

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GREGG ALLEN BREWER, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-3187  
 )  
 DEPARTMENT OF FINANCIAL )  
 SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH), held a final hearing in this case on November 3, 2004, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Gregg Allen Brewer, pro se  
9342 Cumberland Station Drive  
Jacksonville, Florida 32257

For Respondent: Dana M. Wiehle, Esquire  
Department of Financial Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue to be determined is whether Petitioner's application for licensure should be granted.

PRELIMINARY STATEMENT

On or about January 6, 2004, Respondent received an application from Petitioner seeking licensure as a temporary life and health insurance agent. By letter dated June 7, 2004, Respondent advised Petitioner that his application was denied, and Petitioner timely requested an evidentiary hearing regarding that denial. This cause was thereafter transferred to DOAH for conduct of administrative proceedings.

At the final hearing, Respondent offered no direct testimony, although Respondent's Exhibits numbered 1 through 9 were admitted into evidence. Petitioner testified in his own behalf and presented the testimony of two witnesses. Petitioner presented six exhibits which were admitted into evidence. A transcript of the hearing record was provided and filed with DOAH on December 7, 2004.

Although offered the opportunity at the final hearing, neither party timely submitted proposed recommended orders.

All references to Florida Statutes are to the 2004 edition, unless otherwise indicated.

FINDINGS OF FACT

1. Respondent, Department of Financial Services, is the state agency responsible for the licensure of insurance agents in the State of Florida, pursuant to Chapter 626, Florida Statutes.

2. On January 6, 2004, Respondent received an application from Petitioner for temporary licensure as a life and health insurance agent.

3. Petitioner answered "no" to the following question on that application:

Have you ever been convicted, found guilty, or pled guilty or nolo contendere (no contest) to a crime under the laws of any municipality, county, state, territory [or] country, whether or not adjudication was withheld or a judgment of conviction was entered?

4. At the end of the application, immediately above a space for the applicant's signature and in a section of the application titled "Applicant Affirmation Statement," appears the following language:

I do solemnly swear that all answers to the foregoing questions and statements are true and correct to the best of my knowledge and belief. . . .

\* \* \*

Under penalties of perjury, I declare that I have read the foregoing application for license and that the facts stated in it are true. I understand that misrepresentation of any fact required to be disclosed through this application is a violation of The Florida Insurance and Administrative Codes and may result in the denial of my application and/or the revocation of my insurance license(s).

5. Pursuant to the instructions on the form, Petitioner signed the application, dated it December 12, 2003, and mailed it to Respondent.

6. As documented by General Court Martial Order No. 17-01 of Sea Control Squadron Three Two at the Naval Air Station, Jacksonville, Florida, obtained by Respondent during the application process, Petitioner, on January 18, 2001, entered a plea of guilty to the charge of Distribution of Ecstasy, a Felony, and was found guilty of the offense. Petitioner was sentenced to confinement for a period of 40 months, and reduction to pay grade E-1, and subjected to dishonorable discharge. A portion of the sentence was suspended upon the issuance of the dishonorable discharge, following an order of Rear Admiral Jan C. Gaudio on May 30, 2002.

7. By correspondence to Respondent, received on June 29, 2004, and through his testimony at the final hearing, Petitioner asserted that his attorney at the time informed him that his criminal record would never be seen outside the military. Notwithstanding his attorney's assurance, Petitioner informed two subsequent employers that he thought he had a felony record. When those employers checked and discovered no convictions, he assumed the records were sealed as his previous attorney had assured him would be the case. Accordingly, he did not disclose the matter on his application.

8. By Notice of Denial dated June 7, 2004, Respondent informed Petitioner that his application was denied for violations of Sections 626.611, 626.621(8), 626.785(1), and 626.831(1), Florida Statutes. Additionally, the denial informed Petitioner of required waiting periods set forth in Florida Administrative Code Rule 69B-211.042. In Petitioner's case, he was also informed that a 16-year waiting period would be required before reapplication could be considered by Respondent.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties hereto and the subject matter hereof. §§ 120.569 and 120.57(1), Fla. Stat.

10. As the applicant, Petitioner bears the ultimate burden of proving entitlement to a license. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioner must show that he meets all of the relevant statutory criteria in order to satisfy this burden.

11. In its Notice of Denial, Respondent alleged that the Petitioner violated certain provisions of the Florida Insurance Code by failing to disclose his criminal history on his application, namely, Sections 626.611, (1),(2),(7), and (14), 626.621(8), 626.785(1), and 626.831(1), Florida Statutes.

12. Section 626.611, Florida Statutes, reads in pertinent part as follows:

The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license or appointment as specified in this code.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.

\* \* \*

(7) Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

\* \* \*

(14) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

13. Section 626.621(8), Florida Statutes, empowers Respondent to deny licensure when a applicant is guilty or has

pled guilty "or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases."

14. Further amplification of Respondent's authority to deny the license sought by Petitioner is unnecessary. Petitioner's answer to the criminal history question on his application for licensure was false. Respondent properly denied Petitioner's license.

15. Respondent's rules also make clear an applicant's duty with regard to disclosure of criminal history records:

Every applicant shall disclose in writing to the Department the applicant's entire law enforcement record on every application for licensure, as required therein, whether for initial, additional, or reinstatement of licensure. This duty shall apply even though the material was disclosed to the Department on a previous application submitted by the applicant.

Fla. Admin. Code R. 69B-211.042(2).

16. Petitioner has the burden to prove that he was unaware that his answer to the criminal history question was not true and that his untrue answer was unintentional. Munch v. Department of Professional Regulation, 592 So. 2d 1136 (Fla. 1st DCA 1992). Petitioner has failed to meet this burden of proof.

17. Florida Administrative Code Rule 69B-211.042(8) provides that an applicant who has failed to disclose a Class A crime, shall wait 16 years to reapply for licensure. The waiting period is to run from the later of either the date Respondent issued its notice of denial, or the date that a previously imposed waiting period expires.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding that Respondent acted properly in denying Petitioner's application.

DONE AND ENTERED this 4th day of January, 2005, in Tallahassee, Leon County, Florida.



---

DON W. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of January, 2005.



COPIES FURNISHED:

Gregg Allen Brewer  
9342 Cumberland Station Drive  
Jacksonville, Florida 32257

Dana M. Wiehle, Esquire  
Department of Financial Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399

Honorable Tom Gallagher  
Chief Financial Officer  
Department of Financial Services  
The Capitol, Plaza Level 11  
Tallahassee, Florida 32399-0300

Peter Dunbar, General Counsel  
Department of Financial Services  
The Capitol, Plaza Level 11  
Tallahassee, Florida 32399-0300

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.