

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

Robert D. Bush
Petitioner

v

Office of Financial and Insurance Regulation
Respondent

Case No. 12-894-L
Docket No. 12-001732-OFIR

Issued and entered
this 9th day of January 2013
by Randall S. Gregg
Deputy Commissioner

FINAL DECISION

I. BACKGROUND

This case concerns the application of Robert Bush (Petitioner) for a resident insurance producer license. The license was denied because the Petitioner was convicted of two felonies, one in 1988 and one in 1991.

Petitioner challenged the license denial. An order for a contested case hearing was issued October 12, 2012. Respondent filed a motion for summary decision on October 15, 2012. A hearing on the motion was held by telephone on December 6, 2012. The Petitioner participated in the hearing. The administrative law judge issued a Proposal for Decision (PFD) granting Respondent's motion and recommending that the license denial be upheld.

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). The PFD is attached. The findings and recommendation in the Proposal for Decision are adopted.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 1239(1)(f) of the Michigan Insurance Code (Code), MCL 500. 1239(1)(f), provides:

(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:

* * *

(f) Having been convicted of a felony.

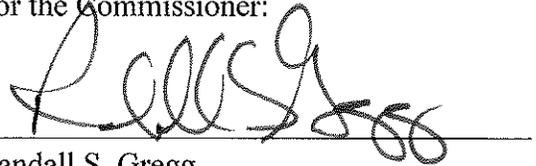
The Commissioner finds that, because the Petitioner has been convicted of two felonies, he is ineligible to receive a Michigan insurance producer license.

III. ORDER

The Proposal for Decision is adopted and made a part of this final decision. The refusal to issue an insurance producer license to Robert Bush is upheld.

R. Kevin Clinton
Commissioner

For the Commissioner:

A handwritten signature in black ink, appearing to read "Randall S. Gregg", is written over a horizontal line. The signature is cursive and somewhat stylized.

Randall S. Gregg
Deputy Commissioner

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:	Docket No.:	12-001732-OFIR
Robert D. Bush, Petitioner	Case No.:	12-894-L
v	Agency:	Office of Financial & Insurance Regulation
Office of Financial and Insurance Regulation, Respondent	Case Type:	OFIR/OFIS-Insurance
_____ /	Filing Type:	Appeal

Issued and entered
this 7th day of December, 2012
by:
C. David Jones
Administrative Law Judge

**PROPOSAL FOR DECISION
ON MOTION FOR SUMMARY DECISION**

PROCEDURAL HISTORY

Petitioner applied for an insurance producer license. The Agency denied his application due to felony convictions. On or about August 10, 2012, Petitioner filed a Petition for Contested Case Hearing. On October 12, 2012, the Chief Deputy Commissioner issued an Order Referring Applicant's Petition for Contested Case Hearing to Appeal Agency. On October 15, 2012, Respondent filed a Response to Petition.

Also on October 15, 2012, Respondent filed a Motion for Summary Decision. The hearing materials were received in this office on October 18, 2012, and included a request that a prehearing conference be scheduled on the Motion. This office overlooked the Motion, and on October 24, 2012 issued a Notice of Hearing for December 6, 2012.

On November 14, 2012 a message was received from Respondent's counsel inquiring about the procedure to handle the Motion. At that time, I reviewed the file, and on November 15, 2012 issued an Order Adjourning Hearing and Scheduling Motion Hearing. In the Order, I ordered Petitioner to file a written answer to the Motion within one week of the mailing date of the order, and scheduled the motion hearing for December 6, 2012 at 9:00 a.m., to be conducted by telephone.

Petitioner did not file an answer to Respondent's Motion.

The Motion hearing was held by telephone on December 6, 2012, at 9:00 a.m. Petitioner represented himself. William R. Peattie, attorney, represented Respondent.

After listening to oral argument, I granted Petitioner's Motion.

Resp?

ISSUES AND APPLICABLE LAW

The applicable law is the Insurance Code of 1956; 1956 PA 218, as amended, MCL 500.100 *et seq.*

The issue is as follows:

Is Respondent entitled to a Summary Decision on its motion to uphold the denial of an insurance producer license because of felony convictions by Petitioner under MCL 500.1205(1)(b), MCL 500.1239(1)(f), and 1979 AACS, R 500.2111(c)?

FINDINGS OF FACT

The parties agree to the following facts:

1. On September 7, 1988 Petitioner was convicted of felony controlled substance – possession (narcotic or cocaine) 25 to 49 grams.
2. On April 22, 1991 Petitioner was convicted of felony trafficking in drugs – 3rd degree.
3. These convictions have not been expunged.

CONCLUSIONS OF LAW

A summary decision is available, as follows, in relevant part:

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

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

1979 AACS, R 500.2111(c)

There is no genuine issue as to Petitioner's convictions of two felonies. Petitioner agreed he had two felony convictions, and they were not expunged.

The next question is whether this entitles Respondent to a decision in its favor as a matter of law.

The relevant law is 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

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: . . .

(f) Having been convicted of a felony.

MCL 500.1239(1)(f)

The above law does entitle Respondent to a decision in its favor. Under MCL 500.1205(1)(b), an application shall not be approved unless the applicant has not committed any act listed in Section 1239(1)(a). Under MCL 500.1239(1)(f), the commissioner shall refuse to issue a license to a person convicted of a felony, like Petitioner.

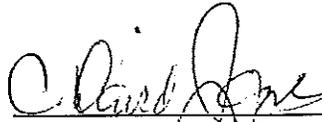
PROPOSED DECISION

Based on the above Findings of Fact and Conclusions of Law, I recommend the following decision:

Respondent is entitled to a Summary Decision in its favor on its motion to uphold the denial of an insurance producer license because of felony convictions by Petitioner, under MCL 500.1205(1)(b), MCL 500.1239(1)(f) and 1979 AACRS, R 500.2111(c).

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with The Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P. O. Box 30220, Lansing, Michigan 48909, within twenty (2) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.



C. David Jones
Administrative Law Judge