

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DENNIS WAYNE GREAVES, JR.,)
)
 Petitioner,)
)
vs.) Case No. 04-4035
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held on January 25, 2005, in St. Augustine, Florida, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Dennis Wayne Greaves, Jr., pro se
101 Meadows Avenue
St. Augustine, Florida 32804

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

STATEMENT OF THE ISSUE

The issue is whether Respondent properly denied Petitioner's applications for licensure as a temporary resident life and health insurance agent and a resident life, variable annuity and health insurance agent.

PRELIMINARY STATEMENT

In a Notice of Denial letter dated August 12, 2004, Respondent, Department of Financial Services (Department) denied Petitioner's applications for licensure as a temporary life and health agent and a resident life, variable annuity and health agent. The Notice of Denial cited as authority Section 626.611(1),(2),(7), and (14), Florida Statutes, and Florida Administrative Code Rule 69B-211.042, alleging that he failed to disclose criminal history and falsely did not acknowledge that criminal history. Petitioner disputed the Department's determination and filed a timely request for a formal administrative proceeding.

Respondent referred this case to the Division of Administrative Hearings on November 5, 2004. A Notice of Hearing was issued scheduling the hearing for January 25, 2005.

On January 24, 2005, Respondent filed an unopposed Motion for Leave to Amend Denial Letter, together with an Amended Notice of Denial letter. The Amended Notice of Denial relates only to the alleged failure of Petitioner to disclose a criminal offense. The Motion was considered at the commencement of the hearing and was granted. The case proceeded based upon the Amended Notice of Denial.

At hearing, Petitioner testified on his own behalf and presented the deposition testimony of Claves Sellers. Petitioner's Exhibit numbered 1 was admitted into evidence. Respondent presented the testimony of Petitioner. Respondent's Exhibits numbered 1 through 7 were admitted into evidence.

A one-volume Transcript of the proceeding was filed on February 16, 2005. The Department timely filed a Proposed Recommended Order which has been considered in the preparation of this Recommended Order. Petitioner did not file a post-hearing submission.

All citations are to Florida Statutes (2004) unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner applied for licensure as a temporary resident life and health insurance agent in May 2004. In June 2004, a second application was filed on behalf of Petitioner seeking licensure as a resident life, variable annuity and health insurance agent.

2. On May 7, 2004, Petitioner filed out an employment application with American International Group Company (AIG) seeking to become an insurance sales agent with the company. On his employment application, Petitioner disclosed to AIG that he had a criminal history, and included a written explanation of the circumstances surrounding the crime with his application.

3. The criminal history disclosed by Petitioner arose from an incident that occurred in the State of Georgia in 1991. On September 18, 1991, Accusation No. 91-3119 was filed against Petitioner in the case of State of Georgia v. Dennis Wayne Greaves in the Superior Court of Cobb County, Georgia, charging him with violation of the Georgia Controlled Substances Act in which he was charged with intent to possess more than one ounce of marijuana. Petitioner entered a negotiated plea to this charge on October 29, 1991, and the court deferred adjudication of guilt, sentencing Petitioner to First Offender Treatment and placing him on five years' probation. On October 25, 1993, Petitioner was found to have violated probation, at which time the Superior Court of Cobb County, Georgia, entered an adjudication of guilt against Petitioner in Case No. 91-3119.

4. At a point in time that is not clear from the record, Petitioner was hired by AIG to work as a sales agent out of the company's St. Augustine and Jacksonville offices. On May 28, 2004, an on-line application for a temporary resident life and health agent was filed with the Department. The application contained the question, "Have you ever been convicted, found guilty, or pled nolo contendere (no contest) to a crime punishable by imprisonment of one (1) year or more under the laws of any . . . state . . . , whether or not adjudication was

withheld or a judgment of conviction was entered?" The application form reflected a "no" answer.

5. However, the application was not filled out by Petitioner. It was filled out by an individual or individuals in the Jacksonville AIG office. Petitioner was not present when the on-line application was filled out or when it was filed.

6. Shortly after the online application for temporary license was filed, a "Temporary Appointment" form was submitted to the Department by AIG on behalf of Petitioner. The form included the question, "[h]as the applicant ever been convicted, found guilty, or pleaded guilty or nolo contendere (no contest) to a felony." Despite the fact that Petitioner had disclosed his criminal history to AIG on his application for employment, the question was answered in the negative. Again, Petitioner did not participate in the completion of the "Temporary Appointment" form which was signed by the General Manager of AIG's Jacksonville office.

7. In addition to the temporary license, Petitioner needed to make application for and receive a permanent license in order to carry out his job at AIG. Petitioner and his immediate supervisor in AIG's St. Augustine office attempted to file an online application for a permanent license. However, they were unable to submit the online application because Petitioner had not yet passed the required 40-hour pre-licensing class, and

could not, therefore, supply a "date completed" answer on the application. In the process of filling out the application, Petitioner answered the criminal history question in the affirmative.

8. After receiving notification that the permanent license application could not be filed until Petitioner passed the pre-licensing course, someone in the AIG Jacksonville office completed the online application for Petitioner by supplying what apparently was a guess or estimated completion date for the course. Again, Petitioner was not present when this second application was completed and filed with the Department. In response to the criminal history question, a "no" answer was again supplied to the Department.

9. Petitioner's testimony regarding the instances in which his employer incorrectly answered the criminal history question incorrectly is consistent, credible, and supported by corroborating evidence. That is, he did not answer the criminal history questions falsely. In the instances when he personally filled out applications, he answered the questions regarding his criminal history truthfully. In the instances that an incorrect answer was submitted on the application, those answers were submitted by others without his knowledge and contrary to the information he had given to his employer. Accordingly, Petitioner did not make a material misstatement,

misrepresentation, or commit fraud in applying for licensure with the Department.

10. The Department's Amended Notice of Denial is based solely on his failure to acknowledge his criminal history on the applications in question.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

12. Petitioner is an applicant for licensure as an insurance agent in the State of Florida. Accordingly, as the party asserting the affirmative of an issue before this administrative tribunal, Petitioner has the burden of proof. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioner must establish facts by a preponderance of the evidence that the Department improperly denied his application for licensure. Department of Banking and Finance v. Osborne Stern Company, 670 So. 2d 932 (Fla. 1996).

13. Section 626.611 reads in pertinent part as follows:

The department...shall deny an application for . . . the license . . . of any applicant . . . if it finds that as to the applicant . . . 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. Florida Administrative Code Rule 69B-211.042(2), reads in pertinent part as follows:

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.

15. The answers to the criminal history questions on Petitioner's applications were incorrect. Based upon these answers, the Department determined that Petitioner made a material misstatement, misrepresentation, or committed fraud in his attempt to obtain his license. Further, the Department determined that by doing so, Petitioner had demonstrated a lack of fitness or trustworthiness to engage in the business of insurance.

16. Because the answers were indeed incorrect, Petitioner must prove that he did not have knowledge 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 met this burden.

17. Petitioner was not responsible for the incorrect answers contained in the applications submitted by his employer on his behalf and had no knowledge that his employer had done so. Therefore, he did not make a material misstatement, misrepresentation, or commit fraud in attempting to obtain licenses. For the same reasons, he did not demonstrate a lack of fitness or trustworthiness to engage in the business of insurance.

RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the Department enter a final order rescinding its Amended Notice of Intent to Deny Petitioner's applications for licensure and to grant such licensure when all requirements for licensure have been met.

DONE AND ENTERED this 1st day of March, 2005, in
Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of March, 2005.

COPIES FURNISHED:

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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.