

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



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OSAH

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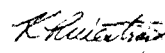
MARIAH DANIELLE MASSEY,
Petitioner,

v.

GEORGIA DEPARTMENT OF
INSURANCE,
Respondent.

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Docket No.:
OSAH-INS-DEN-1456934-106-Teate


Kevin Westray, Legal Assistant

Agency Reference No.: 11012962

INITIAL DECISION

I. Introduction

Mariah Danielle Massey requested a hearing in response to the Georgia Department of Insurance's (DOI's) Order of License Refusal issued on May 14, 2014. The hearing on this matter was held on July 29, 2014, at the Office of State Administrative Hearings in Atlanta, Georgia. For the reasons indicated below, DOI's order is **AFFIRMED**.

DOI's "Matters Asserted" and Ms. Massey's response to those matters asserted that were attached to the OSAH 1 referral are made ALJ Exhibits 1 and 2, subject to objection within the 10-day reconsideration period.

II. Findings of Fact

1. Prior to the submission of a Resident Agent License Application, Ms. Massey, who is not currently licensed in any capacity with DOI, was required to take a required examination for agent licensure. DOI contracts with Pearson VUE to administer the examination required for agent licensure in Georgia under O.C.G.A. § 33-23-10. (Testimony of Tamara Holmes, DOI Director of Agent Licenses).

2. Ms. Massey first sat for the required exam on August 17, 2013, at one of Pearson VUE's testing facilities. During that exam, Ms. Massey brought notecards into the testing room. Use of such notecards during the exam is expressly prohibited in a Professional and Regulatory Candidate Rules Agreement that candidates must sign before being allowed to take the exam. Ms. Massey signed the Agreement using an electronic signature that is recorded and preserved on a database maintained by Pearson VUE. The notes were discovered by a Pearson VUE Test Administrator during the exam. (Testimony of Joy W. Mills, Pearson VUE regional manager; Exhibits R-1, R-2, R-3 and R-4).

3. Security footage taken during the exam shows Ms. Massey removing notecards from her person, placing them under a notepad at her workstation, and sliding the notepad off the cards on more than one occasion during her examination. Ms. Massey's notecards were confiscated and she was escorted from the testing room at the conclusion of the exam. She completed but did not

pass the exam. (Testimony of Joy W. Mills, Pearson VUE regional manager; Exhibits R-3, R-2, R-3 and R-4; Testimony of Ms. Massey).

4. On or about August 19, 2013, Pearson VUE notified Tamara Holmes, DOI's Director of Agent licenses, of Ms. Massey's cheating. Ms. Holmes noted the information in DOI's records. However, DOI took no action at that time inasmuch as Ms. Massey was not otherwise licensed and DOI lacked authority to impose a sanction prior to an application that requires an examination as a prerequisite to submission. (Testimony of Tamara Holmes, DOI Director of Agent Licenses).

5. On or about December 21, 2013, Ms. Massey again took the required examination and passed the examination. Shortly thereafter, on or about December 27, 2013, Ms. Massey submitted her Resident Agent License Application to DOI's Agents Licensing Division. (Exhibit R-5).

6. In reviewing Ms. Massey's application, the notation on file regarding her cheating on the August 17, 2013, exam was considered. DOI is charged with protecting consumers by declining licenses when an applicant demonstrates behaviors that undermine public trust as licensed agents have access to sensitive financial and personal data that could be used to the detriment of consumers. DOI concluded that Ms. Massey had cheated on an examination required for a license, that such cheating constituted a fraudulent or dishonest practice, and that it further demonstrated a lack of trustworthiness or lack of competence to act as a licensee. Accordingly, DOI denied Ms. Massey's Resident Agent License Application on May 14, 2014. (Testimony of Tamara Holmes; ALJ Exhibit 1).

7. Ms. Massey does not deny her attempt to cheat on the first exam. She explained that she felt emotionally strained at the time inasmuch as she was pregnant and transitioning from military life to civilian life. She opined that she was not checked closely going into testing. She further opined that she did not cheat since was impossible to cheat due to the tight time frame for question responses. She could not understand why DOI allowed to take the exam again after this incident since such an effort cost her money. Although she acknowledges her action was untrustworthy, she does not view herself as untrustworthy. (Testimony of Ms. Massey; ALJ Exhibit 2).

III. Conclusions of Law

1. Georgia law enumerates several reasons for the denial of a license application. Those reasons include:

- commission of fraudulent or dishonest practices, a violation of O.C.G.A. § 33-23-21 (5);
- cheating on an examination required for a license, a violation of O.C.G.A. § 33-23-21 (7); and
- lack of trustworthiness to act as a DOI licensee, a violation of O.C.G.A. § 33-23-21 (11).

Individually or collectively, each of these reasons supports the denial of a license application. DOI properly determined that Ms. Massey's cheating supported a denial of her application. O.C.G.A. § 33-23-21.

2. Because this case concerns the Department of Insurance's denial of Ms. Massey's application for a license, Ms. Massey, the applicant, bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(c). The standard of proof is a preponderance of the evidence. Ga. Comp. R & Regs. 616-1-2-.21(4). Ms. Massey has failed to produce any objective evidence that would rebut the express authority that the Department of Insurance has to deny the application for cheating on an examination required for a license. Subjectively, Ms. Massey's opinions that she was not checked closely enough before taking the exam and that she did not have time to cheat indicate that she is unwilling to accept responsibility for her actions, which were clearly untrustworthy. DOI correctly concluded that such cheating on an exam required for licensure was a fraudulent or dishonest practice and that it showed a lack of trustworthiness to act as a DOI licensee.

IV. Decision

IT IS HEREBY ORDERED that the Department of Insurance's decision to deny Ms. Massey's application for a Resident Agent License is **AFFIRMED**.

SO ORDERED, this 19th day of August 2014.



Steven Teate
Administrative Law Judge