

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANCISCO LUIS INGUANZO,)
)
 Petitioner,)
)
vs.) Case No. 05-0754
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on April 26, 2005, by video teleconference with the Petitioner appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Julio R. Ferrer Roo, Esquire
 Julio R. Ferrer Roo, P.A.
 8360 West Flagler Street, Suite 203A
 Miami, Florida 33144

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

Whether the Petitioner, Francisco Luis Inguanzo

(Petitioner), is entitled to have his application for licensure approved.

PRELIMINARY STATEMENT

This case resulted from the denial of Petitioner's application for licensure as a resident public all lines insurance adjuster. On December 30, 2004, the Respondent, Department of Financial Services (Respondent or Department), issued a letter denying the Petitioner's application for licensure. Thereafter, the Petitioner timely sought an administrative review of that decision and the matter was forwarded to the Division of Administrative Hearings on February 28, 2005, for formal proceedings.

At the hearing conducted on April 26, 2005, the Petitioner testified on his own behalf. The Respondent's Exhibits 1-7 were admitted into evidence. The transcript of the proceeding was filed on May 6, 2005. Thereafter, the Respondent timely submitted a Proposed Recommended Order that has been considered in the preparation of this order. The Petitioner did not submit a proposed order.

FINDINGS OF FACT

1. The Petitioner, Francisco Luis Inguanzo, is an applicant for licensure as a resident public all lines insurance adjuster. He filed an application with the Respondent on or about September 20, 2004.

2. The Department is the state agency charged with the responsibility of regulating licensees and applicants for licensure such as the Petitioner. As such, the Respondent must interpret and administer the provisions of Chapter 626, Florida Statutes (2004).

3. The application for licensure includes several questions that applicants must complete. More specifically, applicants must disclose law enforcement records and, to that end, the Department poses the following question:

Have you ever been convicted, found guilty, or pled guilty or nolo contendere (no contest) to a felony or crime punishable by imprisonment of one (1) year or more under the laws of any municipality, county, state, territory or country, whether or not adjudication was withheld or a judgment of conviction was entered? Yes/No

4. The response the Petitioner provided to the foregoing question was in the negative (that is "No").

5. When the Department reviewed the Petitioner's criminal history, however, it was discovered that the Petitioner was arrested and pled guilty to carrying a concealed firearm, a third-degree felony. The Petitioner did not accurately disclose the foregoing arrest and conviction

6. Moreover, the Petitioner did not provide a credible explanation for why he failed to accurately answer the application question.

7. The criminal charges against this Petitioner were

resolved on September 10, 2002. After pleading guilty, the Petitioner was placed on one-year probation with various terms to be completed. The Petitioner successfully completed the terms of his probation on May 30, 2003.

8. At the time he filed the application in the instant matter, the Petitioner knew or should have known that he had been charged with a serious crime, that he had resolved the criminal case, and that he was no longer on probation.

9. The Petitioner did not fully disclose his criminal record to the Department.

10. The Department's application form makes it clear that the applicant's criminal history must be disclosed.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2004).

12. As the applicant, the Petitioner bears the burden of proof in this case to establish he is entitled to the license sought. The Petition must establish he meets all eligibility criteria to become licensed by a preponderance of the evidence. See Florida Department of Transportation v. J.W.C. Co. Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

13. Section 626.611, Florida Statutes (2004), provides, in pertinent part:

Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.-- 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.

14. Section 626.621, Florida Statutes (2004) provides, in part:

Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.-- The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may 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 under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611.

(3) Violation of any lawful order or rule of the department, commission, or office.

* * *

(8) 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, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

15. Florida Administrative Code Rule 69B-211.041 provides, in part:

(3) "Crime of Moral Turpitude" refers to each felony crime identified in subsection 69B-211.042(21), F.A.C

(4) "Criminal record," for purposes of this rule part, includes any felony charge filed against the applicant in the courts of any state...on any subject whether related to insurance or not, concerning which charge the applicant was found guilty, or pled guilty, or pled nolo contendere, regardless of whether or not there was an adjudication by the court, and regardless of whether the matter is under appeal by the applicant. The phrase includes such charges even where the crime was subsequently pardoned or civil rights have been restored.

16. Rule 69B-211.042, Florida Administrative Code provides in part:

(2) Duty to Disclose Law Enforcement Record. 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.

(3) Policy Specifically Concerning Effect of Criminal Records.

(a) The Department interprets Sections 626.11(14) and 626.621(8), Florida Statutes, which subsections relate to criminal records, as applying to license application proceedings. The Department interprets those statutes as not limiting consideration of criminal records to those crimes of a business-related nature or committed in a business context. More specifically, it is the Department's

interpretation that these statutes include crimes committed in a non-business setting, and that such crimes are not necessarily regarded as less serious in the license application context than are crimes related to business or committed in a business context.

* * *

(4) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The Department finds that all matters that are part of an applicant's law enforcement record are material elements of the application, and finds that the omission of any part of the law enforcement record required to be disclosed on the application is a material misrepresentation or material misstatement in and of itself. The applicant shall have violated Section 626.611(2) or 626.621(1), Florida Statutes, if the applicant fails to provide the Department with the documentation required by this rule.

(b)1. If an applicant fails to fully and properly disclose the existence of law enforcement records, as required by the application, the application will be denied and a waiting period will be imposed before the applicant may reapply for any license.

* * *

3. The waiting period shall begin on the later of:

a. The date that the Department issues a letter or notice of denial of the application, or

b. The date that a previously imposed waiting period expires.

4. The waiting period shall be calculated as follows:

a. Class A or B crime omitted, where the trigger date was more than 10 years before the time of application, add 1 year. If the trigger date was 10 years prior, or less than 10 years prior, to the time of the application, add 2 years.

* * *

(7) Classification of Felony Crimes.

(a) The Department makes a general classification of felony crimes into three classes: A, B and C, as listed in subsections (21), (22), and (23) of this rule.

* * *

(8) Required Waiting Periods for a Single Felony Crime. The Department finds it necessary for an applicant whose law enforcement record includes a single felony crime to wait the time period specified below (subject to the mitigating factors set forth elsewhere in this rule) before licensure. All waiting periods run from the trigger date.

(a) Class A Crime. The applicant will not be granted licensure until 15 years have passed since the trigger date.

* * *

(21) Class "A" Crimes include all those listed in this subsection, where such crimes are felonies, and all are of equal weight notwithstanding from which subparagraph they are drawn. The Department finds that each felony crime listed in this subsection is a crime of moral turpitude.

* * *

(w) Carrying a concealed weapon/firearm.

17. The record in this matter is undisputed. The Petitioner pled guilty to a felony, a crime (by definition) of moral turpitude. The Petitioner failed to disclose the criminal history on his application for licensure, and 15 years have not passed since the trigger date for that crime.

18. It is the Petitioner's burden of proof to establish he is entitled to the license sought. He has failed to meet that burden. Even if it were credible that the Petitioner misunderstood the question asked on the application (and thereby by inadvertence failed to accurately answer the questionnaire), the underlying fact remains: Petitioner committed a felony constituting moral turpitude. Moreover, the time period to wait for licensure has not passed. As such, the Petitioner lacks qualification for the license sought as a matter of law.

19. Additionally, since the Petitioner made a material misrepresentation on the application (he failed to disclose the criminal history), he is not entitled to the license sought.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services enter a Final Order denying the Petitioner's application for licensure.

DONE AND ENTERED this 30th day of June, 2005, in
Tallahassee, Leon County, Florida.

S

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of June, 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.