

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN STOVER MARK,)
)
 Petitioner,)
)
 vs.) Case No. 08-0669
)
 DEPARTMENT OF FINANCIAL)
 SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On April 3, 2008, a formal administrative hearing in this case was held in New Port Richey, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: John Stover Mark, pro se
8143 Sudbury Drive
Port Richey, Florida 34668

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

STATEMENT OF THE ISSUE

The issue in the case is whether the application filed by John Stover Mark (Petitioner) for licensure as a resident independent all lines adjuster should be approved.

PRELIMINARY STATEMENT

By Notice of Denial dated November 22, 2007, the Department of Financial Services (Respondent) notified the Petitioner that his application for licensure as a resident independent all lines adjuster was denied. The Petitioner filed a request for formal hearing with the Respondent. The Respondent referred the request to the Division of Administrative Hearings, which scheduled and conducted the formal proceeding.

The Petitioner testified on his own behalf, presented the testimony of one witness, and had Exhibits numbered 1 through 6 admitted into evidence. The Respondent presented no testimony and had Composite Exhibit 1 admitted into evidence.

A Transcript of the hearing was filed on April 11, 2008. The Petitioner filed a Proposed Recommended Order on April 21, 2008, that has been considered in the preparation of this Order.

FINDINGS OF FACT

1. On June 13, 2005, the Petitioner was driving his vehicle and was stopped for unlawful speeding. During the traffic stop, the law enforcement officer discovered that a grand theft warrant had been issued and was outstanding against the Petitioner. Prior to the traffic stop, the Petitioner was unaware of the warrant. The Petitioner was arrested on the warrant and charged with a third degree felony count of grand theft.

2. The Petitioner testified that the charge was related to a claim by his former employer that the Petitioner had stolen tools from a construction job site.

3. According to the Petitioner, he had been employed in the construction industry for many years by the same employer and had become unhappy with the lack of financial support he believed he was receiving from the employer. Eventually, he decided to quit the job and called his employer from the job site to do so. The Petitioner testified that he advised the employer that he was leaving the job and that the tools that belonged to the employer were being left at the job site. The abandoned tools apparently went missing, and the Petitioner was subsequently charged with the theft of the equipment.

4. Although the Petitioner testified that he entered a plea of nolo contendere to the charge upon advice of his public defender, the court records indicate that the Petitioner entered a guilty plea to one count of grand theft, a third degree felony, on July 29, 2005, in Case No. 05-CF-012565, Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida. The confusion related to the actual plea entered is immaterial to the disposition of this case.

5. In any event, adjudication was withheld, and the Petitioner was sentenced to make restitution and pay court costs and to complete a five-year probationary period. The probation

was terminated by order of the Court after approximately two years after the Petitioner had complied with all other requirements of his sentence.

6. The Petitioner was subsequently injured in an automobile accident and through the services of the Department of Education, Division of Vocational Rehabilitation (DVR), received training for another occupation for which he was physically capable.

7. The Petitioner testified that the DVR provided computer equipment and also funded the educational training that was a requirement for licensure as an insurance adjuster.

8. The Petitioner testified that he disclosed the grand theft felony to his DVR counselor, who was apparently unconcerned or unaware that the felony incident posed an impediment to the Petitioner's prospects for licensure as an insurance adjuster.

9. After completing the relevant training, the Petitioner filed an application for licensure as a resident independent all lines adjuster on July 11, 2007.

10. The application contained the following question:

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

11. The Petitioner answered the question in the affirmative.

12. The Petitioner truthfully answered other questions on the application related to the felony problem and properly disclosed the relevant information.

13. There is no evidence that the Petitioner has failed to disclose the grand theft incident in response to any inquiry material to this case, or has made any attempt to conceal the matter from the Respondent.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2007).

15. The Petitioner has the burden of establishing entitlement to the licensure sought in this proceeding by a preponderance of the evidence. See Department of Banking & Finance, Division of Securities & Investor Protection v. Osborne Stern & Company, 670 So. 2d 932, 934 (Fla. 1966); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); § 120.57(1)(j), Fla. Stat. (2007).

16. Section 626.611, Florida Statutes (2007), sets forth the grounds under which the Respondent is required to deny the Petitioner's application and provides in relevant 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.

* * *

(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.

17. The Respondent has classified grand theft as a crime of moral turpitude through Florida Administrative Code Rule 69B-211.042(21)(s). Under the facts of this case, the denial of the Petitioner's application is mandatory under the provisions of Subsection 621.611(14), Florida Statutes (2007).

18. Section 626.621, Florida Statutes (2007), sets forth the grounds under which the Respondent may, in its discretion, deny the Petitioner's application and provides in relevant part as follows:

626.621 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:

* * *

(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.

19. The referenced section provides that the denial of the Petitioner's application is within the Respondent's discretion. There is no evidence that the Respondent's exercise of discretion is unreasonable in this case.

20. The Petitioner offered testimony and evidence related to restoration of civil rights; however, there is no evidence that the Petitioner's civil rights were affected by the grand theft incident, and the issue is immaterial to this dispute.

21. The Petitioner appears to be attempting in good faith to resume gainful employment in a manner appropriate to his physical abilities. The Petitioner is justifiably frustrated by the fact that one state agency (DVR) provided equipment and training to enable entry into a new occupation and that a second state agency (the Respondent) has refused to issue the required license.

22. Ultimately, the Petitioner's time and the state's resources were wasted by the provision of vocational services without consideration of the statutory bar to the Petitioner's licensure, and the Petitioner's disappointment with the situation is reasonable. Unfortunately for the Petitioner, the Respondent is not required to issue the license on the basis of the training provided to the Petitioner by DVR.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petitioner's application for licensure as a resident independent all lines adjuster be denied.

DONE AND ENTERED this 13th day of May, 2008, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of May, 2008.

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.