

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE REGULATION  
Before the Commissioner of Financial and Insurance Regulation

Joseph M. Savage,  
Petitioner

v

Case No. 10-787-L  
Docket No. 2010-922

Office of Financial and Insurance Regulation,  
Respondent

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For the Petitioner:

Joseph M. Savage  


For the Respondent:

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

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Issued and entered  
this 2nd day of March 2011  
by Ken Ross  
Commissioner

**FINAL DECISION**

This case concerns the application of Joseph M. Savage (Petitioner) for a nonresident insurance producer license. Petitioner filed his application with the Office of Financial and Insurance Regulation (OFIR) in November 2009. On the application, Petitioner failed to disclose that he had been convicted of felony drug offenses on two occasions in New York in 1991 and 1994. Following a pre-licensing review, the convictions were discovered and the license application was denied based on those convictions. Deputy Commissioner Jean Boven issued a Notice of License Denial and Opportunity for Hearing on April 20, 2010.

Respondent's attorney filed a motion for summary decision on September 3, 2010. Petitioner failed to respond to the motion.

The Administrative Law Judge issued a Proposal for Decision (PFD) dated December 8, 2010 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**

Therefore, it is ORDERED that the refusal to issue a nonresident insurance producer license to the Petitioner Joseph M. Savage is upheld.



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Ken Ross  
Commissioner

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of	Docket No.	2010-922
Joseph M. Savage, Petitioner	Agency No.	10-787-L
v Office of Financial and Insurance Regulation, Respondent	Agency:	Office of Financial and Insurance Regulation
	Case Type:	Sanction

Issued and entered  
this 8th day of December 2010  
by Lauren G. Van Steel  
Administrative Law Judge

PROPOSAL FOR DECISION

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PROCEDURAL HISTORY

Appearances: Elizabeth V. Bolden, Attorney at Law, appeared on behalf of the Office of Financial and Insurance Regulation, Respondent. Joseph M. Savage, Petitioner, did not appear at the hearing nor did any attorney appear on his behalf.

This proceeding commenced with the filing of a Notice of Hearing dated September 20, 2010, scheduling the contested case hearing for October 18, 2010. The Notice of Hearing was issued pursuant to a Request for Hearing received by the State Office of Administrative Hearings and Rules on September 14, 2010, and an Order Referring Petition for Hearing and Order to Respond, dated September 3, 2010, issued by the Chief Deputy Commissioner of the Office of Financial and Insurance Regulation under the provisions of the Michigan Insurance Code of 1956, being 1956 PA 218 as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code").

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated June 15, 2010; Applicant's Petition for Contested Case Hearing, dated July 19, 2010; Respondent's Answer to Applicant's Petition for Contested Case Hearing, dated September 3, 2010; and Respondent's Motion for Summary Decision and Brief in Support, dated September 3, 2010. Petitioner did not file a response to Respondent's Motion for Summary Decision with the State Office of Administrative Hearings and Rules.

The Notice of Hearing was sent by certified mail to Petitioner at his last known address of record, and stated that if a party failed to appear at the hearing as scheduled, "a default judgment or decision may be entered against you pursuant to the Administrative Procedures Act" (1969 PA 306, as amended, MCL 24.201, *et seq.*, hereafter "APA").

On October 7, 2010, the undersigned issued an Order Adjourning Contested Case Hearing and Scheduling Motion Hearing, in order to provide the parties an opportunity on October 18, 2010, at 9:00 a.m. for oral argument on Respondent's Motion for Summary Decision. The Order Adjourning Contested Case Hearing and Scheduling Motion Hearing was mailed to Petitioner at his last known address of record and not returned by the post office. No request for adjournment of the motion hearing scheduled for October 18, 2010, was received from either party.

On October 18, 2010, the motion hearing was held as scheduled. Elizabeth V. Bolden, Attorney at Law, appeared on behalf of Respondent. Neither Petitioner, nor an attorney on Petitioner's behalf, appeared at the hearing. Also, Petitioner was not available at the telephone number he provided on the Applicant's

Petition for Contested Case Hearing. The undersigned determined on the record that Petitioner had been properly served with notice of the motion hearing and had failed to appear. Respondent's representative requested to be allowed to proceed in Petitioner's absence pursuant to Section 72 of the APA, being MCL 24.272, which states in pertinent part as follows:

Sec. 72. (1) If a party fails to appear in a contested case after proper service, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.72(1).

In accordance with Section 72 of the APA, the motion hearing proceeded in the absence of Petitioner.

Respondent's Attorney presented oral argument on Respondent's Motion for Summary Decision. No witnesses were presented. The following exhibits were offered by Respondent and admitted into evidence:

1. Respondent's Exhibit No. 1 is a copy of a Sentence and Commitment, Westchester County Court of New York, dated October 9, 1991.
2. Respondent's Exhibit No. 2 is a copy of Section 220.06 of the Penal Law of New York, "Criminal possession of a controlled substance in the fifth degree", effective November 1, 2003.
3. Respondent's Exhibit No. 3 is a copy of a Sentence and Commitment, Westchester County Court of New York, dated February 3, 1994.
4. Respondent's Exhibit No. 4 is a copy of Section 220.09 of the Penal Law of New York, "Criminal possession of a controlled substance in the fourth degree", effective November 1, 2003.

5. Respondent's Exhibit No. 5 is a copy of an Individual Licensee Application, dated November 28, 2009.
6. Respondent's Exhibit No. 6 is a copy of a letter to Petitioner from Jennifer Fletcher (Department Technician, Licensing and Product Review Division) for Respondent, dated December 9, 2009.
7. Respondent's Exhibit No. 7 is a copy of a letter to Jennifer Fletcher (for Respondent) from Petitioner, dated December 14, 2009.
8. Respondent's Exhibit No. 8 is a copy of a letter to Petitioner from Jennifer Fletcher for Respondent, dated January 6, 2010.
9. Respondent's Exhibit No. 9 is a copy of E-mail messages between Petitioner and Jennifer Fletcher for Respondent, dated March 2, 2010.
10. Respondent's Exhibit No. 10 is a copy of a Notice of License Denial and Opportunity for Hearing, dated April 20, 2010.

Following oral argument, the undersigned granted Respondent's Motion for Summary Decision (as a proposal to the Commissioner) and closed the record.

#### ISSUE AND APPLICABLE LAW

The issue presented in this matter is whether Respondent has properly denied Petitioner's application for a non-resident insurance producer license under Sections 1206a and 1239(1)(f) of the Insurance Code, which provide in pertinent part 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: \*\*\*. 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 \* \* \* 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. MCL 500.1239(1)(f), as amended by 2008 PA 423. Imd. Eff. Jan. 6, 2009. (Emphasis supplied).

### FINDINGS OF FACT

Based on the entire record in this matter, the following findings of fact are established:

1. On or about October 9, 1991, Joseph M. Savage, Petitioner, was convicted in the State of New York of the felony of Attempted Criminal Possession of Controlled Substance – Fifth Degree. [Resp. Exh. 1 & 2].
2. On or about February 3, 1994, Petitioner was convicted in the State of New York of the felony of Criminal Possession of Controlled Substance - Fourth Degree. [Resp. Exh. 3 & 4].
3. On or about November 28, 2009, Petitioner submitted an Individual Licensee Application to the Office of Financial and Insurance Regulation within the State of Michigan, Respondent, for a non-resident insurance producer license. [Resp. Exh. 5].
4. On the November 28, 2009 Individual Licensee Application, Petitioner answered “No” to Question #1, as to whether he had been convicted or charged with a crime. [Resp. Exh. 5, p 2].

5. By letter dated December 9, 2009, Respondent requested that Petitioner verify its information regarding Petitioner's history of felony convictions in the State of New York. [Resp. Exh. 6].
6. By letter dated December 14, 2009, Petitioner acknowledged the accuracy of the aforesaid 1991 and 1994 felony conviction information. He asserted to Respondent, however, that the "conviction records are supposed to be sealed so therefore no longer exist." [Resp. Exh. 7].
7. Upon subsequent request by Respondent, Petitioner did not provide any documentation to show that the aforesaid 1991 and 1994 felony convictions were in fact "sealed", expunged, set aside or otherwise not legally in effect for purposes of the license application at issue here. [Resp. Exh. 8 & 9].

#### 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)&(3). Under Rule 11(c) of the administrative rules for Insurance Code hearing procedures, a party may move for summary decision in its favor on the grounds that 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 500.211(c).

Here, Respondent has shown that it is entitled to summary decision in its favor as there appears no issue of material fact regarding Petitioner's 1991 and 1994 felony conviction history, and as a matter of law under Sections 1206a and 1239(1) of

the Insurance Code, *supra*, the Commissioner shall deny an application for non-resident insurance producer license where an applicant has been convicted of a felony. See MCL 500.1206a and MCL 500.1239(1), as amended by 2008 PA 423, which amendment became effective on January 6, 2009, prior to the license application at issue here. Therefore, summary decision in Respondent's favor is properly granted under Rule 11(c), and the license application denied.

**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 deny Petitioner's application for a non-resident insurance producer license under MCL 500.1206a and MCL 500.1239(1)(f); and
3. That the Commissioner take any other action in this matter deemed appropriate by the Commissioner under the provisions of MCL 500.1239.

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.

  
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Lauren G. Van Steel  
Administrative Law Judge