

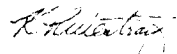


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
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SEP 29 2014

WILLIE LEON BERNARD, :
 :
 Petitioner, :
 :
 v. :
 :
 GEORGIA DEPARTMENT OF :
 INSURANCE, :
 :
 Respondent. :


Kevin Westray, Legal Assistant

Docket No.
OSAH-INS-DEN-1502560-60-KENNEDY

Agency Reference No. 11013339

INITIAL DECISION

I. INTRODUCTION

Petitioner, Willie Leon Bernard, has appealed Respondent’s refusal of his Application for a Resident Agent License for the Life line of insurance. The evidentiary hearing was held on August 14, 2014 before the undersigned administrative law judge of the Office of State Administrative Hearings. Petitioner appeared *pro se*. Sweta Patel Esq., Enforcement Attorney with the Georgia Insurance Department, represented Respondent. Upon consideration of the evidence presented, the refusal is **AFFIRMED**.

II. FINDINGS OF FACT

Application

1.

Petitioner submitted an application to Respondent on or about April 28, 2014 seeking to be licensed as a Resident Agent for the Life line of insurance. *Testimony of Petitioner; Exhibit R-1*. This line of work interests him, in part, because he was informed he would have a Monday through Thursday work schedule, which would allow him more time to spend with his spouse. *Testimony of Petitioner*.

2.

On his Application, Petitioner answered “NO” to the question that reads “Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?” He also answered “NO” to the question that reads “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

3.

On or about July 13, 2007, in the Superior Court of DeKalb County, Georgia, Petitioner pled guilty to one felony count of Identity Fraud and one felony count of Forgery in the First Degree. *Exhibit R-2.*

4.

Petitioner was sentenced under the First Offender Act to serve three years on probation for both counts, concurrently. *Exhibit R-2.*

5.

Petitioner was discharged from probation on March 30, 2011. *Exhibits R-2, R-3.*

Disclosure of Criminal History

6.

Petitioner was referred to Secure Select, which is associated with American Mutual Life, for employment. *Testimony of Petitioner.*

7.

A staff member of Secure Select completed Petitioner's on-line insurance application on his behalf. The staff member asked Petitioner if he had a criminal record. Petitioner replied "no" because he had been informed by Wesley Fitch, his probation officer, that once his conditions of the First Offender sentence were completed he would be cleared of all charges without court adjudication of guilt and could answer "no" when asked if he had any prior convictions or a criminal record. He was also told by his attorney, the district attorney and the judge that he would not have a criminal conviction upon receiving a discharge under the First Offender Act. *Exhibit R-5.*

8.

Petitioner did not carefully review the on-line application prior to its submission. Thus, he did not realize that the application asked for more than whether the applicant had a criminal record. He did not realize that the application incorrectly reported that Petitioner had never had a judgment withheld or deferred, and that he had never received First Offender treatment. Petitioner testified that if he had read the questions himself he would have answered "yes" to each of the aforementioned questions on the application. *Testimony of Petitioner.*

Determination and Appeal

9.

Respondent issued a Notice and Order of License Refusal on July 7, 2014, in which Respondent refused Petitioner's resident agent license application, on the grounds that he (1) has been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where first offender treatment without adjudication of

guilt pursuant to the charge was granted, and (2) he misrepresented or concealed a material fact in an application for a license filed with the Commissioner. *Exhibit R-4.*

10.

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

11.

Petitioner explained that his criminal plea and sentence should not be held against him, in part, because he only entered the plea on the advice of his attorney. Petitioner further explained that he has worked in the restaurant business for 18 years, and was working as a general manager at Ruby Tuesdays after Hurricane Katrina when the underlying events that led to his charge occurred. At that time, many new employees had come from the affected areas and were trying to settle here in Georgia. One employee asked Petitioner if he would cash a check for him since he had not yet been able to set-up a checking account. The check was in the amount of \$24,175.42 and made "payable to Darwin J. Glapion drawn on Chase Baton Rouge, Louisiana on the account of Teachers' Retirement System of Louisiana." When Petitioner deposited the check into his account, the bank flagged the account and Petitioner was arrested because the check was stolen. *Testimony of Petitioner; Exhibit R-2.*

12.

Petitioner further testified that he should be granted an insurance license because is trustworthy despite the aforementioned criminal charge. Petitioner explained that he volunteers at Lagrange High School, his father is employed as a police officer, and his mother also works for the police department. *Testimony of Petitioner.*

III. CONCLUSIONS OF LAW

1.

Petitioner bears the burden of proof to show that Respondent improperly denied his resident license application. O.C.G.A. § 24-4-1; OSAH Rule 616-1-2-.07(1)(d).

2.

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).

3.

Based on the evidence presented, Petitioner has established that he did not conceal or misrepresent a material fact on his application. However, he nevertheless did not establish that Respondent erred in denying his resident license application based on Petitioner having been charged and sentenced for a serious felony that directly relates to Respondent's purpose in regulating license applications. O.C.G.A. § 33-23-21(16).

4.

Petitioner has established that he did not conceal or misrepresent a material fact in an application for licensure. Petitioner has shown that his omission was inadvertent and void of deceitful intent because he did not personally complete the application and was unaware that the application contained incorrect information. Petitioner completed the application by answering questions posed to him by an employee of Secure Select who failed to properly inform him of the information the application sought. Thus, the allegation of misrepresentation cannot serve as a basis for denial of Petitioner's application. O.C.G.A. § 33-23-21(3). However, although Petitioner may not have intentionally concealed or misrepresented a material fact in his application, his failure to thoroughly review his application before submission calls into question Petitioner's ability to competently work in a highly regulated industry.

5.

Despite Petitioner having established that he did not intentionally conceal or misrepresent a material fact in his application, Respondent is nevertheless authorized to refuse Petitioner's application because Petitioner has been arrested, charged, and sentenced for the commission of a felony.¹ O.C.G.A. §§ 33-23-21(16). The specific felonies for which Petitioner was charged bear directly on public safety. Petitioner's criminal charges of Identity Fraud and Forgery in the First Degree are crimes that raise concern when an individual has access to clients' personal information as Petitioner would if he were granted an insurance license. If Petitioner were to be granted a license he would have the imprimatur of the State that he is both trustworthy and competent to handle the insurance needs of the citizens of Georgia. Given Petitioner's specific charges, Respondent must give such charges serious consideration before issuing a license. Based on the record as a whole, the court concludes Respondent was authorized to deny Petitioner's application. Petitioner presented no witnesses familiar with his criminal history who have nevertheless found him to be honest and trustworthy and who could corroborate his assertions that the public would be safeguarded if he were granted a Resident Agent license. Instead, Petitioner only presented his own self-serving testimony to establish a basis for the granting of a license, which evidence was insufficient to meet Petitioner's burden.

IV. DECISION

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 26th day of September, 2014.



Ana Kennedy
Administrative Law Judge

¹ 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)).