

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

Mark Sims,
Petitioner

v

Office of Financial and Insurance Regulation,
Respondent

Case No. 11-815-L
Docket No. 2011-230

For the Petitioner:

Mark Sims


For the Respondent:

Elizabeth Bolden
Office of General Counsel
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909

Issued and entered
this 29th day of July 2011
by R. Kevin Clinton
Commissioner

FINAL DECISION

This case concerns the application of Mark Sims (Petitioner) for a nonresident insurance producer license. Petitioner filed his application with the Office of Financial and Insurance Regulation (OFIR) in January 2010. On the application, Petitioner disclosed that he violated an order of the Indiana Insurance Commissioner in 1996. Petitioner's Michigan producer application was denied for that reason.

Petitioner challenged the license denial. A hearing was scheduled for March 29, 2011. Respondent filed a motion for summary decision which was heard on that date before an administrative law judge who issued a proposal for decision (PFD) dated May 20, 2011 granting Respondent's motion and recommending that the Commissioner uphold the license denial. Neither party filed exceptions.

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. Those findings and conclusions are adopted. The PFD is attached and made part of this final decision.

In addition to the considerations above, it is noted that the Petitioner did not file exceptions to the Proposal for Decision. 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).

ORDER

It is ordered that the refusal to issue an insurance producer license to Petitioner Mark Sims is upheld.



R. Kevin Clinton
Commissioner

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

In the matter of	Docket No.	2011-230
Mark A. Sims, Petitioner	Agency No.	11-815-L
v Office of Financial and Insurance Regulation, Respondent	Agency:	Office of Financial and Insurance Regulation
	Case Type:	Sanction

Issued and entered
this 20th day of May 2011
by Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Mark A. Sims, Petitioner, appeared on his own behalf. Elizabeth V. Bolden and Conrad L. Tatnall, Attorneys at Law, appeared on behalf of the Office of Financial and Insurance Regulation, Respondent.

This proceeding under the Michigan Insurance Code, 1956 PA 218 as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance by the State Office of Administrative Hearings and Rules (now the Michigan Administrative Hearing System) of a Notice of Hearing dated February 24, 2011, scheduling the contested case hearing for March 29, 2011. The Notice of Hearing was issued pursuant to the Michigan Administrative Procedures Act, 1969 PA 306 as amended, MCL 24.201 *et seq.* (hereafter "APA"), following a Request for Hearing received on February 18, 2011, with an Order Referring Petition for Hearing and Order to Respond, dated February 16, 2011, issued by Stephen R. Hilker, Chief Deputy

Commissioner for the Office of Financial and Insurance Regulation. Attached to the Order Referring Petition for Hearing was a copy of the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, dated July 9, 2010.

On March 9, 2011, Respondent filed a Motion for Summary Decision and Brief in Support of Motion. On March 16, 2011, the undersigned issued an Order for Adjournment and Order Scheduling Hearing on Motion for Summary Decision, which set a date for a motion hearing on March 29, 2011. On March 17 and 24, 2011, Petitioner filed a Response to Respondent's Motion for Summary Decision.

On March 29, 2011, the motion hearing was held as scheduled. Petitioner appeared on his own behalf. Ms. Bolden and Mr. Tatnall appeared on behalf of Respondent. Oral argument was heard on Respondent's Motion for Summary Decision.

Petitioner offered the following exhibit, which was admitted as evidence into the record:

1. Petitioner's Exhibit A is a copy of certificates of licensure from the states of Alabama, Colorado, California, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, New York, North Carolina, Ohio, South Carolina, Texas and Virginia.

Respondent offered the following exhibits, which were admitted as evidence into the record:

1. Respondent's Exhibit No. 1 is a copy of a Final Order of the Commissioner of Insurance, State of Indiana, dated August 24, 1994, and Agreed Entry, dated August 23, 1994.

2. Respondent's Exhibit No. 2 is a copy of a Statement of Charges before the Commissioner of Insurance, State of Indiana, dated July 18, 1994.
3. Respondent's Exhibit No. 3 is a copy of a Final Order of the Commissioner of Insurance, State of Indiana, and Agreed Entry, dated January 29, 1996, and Statement of Charges, dated October 24, 1995.
4. Respondent's Exhibit No. 4 is a copy of a letter to Petitioner from the Department of Insurance, State of North Dakota, dated May 7, 2002.
5. Respondent's Exhibit No. 5 is a copy of Petitioner's online entries for an Individual Licensee Application, dated January 28, 2010.
6. Respondent's Exhibit No. 6 is a copy of a Notice of License Denial and Opportunity for Hearing issued by Jean M. Boven, Deputy Commissioner, Licensing & Product Review Division, Office of Financial and Insurance Regulation, State of Michigan, dated June 15, 2010.
7. Respondent's Exhibit No. 7 is a copy of a letter to Michelle E. Riddering, Licensing Manager, from Petitioner, dated July 9, 2010.

At the conclusion of the motion hearing, the undersigned took Respondent's Motion for Summary Decision under advisement. On March 29, 2011, Respondent filed a "Corrected Request for Hearing," which corrected the case caption titles for "Petitioner" and "Respondent", as stated on the record.

ISSUES AND APPLICABLE LAW

The central issue presented is whether Respondent has properly denied Petitioner's non-resident insurance producer license application for additional lines of authority for Property & Casualty insurance under Sections 1206a(1) and

1239(1)(b),(d)&(h) of the Insurance Code, *supra*, which provide as follows:

Sec. 1206a. (1) Unless denied licensure under section 1239, a nonresident person shall receive a nonresident insurance producer license if he or she meets all of the following:

(a) Is currently licensed as a resident and in good standing in his or her home state.

(b) Has submitted the proper request for licensure and has paid the applicable fees required by section 240.

(c) Has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state or a completed uniform application as required by the commissioner.

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis. MCL 500.1206a(1). (Emphasis supplied).

Sec. 1239. (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:

* * *

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

* * *

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

* * *

(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)(b),(d)&(h). (Emphasis supplied).

FINDINGS OF FACT

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

1. Mark A. Sims, Petitioner, is a resident of Bloomington, Indiana. He is the Chief Executive Officer (CEO) of Captive Transactions, LLC, which is a national broker for physician medical malpractice insurance.
2. Petitioner is currently licensed as an insurance producer in his home state of Indiana, with Life, Accident & Health, and Property & Casualty issuance authority.
3. In addition to the state of Indiana, Petitioner has been licensed in several other states as an insurance producer with specific issuance authority for Property & Casualty lines. [Pet. Exh. A; Resp. Exh. 7].
4. On August 23, 1994, Petitioner and the State of Indiana, Department of Insurance, executed an Agreed Entry, approved by Final Order on August 24, 1994, in which Petitioner admitted to conduct that was "wrongful" and in violation of Indiana law, and agreed to pay a civil penalty of \$2,400.00 and have two years of supervised probation with quarterly reports. [Resp. Exh. 1 & 2].
5. In correspondence to Respondent, dated July 9, 2010, Petitioner acknowledged that in February 1993, he "wrongfully and intentionally withdrew \$15,000 of funds from a client's cash value life insurance policy for my own use. The wrongful conversion was discovered by my client and I was reported to and I was censured by the Indiana Department of Insurance under Cause number 4902-AG94-060. Full restitution with interest was made to the client and to the insurance company, fines were assessed by the Indiana Department of Insurance, and I entered into a

two year probationary period which was extended an additional one year due to my slow repayment of the fines." [Resp. Exh. 7, pp 3-4].

6. Petitioner further acknowledged at the motion hearing that his conduct leading to the August 24, 1994 Final Order by the commissioner of insurance in the State of Indiana included his forgery of a client's name on a document.
7. On January 24, 1996, Petitioner and the State of Indiana, Department of Insurance, executed an Agreed Entry, approved by Final Order on January 29, 1996, in which Petitioner admitted to having violated the Final Order dated August 24, 1994, and agreed to pay a civil penalty of \$2,000.00, and to have one year of supervised probation requiring quarterly reports. [Resp. Exh. 3].
8. On July 26, 1999, Petitioner became licensed as a non-resident insurance producer in the state of Michigan for the insurance lines of Accident & Health and Life. [Pet. Exh. A].
9. On May 7, 2002, the State of North Dakota denied Petitioner's application for a non-resident insurance license based upon Petitioner having refused to respond to repeated written requests for information surrounding an alleged misstatement on his application and the administrative action taken against his license in the State of Indiana. [Resp. Exh. 4].
10. Petitioner has acknowledged that he failed to disclose the State of Indiana administrative proceeding on his State of North Dakota application, and that he did not submit a correction or withdraw his application after he no

longer required a North Dakota license for a particular client. [Resp. Exh. 7, p 3].

11. Petitioner indicated at the motion hearing that someone in his office had filled out the North Dakota application on his behalf that he then signed, and that he had not received certain follow-up correspondence sent to a former office by the State of North Dakota, prior to the denial of his application.
12. Petitioner has acknowledged having entered into a consent decree with the State of Florida, "based essentially on the non-reporting of the Indiana incident". After the consent decree and payment of a fine, the State of Florida issued a non-resident insurance producer license to Petitioner. [Resp. Exh. 7].
13. On January 28, 2010, Petitioner submitted an online application to obtain licensure in the state of Michigan as a non-resident insurance producer with issuance authority for Property & Casualty lines. Petitioner's company is currently seeking to do business in Michigan.
14. In response to Question #2 on the application, which asks whether the applicant is involved in any administrative proceedings, Petitioner indicated, "Yes". [Resp. Exh. 5].
15. On June 15, 2010, Jean M. Boven, Deputy Commissioner for the Licensing & Product Review Division of the Office of Financial and Insurance Regulation (Respondent), issued a Notice of License Denial, in which Petitioner's license application was denied for the stated reasons

that "Applicant violated other states insurance laws, improperly converted money received in the course of business and demonstrated untrustworthiness in the conduct of business." [Resp. Exh. 6, p 2].

16. Petitioner has credibly asserted that he successfully completed his probationary period with his home state of Indiana in 1996, that he has been licensed in good standing in Indiana since that time "free of any other warnings or disciplinary actions", and that he currently holds licensure in several other states with different lines of issuance authority, including Property & Casualty. [Resp. Exh. 7]. To date, Respondent has not sought to refute Petitioner's assertions on these points.
17. Petitioner's actions, which led to the Final Order entered in the State of Indiana on August 24, 1994, constituted a violation of another state's insurance laws; the improper misappropriation or conversion of money received in the course of doing insurance business; and the use of dishonest practices or a demonstration of untrustworthiness in the conduct of business. See Respondent's Exhibit No. 1, page 2 of the "Agreed Entry" and Respondent's Exhibit No. 2.
18. Petitioner's actions, which led to the Final Order entered in the State of Indiana on January 29, 1996, constituted a violation of an order of another state's insurance commissioner. See Respondent's Exhibit No. 3, pages 2-3 of the "Agreed Entry".

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. Petitioner must show by a preponderance of evidence that he meets the requirements for licensure. See MCL 500.1239(2). Under Rule 11(c) of the administrative rules for hearings under the Insurance Code, *supra*, 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).

Pursuant to Sections 1239(1)(b), (d) and (h) of the Insurance Code, *supra*, as enacted at times pertinent to Petitioner's January 28, 2010 license application, the Commissioner "shall refuse to issue a license" where an applicant has violated any insurance laws or order of another state's insurance commissioner; misappropriated or converted any money in the course of doing insurance business; or used dishonest practices or demonstrated untrustworthiness in the conduct of business in this state or elsewhere. MCL 500.1239(1)(b),(d)&(h), as amended by 2008 PA 423, Imd. Eff. Jan. 6, 2009.

Based on the above findings of fact, in this matter there is no genuine issue of material fact that Petitioner's acknowledged actions constitute grounds for Respondent's refusal to approve Petitioner's license application under Section 1239(1). Pursuant to Section 1206a(1), a non-resident applicant who otherwise meets the stated licensure requirements is to receive an insurance producer license, "[u]nless denied licensure under Section 1239." MCL 500.1206a(1). Here, Respondent must refuse to

issue a license under the plain meaning of Sections 1239(1)(b),(d)&(h). Therefore, Respondent is entitled to summary decision in its favor under Rule 11(c).

PROPOSED DECISION

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 grant Respondent's Motion for Summary Decision and deny Petitioner's application under the terms of Sections 1206a(1) and 1239(1) of the Insurance Code, *supra*.
3. That the Commissioner take any other action in this matter deemed appropriate by the Commissioner under the provisions of the Insurance Code, *supra*.

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 the 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

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 20th day of May, 2011.



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