

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DUSTIN L. GILBERT,

Petitioner,

v.

GEORGIA DEPARTMENT OF
INSURANCE,

Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

Docket No.

OSAH-INS-DEN-1319840-92-KENNEDY

Agency Reference No. 11010178




FILED
OSAH

JAN 25 2013

INITIAL DECISION

I. INTRODUCTION


Kevin Westray, Legal Assistant

Petitioner in this matter, Dustin Gilbert, appealed Respondent's refusal of Petitioner's Resident Agent Producer Application. The evidentiary hearing was held on January 17, 2013 at 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, it is recommended the refusal be **REVERSED**.

II. FINDINGS OF FACT

License Application

1.

Petitioner submitted a Resident Agent Producer Application to Respondent on August 31, 2012 seeking to be licensed as an agent in the Accident and Sickness, and Life classifications. *Exhibit R-1*.

2.

Respondent issued an Order of License Refusal on November 7, 2012, in which Respondent refused Petitioner's resident license application on the grounds that he (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 guilt

pursuant to the charge was granted, and (2) has shown a lack of trustworthiness or lack of competence to act as a licensee. *Exhibit R-4*. Petitioner timely appealed the denial. *Exhibit R-5*.

Disclosure and Sentence

3.

On his Application, the Petitioner answered "YES" to the question that 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?

Exhibit R-1.

4.

In 2003, when Petitioner was 17 years old, he was arrested and charged with two counts of Aggravated Battery, a felony. The arrest and charge arose from an incident that occurred on October 31, 2002. Petitioner was a senior in high school at the time. He eventually pled guilty to one misdemeanor count of Battery, for which he was sentenced to one year probation and ordered to pay \$1,000 in restitution. *Testimony of Petitioner; Exhibits P-2, R-2*.

5.

The following year, in 2004, Petitioner was arrested and charged with two counts of misdemeanor Family Violence Battery, one count of misdemeanor Battery, one count of misdemeanor Criminal Trespass and one count of felony Obstruction of Officer. He entered into a negotiated plea to one count of misdemeanor Family Violence Battery, one count of misdemeanor Battery and one count of felony Obstruction of Officer. Petitioner was sentenced under the First Offender's Act. He was ordered to pay a fine of \$2,000 and restitution of \$2,325.75. He was also sentenced to twelve months on each misdemeanor count and five years on the felony count. The sentence specifically provided that Petitioner was ordered to a Department of Corrections Detention Center for

a period of not less than 90 days and no more than 180 days. Petitioner was released after serving the minimum sentence of 90 days, in part, because he did not “cause any trouble.” Subsequently, on July 22, 2008, Petitioner received an Order of Discharge. *Testimony of Petitioner; Exhibit R-3.*

6.

Having successfully completed his sentence under the First Offender’s Act, and having received a Discharge from the court, the Petitioner maintains his civil rights, such as the right to vote and the right to bear arms. *Exhibit R-3*

Petitioner’s Business, Personal History, and Current Reputation

7.

Following his arrest at the age of 18 in the summer of 2004, Petitioner recognized that his life was headed down a path that he did not want to take. Petitioner recognized that he “needed to grow up and start taking responsibility for [his] actions and start living a life that was respectable to [his] family and [his] community.” He immediately contacted a community leader, Pastor David Rogers, to ask for assistance in redirecting his life. *Testimony of Petitioner; Testimony of David Rogers; Exhibit P-3.*

8.

Pastor Rogers has encountered many individuals seeking to change their lives. However, Pastor Rogers noted that Petitioner truly regretted his actions that led to his arrest. He further noted that Petitioner expressed a genuine desire to change his life that Pastor Rogers does not always see in those that come to him for assistance. *Testimony of David Rogers.*

9.

Petitioner successfully completed an Anger Management Course as part of his sentence. He also routinely met with Pastor Rogers for counseling sessions. During his counseling sessions, Petitioner had open and honest discussions regarding his experiences, feelings and his desire to change. As a result of the steps Petitioner took to redirect his life,

Petitioner has been able to overcome his immature and aggressive attitude. Petitioner has not engaged in any further wrongdoing and has had no new charges or incidents arise in the past 8 years. *Testimony of Petitioner; Exhibit P-3.*

10.

Petitioner married 6 years ago. He has three children, ages 5, 3 and a newborn baby who was born December 31, 2012. Petitioner and his wife have had no physical altercations. *Testimony of Petitioner; Testimony of David Rogers; Exhibit P-3.*

11.

In the past 6 years, Petitioner has successfully owned and operated a bread route in his local community for FlowersFoods d/b/a Flower's Baking Company. Petitioner sold his business in the Fall of 2012, after deciding to pursue a career in the insurance industry. Petitioner decided to change careers, in part, because he believes the insurance industry will provide better opportunities for him to improve himself and his ability to financially support his family. Petitioner has been offered a position with Taylor Insurance if he is able to obtain his license. *Testimony of Petitioner; Exhibit P-3.*

12.

While raising a family and working full-time, Petitioner attended school and obtained an Associate's Degree in Science and Business Administration. Petitioner attended college and obtained his 2-year degree, in part, because he genuinely wants to improve his life and that of his family. *Testimony of Petitioner; Testimony of David Rogers; Exhibit P-2.*

13.

Petitioner is active within his community. Petitioner has gained the respect of his community, and he currently bears a good reputation. Petitioner is known as someone who is always caring for others in their time of need, and he is viewed as a good role model. He helps support the youth of his community by participating in activities that provide opportunities for those less fortunate. For example, Petitioner volunteers at Fall Festivals that provide fun opportunities for local children. He also shares his life story in

hopes that wayward youths will choose a better path before getting involved in criminal activity. In 2004, just one month after Petitioner began meeting with Pastor Rogers, Petitioner told him "I want to help kids so they don't go down the path I did." He further told Pastor Rogers, "I want to bring awareness and educate kids about violence, and how being in the wrong place at the wrong time can get you in trouble." *Testimony of Petitioner; Testimony of David Rogers; Exhibit P-3.*

14.

Petitioner no longer suffers from the anger issues that led to his prior arrests and sentences. Petitioner has matured into a family man who has worked hard to provide for his family and set a good example. Petitioner now serves as a role model for the youth at his church and continues to seek ways to improve himself. *Testimony of Petitioner; Testimony of David Rogers.*

III. CONCLUSIONS OF LAW

1.

Petitioner has been arrested, charged, and sentenced for the commission of a felony, or a crime involving moral turpitude, where first offender treatment without adjudication of guilt pursuant to the charge was granted. O.C.G.A. § 33-23-21(16)(A).

2.

However, Petitioner has demonstrated that he currently bears a good reputation within his community and that he does not lack trustworthiness and/or competence to act as a licensee. O.C.G.A. § 33-23-21(11).

3.

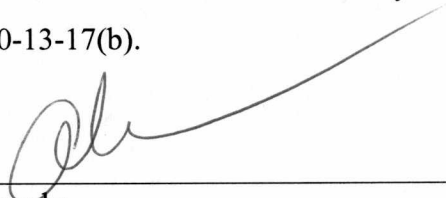
The mistakes that Petitioner made in his past occurred when he was young and immature. Petitioner has expressed genuine remorse for his past actions and has shown that he has taken positive steps to improve his life, both for himself and his family. He has also shown that he has matured into an individual who is likely to avoid his past mistakes and who will make better choices when confronted with difficult situations. Petitioner has

presented sufficient evidence, as set forth in the Findings of Fact above, that he has matured past his prior lapses in judgment, and that he is unlikely to act in that manner again. Petitioner has shown that, despite his past criminal history, his license application should be granted.

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 Agent Producer Application be **REVERSED**. 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