

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES  
Before the Director of Insurance and Financial Services

Beth Jill Rios  
Petitioner

v

Department of Insurance and Financial Services  
Respondent

Case No. 13-935-L  
Docket No. 13-015518-DIFS

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Issued and entered  
this 7<sup>th</sup> day of August 2014  
by Randall S. Gregg  
Special Deputy Director

**FINAL DECISION**

**I. BACKGROUND**

This case concerns the application of Beth Jill Rios (Petitioner) for a resident insurance producer license.

In July 2013, the Petitioner applied for a resident insurance producer license. On September 19, 2013, the Department of Insurance and Financial Services (Respondent) issued to the Petitioner a Notice of License Denial and Opportunity for Hearing. The denial was based on the discovery of a 2012 misdemeanor conviction that the Petitioner had not disclosed on her license application. Petitioner challenged the license denial by filing a Petition for Contested Case Hearing. A hearing was held on May 1, 2014.

The administrative law judge issued a Proposal for Decision (PFD) on June 13, 2014, recommending that the license denial be upheld. The PFD is attached and made a part of this Final Decision. The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Comm*, 136 Mich App 52 (1984).

**II. FINDINGS OF FACT**

In September 2012, the Petitioner was convicted of Disturbing the Peace, a misdemeanor (MCL 750.170). The Petitioner, in her job as a Lansing detention officer, had made false entries on a breath test record required for individuals on probation. This, and the other findings of fact in the PFD, are adopted and made a part of this final decision.

### III. CONCLUSIONS OF LAW

Sections 1239(1)(a) and (h) of the Michigan Insurance Code, MCL 500.1239(1)(a) and (h), provide:

(1) In addition to any other powers under this act, the [director] may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the [director] shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

\* \* \*

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

Section 1205(1)(b) of the Michigan Insurance Code, MCL 500.1205(1)(b), provides:

A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

\* \* \*

(b) Has not committed any act listed in section 1239(1).

By failing to disclose her misdemeanor conviction, the Petitioner has provided “incorrect, misleading, incomplete, or materially untrue information in the license application” as referenced in section 1239(1)(a) of the Michigan Insurance Code. The Petitioner’s failure to disclose the conviction requires license denial under section 1205(1)(b) of the Michigan Insurance Code. MCL 500.1205(1)(b).

By entering false information on a record she was required to maintain as part of her job as a detention officer, the Petitioner demonstrated dishonesty and untrustworthiness as referenced in section 1239(1)(h) of the Michigan Insurance Code. The Petitioner’s dishonest and untrustworthy conduct requires license denial under section 1205(1)(b) of the Michigan Insurance Code.

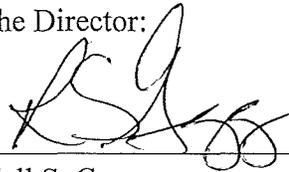
Accordingly, the conclusions of law in the PFD are adopted and made a part of this final decision.

**IV. ORDER**

The refusal to issue an insurance producer license to Beth Jill Rios is upheld.

Annette E. Flood  
Director

For the Director:

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg  
Special Deputy Director

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:	Docket No.:	13-015518-DIFS
Beth Jill Rios, Petitioner	Case No.:	13-935-L
v	Agency:	Department of Insurance and Financial Services
Department of Insurance and Financial Services, Respondent	Case Type:	DIFS-Insurance
_____ /	Filing Type:	License Denial

Issued and entered  
this 13<sup>th</sup> day of June 2014  
by Lauren G. Van Steel  
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), concerns a denial by the Department of Insurance and Financial Services, Respondent, of an application for resident insurance producer license submitted by Beth Jill Rios, Petitioner.

The record reflects that on September 19, 2013, Respondent issued a Notice of License Denial and Opportunity for Hearing. On October 23, 2013, Petitioner filed with Respondent the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, dated October 18, 2013. On November 19, 2013, Scott D. Basel, Staff Attorney for Respondent, issued the Agency Response to Applicant's Appeal of License Denial.

On November 27, 2013, Teri L. Morante, Acting Chief Deputy Director, issued an Order Referring Petition for Hearing and Order to Respond. On December 2, 2013, Respondent filed a Request for Hearing with the Michigan Administrative Hearing System. On December 3, 2013, the Michigan Administrative Hearing System issued a Notice of Hearing to the parties that scheduled a hearing on January 23, 2014. On January 16, 2014, Respondent filed a copy of the Notice of License Denial and Opportunity for Hearing. On January 17, 2014, Respondent filed Respondent's Proposed Written Evidence/Exhibits.

On January 23, 2014, Petitioner filed a request for adjournment on the basis that she was ill. The hearing was commenced as scheduled. Mr. Basel appeared on behalf of

Respondent. Petitioner did not appear. The undersigned Administrative Law Judge granted a continuance of the hearing on the record. On February 6, 2014, the undersigned issued an Order for Continuance, for hearing date of April 3, 2014.

On February 13, 2014, Respondent filed a Motion for Adjournment. On February 18, 2014, the undersigned issued an Order Granting Adjournment, rescheduling the hearing date to May 1, 2014.

On May 1, 2014, the hearing was held as scheduled. Petitioner appeared on her own behalf. Mr. Basel appeared as Staff Attorney on behalf of Respondent.

Respondent called Jill Huisken, Licensing Manager, to testify as a witness. Respondent offered the following exhibits that were admitted into the record as evidence:

1. Respondent's Exhibit No. 1 is a copy of the Uniform Application for Individual Producer License/Registration form.
2. Respondent's Exhibit No. 2 is a copy of an Individual Licensee Application printout for Beth Jill Rios (Petitioner), dated July 14, 2013.
3. Respondent's Exhibit No. 3 is a copy of a Certificate of Conviction, 54-A District Court in the matter of Beth Jill Rios (Petitioner), dated January 21, 2014; Register of Actions for Case No. 12-03409;
4. Respondent's Exhibit No. 4 is a copy of a letter from the Department of Insurance and Financial Services (Respondent) to Beth Rios (Petitioner), dated July 22, 2013, "Re: Application Background Question(s) . . ."; and Petitioner's handwritten response, dated July 25, 2013.
5. Respondent's Exhibit No. 5 is a copy of a 55<sup>th</sup> District Court PBT Verification Form for [REDACTED] B [REDACTED], dated May 24, 2012 to June 11, 2012; and City of Lansing receipt dated June 6, 2012.
6. Respondent's Exhibit No. 6 is a copy of a Notice of License Denial and Opportunity for Hearing, dated September 19, 2013.
7. Respondent's Exhibit No. 7 is a copy of a statement, To Whom It May Concern by Beth Jill Rios (Petitioner), dated June 6, 2012.

Petitioner testified on her own behalf. No other witnesses were presented. Petitioner offered the following exhibits that were admitted into the record as evidence:

1. Petitioner's Exhibit No. 1 is a letter, To Whom It May Concern from [REDACTED], dated April 30, 2014.

2. Petitioner's Exhibit No. 2 is a letter, To Whom It May Concern from [REDACTED], dated April 30, 2014.

The record was closed at the conclusion of the hearing.

### ISSUES AND APPLICABLE LAW

The issue presented is whether Respondent has properly denied Petitioner's application for a resident insurance producer license under Sections 1205(1) and 1239(1)(a)&(h) of the Insurance Code. These sections provide in pertinent part:

Sec. 1205.

(1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

(a) Is at least 18 years of age.

(b) Has not committed any act listed in section 1239(1).

(c) As required under section 1204(2), has completed a prelicensing course of study for the qualifications for which the person has applied.

(d) Has paid the fees applicable to the individual under section 240.

(e) Has successfully passed the examination required for each qualification for which the person has applied. MCL 500.1205(1). (Emphasis supplied).

Sec. 1239. (1) In addition to any other powers under this act . . . the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: \* \* \*

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(f) Having been convicted of a felony.

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

(i) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(k) Improperly using notes or any other reference material to complete an examination for an insurance license.

(l) Knowingly accepting insurance business from an individual who is not licensed.

(m) Failing to comply with an administrative or court order imposing a child support obligation.

(n) Failing to pay the single business tax or the Michigan business tax or comply with any administrative or court order

directing payment of the single business tax or the Michigan business tax. MCL 500.1239(1). (Emphasis supplied).

### FINDINGS OF FACT

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

1. Beth Jill Rios, Petitioner, was employed as a Detention Officer with the Lansing Police Department for over 21 years. Her educational background includes college coursework in the field of Criminal Justice.
2. Petitioner's job duties as a Detention Officer included conducting PBTs (preliminary breath tests) as ordered by the court, which is a position likely involving the public trust per the credible testimony of Jill Huisken, Licensing Manager.
3. On June 6, 2012, Petitioner made a false PBT entry on a "55<sup>th</sup> District Court PBT Verification Form" for a friend or acquaintance, [REDACTED] B [REDACTED], by indicating on the form that she had conducted the PBT on a date that she did not conduct the test. [Resp. Exh. 5].
4. A Lansing Police Department co-worker likely noticed that the form was stamped and initialed by Petitioner for the date of June 4, 2012, which was a date that she had not been working. The matter was referred by Petitioner's supervisor to Internal Affairs.
5. Petitioner noted in her testimony that she had just worked a 16-hour shift at the time, and had been called back to work after two hours, and that she felt sleep-deprived at the time that she made the false PBT entry. She testified that she does not know why she did it. She acknowledged that it was a "bad judgment call".
6. On June 6, 2012, Petitioner acknowledged in a written statement that Mr. B [REDACTED] is a "friend of mine." She further stated that Mr. B [REDACTED] had told her that he had overslept the day before and had not made it down for a PBT "so I stamped his sheet twice and put my name on it, in hind sight it was wrong ... but did it hurt anyone ...no, will I do it again ... no I will not." [Resp. Exh. 7].
7. Petitioner testified at hearing that Mr. B [REDACTED] had said that he had been at work and could not leave, and asked her to stamp his form twice.
8. On July 26, 2012, Petitioner was charged with one count of felony conspiracy to commit an offense or legal act in illegal manner in the 54-A Judicial District Court. [Resp. Exh. 3].

9. On September 7, 2012, Petitioner accepted a plea agreement and was convicted on one count of the misdemeanor of "Disturbing the Peace" in the 54-A Judicial District Court. [Resp. Exh. 3].
10. On September 7, 2012, Petitioner was sentenced to 45 days in jail, plus \$400.00 in fines and costs. [Resp. Exh. 3]. Petitioner resigned from her job as a Detention Officer. She credibly testified that she paid the fine timely.
11. On or about July 14, 2013, Petitioner submitted an application with Respondent to become licensed as a resident insurance producer in the state of Michigan. [Resp. Exh. 2].
12. Petitioner answered "No" to the question on the application that asked, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" [Resp. Exh. 1 & 2].
13. The application form stated that the term, "crime" includes a "misdemeanor, a felony or a military offense." It further stated, "You may exclude misdemeanor traffic citations and misdemeanor citations or pending misdemeanor charges involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. [Resp. Exh. 1].
14. The application form stated that the term, "convicted" includes, but is not limited to, "having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine." [Resp. Exh. 1].
15. After the license application was received, Petitioner's misdemeanor conviction was discovered through a criminal background check conducted by Respondent, per the credible testimony of Ms. Huisken.
16. On July 22, 2013, Megan Schulz, Licensing Technician for Respondent, sent Petitioner a letter requesting additional information on her misdemeanor conviction. [Resp. Exh. 4].
17. On July 25, 2013, Petitioner submitted a handwritten response and supplied relevant court documents. Petitioner stated that she had "misunderstood the question, at first I had checked yes, but as I read further I thought that it said if it was a misdemeanor that I should check no. I did not intentionally omit this information from my application." [Resp. Exh. 4].

18. Petitioner noted in her testimony at hearing that she had completed the application by using her phone and that she went back and forth and was confused by the question asking whether she had been convicted of a crime. She acknowledged that she did not call Respondent to ask about that question before submitting the application. She thought the question was "ambiguous" and that she should not include a misdemeanor for "Disturbing the Peace".
19. Petitioner contended at hearing that the misdemeanor conviction of "Disturbing the Peace" does not contain the element of fraud or dishonesty, and that her failure to disclose the misdemeanor on the application was not intentional, but rather because she did not understand the wording of the question.
20. As to her conduct leading to the misdemeanor conviction, Petitioner acknowledged in her response of July 25, 2013, to Respondent that she had "stamped a person's PBT sheet twice instead of once. He had missed a day, he was there on one day and I stamped it to reflect he was there on two days." [Resp. Exh. 4].
21. Respondent obtained a copy of the underlying "55<sup>th</sup> District Court PBT Verification Form" through a Freedom of Information Act (FOIA) request to the state police, per Ms. Huisken's credible testimony. The form states that "Falsification of this form is a violation of Court Order." Ms. Huisken credibly testified that in evaluating a license application Respondent considers falsification of a court order to be a serious offense. [Resp. Exh. 5].
22. On September 19, 2013, Jean M. Boven, Director, Office of Insurance Licensing & Market Conduct for Respondent, issued a Notice of License Denial and Opportunity for Hearing. [Resp. Exh. 6].
23. Petitioner's Exhibit Nos. 1 and 2 contain statements from persons, [REDACTED] and [REDACTED], who have likely known Petitioner for several years. The exhibits include positive statements regarding Petitioner's good moral character, work ethic and goal of becoming employed as a bondsman. Neither Ms. [REDACTED] nor Ms. [REDACTED] was called to testify at hearing. The exhibits do not directly address the underlying facts of Petitioner's misdemeanor conviction or her completion of the resident insurance producer license application.

### CONCLUSIONS OF LAW

In this matter concerning a Notice of License Denial, while Respondent must go forward with evidence in support of the allegations in the Notice, Petitioner has the burden of proof to present evidence to support a conclusion that she should be granted a

residence insurance producer license. As the party asserting facts which would support her request for a license, Petitioner has the burden of proof in establishing those facts. See, the Final Decision in the matter of *McClorrine v Department of Insurance and Financial Services* (Case No. 12-899-L; Docket No. 12-001995-OFIR) dated April 23, 2013; and *Bunce v Secretary of State*, 239 Mich App 204, 216; 607 NW2d 372 (1999).

Under Sections 1205(1) and 1239(1)(a)&(h) of the Insurance Code, *supra*, the Commissioner (now Department Director) shall deny an application for a resident insurance producer license where an applicant has provided incorrect, misleading, incomplete, or materially untrue information in the license application, or where the applicant has used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

Based on the above findings of fact, it is concluded that Petitioner has not met her burden of proof. Rather, a preponderance of the evidence shows that Petitioner was properly denied licensure as a resident insurance producer in the state of Michigan under Sections 1205(1) and 1239(1)(a)&(h) of the Insurance Code. The record evidence shows it more likely than not that Petitioner provided incorrect, misleading or materially untrue information in the license application by denying that she had been convicted of a "crime", which was defined as including a misdemeanor. Further, the record evidence shows it more likely than not that Petitioner used fraudulent or dishonest practices or demonstrated untrustworthiness in the conduct of business by the underlying conduct leading to her misdemeanor conviction. As such, the Department Director is prohibited from granting Petitioner a resident insurance producer license under MCL 500.1205(1) and MCL 500.1239(1)(a)&(h).

### **PROPOSED DECISION**

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Department Director:

1. That the above findings of fact and conclusions of law be adopted in the final decision and order;
2. That the denial of Petitioner's application for a resident insurance producer license be affirmed; and
3. That the Department Director take any other action in this matter deemed appropriate under the applicable provisions of the Insurance Code of 1956, as amended.

### **EXCEPTIONS**

Any Exceptions to this Proposal for Decision should be filed in writing with the Department of Insurance and Financial Services, Division of Insurance, Attention: Dawn

Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.



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**Lauren G. Van Steel**  
**Administrative Law Judge**