

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

Mark Shamoun,
Petitioner

v

Office of Financial and Insurance Regulation
Respondent

Case No. 11-826-L
Docket No. 2011-874

Issued and entered
this 9th day of May 2012
by R. Kevin Clinton
Commissioner

FINAL DECISION

I. BACKGROUND

This matter concerns the application of Mark Shamoun (Petitioner) for a resident insurance producer license. Petitioner filed his application with the Office of Financial and Insurance Regulation (OFIR) in March 2011. On the application, Petitioner failed to disclose that he had three misdemeanor convictions, one in 1998 for retail fraud, one in 1999 for destruction of property, and one in 2005 for assault and battery. 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 October 31, 2011. On December 15, 2011, the presiding administrative law judge issued a Proposal for Decision (PFD) recommending that the license denial be reversed and the Petitioner allowed to submit a new license application.

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

Resolution of this case requires the application of section 1239(1)(a) of the Insurance Code, MCL 500.1239(1)(a), which is 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.

IV. FINDINGS OF FACT

The findings of fact in the PFD are adopted and made a part of this Final Order.

V. CONCLUSIONS OF LAW

The Commissioner adopts the conclusion of law in the PFD that, although Petitioner failed to disclose three misdemeanor convictions, he should not be precluded from receiving a license because he did not intend to mislead agency licensing officials or provide materially untrue information in the license application.

The Commissioner does not adopt that portion of the PFD which relies on *King v State of Michigan*, 488 Mich 208 (2010). That opinion, while it did address a licensing decision by this agency, did not concern the effect of failing to disclose a misdemeanor conviction. The *King* ruling concerned a felony conviction and the application of an Insurance Code provision that was subsequently amended.

In the present case, the Petitioner's misdemeanor convictions occurred several years ago. No information has been presented which indicates that the Petitioner has had any subsequent encounters with the courts. The convictions themselves do not demonstrate a lack of honesty on the part of the Petitioner. Certainly, they are evidence of poor judgment and lack of restraint. Such conduct, while regrettable, does not require denial of the requested producer license, particularly when the events in question occurred well in the past.

The Commissioner finds that the facts presented do not establish that Petitioner intended to mislead agency licensing officials, or that Petitioner provided materially untrue information in the license application. Therefore, section 1239(1)(a) of the Insurance Code does not preclude issuance of an insurance producer license to the Petitioner.

VI. ORDER

It is ordered that:

1. The refusal to issue an insurance producer license to Petitioner Mark Shamoun is reversed.
2. The Petitioner may submit a new application for an insurance producer license to ensure that the information he submits is both accurate and current.
3. The Petitioner is not required to re-take the licensing examination.



R. Kevin Clinton
Commissioner

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

In the matter of

Docket No. 2011-874

Mark Shamoun,
Petitioner

Agency No. 11-826-L

v

Agency: Office of Financial &
Insurance Regulation

Office of Financial and
Insurance Regulation,
Respondent

Case Type: Intent to Deny
Refusal to License

Issued and entered
this 15th day of December, 2011
by Renée A. Ozburn
Administrative Law Judge

PROPOSAL FOR DECISION

On March 4, 2011, Mark Shamoun (Petitioner) filed an Application for an Insurance Producer License with the Office of Financial and Insurance Regulation (Respondent/OFIR). On April 4, 2011, OFIR issued a Notice of License Denial and Opportunity for Hearing. On April 19, 2011, Mr. Shamoun filed a Petition for a Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License.

A hearing was held on October 31, 2011. Mr. Shamoun represented himself. Attorney William Peattie appeared for OFIR. Mr. Shamoun testified on his own behalf. Deputy Commissioner Jean Boven testified on behalf of OFIR.

ISSUES AND APPLICABLE LAW

The April 4, 2011 Notice of License Denial cites the Michigan Insurance Code (Code), 1956 PA 218, as amended, MCL 500.100 *et seq.*, Sections 1205 an1239(1)(a) as the basis for OFIR's refusal to license Mr. Shamoun.

In pertinent part, Sections 1205 and 1239(1)(a) state:

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).

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:

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

SUMMARY OF EVIDENCE

The Petitioner did not offer any Exhibits.

Respondent Exhibits:

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|-----------|--|
| Exhibit 1 | On-Line License Application dated March 4, 2011 |
| Exhibit 2 | Blank NAIC Uniform Producer License Application |
| Exhibit 3 | Correspondence from OFIR to Petitioner dated March 8, 2011 |
| Exhibit 4 | Petitioner response to Exhibit 3 with attached documents |
| Exhibit 5 | Notice of License Denial dated 4/4/11 |

Mark Shamoun is 31 years of age. In 2001 he completed an Associates Degree in Criminal Justice at Oakland Community College. From September 2001 through 2007 he was employed with a private investigation company where he performed insurance and workers compensation investigative work. Mr. Shamoun lost this job in 2007 because of employer downsizing. He has been without work and seeking employment since 2007. He applied for an insurance producer license after a friend working for the All State Insurance Company indicated that there might be work in the insurance field if he was licensed.

On or about March 4, 2011, Mark Shamoun filed an Application for Individual Producer License using OFIR's on-line application process. The National Association of Insurance Commissioners (NAIC) drafted the uniform application used for OFIR's on-line application process (Exhibit 2). After an applicant completes and submits the application electronically, OFIR's system transcribes the answers into a format (Exhibit 1) designed to coordinate with OFIR's application data base.

Mr. Shamoun checked 'No' in response to the following question on Page 3 of the NAIC on-line application, entitled 'Background Information':

"The Applicant must read the following very carefully and answer every question. All written statements submitted by the Applicant must include an original signature.

1) Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

"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.

If the answer is yes, you must attach to this application:

- a) A written statement explaining the circumstances of each incident.
- b) A copy of the charging document.
- c) A copy of the official document, which demonstrates the resolution of the charges or any final judgment."

OFIR Deputy Commissioner Jean Boven testified that background checks are conducted on all applicants. The background check on Mr. Shamoun turned up the following three possible criminal actions:

- 3/3/1998 – Sterling Height, MI – Citation – Case #MI5076500
- 5/17/1999 – Mount Pleasant, MI – Citation – Case #MI3787000
- 7/20/2005 – St. Claire Shores, MI – Citation – Case #MI5072200

As a result of the discrepancy between Mr. Shamoun's application answer and the background check findings, OFIR issued correspondence to Mr. Shamoun dated March 8, 2011 (Exhibit 3), noting the above citations and requesting verification of Mr. Shamoun's address, date and place of birth.

In response to OFIR's March 8, 2011 correspondence, Mr. Shamoun submitted an undated response (Exhibit 4) which states that he did not disclose his criminal history because he misread the question. Mr. Shamoun testified that he had filed out approximately 100 applications since becoming unemployed and he estimates that 90% asked only for disclosure of felony convictions. This caused him to presume what the application question was asking for and he answered without carefully reading the whole question.

In Mr. Shamoun's Exhibit 4 correspondence he gives details of his three misdemeanor convictions for retail fraud in 1998, destruction of property in 1999, and assault and battery in 2005. He also attached related court documents. Mr. Shamoun explained that the retail fraud conviction occurred when he was 17 after he and a few friends stole from a store. The destruction of property incident occurred when he was 19 and involved vandalism of a vehicle. The assault incident occurred when he was 25 and resulted when he hit a man who had pushed him in a bar. He complied with all court ordered sanctions for these incidents. He considers these three incidents to be youthful lapses in judgment from which he has learned and grown.

Ms. Boven testified that Mr. Shamoun's explanation did not change the fact that he answered an application question incorrectly which she interpreted as an act of providing materially untrue information in violation of Code Section 1239(1)(a). She noted that the question is worded clearly and does not limit the requested disclosure to felonies. Ms. Boven acknowledged that a failure to carefully read this particular question has been a problem for a number of other applicants. Ms. Boven testified that misdemeanor convictions, by themselves, are not considered grounds for automatic denial. Rather, OFIR looks at how the misdemeanor may be related to the occupation of insurance producer and attempts to discern if there are patterns of conduct that conflict with license requirements.

Mr. Shamoun expressed remorse for failing to pay more attention to the exact question asked on the application. He asserts that he did not intend to misrepresent his actual conviction record or mislead OFIR. He is trying to move past his youthful mistakes and earnestly desires an opportunity to get back into the

workforce and live productively. He further asserts that he is in no way a threat to society.

FINDINGS OF FACT

1. Mark Shamoun submitted an on-line application for an insurance producer license on March 4, 2011.
2. Mr. Shamoun failed to carefully read an application question and gave an incorrect answer of 'No' because he assumed the question was only asking about felony convictions.
3. After a background check revealed a possible criminal history involving citations in 1998, 1999 and 2005, OFIR sent correspondence to Mr. Shamoun dated March 8, 2011, asking for verification of his identity.
4. In correspondence responding to OFIR's March 8, 2011 inquiry, Mr. Shamoun attempted to explain his incorrect application answer and the details and circumstances of his three misdemeanor convictions.
5. The underlying facts of Mr. Shamoun's misdemeanor convictions indicate that they he was 17 years old when he committed an incident of retail fraud; 19 when a destruction of property incident occurred and 25 at the time of the assault incident. Mr. Shamoun is currently 31 years old. He complied with all terms and sanctions levied as a result of these misdemeanor convictions.

6. Mr. Shamoun's work history indicates experience in insurance related investigations.

CONCLUSIONS OF LAW

The above Findings of Fact establish that Mr. Shamoun submitted an application answer that was incorrect. OFIR's Notice of License Denial indicates that an applicant alleged to have provided misleading, incomplete or materially untrue information on a license application can petition for a hearing to appeal denial if they can show they did not provide misleading information *or* if they "have another explanation as to why such information was or was not in" the application.

In *King v State of Michigan* 488 Mich 208 (2010), the Michigan Supreme Court stated:

It also remains the law today that no licensing agency may make a finding as to an applicant's moral character on the sole basis of a criminal conviction. MCL 338.42. It also remains the law that "orders, decisions, findings, rulings, determinations, opinions, actions, and inactions of the commissioner in [the Insurance Code] shall be made or reached in the reasonable exercise of discretion." MCL 500.205.

In addition, the court in *King* reasoned:

Consistent with MCL 500.205, the licensure requirement mandates that the commissioner make a discretionary judgment call when reviewing an application and deny the application if he or she concludes – in the exercise of that discretion- that denial, suspension, or revocation would be appropriate.

Mr. Shamoun gave credible testimony establishing that his failure to carefully read the application question regarding his conviction history was the reason for his incorrect answer, not an intent to mislead or misrepresent his history. Immediately after OFIR brought discrepancies to his attention, Mr. Shamoun not only

provided an explanation but forwarded extensive court documents. Further, the OFIR Deputy Commissioner who made the decision to deny licensure acknowledged that the problem of applicants assuming that the application was asking only for disclosure of felony convictions has arisen previously.

There was less than a week between the time Mr. Shamoun filed his application on March 4, 2011 and OFIR's notice to him of background check discrepancies. Since Mr. Shamoun made an honest mistake in answering the question, there was nothing that would have triggered his attention to the mistake in those few days between submitting the application and receiving OFIR's correspondence about discrepancies, in a manner that would have caused him to initiate an unsolicited correction.

On November 8, 2011, the Commissioner of Insurance issued a Final Decision in the matter of *Jason Gatt v Office of Financial and Insurance Regulation* (Docket No: 2011-813). The pertinent facts were the same; the applicant misread the insurance producer application question regarding convictions and assumed it was asking only for felonies. In the *Gatt* decision, the Commissioner concluded:

"An individual who subverts the licensing process by concealing disqualifying information will be denied that license. **However...** Mistaken or inadvertent omission of information requested should not, by itself, automatically result in license denial...(emphasis added)

If the errors are committed without the *intent* to mislead, they are simple errors which can be corrected...

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

In light of the specific finding by the ALJ that there was no intent to mislead, Petitioner's failure to disclose his two misdemeanors does not require the denial of a license...

...intent to deceive is an element which must be present in order to find that section 1239(1)(a) has been violated. The Commissioner finds the failure to disclose the misdemeanors occurred as a consequence of the Petitioner's misunderstanding of what the application required him to disclose."

The Commissioner in *Gatt* goes on to analyze the significance of the Petitioner's underlying misdemeanors and concludes that, while they were evidence of poor judgment and lack of restraint at the time, they do not require denial of the requested producer license, especially since they occurred well in the past.

Although the capability to accurately read, understand and explain voluminous insurance documents is integral to advising and assisting consumers, an isolated incidence of misreading an application question should not be an absolute bar to future employment in the insurance field, in the absence of collateral evidence of a propensity to dishonesty or inattention. Deputy Commissioner Boven acknowledged that misdemeanor convictions would not automatically result in a denial.

Mr. Shamoun was credible in his assertion that his misdemeanors were isolated incidents of poor judgment caused primarily by youthful impulsiveness. He gave sincere testimony establishing that he has matured and is highly unlikely to repeat the conduct that led to the misdemeanor convictions. None of his convictions reflect negatively on his current ability to serve the public as an insurance producer in a fair, open and honest manner.

The evidence did not establish a substantive and material violation of Section 1239(1)(a) because Mr. Shamoun made an inadvertent mistake in answering an application question and did not intend to provide materially untrue information.

PROPOSED DECISION

Pursuant to the above Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge proposes that the Commissioner reverse the decision to deny an insurance producer license to the Petitioner and allow him to submit a new application.

EXCEPTIONS

The parties may file Exceptions to this Proposal for Decision within 20 days after it is issued. Exceptions should be addressed to the Office of Financial and Insurance Services, 611 W. Ottawa Street, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus.



Renee A. Ozburn
Administrative Law Judge