

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

AMANDA L. BOGART,
Petitioner,

v.

**GEORGIA DEPARTMENT OF
INSURANCE,**
Respondent.

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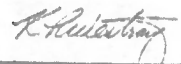
DOCKET NO.
OSAH-INS-DEN-1331668-124-Miller



APR 17 2013

INITIAL DECISION

I. Introduction



Kevin Westray, Legal Assistant

The Petitioner, Amanda L. Bogart, appealed the denial of her application for licensure in Georgia as a resident insurance agent, as stated in the Order of License Refusal entered by the Chief Deputy Commissioner of Insurance on February 6, 2013. The evidentiary hearing took place on April 8, 2013, pursuant to O.C.G.A. §§ 33-2-17, 33-2-21, 50-13-13, and 50-13-41, before the undersigned administrative law judge of the Office of State Administrative Hearings. The Petitioner appeared *pro se*. The Georgia Department of Insurance (“Department”), Respondent herein, was represented by Molly Levinson, Esq.

After consideration of the evidence and the arguments of the parties, and for the reasons set forth below, the Order refusing the Petitioner’s application for licensure is **AFFIRMED**.

II. Findings of Fact

1.

On or about October 26, 2012, the Petitioner submitted an application to the Department, seeking licensure in Georgia as a resident agent for the property and casualty lines of insurance. (Exhibit R-1.)

2.

On her application, the Petitioner answered "yes" to the following question regarding her criminal history:

Have you ever been convicted of or are you currently charged with a felony?

The Petitioner also answered "yes" to a second application question regarding her criminal history, as follows:

Have you ever 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 at 1.)

3.

On May 31, 2001, in the State Court of Troup County, Georgia, Case No. 01-S-763, the Petitioner entered a plea of guilty to one misdemeanor count of Theft by Taking. The court sentenced the Petitioner to serve twelve months on probation and ordered her to perform 160 hours of community service work. (Order of License Refusal, ¶¶ 5-6; Request for Hearing, ¶¶ 2-3; Exhibit R-2.)

4.

On May 30, 2006, in the Superior Court of Troup County, Georgia, Case No. 06-R-452, the Petitioner entered a plea of guilty to two felony counts of Forgery in the First Degree and one felony count of Financial Transaction Card Fraud. The Petitioner was sentenced under the First Offender Act to serve ten years on probation for each of the forgery counts and three years on probation for the fraud count, to run concurrently. The Petitioner was further ordered to pay restitution of \$3,000.00 and to complete a twelve-month inpatient drug rehabilitation program. (Order of License Refusal, ¶¶ 7-8; Request for Hearing, ¶¶ 4-5; Exhibit R-3.)

5.

On June 11, 2007, in the Superior Court of Troup County, Georgia, Case No. 07-R-233, the Petitioner entered a plea of guilty to one felony count of Forgery in the First Degree and one misdemeanor count of Giving False Information to an Officer. The court sentenced the Petitioner to serve five years on probation for the felony count and twelve months on probation for the misdemeanor count, to run concurrently. The Petitioner was further ordered to pay a fine of \$500.00 and to perform eighty hours of community service work. (Order of License Refusal, ¶¶ 10-11; Request for Hearing, ¶¶ 7-8; Exhibit R-4.)

6.

All of the Petitioner's criminal activity coincided with her use of illegal drugs. She began using drugs, including methamphetamine, approximately twelve years ago, following a traumatic personal experience.¹ In her hearing testimony, the Petitioner expressed gratitude that the criminal justice system had afforded her the opportunity to recover from her addiction. She successfully completed an eight-month inpatient drug rehabilitation program as part of her 2006 criminal sentence, and she has been in recovery since that time. She now has two children, ages three and six, and is engaged to be married. She does not use drugs or alcohol. (Testimony of Petitioner and Nancy Boddiford.)

7.

The 2001 misdemeanor theft charge arose when the Petitioner and two coworkers at a bonding company collected bond money and failed to turn it over to the company's owner. This incident occurred near the time that the Petitioner began using drugs. (Testimony of Petitioner.)

¹ The Petitioner did not wish to disclose the nature of this experience. (Testimony of Nancy Boddiford.)

8.

Both the 2006 and 2007 convictions arose from incidents that occurred in or near September 2005. At that time, the Petitioner was dating a man who shared a joint credit card with his mother. He and the Petitioner obtained cash advances with the credit card and used the money to buy drugs, which prompted the 2006 forgery and fraud charges. The 2007 charges were based on an incident wherein the Petitioner gave a false name to a police officer and signed a legal notice using the false name. (Testimony of Petitioner.)

9.

In October 2007, after her sentencing on the criminal charges and discharge from the rehabilitation program, the Petitioner found employment as a receptionist and clerical assistant at Murray & Associates, an insurance company in Sylvania, Georgia. In 2009, the company was bought by new owners and renamed Murray-Lane & Associates. The Petitioner has disclosed her criminal convictions to both the current and former owners, and she continues to work for the company. She is a highly valued employee who consistently displays integrity, diligence, and reliability. In her employment capacity, she is trusted to handle cash on a daily basis. The company's owners have encouraged the Petitioner to seek licensure, and they have offered her a job as an agent if she becomes licensed. (Testimony of Petitioner, Nancy Boddiford, James C. Lane, and Mary Alice Nunn.)

10.

The Petitioner has complied with the requirements of her probation and sentencing orders, and she is currently on unsupervised probation. She expects her probation to be terminated in May 2016, upon the completion of her sentence. At the present time, the Troup County Superior Court has not entered an order discharging her sentence under the First

Offender Act. (Order of License Refusal, ¶ 9; Request for Hearing, ¶ 6; Testimony of Petitioner; Exhibit P-1.)

11.

On February 6, 2013, the Chief Deputy Commissioner of Insurance entered an Order of License Refusal, refusing a resident agent license to the Petitioner. The Petitioner timely requested a hearing. (OSAH Form 1 and attachments.)

III. Conclusions of Law

1.

Because this matter involves an application for licensure, the Petitioner bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

Pursuant to O.C.G.A. § 33-23-21, the Insurance Commissioner is authorized to refuse a license application upon a finding that the applicant:

(5) Has committed fraudulent or dishonest practices;

...

(15) Has been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States;

...

(16) Has been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where . . . [f]irst offender treatment without adjudication of guilt pursuant to the charge was granted

....

O.C.G.A. § 33-23-21.

3.

Here, the Petitioner has been convicted of the felony criminal offense of Forgery in the First Degree, as set forth in the Findings of Fact, above. She has also been convicted of two misdemeanor crimes of moral turpitude: Theft by Taking and Giving False Information to an Officer. See Sapp v. State, 271 Ga. 446 (1999) (crimes of theft and giving a false name to a police officer involve moral turpitude). These convictions are grounds for the refusal of the Petitioner's licensure application pursuant to O.C.G.A. § 33-23-21(15).

4.

Additionally, the Petitioner has been arrested, charged, and sentenced under the First Offender Act on two felony counts of Forgery in the First Degree and one felony count of Financial Transaction Card Fraud, as set forth in the Findings of Fact, above. These offenses are grounds for the refusal of the Petitioner's licensure application pursuant to O.C.G.A. § 33-23-21(16).

5.

By committing the offenses of Forgery in the First Degree, Financial Transaction Card Fraud, Theft by Taking, and Giving False Information to an Officer, as set forth in the Findings of Fact, above, the Petitioner engaged in fraudulent and dishonest practices, in violation of O.C.G.A. § 33-23-21(5).

6.

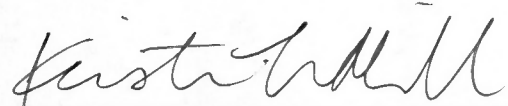
This Court notes that the Petitioner is held in high regard by her workplace supervisors and is a valued member of her community. She also displayed personal integrity at the hearing. Notwithstanding these significant factors, the fact that she remains on probation weighs heavily

against granting her a license. Therefore, the Court concludes that sufficient grounds exist for the denial of the Petitioner's licensure application.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioner's application for licensure in Georgia as a resident insurance agent is hereby **DENIED**. The Petitioner may wish to reapply for licensure upon the successful termination of her probation.

SO ORDERED, this 17th day of April, 2013.



KRISTIN L. MILLER
Administrative Law Judge