

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Before the Director of Insurance and Financial Services

**Keshia Renea Noel,
Petitioner**

v

**Case No. 20-1047-L
Docket No. 20-001631**

**Department of Insurance and Financial
Services,
Respondent.**

_____ /

For the Petitioner:

Keshia Renea Noel
In Pro Per

Email: _____

Phone: _____

For the Respondent:

Conrad L. Tatnall (P69785)
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Services

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**Issued and entered
This 17th day of June 2020
by Randall S. Gregg
Senior Deputy Director**

FINAL DECISION

I. INTRODUCTION

On March 23, 2020, Administrative Law Judge Christopher S. Saunders (Judge Saunders) issued a Proposal for Decision Granting Respondent's Motion for Summary Disposition (PFD). Judge Saunders recommended that the Director issue a final decision consistent with the Findings of Fact and Conclusions of Law as outlined in his PFD. 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. In addition, neither party filed

exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm'n*, 136 Mich App. 52 (1984); *see also* MCL 24.281. For these reasons, and as set forth below, the PFD is adopted in full and Petitioner's appeal of Respondent's Notice of License Denial is dismissed.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact in the March 23, 2020 PFD are adopted in full and made part of this Final Decision. The Conclusions of Law set forth in the March 23, 2020 PFD are also adopted in full, made a part of this Final Decision, and restated herein as follows:

1. The Insurance Code provisions in effect at the time of this application for licensure mandate that the Director "shall refuse to issue a license" to an applicant who has been convicted of a felony. *See* MCL 500.1239(1)(f).
2. There is no genuine issue of material fact relevant to Respondent's claim that Petitioner's felony conviction renders her ineligible for issuance of a non-resident insurance producer license.
3. As is required by law, the Director denied Petitioner's application for licensure.

III. ORDER

Therefore, it is ORDERED that:

1. The PFD is adopted and made part of this Final Decision.
2. Petitioner's appeal of Respondent's Notice of License Denial is dismissed.



Randall S. Gregg
Senior Deputy Director

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

**Keshia Renea Noel,
Petitioner**

v

**Department of Insurance and Financial
Services,
Respondent**

Docket No.: 20-001631

Case No.: 20-1047-L

**Agency: Department of
Insurance and
Financial Services**

Case Type: DIFS-Insurance

Filing Type: License Denial

**Issued and entered
this 23rd day of March 2020
by: Christopher S. Saunders
Administrative Law Judge**

**PROPOSAL FOR DECISION GRANTING
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION**

PROCEDURAL HISTORY

This proceeding is held under the authority of the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100, *et seq.* (hereafter 'Code').

On or about August 15, 2019, Keshia Renea Noel, (hereafter, 'Petitioner') submitted an application for licensure as a non-resident insurance producer in the State of Michigan.

On September 10, 2019, the Department of Insurance and Financial Services (hereafter, 'Respondent') issued a Notice of License Denial and Opportunity for Hearing (Notice of Denial). The Notice of Denial advised the Petitioner that her application for licensure was denied because she failed to satisfy the minimum licensing requirements of Section 1206a of the Code. Specifically, the Notice of Denial informed the Petitioner that her March 31, 2004, felony conviction of manufacture, sell, give, or distribute or possess with intent to sell, give, or distribute cocaine rendered her disqualified for licensure under Section 1239(1)(f) of the Code.

The Petitioner timely appealed the Notice of Denial, thereby triggering her right to a contested case hearing before an Administrative Law Judge (ALJ).

On January 22, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) issued a Notice of Hearing scheduling this matter to convene at 9:00 a.m. on March 2, 2020. The Notice of Hearing was sent via certified mail, return receipt requested. The Notice and the receipt were returned, Petitioner signed the return receipt, but when the Notice was returned, "refused" was written on the envelope.

On February 4, 2020, Respondent filed a Motion for Summary Disposition (Respondent's Motion) under 2015 AACS R 792.10129 (Rule 129), asserting there are no genuine issues of any material fact, and that it is entitled to a decision in its favor as a matter of law. The Respondent's Motion also requested that the contested case hearing be converted to an oral argument hearing on its Motion. The Petitioner did not file a written response to the Respondent's Motion.

On February 7, 2020, an Order Converting Hearing to Oral Argument on Respondent's Motion for Summary Disposition was issued by the undersigned. The Order Converting Hearing was served on Petitioner at her last-known address, and the Order Converting Hearing was not returned as undeliverable or unable to forward.

Oral argument convened on March 2, 2020, at 9:00 a.m. as scheduled. Attorney Conrad Tatnall appeared on behalf of Respondent. Petitioner did not appear, nor did an attorney appear on her behalf. Although the Notice of Hearing was returned as refused, the Order Converting Hearing to Oral Argument was not returned and was mailed to Petitioner at her last known-address. The undersigned ALJ determined on the record that Petitioner was properly served with the Order Converting Hearing to Oral Argument. The oral argument proceeded in Petitioner's absence pursuant to Section 72 of the Administrative Procedures Act, 1969 PA 306, as amended, (APA) MCL 24.201, *et seq.*

APPLICABLE LAW

Section 1206a

MCL 500.1206a states:

**500.1206a Nonresident insurance producer license;
requirements; verification of status; change of address;**

**nonresident surplus lines insurance producer license;
nonresident limited lines insurance producer.**

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.

(2) The commissioner may verify the insurance producer's licensing status through the producer database maintained by the national association of insurance commissioners or its affiliates or subsidiaries.

(3) A nonresident insurance producer who moves from 1 state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence. No fee or license application is required.

(4) Notwithstanding any other provision of this chapter, a person licensed as a surplus lines insurance producer in his or her home state shall receive a nonresident surplus lines insurance producer license pursuant to subsection (1). Except as otherwise provided in subsection (1), this section does not otherwise amend or supersede any provision of chapter 19.

(5) Notwithstanding any other provision of this chapter, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in his or her home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection (1), granting the same scope of authority as granted under the license issued by the producer's home state. For the purposes of this subsection, limited lines insurance is any authority granted by the home state that restricts the authority of the license to less than the total authority prescribed in the associated major lines under section 1206(1)(a) to (f).

Section 1239

Additionally, MCL 500.1239(1)(f) states:

500.1239 Probation, suspension, or revocation of insurance producer's license; refusal to reissue; causes; civil fine; notice of license denial; hearing; license of business entity; penalties and remedies.

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:

* * *

(f) Having been convicted of a felony.

FINDINGS OF FACT

Based upon argument of the parties, review of the hearing file, the respective pleadings and documentary submissions, I find the following material facts:

1. On March 31, 2004, Petitioner entered a plea of guilty to the crime of manufacture, sale, possession of a controlled substance in the [REDACTED]

█████ Circuit Court, in the county of █████, city of █████, █████.
(Resp. Exhibit 1, Motion for Summary Disposition).

2. The above crime to which Petitioner tendered a plea of guilty is a felony. (Resp. Exhibit 1, Motion for Summary Disposition).
3. On August 15, 2019, Petitioner filed an Application for a Non-Resident Producer License in the State of Michigan. The Petitioner responded “yes” on the Application to the question asking her whether she had ever been convicted of a felony. (Resp. Exhibit 2, Motion for Summary Disposition).
4. On September 10, 2019, Respondent issued a Notice of License Denial and Opportunity for Hearing, informing Petitioner that her Application for a Non-Resident Producer License was denied due to her 2004 felony conviction. (Resp. Exhibit 3, Motion for Summary Disposition).
5. Petitioner timely requested a hearing regarding the denial of her application. (Resp. Exhibit 4, Motion for Summary Disposition).

CONCLUSIONS OF LAW

The Respondent’s motion for summary disposition under 2015 AACS R 792.10129 is akin to a motion brought under Michigan Court Rule (MCR) 2.116(C)(10). A motion filed under MCR 2.116(C)(10) tests the factual support for a plaintiff’s claim. *Skinner v Square D Co*, 445 Mich 153, 161, 516 NW2d 475 (1994); *Babula v Robertson*, 212 Mich App 45, 48, 536 NW2d 834 (1995).

Summary disposition under MCR 2.116(C)(10) is available when “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10); see also *Coblentz v City of Novi*, 475 Mich 558, 719 NW2d 73 (2006); *Haliw v City of Sterling Heights*, 464 Mich 297, 627 NW2d 581 (2001); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 645 NW2d 643 (2000).

“A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *Attorney Gen v PowerPick Players’ Club of Michigan, LLC*, 287 Mich App 13, 26–27, 783 NW2d 515 (2010) (quoting *West v GMC*, 469 Mich 177, 183, 665 NW2d 468 (2003)).

A material fact has been defined as “an ultimate fact issue upon which a jury’s verdict must be based.” *Estate of Neal v Friendship Manor Nursing Home*, 113 Mich App 759,

763, 318 NW2d 594 (1982). In other words, “[t]he disputed factual issue must be material to the dispositive legal claim[s].” *Auto Club Ins Ass’n v State Auto Mut Ins Co*, 258 Mich App 328, 333, 671 NW2d 132 (2003).

In reviewing a motion brought under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in light most favorable to the nonmoving party. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 120, 597 NW2d 817 (1999); *Radtke v Everett*, 442 Mich 368, 374, 501 NW2d 155 (1993); *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233, 553 NW2d 371 (1996). Affidavits or other documentation submitted in support of or in opposition to a motion for summary disposition under MCR 2.116(C)(10) must contain admissible evidence. MCR 2.116(G)(6); *Maiden*, 461 Mich at 121.

Granting the nonmoving party the benefit of any reasonable doubt regarding material facts, the court must then determine whether a factual dispute exists to warrant a trial. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617–618, 537 NW2d 185 (1995); *Radtke*, 442 Mich at 374. If there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law. See *Quinto v Cross & Peters Co*, 451 Mich 358, 363, 547 NW2d 314 (1996) (plaintiff failed to present evidence on which reasonable person could find that hostile work environment existed; summary disposition proper); *Helsel v Morcom*, 219 Mich App 414, 417, 555 NW2d 852 (1996).

Here, Respondent contends that Petitioner was convicted of a felony in Virginia in 2004. The documentation provided by Respondent shows that Petitioner entered a plea of guilty to a charge of manufacture, sale, possession of a controlled substance in [REDACTED] Circuit Court on March 31, 2004. In reviewing Petitioner’s response to Respondent’s Notice of License Denial and Opportunity for Hearing, it does not appear that there is any dispute of this fact. Petitioner did not submit a response to Respondent’s Motion for Summary Disposition, nor did she appear at the oral argument.

Petitioner’s March 31, 2004, guilty plea constitutes a conviction. The crime to which Petitioner tendered the plea of guilty is a felony (see Resp. Exhibit 1, Motion for Summary Disposition). MCL 500.1239(1)(f) states that the commissioner *shall* refuse to issue a license if an applicant has been convicted of a felony. Therefore, Respondent is required to deny an application for a non-resident insurance producer license if an applicant has a conviction for a felony. In this case there is no dispute that Petitioner was convicted of a felony on March 31, 2004. Therefore, Respondent is required by law to deny her application. As such, Respondent is entitled to a judgement as a matter of law and its Motion for Summary Disposition should be granted.

SUMMARY

There is no genuine issue of material fact relevant to Respondent's claim that Petitioner's felony conviction renders her ineligible for issuance of a non-resident insurance producer license. Therefore, Respondent is entitled to a decision in favor of its denial of licensure as a matter of law.

IT IS HEREBY RECOMMENDED THAT THE DIRECTOR ORDER that:

The Respondent's Motion for Summary Decision is **GRANTED**.

The Petitioner has failed to satisfy the minimum licensing requirements of Section 1206a of the Code.

The Petitioner is ineligible for issuance of a non-resident insurance producer license under Section 1239(1)(f) of the Code.



Christopher S. Saunders
Administrative Law Judge

EXCEPTIONS

Pursuant to MCL 24.281, 2015 AACS R 792.10132, and 2015 AACS R 792.10608, a party may file exceptions to this proposal for decision within 21 days after the proposal for decision is issued. An opposing party may file a response to exceptions within 14 days after exceptions are filed. File exceptions and responses with Dawn Kobus, Department of Insurance and Financial Services, Division of Insurance, PO Box 30220, Lansing, Michigan, 48909, and send a copy to the other parties.