

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

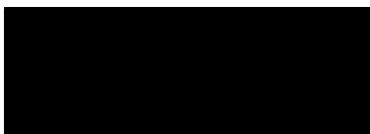
Michael Despres,
Petitioner

v

Office of Financial and Insurance Regulation,
Respondent

Case No. 11-824-L
Docket No. 2011-791

For the Petitioner:



For the Respondent:

Elizabeth Bolden
Office of General Counsel
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909

Issued and entered
this 14th day of September 2011
by R. Kevin Clinton
Commissioner

FINAL DECISION

I. BACKGROUND

This case concerns the application of Michael Despres (Petitioner) for a resident insurance producer license under section 1205 of the Michigan Insurance Code, MCL 500.1205. Petitioner filed his application with the Office of Financial and Insurance Regulation (OFIR) in February 2011. On the application, Petitioner failed to disclose that he had been denied an insurance producer license in Indiana. OFIR staff discovered these omissions when the Petitioner's application was reviewed. Denial of a Michigan license under these circumstances is required by section 1239(1)(i) of the Michigan Insurance Code, MCL 500.1239(1)(i), which provides:

(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:*

* * *

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

Petitioner challenged the license denial. A hearing was scheduled for June 22, 2011. On June 8, 2011, OFIR staff filed a motion for summary decision. Following a prehearing conference on June 9, 2011, the administrative law judge issued a proposal for decision (PFD) on July 21, 2011 granting the staff's motion and recommending that the license denial be affirmed. Neither party filed exceptions to the PFD.

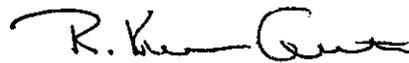
II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The factual findings in the PFD are in accordance with the preponderance of the evidence and are adopted. The conclusions of law, with one exception, are supported by reasoned opinion and are adopted. The Commissioner does not adopt the paragraph in the "conclusions of law" on page 6 of the PFD which begins, "Section 1239(2) states..." This paragraph is not necessary to the disposition of this case and is more in the nature of an editorial comment than a true conclusion of law. The remainder of the PFD is adopted and made part of this final decision.

The Commissioner finds that the Petitioner was denied an insurance license by the state of Indiana. This license denial requires that Petitioner's Michigan license application be denied.

III. ORDER

It is ordered that the refusal to issue an insurance producer license to Petitioner Michael Despres is upheld.



R. Kevin Clinton
Commissioner

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of
Michael Despres,
Petitioner

Docket No. 2011-791

Agency No. 11-824-L

V
Office of Financial and Insurance
Regulation,
Respondent

Agency: Office of Financial and
Insurance Regulation

Case Type: Intent to Deny/
Refusal to License

Issued and entered
this 21st day of July, 2011
by Renée A. Ozburn
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On February 8, 2011, Michael Despres (Petitioner) submitted an application for a Michigan resident insurance producer's license. On March 31, 2011, the Office of Financial and Insurance Regulation (OFIR/Respondent) issued a Notice of License Denial and Opportunity for Hearing. On May 19, 2011, a Notice of Hearing was issued by the Michigan Administrative Hearing System scheduling a contested case hearing for June 22, 2011. On June 8, 2011, OFIR filed Respondent's Motion for Summary Decision and Brief in Support of Motion. On June 9, 2011, the undersigned Administrative Law Judge issued an Order Converting Hearing Date to Telephone Prehearing Conference.

A Telephone Prehearing Conference was conducted on June 22, 2011. Petitioner appeared on his own behalf. Attorney Elizabeth Bolden appeared on behalf of OFIR. At the conclusion of the prehearing, I indicated that I would be issuing a Proposal for Decision (PFD) on OFIR's Motion for Summary Decision, and no further date for hearing would be scheduled pending issuance of the PFD.

ISSUES AND APPLICABLE LAW

Has OFIR shown that there is no genuine issue of a material fact that entitles OFIR to a summary decision in its favor as a matter of law? In pertinent part, the following rule and Code provisions apply:

R 500.2111 Summary decision.

Rule 11. A party may move for a summary decision in the party's favor upon any 1 of the following grounds:

(c) There is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law.

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).

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.

(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.

(2) Before the commissioner denies an application for a license under section 1205 or 1206a, the commissioner shall notify in writing the applicant or licensee of the denial and of the reason for the denial. Not later than 30 days after this written denial, the applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. A hearing under this subsection shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

FINDINGS OF FACT

1. On February 8, 2011, Petitioner submitted an application for a Michigan resident insurance producer's license.
2. In response to application Question #1, asking if the applicant has been convicted or charged with a crime, Petitioner answered "Yes".
3. In response to application Question #2, asking if the applicant has been involved in any administrative proceedings, Petitioner answered "No".
4. On March 31, 2011, OFIR issued a Notice of License Denial listing as the basis of denial: (1) failing to disclose prior administrative actions, (2) demonstrating coercive practices against a minor child and (3) having had an insurance producer license denied in another state.

5. In correspondence addressed to OFIR in response to the Notice of Denial, Petitioner acknowledges that his application for an insurance license was denied in Indiana.

CONCLUSIONS OF LAW

There is no dispute of the fact that Petitioner was denied an insurance producer license, or its equivalent, in another state. Pursuant to Section 1239(1)(i) the commissioner *shall* refuse to issue a license under section 1205 or 1206a, *for any* 1 or more of the following causes: (emphasis added)

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

The term "shall" makes refusing to license mandatory and removes discretion to consider mitigating evidence that a person has been rehabilitated from past mistakes. If an applicant admits the existence of any one of the criteria listed in Section 1239, any attempt to show that the applicant currently possesses other qualifications and has the good character to serve and protect the public will have no effect on the Commissioner's decision to deny licensure. Section 1239 of the Insurance Code was specifically amended in 2008 removing the discretionary phrase "may refuse to issue a license" replacing it with "shall refuse...". Enactment of this statutory amendment results in an absolute lifetime bar to licensure for individuals with a past that includes conduct enumerated in Section 1239 whether it reflects intentional acts or inadvertent mistakes. Enacting statutes of this nature is the prerogative of the legislature.

Therefore, in Michigan, there is no way an individual can be rehabilitated from acts enumerated in Section 1239(1) as it relates to qualifying for an insurance producers license.

Section 1239(2) states "Not later than 30 days after this written denial, the applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action". However, the issue of 'reasonableness' is no longer a factor if it is uncontested that the Petitioner meets any of the criteria listed in subsections 1239(1)(a) through (n). Although it is not mandated by statute or rule, full and fair notice should inform applicants, prior to submission of an application, that the existence of any of these Section 1239 criteria is a permanent bar to licensure and any further pursuit of licensure is an exercise in futility because the outcome is a foregone conclusion that the license will be denied.

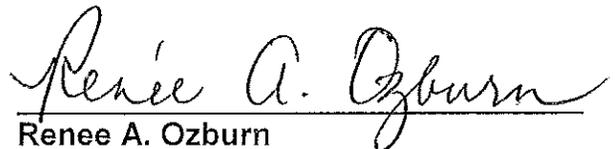
Pursuant to Sections 1205 and 1239(1)(i), and Insurance Bureau Hearing Rule 11, 1983 AACS R 500.2111, the undisputed fact that the Petitioner was denied a license in Indiana is sufficient to support OFIR's Motion for Summary Decision.

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Commissioner issue a Final Order consistent with the above Findings of Fact and Conclusions of Law.

EXCEPTIONS

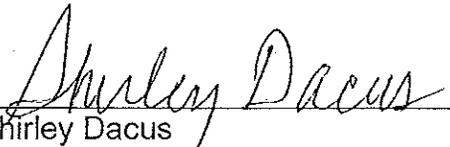
The parties may file Exceptions to this Proposal for Decision within 20 days after it is issued. Exceptions should be addressed to the Office of Financial and Insurance Regulation, 611 West Ottawa Street, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus.



Renee A. Ozburn
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 21st day of July, 2011.



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