

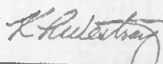


FILED
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OCT 26 2012

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

TAMIKA L. REED :
A.K.A. TAMIKA L. MELLS, :
Petitioner, :
v. :
GEORGIA DEPARTMENT OF :
INSURANCE, :
Respondent. :


Kevin Westray, Legal Assistant

Docket No.: OSAH-INS-DEN-1307722-98-
Howells

INITIAL DECISION

Petitioner appeals the decision of the Georgia Department of Insurance (“Respondent”) to deny her application for a resident insurance agent’s license. The hearing in this matter was held on September 26, 2012, before Administrative Law Judge Stephanie Howells. Petitioner appeared *pro se* and testified on her own behalf. Respondent was represented by Daniel Camp, Esq. For the reasons stated below, this Court finds that Respondent’s decision to deny Petitioner’s application for a resident insurance agent’s license should be **AFFIRMED**.

Findings of Fact

1.

Respondent received Petitioner’s application for a resident insurance agent’s license on or about May 2, 2012. (Ex. R-1.)

2.

On the application, Petitioner answered “Yes” to the following question: “Have you been convicted of or are you currently charged with the commission of any crime or pled *nolo contendere* in a criminal proceeding or have you received first offender treatment or had adjudication of guilt withheld in a criminal proceeding, other than a minor traffic offense?” (Ex. R-1.)

3.

On or about July 8, 1996, Petitioner pleaded guilty to a felony charge of Theft by Shoplifting in the Superior Court of McIntosh County, Georgia. At the time of the offense, she was an employee of the store from which the goods were taken. She deliberately failed to charge a conspirator for items when he exited the store through her checkout line. (Ex. R-4.) She was 20 years old at the time. (See Exs. R-1 and R-4.) Petitioner was sentenced under the provisions of the Georgia First Offender Act to a probationary period of two years, ordered to pay a fine of \$500.00, and ordered to complete 40 hours of community service. She was successfully discharged from probation without an adjudication of guilt on August 19, 1998. (Ex. R-4.)

4.

On or about June 6, 2001, when the Petitioner was 25 years old, she and others were arrested and

charged with felony Theft by Shoplifting. (Testimony of Petitioner; Ex. R-5.) Petitioner pleaded guilty on February 1, 2002, under the First Offender Act, to a felony charge of Theft by Shoplifting. In this case, it appears that the Superior Court of Chatham County, Georgia, erroneously found that Petitioner had not previously availed herself of first offender treatment and, thus, allowed her to avoid an adjudication of guilt.¹ The court sentenced Petitioner to four years of probation and 100 hours of community service. As the error was not discovered, Petitioner was successfully discharged under the First Offender Act without an adjudication of guilt on October 19, 2006. (Ex. R-5.)

5.

Since entering a second guilty plea under the First Offender Act, Petitioner has worked in several different businesses, with the longest stint of employment at Golden Corral, where she worked from March of 2003 until 2011. According to Petitioner, she was promoted to the position of general manager of Golden Corral upon completion of a management course in 2006. She was recruited from Golden Corral by Aaron's Sales & Lease to be a manager in the accounts department. At that position, she had access to cash, clients' personal and credit card information, as well as the ability to set up automatic drafts as a method of payment. She left that position after a relatively short time, however, due to the long hours. She began working for Acceptance Insurance in February 2012 but was asked to leave on August 18, 2012, because she did not have an insurance agent's license. (Testimony of the Petitioner.)

6.

Petitioner admits that she committed the crimes with which she was charged. She attributes her past criminal activities to her youth and states that she has learned from her mistakes and is now honest and hardworking. (Testimony of Petitioner.) Although the Petitioner testified that her former employers would attest to her trustworthiness, she failed to present any witnesses or evidence beyond her own testimony.

7.

Patti Farha is employed at the Georgia Department of Insurance as a senior paralegal. Among other things, her job duties include reviewing criminal history records of license applicants and making recommendations to the Commission as to what disciplinary actions to take, including whether a particular application should be granted or denied. While the Department of Insurance does not have written guidelines, it does consider certain factors in reviewing license applications from applicants with criminal histories. These factors include: the nature of the offense, in particular whether the crime is one of dishonesty or moral turpitude; whether there is a pattern of repeated criminal activity; and how recently the offense was committed. With regard to the last factor, the Commission considers a date of discharge within the last ten years to be recent. (Testimony of Patti Farha.)

8.

Applying the above factors, Ms. Farha recommended that Petitioner's resident insurance agent's license application be denied. First, Petitioner's two offenses were felonies--crimes of moral turpitude--involving dishonesty. Second, Petitioner's criminal record indicated a pattern of

¹ The Georgia First Offender Act states: "No person may avail himself or herself of this article on more than one occasion." O.C.G.A. § 42-8-60(b) (2012).

behavior as she pleaded guilty on two separate occasions. Third, Petitioner's final discharge under the First Offender Act occurred in 2006, less than ten years ago. All of these factors demonstrated to Ms. Farha that Petitioner lacks the necessary level of trustworthiness to act as an insurance agent. The insurance industry is highly regulated and its agents have access to individuals' personal information, creating a concern that agents may misuse or misappropriate such information. The Commissioner agreed with Ms. Farha's recommendation and denied Petitioner's application. (Testimony of Patti Farha.)

9.

On July 27, 2012, the Commissioner issued a Notice of Order of License Refusal, denying Petitioner's application for a resident insurance agent's license. (Ex. R-2.) Thereafter, Petitioner submitted a timely request for a hearing in this matter. (Ex. R-3.)

Conclusions of Law

1.

Petitioner appeals the denial of her application for a resident insurance agent's license. Accordingly, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

Pertinent to this case, Georgia Code Section 33-23-21 authorizes the Commissioner of Insurance to refuse a license if the Commissioner finds that the applicant has:

* * *

(5) Has committed fraudulent or dishonest practices;

* * *

(11) Has shown lack of trustworthiness or lack of competence to act as a licensee under this chapter;

* * *

(16) Has been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) First Offender treatment without adjudication of guilt pursuant to the charge was granted; . . .

O.C.G.A. § 33-23-21.

3.

Here, Petitioner engaged in crimes of dishonesty on two separate dates approximately five years apart. For these felony offenses, she was twice sentenced under the First Offender Act. Under Code Section 33-23-21, this is sufficient to justify the Commission's decision to deny Petitioner a license. O.C.G.A. § 33-23-21(5), (11), (16)(A).

4.

Notwithstanding, section 33-23-21 states that a license "may" be refused, if the Commissioner finds that the applicant has engaged in any of the prohibited conduct. As written, section 33-23-

21 gives the Commissioner discretion to refuse or grant a license to an applicant. However, that section does not provide any guidance as to when a particular application should be refused or granted. Thus, this Court must determine whether Petitioner has presented sufficient evidence in favor of exercising the discretion to grant a license, despite her criminal history.

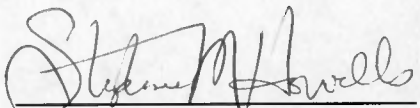
5.

Licensing insurance agents is one method of protecting the public from those who might misuse sensitive client information or misappropriate client funds. In this case, Petitioner testified that she is honest and hardworking. She also testified about her duties at various jobs in which she was entrusted with sensitive financial and personal information. While she stated that all her employers could attest to her trustworthiness, she failed to bring any witnesses to corroborate her assertion. Petitioner has an interest in the outcome of this proceeding, which this Court may consider in weighing her testimony. *See* O.C.G.A. §§ 24-4-4. Given Petitioner's self-interest and the absence of any corroborating testimony, the undersigned finds that Petitioner failed to establish by a preponderance of the evidence that this Court should grant Petitioner's application for a resident insurance agent's license, despite her criminal history.

Decision

For the reasons stated above, Respondent's decision to deny Petitioner's application for a resident insurance license should be **AFFIRMED**.

SO ORDERED, this 26th day of October 2012.


STEPHANIE M. HOWELLS
Administrative Law Judge