

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

JACOB MONDRAGON,
Petitioner,

v.

GEORGIA DEPARTMENT OF
INSURANCE,
Respondent.

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Docket No.: OSAH-INS-DEN-14269
Howells



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INITIAL DECISION

Kevin Westray, Legal Assistant

Petitioner appeals the decision of the Georgia Department of Insurance (“Respondent”) to deny his application for a non-resident agent insurance license. The hearing in this matter was held on January 31, 2014. Petitioner appeared *pro se* and testified, as did his wife. Respondent was represented by Stephen Parker, Esq. For the reasons stated below, the Court finds that Respondent’s decision to deny Petitioner’s application for a non-resident agent insurance license should be **REVERSED**.

Findings of Fact

1.

Petitioner applied for a Georgia non-resident agent insurance license in August 2013. Petitioner currently has an Arizona Insurance License, issued June 5, 2013. (Exhibits R-1, P-1, P-2; Testimony of Petitioner.)

2.

On his Georgia non-resident agent insurance application, Petitioner answered “yes” to the question, “Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?” He submitted certified copies of four felony convictions from El Paso, Texas. (Exhibits R-2, R-3, R-4, R-5; Testimony of Petitioner.)

3.

Petitioner was first indicted on a felony offense on November 10, 2005, in the Judicial District Court of El Paso, Texas. At the time, he was seventeen years old. On October 17, 2007, after 102 days' confinement, he pled guilty to one count of possession of less than a gram of cocaine. Upon entry of the judgment, his sentence was ordered executed and he was released immediately. (Exhibit R-2; Testimony of Petitioner.)

4.

On April 8, 2008, September 23, 2008, and March 10, 2009, Petitioner was indicted on three additional felony counts, arising from incidents that had occurred between February and September 2008, specifically: one count involving the unauthorized use of a vehicle, one count involving the sale of more than a quarter ounce but less than five pounds of marijuana, and one count of possession of less than one gram of cocaine. Petitioner pled guilty to all three counts on January 25, 2010, and was fined \$2500 (\$1,500 probated), ordered to pay court costs in the amount of \$227 and restitution in the amount of \$140, and to serve a five-year suspended sentence on probation. All three sentences were to run concurrently. (Exhibits R-3, R-4, R-5; Testimony of Petitioner.)

5.

At the time he incurred his final three felony convictions, Petitioner was a registered high school student.¹ Instead of attending class, however, he had fallen in with the wrong crowd and was dealing drugs. As Petitioner was still living with his mother, he was not using the money to support himself but was using his profits to buy nice clothing and shoes. While each felony count was the result of a separate transaction, he was arrested for all three 2008 offenses on one

¹ There is some discrepancy with the dates provided. Petitioner stated that he obtained his GED in September 2007. (Testimony of Petitioner.) Petitioner also stated that he was a registered student at the time he incurred his final three felony charges, which occurred between February and September 2008. (See Exhibits R-3, R-4, R-5; Testimony of Petitioner.)

occasion when he ran out of gas and was identified by an officer familiar with his activities. The police officer ran a check on the vehicle and determined it had been reported stolen by its registered owner. At the hearing, Petitioner testified that he made an initial payment toward the purchase price of the car and was waiting for the transfer of title to pay the remainder. The seller, however, reported the car stolen to the police and filed an insurance claim. Upon determining the vehicle was reported stolen, the officer discovered that Petitioner was in possession of cocaine and uncovered an outstanding warrant for his arrest for selling marijuana to an undercover officer. Sentencing for the three offenses was consolidated. (Exhibits R-3, R-4, R-5; Testimony of Petitioner; Testimony of Mrs. Mondragon.)

6.

Shortly after sentencing, Petitioner began completing the conditions of his probation. Specifically, he completed a drug and alcohol offender program; a six-month rehabilitation program, involving extensive counseling; 500 hours of community service; and paid fines and penalties. On February 14, 2013, he obtained an order of early release from probation as a result of completing all requirements of his probation and upon demonstrating personal progress. (Exhibits R-6, R-7, R-8; Testimony of Petitioner.)

7.

At the same time as he was working on fulfilling the terms of his probation, he took jobs working as a painter on construction projects at Fort Bliss. Because these jobs provided insufficient income to support his wife and two young children, he simultaneously completed a nine-month Heating, Ventilation, and Air Conditioning (“HVAC”) course at Vista College in El Paso. He graduated as an HVAC technician with a 3.13 GPA on November 15, 2012. While enrolled in school, his professors served as role models and motivators for self-improvement. Following graduation, he had an opportunity to work for Fred Loya Insurance Agency, Inc., in

its Phoenix, Arizona office, where his mother-in-law worked. He saw moving to Arizona as an opportunity to remove himself from the bad influences in El Paso and the dearth of jobs. (Exhibits R-6, R-7, R-8, P-4; Testimony of Petitioner.)

8.

Petitioner has since been a diligent employee in the insurance industry. In Arizona, in order to obtain an insurance agent license, he passed a competency test and completed a background check. He was forthcoming regarding his criminal history and, despite it, was able to obtain his Arizona insurance license on June 5, 2013. He proved to be an asset to his company and a positive influence on the business environment. For instance, at his suggestion, ties became standard dress at the company. Due to his success as an employee, he was chosen to be part of a team transferred to Georgia in August 2013. Only the best employees were chosen to be a part of the team, which would represent the company in its new Georgia business venture. (Exhibits P-1, P-2; Testimony of Petitioner.)

9.

Petitioner applied for a Georgia non-resident agent insurance license the month he transferred to Georgia. However, because he has not received his license, he resigned from his position at Fred Loya (Loya Insurance in Georgia) at the end of September 2013. While awaiting the outcome of his application, he has been assisting his current employers with the tax preparation and accounting part of their business. He and his employers hope to open an insurance company focusing on the Latin community. In addition, in October 2013, he obtained a certificate of appointment of notary public in the Superior Court of Gwinnett County, Georgia. (Exhibits P-1, P-2, P-3, R-6, R-7, R-8; Testimony of Petitioner.)

10.

At the hearing, Petitioner admitted and expressed remorse for his past misdeeds. He has

removed himself from the bad influences of his youth and has demonstrated through his work ethic that he is a changed person. He has consistently been forthcoming about his criminal history in all applications. At the hearing, Petitioner's wife, who has been a stabilizing influence in his life, testified regarding her husband's transformation into a responsible husband and father. Petitioner feels responsible for the welfare of his family and wants to be a good role model for his son. His last criminal infraction occurred on September 8, 2008. (Testimony of Petitioner; Testimony of Mrs. Mondragon; Exhibit R-5.)

11.

The Department denied Petitioner's application for a non-resident agent insurance license on December 5, 2013. Petitioner, who requires a Georgia insurance license to pursue his career as an insurance agent in Georgia and to help get his employer's fledgling business off the ground, appealed the Department's denial by letter, dated December 20, 2013. The Department presented no witnesses at the hearing but rather argued that the Department had the authority to deny Petitioner a license based on his felony convictions. (Exhibits R-9, R-10; Testimony of Petitioner.)

Conclusions of Law

1.

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

2.

The Commissioner of Insurance may refuse to grant a license to persons who have pled guilty to a felony or any crime involving moral turpitude in any court within the United States. O.C.G.A. § 33-23-21(15) (Code section enumerates various grounds for denial of a license). The

Department contends that this provision authorizes it to deny Petitioner a license. Georgia Code Section 33-23-21(15) states that the Commissioner “may” refuse Petitioner a license, indicating that a refusal is not automatic or mandatory, yet the section does not provide any guidance on how that discretion should be exercised.

3.

Here, Petitioner’s circumstances and behavior justify the grant of his insurance agent license. Petitioner’s crimes occurred when he was a teenager or young adult in El Paso, subject to bad influences. Following his criminal convictions, he removed himself from these bad influences, took responsibility for his actions, and continues to express remorse for his crimes. He has since acted as a law-abiding citizen. He has maintained employment, even working while obtaining an HVAC degree. Furthermore, he has been working in the insurance industry without any mishaps and has an insurance agent license in the state of Arizona. Since moving to Georgia, he has continued to work in the insurance industry, performing tasks that do not require a license. He is dedicated to providing for his family and acting as a role model for his son. He has not incurred additional criminal charges since 2008.

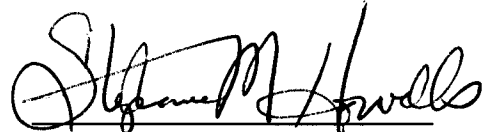
4.

Given that more than five years have passed since the commission of the crimes, Petitioner’s age at the time of commission, his sincere remorse, and his subsequent behavior, the undersigned finds that Petitioner should be granted a non-resident agent insurance license.

Decision

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

SO ORDERED, this 18th day of February, 2014.

A handwritten signature in black ink, appearing to read 'Stephanie M. Howells', written in a cursive style.

STEPHANIE M. HOWELLS
Administrative Law Judge