

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

Department of Insurance and
Financial Services,

Petitioner,

v

Case No. 15-948-L
Docket No. 15-001554-DIFS

Robert Clinton Burt Relief II,

Respondent.

For the Petitioner:

Elizabeth V. Bolden (P69865)
Dept. of Insurance and Financial Services
611 W. Ottawa, 3rd Floor
Lansing, MI 48933

For the Respondent:

Robert Clinton Burt Relief II

Issued and entered
this 27th day of May 2015
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

The Administrative Law Judge issued a Proposal for Decision dated April 8, 2015. She recommended that the Director issue a final decision consistent with the Findings of Fact and Conclusions of Law as outlined in her Proposal for Decision. The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. Neither party filed exceptions. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Com'n*, 136 Mich.App. 52 (1984).

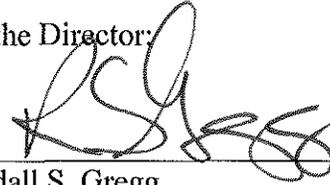
ORDER

Therefore, it is ORDERED that:

1. the PFD is adopted and made part of this final decision; and
2. the insurance producer license of Respondent is REVOKED.

Patrick M. McPharlin
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

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DIFS/OGC

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 15-001554-DIFS

Department of Insurance and
Financial Services,
Petitioner

Case No.: 15-948-L

Agency: Department of
Insurance and
Financial Services

v

Robert Clinton Burt Relief II,
Respondent

Case Type: DIFS-Insurance

Filing Type: Insurer

Issued and entered
this 8th day of April 2015
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"), commenced with the issuance of a Notice of Hearing dated January 15, 2015, scheduling a contested case hearing concerning a Complaint issued by the Staff of the Department of Insurance and Financial Services, Petitioner, regarding the resident insurance producer license of Robert Clinton Burt Relief, II, Respondent.

The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on January 6, 2015, and an Order Referring Complaint for Hearing, dated January 5, 2015, issued by Teri L. Morante, Chief Deputy Commissioner. The Notice of Hearing scheduled a hearing date of March 11, 2015.

On March 11, 2015, the hearing was held as scheduled. Elizabeth Bolden, Attorney, appeared as representative for Petitioner. Respondent appeared on his own behalf.

Petitioner called Michele Riddering, Director of Insurance Licensing, to testify as a witness. Petitioner offered the following exhibits that were admitted into evidence:

1. Petitioner's Exhibit No. 1 is a copy of Detailed Information for the Resident Producer license of Respondent.

2. Petitioner's Exhibit No. 2 is a copy of an Individual Licensee Application submitted by Respondent, date signed October 9, 2009.
3. Petitioner's Exhibit No. 3 is a copy of an Individual Licensee Application submitted by Respondent, date signed November 14, 2010.
4. Petitioner's Exhibit No. 4 is a copy of an Individual Licensee Application submitted by Respondent, date signed December 22, 2011.
5. Petitioner's Exhibit No. 5 is a copy of court records in the matter of the *United States of America v Robert Relief*, U.S. District Court, Eastern District of Michigan, Southern Division, Case No. 93-80953: Request for Warrant Upon Indictment, dated November 18, 1993; Warrant for Arrest, dated November 19, 1993; Judgment in a Criminal Case, dated October 7, 1994; Superseding Indictment, dated November 18, 1993; Criminal Case Cover Sheet, dated November 18, 1993; and Rule 11 Plea Agreement, dated June 11, 1994 with Worksheet A.
6. Petitioner's Exhibit No. 6 is a copy of a letter from Respondent to Petitioner, fax dated April 28, 2014.
7. Petitioner's Exhibit No. 7 is a copy of Application question #1.

Respondent testified on his own behalf. The record was held open at the conclusion of the hearing for the parties to submit additional exhibit evidence.

On March 11, 2015, Petitioner submitted an additional proposed exhibit. No objection to admission of the exhibit was received and it was admitted as follows:

8. Petitioner's Exhibit No. 8 is a copy of a blank Uniform Application for Individual Producer License/Registration.

On March 30, 2015, Respondent submitted a cover letter and Respondent's proposed Exhibit Nos. 1 to 4. On April 2, 2015, Respondent submitted a Response to Respondent's Post-Hearing Exhibit Filing, indicating no objection to the proposed exhibits. The proposed exhibits were therefore admitted as follows:

1. Respondent's Exhibit No. 1 is a copy of correspondence between Respondent and Beverly M. Williamson, Senior Legal Assistant, MetLife, dated February 1, 2012 to June 27, 2012.

2. Respondent's Exhibit No. 2 is a copy of a letter to Respondent from General Information Services on behalf of MetLife, dated November 3, 2011.
3. Respondent's Exhibit No. 3 is a copy of a letter to MetLife Securities, Inc. from Brenda Schneider, Dept. Analyst, Office of Financial and Insurance Regulation, dated June 27, 2012.
4. Respondent's Exhibit No. 4 is a copy of a MetLife Enterprise Registration & Licensing printout, dated May 7, 2012.

ISSUES AND APPLICABLE LAW

The issues presented in the Complaint are whether sanction(s) are properly imposed under Section 1244(1)(a)-(d) on Respondent's license based on violation of Sections 1205(1)(b) and 1239(1)(a),(c),(f)&(h) of the Insurance Code, *supra*, which provide as follows:

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: * * *

(b) Has not committed any act listed in section 1239(1). MCL 500.1205(1)(b). (Emphasis supplied).

Sec. 1239. (1) In addition to any other powers under this act, the commissioner 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 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.

* * *

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

* * *

(f) Having been convicted of a felony.

* * *

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. MCL 500.1239(1)(a),(c),(f)&(h). (Emphasis supplied).

Sec. 1244.

(1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A refund of any overcharges.

(c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person found to be in violation of this chapter.

(d) The suspension or revocation of the person's license. MCL 500.1244(1)(a)-(d).

FINDINGS OF FACT

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

1. Robert Clinton Burt Relief, II, Respondent, is currently licensed as a resident insurance producer in the state of Michigan. [Pet. Exh. 1]. He formerly worked as an insurance producer for the MetLife and Aflac insurance companies, per Respondent's testimony and Respondent's Exhibit Nos. 1 & 2.
2. On October 9, 2009, Respondent completed and submitted to Petitioner an application for a resident insurance producer license, in which he requested qualifications in life, accident and health lines of insurance. On the application, Respondent answered "No" to the question whether he had ever been convicted or charged with a crime, had a judgment withheld or deferred, or was currently charged with committing a crime. [Pet. Exh. 2, 7 & 8].
3. The term, "crime" was defined on the application to include a conviction by a plea of guilty. [Pet. Exh. 7 & 8].
4. On November 3, 2009, the licensing division within the Department of Insurance and Financial Services (Ppetitioner) granted Respondent a resident producer license with qualifications in life, accident and health lines of insurance, after Petitioner conducted a background search on Respondent using several different databases but not fingerprints, per the credible testimony of Michele Riddering, Director of Insurance Licensing for Petitioner. [Pet. Exh. 1].
5. On November 14, 2010, Respondent completed and submitted to Petitioner a second application requesting additional qualifications in casualty and property lines of insurance. On the application, Respondent again answered "No" to the question whether he had ever been convicted or charged with a crime. [Pet. Exh. 3, 7 & 8].
6. On November 30, 2010, Petitioner granted Respondent additional qualifications in casualty and property lines of insurance. [Pet. Exh. 1].
7. On December 22, 2011, Respondent completed and submitted to Petitioner a third application requesting additional qualification in variable annuities. He again answered "No" to the question asking whether he had ever been convicted or charged with a crime. [Pet. Exh. 4, 7 & 8].

8. On January 4, 2012, Petitioner granted Respondent the additional qualification in variable annuities. [Pet. Exh. 1].
9. On December 7, 2011, Respondent completed and submitted to the Michigan Department of Licensing and Regulatory Affairs (LARA) an application to register as a securities agent. As part of his application to the Department of LARA, he was required to submit fingerprints.
10. The fingerprints were submitted by the Department of LARA to the Federal Bureau of Investigation (FBI), which confirmed that in 1994 Respondent had been convicted by guilty plea in the U.S. District Court, Eastern District of Michigan, Southern Division, of two felonies: 1) Conspiracy to Possess with Intent to Distribute; and 2) Distribute Cocaine and Heroin. [Pet. Exh. 5].
11. Respondent had been sentenced to 18 months incarceration, 3 years supervised release, and fined \$5,000.00 by the U.S. District Court for the 1994 convictions. [Pet. Exh. 5].
12. As of a result of the information obtained by the Department of LARA regarding Respondent's history of felony conviction, he was not registered as a securities agent. [Resp. Exh. 3].
13. The Department of LARA's Securities Division notified Petitioner that Respondent had been charged and convicted of two felony crimes.
14. Petitioner subsequently contacted Respondent to inquire about the charges and convictions. Respondent indicated to Petitioner that he had been charged with a crime and pled guilty to a felony, but that the conviction was expunged or pending expunction and the record was sealed. Respondent did not provide any documentation to Petitioner to show that the convictions had been expunged, per the credible testimony of Ms. Riddering.
15. Respondent acknowledged in his testimony that he is not aware that any application for expunction was actually filed on his behalf with the U.S. District Court, but that he understood at the time of his incarceration that his attorney (who was later disbarred) was going to seek expunction for him in court. He further thought, based upon a conversation with his probation officer, that the convictions would be removed from his reporting history after 10 years by statute of limitations.

16. Ms. Riddering credibly testified that there is no 10-year cut-off or statute of limitations for purposes of disclosure of a felony conviction in an application for a resident insurance producer licensure under the Insurance Code, *supra*, in the state of Michigan.
17. Respondent acknowledged in his testimony that court documents show that the conviction records were under seal pending expunction, rather than having been expunged, such that he was able to personally retrieve the conviction records from the court.
18. Petitioner obtained a copy of the conviction records on February 24, 2014. [Pet. Exh. 5].
19. Respondent acknowledged in his testimony that in the 1994 plea agreement, the government did not promise that his convictions would be expunged by the court. At one point, he thought that the MetLife legal department was taking care of the matter for him. His employment with MetLife was ultimately dismissed.
20. The documentary evidence submitted by Respondent in this matter shows that in 2012 the MetLife legal department was addressing Respondent's conviction history with the state, but this was after all three of Respondent's license applications had been submitted to Petitioner. [Resp. Exh. 1 & 5].
21. If Petitioner had been aware of Respondent's felony conviction history, he would not have been granted licensure as a resident insurance producer on November 3, 2009, pursuant to the 2008 amendment to the Insurance Code (effective January 6, 2009), per the credible testimony of Ms. Riddering.
22. On April 28, 2014, Respondent submitted correspondence to Petitioner, which indicated in part that the act was over 10 years ago, that "court records show sealed and removed pending expungment" and he believed he "was not required to disclose." [Pet Exh. 6].
23. On January 5, 2015, Staff for Petitioner issued a Complaint, seeking revocation of Respondent's license. The same date, the Chief Deputy Director issued an Order Referring Complaint for Hearing.
24. On March 11, 2015, a properly noticed hearing was held, at which the parties were afforded an opportunity to present evidence regarding the Complaint allegations.

25. On March 11, 2015, a properly noticed hearing was held, at which the parties were afforded an opportunity to present evidence regarding the Complaint allegations.
26. On March 30, 2015, Respondent filed additional proposed exhibits, along with a cover letter dated March 25, 2015, that stated in pertinent part:

"Please understand these are not to deny or disprove any of the factual evidence. Their purpose is to explain what lead to the errors in thinking and outline that I and my employers acting under guidance and direction of those involved by initiate the corrective action. I was naïve and thought I was one the lucky ones that was grant a 'clean slate.'" [Letter with Resp. Exh. 1-4].

CONCLUSIONS OF LAW

As the complaining party, Petitioner has the burden of proof in this matter to prove the truth of the factual and legal allegations set forth in the Complaint by a preponderance of evidence. As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985).

Pursuant to Section 1239(1) of the Insurance Code, *supra*, the Commissioner (now Department Director per Executive Order 2013-1) may sanction a license of a resident insurance producer under Section 1205 for the causes of "providing incorrect, misleading, incomplete or materially untrue information," "obtaining or attempting to obtain a license through misrepresentation or fraud," "having been convicted of a felony" and/or "[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere." MCL 500.1239(1)(a),(c),(f)& (h).

Based on the above findings of fact, Petitioner has shown by a preponderance of evidence that Respondent violated these subsections of Section 1239 of the Insurance Code as alleged in the Complaint in total and Counts I, II and III of the Complaint. The record evidence shows that Respondent knew or should have known that the Insurance Code, as amended effective January 6, 2009, prohibited an applicant with a felony conviction from being licensed as an insurance producer. He failed to truthfully disclose his conviction history. In his submission of the three license applications at issue and obtaining licensure, he misrepresented that he had not been convicted of a crime. As such, Respondent provided incorrect, misleading and materially untrue information, obtained licensure through misrepresentation, and used dishonest practices in the conduct of business. Therefore, Petitioner has established that the provisions of MCL

500.1239(1)(a),(c),(f)&(h) and MCL 500.1205(1)(b) properly apply for sanction upon Respondent's resident insurance producer license under MCL 500.1244, *supra*.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the above findings of fact and conclusions of law be adopted, and that a sanction or sanctions be ordered by the Department Director in a final decision and order, in accordance with Sections 1205, 1239 and 1244 of the Insurance Code, *supra*.

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-one (21) days of the issuance of this Proposal for Decision. An opposing party may file a response within fourteen (14) days after Exceptions are filed.



Lauren G. Van Steel
Administrative Law Judge