

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RANDALL LEE WOODALL, SR.,)
)
 Petitioner,)
)
vs.) Case No. 06-2371
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
 Respondent.)

)

RECOMMENDED ORDER

A formal hearing was conducted in this case on September 14, 2006, in Milton, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Randal Lee Woodall, Sr., pro se
6300 Saragon Lane
Milton, Florida 32583

For Respondent: William G. Kitchen, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue is whether Respondent properly denied Petitioner's application for a license as a resident independent all-lines insurance adjuster.

PRELIMINARY STATEMENT

By letter dated June 15, 2006, Respondent Department of Financial Services (Respondent) denied the application of Petitioner Randall Lee Woods, Sr. (Petitioner) for a license as a resident independent all-lines insurance adjuster. The denial was based on allegations that Petitioner had multiple felony convictions and that he failed to disclose his criminal record on his application.

On or about June 23, 2006, Petitioner requested an administrative hearing to contest the denial of his application. Respondent referred the request to the Division of Administrative Hearings on July 5, 2006.

A Notice of Hearing dated July 17, 2006, scheduled the hearing for September 14, 2006. During the hearing Petitioner testified on his own behalf, but did not offer any exhibits for admission into the record as evidence. Respondent did not present any witnesses but offered five exhibits, which were accepted as evidence.

A transcript of the proceeding was filed on September 19, 2006. Neither party filed proposed findings of fact or conclusions of law.

FINDINGS OF FACT

1. In June 2002, Petitioner was an 18-year-old high student. Early in the morning of June 1, 2002, Petitioner and two friends entered three unoccupied vehicles and stole several items, including a couple of cell phones.

2. On October 9, 2002, in the Circuit Court in and for Santa Rosa County, Florida, Case No. 02-518, Petitioner entered a guilty plea to two counts of Burglary of an Unoccupied Conveyance, each count being a third-degree felony, and Petit Theft, a second-degree misdemeanor.

3. On October 9, 2002, in the Circuit Court in and for Santa Rosa County, Florida, Case No. 02-720, Petitioner entered a guilty plea to one count of Burglary of an Unoccupied Conveyance, a third-degree felony, and Petit Theft, a second-degree misdemeanor.

4. On November 1, 2002, the circuit court Judge entered an Order Withholding Adjudication of Guilt and Placing Defendant on Probation in Circuit Court Case Nos. 02-518 and 02-720. Petitioner was placed on probation for 18 months for each felony and 12 months for each misdemeanor, to be served concurrently.

5. On or about April 14, 2004, Petitioner successfully completed his probation.

6. From May 7, 2004, until October 5, 2004, Petitioner attended the Pensacola School of Massage Therapy. Petitioner is now a licensed massage therapist.

7. On February 14, 2006, Petitioner completed a class for professional training as an accredited claims adjuster.

8. On February 15, 2006, Petitioner filed an application for a license as a resident independent all-lines insurance adjuster. One question on the application stated as follows:

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

9. Petitioner answered the question in the negative based on erroneous information provided to him by someone in his probation office. An attorney subsequently advised Petitioner that he should have answered the question affirmatively.

10. In a letter dated March 23, 2006, Petitioner advised Respondent that he had incorrectly answered the question about his criminal record. Petitioner expressed his regret that he failed to disclose his criminal record on the application. He also requested consideration of his professional accomplishments

and clean record since 2002. According to Petitioner, he never intended to make a false or misleading statement when he signed his application, indicating that he did not have a criminal record.

11. By letter dated April 14, 2006, Respondent requested a written explanation, outlining the events which led to each of the arrests/charges.

12. In a letter dated June 15, 2006, Respondent denied Petitioner's application based on his felony convictions and his failure to disclose his criminal record.

13. Despite his poor judgment as a young adult, which resulted in a criminal record, Petitioner has matured into a productive citizen. In addition to massage therapy, Petitioner has two other business interests. He works as an interior contractor and invests in real estate. Additionally, he is married and the father of a child.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2006).

15. Petitioner has the burden of proving by a preponderance of the evidence that Respondent improperly denied his application for licensure as a resident independent all-

lines insurance adjuster. See Dept. of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

16. Respondent must deny the applications of applicants who make material misstatements on their applications, who demonstrate lack of fitness or trustworthiness to engage in the business of insurance, and/or who have pled guilty to felonies that involve moral turpitude. See §§ 626.611(2), 626.611(7), and 626.611(14), Fla. Stat. (2005).

17. As a general rule, applicants cannot mitigate material misstatements based on their lack of intent to misrepresent their criminal history. See Fla. Admin. Code R. 69B-211.042(11)(c). Under the facts of this case, it is difficult to see how Petitioner misinterpreted the question asking about his criminal history.

18. Respondent has determined that felonies involving burglary are crimes of moral turpitude. See Fla. Admin. Code R. 69B-211.042(21)(u). Petitioner has been convicted of burglarizing three unoccupied vehicles on the same night when he was 18 years old.

19. Respondent has established waiting periods for applicants to become eligible for licensure after denial pursuant to Section 626.611, Florida Statutes (2005). See § 626.207, Fla. Stat. (2005). The waiting periods and possible factors that will shorten the waiting periods are set forth in

Florida Administrative Code Rule 69B-211.042. Under the Rule, it appears that Petitioner will not be eligible for licensure until 22 years from the date he pled guilty to the felonies, reduced by proof of each applicable mitigating factor that he submits with his next application. See Fla. Admin. Code R. 69B-211.042(10).

20. In the meantime, Petitioner has not met his burden of proof. Respondent properly denied Petitioner's application for licensure as a resident independent all-lines insurance adjuster.

RECOMMENDATION

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

RECOMMENDED:

That Respondent enter a final order denying Petitioner's application.

DONE AND ENTERED this 11th day of October, 2006, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of October, 2006.

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.