

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



JAN 25 2013

EUGINIA G. SOUTHER,

Petitioner,

v.

GEORGIA DEPARTMENT OF
INSURANCE,

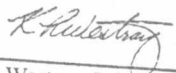
Respondent.

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Docket No.

OSAH-INS-DEN-1319705-155-KENNEDY

Agency Reference No. 11009999


Kevin Westray, Legal Assistant

INITIAL DECISION

I. INTRODUCTION

Petitioner, Euginia Souther, appealed Respondent's refusal of her Application for a Resident Agent License. The evidentiary hearing was held on January 17, 2013 before the undersigned administrative law judge of the Office of State Administrative Hearings. Petitioner appeared *pro se*. Daniel Camp, Esq., Enforcement Attorney with the Georgia Insurance Department, represented Respondent. Upon consideration of the evidence presented, the refusal is **AFFIRMED**.

II. FINDINGS OF FACT

Prior License

1.

Petitioner held a Georgia insurance agent license from 2002 through the early part of 2012. *Testimony of Petitioner.*

2.

In early 2012, Petitioner decided to move to Florida. At that time, Petitioner "turned in" her Georgia license to Respondent so that she could apply for a resident license in Florida. Petitioner recalls receiving a notice from the Florida Department of Insurance that her application had been approved. However, prior to receiving the hard copy of her Florida license, Petitioner received a copy of her background check and realized that a criminal sentence entered in Georgia was reflected on the document. Petitioner had not

disclosed the Georgia criminal case to her Florida employer because she had been told by someone that it would not appear on her record since she was sentenced under the First Offender Act and that she, therefore, should not be forthcoming with information she didn't have to share. When Petitioner realized that the criminal case was reflected on her record and that her employer would see it, she decided to leave Florida and return to Georgia. After returning to Georgia Petitioner sought to regain her Georgia insurance license. *Testimony of Petitioner.*

Most Recent Insurance License Application

3.

Petitioner submitted a Resident Insurance License application to Respondent on or about July 31, 2012. *Testimony of Petitioner; Exhibit R-1.*

4.

On her Application, Petitioner answered "YES" to Question 15, which reads as follows: "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?" *Testimony of Petitioner; Exhibit R-1.*

Criminal History

5.

On March 3, 2011, Petitioner entered a negotiated plea of guilty to one felony count of Forgery 1st Degree.¹ She received a suspended one year sentence and was ordered to pay \$110.00 fine. The sentence was entered under the First Offender Act. *Exhibit R-2.* In

¹ The indictment from the grand jury, which was issued against Petitioner and her ex-husband, states Petitioner "did commit the offense of FORGERY IN THE FIRST DEGREE, when he and she did, with intent to defraud, knowingly make a writing, to wit: a DISPOSSESSORY WARRANT & SUMMONS and COURT ORDER GRANTING A WRIT OF POSSESSION, said writing being in a fictitious name of a magistrate court judge of the MAGISTRATE COURT of WHITFIELD COUNTY, STATE OF GEORGIA, and also being in a fictitious name of a constable of the MAGISTRATE COURT of WHITFIELD COUNTY, STATE OF GEORGIA, and furthermore that the said accused did utter and deliver such writing to another." *Exhibit R-2 (emphasis in original).*

December 2011, Petitioner notified Respondent of her March 2011 sentence when she submitted documentation to renew her insurance license.

6.

On April 19, 2012, Petitioner received a discharge under the First Offender Act. Thus, Petitioner was discharged without court adjudication of guilt, and she was completely exonerated of any criminal purpose. *Exhibit R-3*.

7.

Petitioner explained that at the time of the incident that led to her arrest, charge and sentence under the First Offender Act she was married to George Dwight Souther. She further explained that he had told her to sign an eviction notice he had prepared. She signed the document in three separate locations. More specifically, Petitioner scribbled a signature on three separate signature lines rather than using her customary signature. She testified she did so “to shut [her ex-husband] up” and “to get [him] off her back.” Although Petitioner was aware that the document purported to be an eviction notice that was intended to be served on an individual renting a trailer owned by Mr. Souther, Petitioner did not realize it was purporting to be a court document and she believed that it was not a legal document because it was not notarized. She further believed that her action in signing a document that was not notarized did not constitute forgery and that it was not illegal. According to Petitioner, after she scribbled the signatures on the document, her ex-husband, unbeknownst to her, notarized the document using one of his employee’s notary stamps.² *Testimony of Petitioner*.

Determination and Appeal

8.

Respondent issued an Order of License Refusal on October 26, 2012, in which Respondent refused Petitioner’s resident agent license application, on the grounds that she (1) has been arrested, charged with and sentenced for the commission of a felony, or a crime involving moral turpitude, where first offender treatment without adjudication of

² Petitioner maintains that because the document was not notarized at the time that she scribbled the signature that she “did nothing wrong.” *Testimony of Petitioner*.

guilt pursuant to the charge was granted and (2) has engaged in fraudulent and dishonest practices. *Exhibit R-4*.

9.

Petitioner timely requested a hearing in response to Respondent's order of refusal. *Exhibit R-5*.

III. CONCLUSIONS OF LAW

1.

Petitioner bears the burden of proof to show that Respondent improperly denied her resident license application. O.C.G.A. § 24-4-1; OSAH Rule 616-1-2-.07(1)(d). The standard of proof is a preponderance of the evidence. O.C.G.A. §§ 50-13-15(1), 24-4-3; OSAH Rule 616-1-2-.21(4). Based on the evidence presented, Petitioner has not met her burden.

2.

Respondent is authorized to refuse Petitioner's application because she has been arrested, charged, and sentenced for the commission of a felony, even though the sentence was entered under the First Offender Act and adjudication of guilt was withheld.³ O.C.G.A. § 33-23-21(16)(A).

3.

Respondent is further authorized to refuse Petitioner's application because she has engaged in fraudulent and dishonest practices by having signed a document she knew was purporting to be an eviction notice. O.C.G.A. § 33-23-21(5). Although Petitioner testified that she did not believe the document was legal because it was not notarized, she nevertheless willingly signed the document knowing that her husband intended to serve it on a tenant residing in a trailer he owned.

4.

Petitioner presented no witnesses familiar with her criminal history who have nevertheless found her to be honest and trustworthy. For example, Petitioner did not present any prior insurance clients who could have testified as to her reputation or

³ A felony is a crime involving moral turpitude. See Hall v. Hall, 261 Ga. 188 (1991) (citing Lewis v. State, 243 Ga. 443, 444 (1979); O'Neal v. Kammin, 263 Ga. 218 (1993) (same)).

competence as an insurance agent. Additionally, although Petitioner's brother was present and could have testified, his testimony would not have been sufficient to meet Petitioner's burden given his natural bias. Moreover, Petitioner explained that one reason she chose not to present witnesses is because she is embarrassed at having been charged with and sentenced to a felony count of Forgery 1st Degree. Petitioner's feelings are understandable because the charge and sentence raises questions in the minds of those unfamiliar with Petitioner as to her competency and trustworthiness to serve as an insurance agent. Respondent, who is charged with regulating the insurance industry, must take into consideration whether the public will be safeguarded if an individual is granted a license because the granting of a license carries with it the imprimatur of the State that this individual is both competent and trustworthy. In this matter, the evidence presented is insufficient to show that Petitioner should be granted an insurance license at this time when the incidence occurred just over 2 years ago and her sentence was only completed less than 1 year ago.

IV. RECOMMENDED DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that Respondent's refusal to grant Petitioner's resident license application is **AFFIRMED**. The final decision in this matter shall be made by the Commissioner of Insurance pursuant to O.C.G.A. § 50-13-17(b).

This 25th day of January, 2013.



Ana Kennedy
Administrative Law Judge