading OFIR licensing officials, establishes that OFIR has not established a basis to deny Petitioner a license under section 1205(1)(b) of the Insurance Code.

The Commissioner declines to adopt these conclusions of law.

Section 1239(1) of the Insurance Code enumerates the conduct which requires the Commissioner to deny an insurance producer license. The Commissioner, under 1239(1)(a) is required to deny a license where an applicant has provided "incorrect, misleading, incomplete, or materially untrue information in the license application."

In an earlier licensing case, *Gatt v OFIR*, Case No. 11-819-L, November 8, 2011, the Commissioner addressed the analysis to be applied when incorrect or omitted information is discovered in connection with a license application.

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 were 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.

An insurance producer license is a privilege granted to those who demonstrate an honest and trustworthy character. The OFIR licensing staff is properly vigilant in their scrutiny of applicants. Where an applicant has not disclosed prior convictions in accordance with the online application instructions, it raises legitimate questions regarding the applicant's ability to carry out the responsibilities of an insurance producer in a trustworthy manner.

In the present case, two exhibits, Respondent Exhibits 4 and 6, are of importance in determining whether the Petitioner should receive a producer license. Those exhibits are letters submitted to OFIR by the Petitioner after OFIR had asked the Petitioner to clarify his apparent failure to disclose his misdemeanor convictions. In the first letter (Exhibit 4), dated June 14, 2010, the Petitioner wrote:

This was honestly an error on my part. I read the question and missed the request for the misdemeanor to be included. I just saw felony and marked "no." I regret the omission.

In a subsequent letter (Exhibit 6), submitted on August 20, 2010, the Petitioner wrote:

When I applied for the insurance license, the secretary for the division president started the process for me. I sat at her desk with her looking over my shoulder as I completed the application. When it came to [the] "have you ever been convicted of a crime" section, she laughed, said to check no and go on. Because this was my first day on the job, I did select no, with the intent of going back and changing it when she left. She did not leave, so when I got to the bottom, she said to submit. I did, again, thinking that I could make a correction. I did not realize that once it was submitted, there was not an opportunity to go back and change it.

I let my pride get in the way of my judgment when I completed the application. As I said, it was my first day on a new job. I did not want the president to find out that I had a prior misdemeanor offense and checked no. I can in all honesty say that I should have marked the right box, but embarrassment took over.

The Petitioner offered two contradictory, irreconcilable explanations for his failure to disclose his misdemeanor convictions. He initially claimed not to have noticed that application question encompassed misdemeanor convictions. A short time later he claimed that he knew the question required that the misdemeanors be disclosed but he failed to disclose the conviction out of pride and embarrassment. These contradictions also preclude any findings, such as appear in Findings of Fact 12, 13, 14 and 16 in the PFD, that the Petitioner testified credibly as to the reasons why he failed to disclose his convictions.

By stating on his application that he did not have any misdemeanor convictions, the Petitioner provided inaccurate information on the application. The Petitioner's subsequent contradictory accounts of why he failed to disclose the convictions demonstrates that the Petitioner had not simply made an error but rather was attempting to deceive the Commissioner. Thus, under the analysis of the *Gatt* decision the Petitioner is not a suitable candidate to receive an insurance producer license.

VI. ORDER

The refusal to issue an insurance producer license to Petitioner Kevin Konen is upheld.



R. Kevin Clinton
Commissioner

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

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JAN 17 2012

OFIR/OGC

In the matter of

Docket No. 2011-1103

Kevin S. Konen,
Petitioner

Agency No. 11-832-L

v
Office of Financial and Insurance
Regulation,
Respondent

Agency: Office of Financial and
Insurance Regulation

Case Type: Intent to Deny
Refusal to License

Issued and entered
this 13th day of January 2012
by Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Kevin S. Konen, 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 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 August 8, 2011, scheduling a contested case hearing for September 22, 2011. The Notice of Hearing was issued pursuant to a Request for Hearing received by 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 July 28, 2011, issued by Annette E. Flood, Chief Deputy Commissioner of the Office of Financial and Insurance Regulation.

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated July 15, 2010, and copy of an Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, with fax date of August 20, 2010.

On September 21, 2011, the undersigned issued an Order Granting Adjournment at Respondent's request, rescheduling the hearing date to November 16, 2011.

On November 16, 2011, the hearing was held as scheduled. Respondent called Michele Riddering, Director of the Licensing & Product Review Division, to testify as a witness. Respondent also called Petitioner to testify as an adverse witness. The following exhibits were offered by Respondent and admitted into the record as evidence:

1. Respondent's Exhibit No. 1 is a copy of answers provided by Petitioner in an Individual Licensee Application submitted online on June 3, 2010.
2. Respondent's Exhibit No. 2 is a blank Uniform Application for Individual Producer License/Registration.
3. Respondent's Exhibit No. 3 is a copy of a letter to Petitioner from Joellen Babcock, Licensing Technician, Licensing and Product Review Division, Office of Financial and Insurance Regulation (Respondent), dated June 9, 2010.
4. Respondent's Exhibit No. 4 is a copy of a response from Petitioner to the Office of Financial and Insurance Regulation (Respondent), dated June 14, 2010, and received on June 25, 2010.

5. Respondent's Exhibit No. 5 is a copy of a Notice of License Denial and Opportunity for Hearing in the matter of Kevin Konen, Applicant, dated July 15, 2010.
6. Respondent's Exhibit No. 6 is a copy of the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License in the matter of Kevin Konen, submitted by fax on August 20, 2010.

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

1. Petitioner's Exhibit No. 1 is a copy of the Final Decision of the Commissioner of Financial and Insurance Regulation in the matter of *Jason Gatt v Office of Financial and Insurance Regulation* (Docket No. 2011-813, November 8, 2011).

The record was closed at the conclusion of the hearing.

ISSUE AND APPLICABLE LAW

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

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. MCL 500.1239(1)(a). (Emphasis supplied).

SUMMARY OF EVIDENCE

The following is a summary of the evidence presented by the parties at the hearing:

Testimony of Michele Riddering

Michele Riddering was called to testify by Respondent. Ms. Riddering stated that she has been the Director of the Licensing (& Product Review) Division within the Office of Financial and Insurance Regulation for over one year. In this position, Ms. Riddering oversees a staff of about 14 employees who review license applications and education requirements.

Ms. Riddering testified that her division received an application online from Petitioner for an insurance producer license. Respondent's Exhibit No. 1 shows the responses provided by Petitioner online, while Respondent's Exhibit No. 2 shows the exact questions that were contained on the online application. In particular, an applicant would see online the full language set forth in Question #1. [Resp. Exh. 2, p 3]. To the best of Ms. Riddering's recollection, Petitioner did not initially submit anything else at the time of his online application.

Ms. Riddering stated that it is normal procedure to conduct a criminal background check on license applications, per a requirement in the uniform process for the National Association of Insurance Commissioners (NAIC). In this instance, a "hit" came up on Westlaw and "ICHAT" (the "Internet Criminal History Access Tool" of the Michigan State Police) that Petitioner had two misdemeanors. Petitioner had answered "No" to Question #1 concerning his criminal history. [Resp. Exh. 1 & 2].

Ms. Riddering stated that when there is a "hit" found on a criminal background check for a license applicant, Respondent's next step is to send a letter of inquiry by e-mail or post mail to the applicant requesting a response on whether the criminal history information that was found is correct. Respondent's Exhibit No. 3 is a copy of the June 9, 2010, letter that was sent to Petitioner, containing the standard inquiry. Petitioner responded to the June 9, 2010, letter by correspondence dated June 14, 2010, and received on June 25, 2010. [Resp. Exh. 4]. Petitioner's response did not alleviate Ms. Riddering's concern. Petitioner provided information stating that he had misread Question #1, but that the criminal history cited by Respondent was accurate. He gave Respondent a copy of pertinent court documents.

Petitioner stated in his response of June 14, 2010 (under paragraph #6) that he thought that Question #1 on the application only applied to felonies. In fact, Question #1 applies to both misdemeanor and felonies, and Ms. Riddering is not aware of any reason why Petitioner would have thought that Question #1 only applies to felonies. Under the definition of "crime" on Question #1, "misdemeanors" are clearly included as something that should be reported. Based on her review of Respondent's Exhibit No. 4, Petitioner's response was not satisfactory. The next step in the

application process would be to recommend for approval or denial of the license. Here, a recommendation for denial (with a drafted denial document) was given to Deputy Commissioner Jean Boven based on Petitioner's violation of Section 1239(1)(a) of the Insurance Code.

Ms. Riddering testified that she is not sure if she met with Ms. Boven about Petitioner's license application, but Ms. Boven would have been provided with the file and a draft of the denial. Respondent's Exhibit No. 5 is a copy of the actual denial document that was sent to Petitioner, based on his having provided incorrect and materially untrue information in the application. The next step in the application process was that the applicant would have an opportunity to appeal the denial. In this case, the applicant (Petitioner) did appeal.

Ms. Riddering stated that Petitioner subsequently submitted a letter of explanation, as shown in Respondent's Exhibit No. 6. This letter did not change Ms. Riddering's mind on the license denial, but rather furthered her decision. Petitioner's statement in his appeal letter regarding the reason why he had said "No" on the application regarding criminal history was different from his statement on the June 14, 2010 letter. [Resp. Exh. 4 & 6].

Based upon Ms. Riddering's review of Petitioner's appeal letter as shown in Respondent's Exhibit No. 6, she believes that Petitioner knowingly concealed information from Respondent in his license application. She does not believe that Petitioner was honest and truthful when he answered Question #1 on the application. Petitioner's answer to Question #1 was materially untrue and shows an attempt to mislead or conceal information from her and Respondent's Licensing Division. It is

critical for the application review process that applicants honestly and truthfully answer questions on their criminal history. Issuance of an insurance producer license is a privilege, not a right. Only people who provide honest and truthful information should be granted an insurance producer license. Ms. Riddering stands by the decision to deny Petitioner a license based on his having failed to meet his statutory obligation to provide correct and complete information that is not materially untrue.

Ms. Riddering testified that she reviews every document in a license application herself if it is found that there is criminal history and a question is answered incorrectly. There have been cases where somebody was granted a license who answered "No" to Question #1 and had a criminal background. For example, this has happened where applicants thought they had only received a "ticket" for tagging a deer (with no arrest or fingerprinting), and were not aware that it was a "misdemeanor" violation. As far as the applicant's intent, Ms. Riddering stated that Respondent has "what's in front of us to review." All applicants are provided an opportunity to submit documents. Ms. Riddering stated that she feels that they ask the right questions and do the best that they can with what is in front of them. It is up to the applicant to give all relevant information in the application, not for Ms. Riddering's staff to gather the information.

Testimony of Petitioner

Kevin S. Konen, Petitioner, was first called to testify by Respondent as an adverse witness, and then testified on his own behalf. He stated that he has lived at his current residence in Lansing, Michigan for about 12 years. He received an Associate's degree in "Business/Bank Management" from Lansing Community College

in 1993. He expects to complete a Bachelor's degree in "Communications for Managers" from Siena Heights University by April 2012. His work history includes 20 years in the student loan industry, including the processing and marketing of student loans. If he were granted a resident insurance producer license, he has a couple of potential job opportunities with local insurance companies.

Petitioner stated that it is true that on June 3, 2010, he submitted an online license application for an insurance producer license. [Resp. Exh. 1]. At the time that he filled out the application, he did not thoroughly read Question #1 on the application. It was his first day on the job as a "insurance specialist" at the Michigan Dental Association in Okemos, Michigan. His job was to review insurance policies, billings and other documents. He had not worked in the insurance industry previously. He worked there from June to August 2010, until his employment ended as a result of the license denial at issue here. An insurance producer license was a requirement for his continued employment. Since that time, he has not been employed in the insurance industry, but has worked as a warehouse manager for an electrical contractor and a carpet remnant company, as well as a temporary job with the Muscular Dystrophy Association. He is currently employed with Lansing Community College as a loan specialist in the financial aid office.

Petitioner testified that on June 3, 2010, when the insurance producer application was brought up on the computer, he sat at the computer typing at a secretary's desk with the secretary looking over his shoulder. The secretary had already entered his name on the application. He was in the process that day of getting everything completed with Human Resources. He testified that he just glanced at

Question #1 on the application and the words in the definition of "crime" that popped out to him were "felony" and "exclude misdemeanor." He knows that he did not fully read the question at that point. He acknowledged that it was his responsibility as an applicant to thoroughly read and understand the questions. At the time, he did not know that "Yes" was the correct answer to Question #1. The secretary said to click "No," not knowing that he had any convictions. He clicked to submit the application while the secretary was still there. It was his intent to go back and look at the application more thoroughly. It was his first day on the job and he intended to review and change the application if necessary when the secretary left. There was a lot of pressure on his first day on the job.

Petitioner testified that he had no idea how to get back into the application after it was submitted on the computer. A day or two later, he did look on the application website to try to find a way to go back into the application. He did not call the Licensing Division to correct his application prior to receiving the letter of inquiry. [Resp. Exh. 3]. Petitioner testified that he first realized that his "No" answer was materially untrue when he "got the letter in the mail" from Respondent. Since receiving the letter, he has gone back and reviewed the full language of Question # 1 on the license application. After reading the full language of the question, Petitioner now sees that Question #1 does not apply only to felonies. There is no dispute that Petitioner does have two misdemeanor convictions.

Petitioner testified that he personally drafted the letter of explanation attached to his Petition for Contested Case. [Resp. Exh. 6]. He believes that honest and truthful answers are critical to the license application process. Based on his review

of Question #1 at the point the application was submitted, he believes that he honestly and truthfully answered "No." He believes that what he was saying in his letter of explanation to Respondent was that it was his intent to go back when the secretary left and review the questions and make any changes necessary. It was not an intentional act to mislead or conceal his conviction history from Respondent. When he said in his letter of explanation that "embarrassment took over," he meant that he did not tell the secretary to stop so that he could read the application question carefully. He did not realize that misdemeanor information had to be included on the application.

Regarding his letter of explanation contained in Respondent's Exhibit No. 6, that he did not want the president at the Michigan Dental Association – Insurance and Financial Group to know that he had a prior misdemeanor offense, Petitioner testified that what he meant was that the job application did not ask for misdemeanor information (only felony convictions) so he did not disclose it in his job application. He truly did not understand that misdemeanor offenses had to be disclosed on the license application.

Petitioner stated that he found on Respondent's website that on November 8, 2011, there was a decision that somebody was granted a license who had two misdemeanors. [Pet. Exh. A]. He was not trying to intentionally mislead or "skate by". Petitioner testified that he has "quite an extensive background on a personal level". He has gone through years of counseling and has had a lot of personal "trials and tribulations" based on incidents that happened to him in his childhood. Through counseling, he has come to understand that his childhood history was the main reason for the misdemeanors that he committed 21 and 14 years ago. Now, his life has been turned around. He has confronted his past and is not afraid to admit his past. He did

not intentionally mislead Respondent, as is shown by the information he submitted to Respondent right away after there was an inquiry. It was not a case of a lack of honesty, but rather a case of not reading the application question thoroughly.

Petitioner testified that he has worked hard all of his life. He has tried to be an upstanding citizen and to help his community. He is a youth coach, president of a board, works in the business and financial aid industry, and tries to give his all to everything that he does. He has stood up to his past and provided documentation from the courts about what his crimes were from 21 and 14 years ago. His family knows about everything and his wife is supportive of him. The hardest thing was explaining what happened in his childhood and past to his daughters. He understands that it is not a way to live life to run from the past. He was not intentionally misleading in his application. It was an honest mistake.

FINDINGS OF FACT

Based on the entire record in this matter, including the witness testimony and admitted exhibits, the following findings of fact are established:

1. Petitioner is 45 years old and resides in Lansing, Michigan. [Resp. Exh. 1]. He currently works as a loan specialist in the financial aid office at Lansing Community College.
2. Petitioner has an Associate's degree from Lansing Community College and is working on completing a Bachelor's degree from Siena Heights University.
3. Petitioner has credibly testified and submitted written statements in this matter regarding his having been a victim of abuse as a child and having

subsequently gone through years of counseling as a result. [Resp. Exh. 4].

4. On April 12, 1990, Petitioner was convicted in the 65-B Judicial District Court of the State of Michigan of the misdemeanor offense of "Indecent Exposure." He was sentenced on the offense on May 14, 1990. [Resp. Exh. 6].
5. On October 1, 1997, Petitioner was convicted in the 54-B Judicial District Court of the State of Michigan of the misdemeanor offense of "Disorderly – Engage in Indecent or Obscene Conduct in Public." He was sentenced on November 21, 1997. [Resp. Exh. 6].
6. On June 3, 2010, Petitioner submitted an online Application for an Individual Producer License/Registration to the Office of Financial and Insurance Regulation. [Resp. Exh. 1].
7. On the submitted Application, Petitioner answered "No" to Question #1, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" The Application form provided the following clarification regarding what types of crimes were to be disclosed, as follows:

"Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine. [Resp. Exh. 2, p 3 (Emphasis supplied)].

8. By letter dated June 9, 2011, Joellen Babcock, Licensing Technician in Respondent's Licensing and Product Review Division, requested that Petitioner verify information regarding his possible criminal history of convictions in 1990 and 1997. [Resp. Exh. 3].
9. In subsequent correspondence to Respondent dated June 14, 2010 and received on June 25, 2010, Petitioner explained his understanding of the circumstances of the two misdemeanor offenses. It is noted that Petitioner indicated in his correspondence that he had pled "no contest" (no contest or nolo contendere) in 1997, but the court's Register of Actions document indicates that it was a guilty plea. [Resp. Exh. 4].
10. Petitioner credibly indicated in his letter to Respondent of June 14, 2010, that while attending a counseling session he was "able to finally after 25+ years to tell someone about abuse that I had endured." He provided Respondent with a written statement regarding what led to his two misdemeanor convictions, indicating that neither crime involved any physical contact with anyone else and that the "psychological sessions I attended have mad[e] me understand what happened." [Resp. Exh. 4].
11. On July 15, 2010, Jean M. Boven, Deputy Commissioner for the Licensing and Product Review Division, issued a Notice of License Denial, indicating that Petitioner's license application was denied based on his having provided "incorrect and materially untrue information in the license application." [Resp. Exh. 6].

12. On August 20, 2010, Petitioner submitted a Petition for Contested Case Hearing to contest the license denial. He attached a letter of explanation to the Petition, in which he stated in part that it had been his first day on the job when he completed the license application, that the secretary for the division president was looking over his shoulder as he completed the application, and that he selected "No" to the question of whether he had ever been convicted of a crime "with the intent of going back" Petitioner further explained that when he got to the bottom of the application, the secretary said to submit and he did, "thinking that I could make a correction." Petitioner asserted that he "did not realize that once it was submitted, there was not an opportunity to go back and change it." [Resp. Exh. 6].
13. In his letter of explanation submitted with the Petition for Contested Case Hearing, Petitioner acknowledged that he "should have marked the right box, but embarrassment took over." [Resp. Exh. 6]. Petitioner credibly testified that what he meant by his statement was that he had been too embarrassed at the time he submitted the application, with the secretary looking over his shoulder, to thoroughly read Question #1 on the application regarding the definition of "crime". He credibly testified that the words "felony" and "exclude misdemeanor" popped out at him as he read the question quickly at the time, and that he intended to go back and read the question later more thoroughly.

14. Petitioner credibly testified that he went back on the application website a day or two after submitting the application and did not see how he could get back into the application to thoroughly read the questions and make any corrections.
15. When Petitioner was contacted by Respondent regarding his criminal history, he timely provided all of the relevant court documents with a written explanation. [Resp. Exh. 4 & 6].
16. Petitioner credibly testified that he did not intend to mislead Respondent in the submission of his license application, although the information he provided was in fact incorrect and materially untrue regarding his misdemeanor conviction history.
17. In its Notice of License Denial of July 15, 2010, Respondent did not cite the nature or substance of Petitioner's misdemeanor convictions from 1990 and 1997 as a reason for the denial of the license application. [Resp. Exh. 5].

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). [REDACTED]

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. See MCL 500.1205(1)(b) and MCL 500.1239(1)(a),

as amended by 2008 PA 422 & 423, which amendments became effective on January 6, 2009, prior to the license application at issue here.

In a recently issued Final Decision in another licensing matter involving MCL 500.1239(1)(a) as the basis for denial of a license application, the Commissioner made the following relevant statements concerning the proper interpretation of this section of the Insurance Code:

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. * * * If the errors are committed without the *intent* to mislead, they are simple errors which can be corrected. In contrast, the same inaccuracies might properly be seen as disqualifying if it is demonstrated that the inaccuracy was entered on the application for the purpose of concealing disqualifying information. 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 were 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 [who] presents a similar risk. *Jason Gatt v Office of Financial and Insurance Regulation* (Docket No. 2011-813, November 8, 2011). Pet. Exh. A, pp 5-6. (Emphasis supplied).

In this case, based on the above findings of fact, Respondent has not shown by a preponderance of evidence that in submitting his online application for an insurance producer license on June 3, 2010, Petitioner intentionally provided "incorrect" and "materially untrue" information within the meaning of Section 1239(1)(a) of the Insurance Code. Given the totality of the record evidence, it has not been proven more likely than not that Petitioner had an intent to mislead Respondent in the submission of his license application. As such, Respondent has not proven by a preponderance of the evidence a basis for denial of Petitioner's license application under Section 1205(1)(b) of the Insurance Code. Further, as indicated above, the nature or substance of Petitioner's misdemeanor convictions was not cited by Respondent as a basis for license denial, and thus is not properly at issue in this contested case.

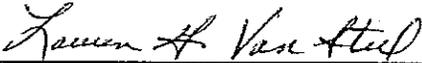
PROPOSED DECISION

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 reverse Respondent's July 15, 2010 Notice of License Denial regarding Petitioner's application for a resident insurance producer license under MCL 500.1239(1)(a) and 500.1205(1)(b); and
3. That the Commissioner take any other action in this matter deemed appropriate 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.



Lauren G. Van Steel
Administrative Law Judge