

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

Steven J. Mosley II,

Petitioner,

v

Case No. 19-1043-L
Docket No.: 19-011910

Department of Insurance and Financial
Services,

Respondent.

For the Petitioner:

Steven J. Mosley II


Phone: 

For the Respondent:

David M. Toy (P73000)
Department of Insurance and
Financial Services
P.O. Box 30220
Lansing, MI 48909
Email: ToyD@Michigan.gov
Office: (517) 284-8808
Fax: (517) 284-8843

Issued and entered
this 26th day of September 2019
by Randall S. Gregg
Senior Deputy Director

FINAL DECISION

I. BACKGROUND

This matter concerns the application of Steven J. Mosley II (Petitioner) for a resident insurance producer license.

On March 13, 2019, the Department of Insurance and Financial Services (Respondent) denied Petitioner's application under Sections 1205 and 1239 of the Insurance Code of 1956, MCL 500.1205 and MCL 500.1239.

On April 1, 2019, Petitioner filed a Petition for Contested Case Hearing to Appeal Agency Denial of Application for insurance Producer License. On May 22, 2019, Respondent filed its Response to Applicant's Appeal of License Denial. On May 28, 2019, Respondent issued an Order Referring Petition for Hearing before the Michigan Office of Administrative Hearings and Rules.

A hearing was scheduled for August 5, 2019. The Petitioner failed to appear for the hearing. After finding that the Petitioner was properly served with notice of the hearing, the hearing proceeded in the Petitioner's absence pursuant to Sections 72 and 78 of the Administrative Procedures Act, MCL 24.272 and MCL 24.278, and the Michigan Administrative Hearing System Rules, 2015 AACS R 792.10101 through R 792.110903.

On August 9, 2019, Administrative Law Judge Stephen B. Goldstein issued a Proposal for Decision (PFD) recommending that the Director issue a final order denying Petitioner's application.

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*, 136 Mich App 52 (1984). The PFD is attached, and its findings and recommendation are adopted.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law as set forth in the PFD are adopted and made part of this Final Decision in their entirety.

III. ORDER

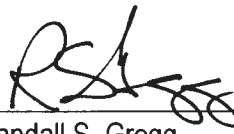
Therefore, it is ORDERED that:

Therefore, it is ORDERED that:

The Respondent's denial of Petitioner's application for licensure as a resident insurance producer under Sections 1205 and 1239 of the Insurance Code, MCL 500.1205 and MCL 500.1239, is upheld.

Anita G. Fox
Director

For the Director:

A handwritten signature in black ink, appearing to read "R. S. Gregg", is written over a horizontal line.

Randall S. Gregg
Senior Deputy Director

AUG 12 2019

DIFS/OGC

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

IN THE MATTER OF:

Steven J. Mosley II,
Petitioner

v

Department of Insurance and Financial
Services,
Respondent

Docket No.: 19-011910

Case No.: 19-383-L

Agency: Department of
Insurance and
Financial Services

Case Type: DIFS-Insurance

Filing Type: Appeal

Issued and entered
this 9th day of August 2019
by Stephen B. Goldstein
Administrative Law Judge

PROPOSAL FOR DECISION

Background and Procedural History

On January 15, 2019, Steven J. Mosley, II (Petitioner) applied to become licensed as a resident insurance producer in the state of Michigan.

On March 13, 2019, the Department of Insurance and Financial Services (Respondent) denied Petitioner's application for licensure as a resident insurance producer, under Sections 1205 and 1239 of the Michigan Insurance Code of 1956, (Code) as amended, MCL 500.1205 and MCL 500.1239.

On April 1, 2019, Petitioner filed a Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License.

On May 22, 2019, Respondent filed its Response to Applicant's Appeal of License Denial.

On May 28, 2019, Respondent issued an Order Referring Petition for Hearing before the Michigan Office of Administrative Hearings and Rules (MOAHR).

On May 31, 2019, MOAHR issued a Notice of Hearing scheduling a contested case hearing to convene at 9:00 a.m. on August 5, 2019. The Notice of Hearing was sent to the parties at their last known addresses of record.

The August 5, 2019 hearing convened as scheduled. Petitioner failed to appear, as of 9:45 a.m. Respondent appeared and was represented by David M. Toy, Attorney at Law. After finding that Petitioner was properly served with notice, the hearing proceeded in his absence, pursuant to Sections 72 and 78 of Michigan's Administrative Procedures Act, MCL 24.271 *et seq.* (APA) and the Michigan Administrative Hearing System Rules (MAHS Rules), 2015 AACS R 792.10101 – R 792.110903.

Issue(s)

Has Respondent properly denied Petitioner's application for licensure as a resident insurance producer in the state of Michigan?

Applicable Law

MCL 500.1205 provides, in relevant 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 500.1239(1)(f) provides, in pertinent part:

"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 on a preponderance of the evidence presented, the Administrative Law Judge finds, as material fact:

1. On January 15, 2019, Petitioner applied to become licensed as a resident insurance producer in the state of Michigan.
2. On March 13, 2019, Respondent denied Petitioner's application.
3. On October 7, 2005, Petitioner was convicted of Attempted Carrying a Concealed Weapon, a 5th Degree Felony, in the Court of Common Pleas, Allen County, Ohio, under case number CRA 2005-0489.
4. On November 19, 2018, Petitioner's Motion to Seal Record of Conviction was granted by the Court of Common Pleas of Allen County, Ohio. However, the sealing of a record of conviction is not tantamount to expungement or dismissal. The Ohio Revised Code has distinct requirements for convictions that can be sealed versus those that can be expunged. Petitioner's October 7, 2005 conviction was not expunged, in that the records of conviction were not destroyed, deleted, and made permanently irretrievable.
5. Petitioner failed to disclose the October 7, 2005 felony conviction on his application for licensure. Thus, Petitioner's application was incorrect, misleading, incomplete, and materially untrue.
6. Petitioner does not meet the minimum standards for licensure under Section 1205 because of the 2005 felony conviction giving cause for denial under MCL 500.1239(1)(f). Petitioner also does not meet the minimum standards for licensure because he provided incorrect, misleading, incomplete, and materially untrue information on his application for licensure, giving cause for denial under MCL 500.1239(1)(a). As a result, Respondent is statutorily prohibited from issuing Petitioner a resident insurance producer license.

Analysis and Conclusions of Law

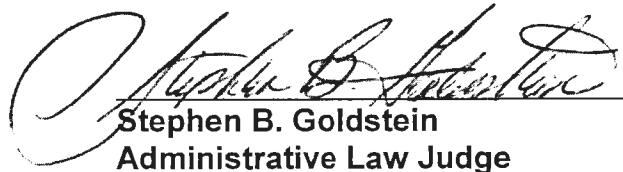
The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Petitioner to prove by a preponderance of the evidence that grounds exist for the imposition of sanctions upon the Respondent.

Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. *Smith v Lansing School District*, 428 Mich. 248 (1987).

The evidence establishes, by a preponderance, that Petitioner does not satisfy the minimum standards for licensure, under MCL 500.1205 and MCL 500.1239(1)(a) and (1)(f). The evidence therefore establishes that Respondent properly denied Petitioner's application for licensure as a resident insurance producer.

PROPOSED DECISION

Based on the above Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge proposes that the Director or the Director's designee issue a Final Order Denying Petitioner's Application for Licensure as a resident insurance producer.



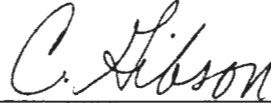
Stephen B. Goldstein
Administrative Law Judge

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Department of Insurance and Financial Services, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty-one (21) days of the issuance of this Proposal for Decision. An opposing party may file a response within fourteen (14) days after Exceptions are filed.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 9th day of August 2019.



C. Gibson
**Michigan Office of Administrative
Hearings and Rules**

Via ID Mail

David M. Toy, Esq.
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✓ Joseph Garcia
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Via First Class Mail

Steven J. Mosley II
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