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

DARIO MARTINI REID,
Petitioner,


v.

GEORGIA DEPARTMENT OF
INSURANCE,
Respondent.

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Docket No.:
OSAH-INS-DEN-1506926-60-Teate

Agency Reference No.: 11013323


Kevin Westray, Legal Assistant

INITIAL DECISION

I. Introduction

Dario Martini Reid, the Petitioner, appeals the denial of his application for a resident agent license by the Georgia Department of Insurance (hereinafter “the Department”), the Respondent. At a hearing held on November 12, 2014, Michael Nations, Esq. represented Mr. Reid and G. Stephen Parker, Esq. represented the Department. For the reasons indicated below, it is recommended that Respondent’s denial of Mr. Reid’s application be **REVERSED** and that Mr. Reid’s application be **GRANTED**.

II. Findings of Fact

1. Mr. Reid is not currently licensed in any capacity with the Georgia Department of Insurance. (Exhibit R-1).
2. On or about April 16, 2014, Petitioner submitted an application for a resident agent license to the Agent Licensing Division of the Georgia Department of Insurance. On this application, Petitioner answered “Yes” to the following question: “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?”¹ (Exhibit R-1).
3. Mr. Reid served in the United States military from 1995 to 2008. During this period, Mr. Reid served as a Gas Turbine System Electronic Technician Second Class aboard the USS Doyle, and received numerous commendations for achievement and good conduct. He was discharged from the United States Navy under other than honorable circumstances on May 29, 2008, due to the misconduct described *infra*. (Testimony of Dario Reid; Exhibits R-2 and R-3).
4. While on active duty with the United States Navy, Mr. Reid was charged with the theft and unauthorized sale of government property in violation of Articles 108 and 121 of the Uniform Code of Military Justice. Specifically, Mr. Reid was charged with stealing fifteen Motorola

¹ Mr. Reid answered “No” to this same question in an earlier application with the Department, which he subsequently withdrew. (Testimony of Dario Reid).

radios of a value of \$2,344.00 and thereafter selling them for \$233.75, without proper authority, to Alex Chadis who operated an authorized buy-back program on the base where Mr. Reid was then stationed. (Exhibit R-2).

5. All of the radios had been assigned to Mr. Reid for various assignments during his service. For security reasons, they contained non-interchangeable frequencies that were valid only in specific geographic areas. Mr. Reid erroneously assumed that since they were no longer usable that they could be sold.² He entered pleas of guilty to the above-described charges in the Navy and Marine Corps Trial Judiciary, Southern Judicial Circuit, on March 24, 2008. The military court sentenced Mr. Reid to 75-day confinement,³ ordered him to pay restitution in the amount of \$223.75, and reduced his rank from E-5 to E-2. He was subsequently discharged with no further probation term imposed. (Exhibit R-2).

6. The Department concluded that Mr. Reid had been convicted of a crime of moral turpitude in a court of the United States and, therefore, that grounds existed for refusal of his application for a resident agent license pursuant to O.C.G.A. § 33-23-21(15). Accordingly, the Department entered an Order of License Refusal on July 17, 2014. (In re Dario Martini Reid, Case No. 11013323 (July 17, 2014)).

7. Mr. Reid submitted a written request for a hearing on August 5, 2014. In his written request, Mr. Reid admitted to all findings of fact set forth in the Department's Order of License Refusal. Pursuant to O.C.G.A. § 50-13-41, Respondent referred the matter to the Office of State Administrative Hearings for adjudication. (Petitioner's Request for Hearing dated August 5, 2014).

8. At the hearing on the matter, Mr. Reid did not dispute that he had been convicted of the above-described charges. However, he explained in his testimony that the conduct giving rise to his conviction and eventual discharge from the military was attributable to a mistake. Mr. Reid testified that the Motorola radios that were the subject of his theft conviction had been issued to him over the course of several foreign deployments. Mr. Reid explained that service members are often issued several two-way radios over time because the radios operate on a frequency that is unique to the area of deployment, which is why he had a large number of the radios in his possession. According to Mr. Reid, service members pay for these radios—as they pay for much of their equipment—through a fee that is deducted from their pay annually. In April 2007, he sold the radios to a fellow service member authorized to purchase the equipment pursuant to a “buy-back” program sanctioned by the Navy. However, according to Mr. Reid, because he was in “unauthorized absence status” at the time he sold the radios, the sale was rendered unlawful. He testified that he pled guilty to the above-described charges in order to avoid a harsher sentence. Mr. Reid's conviction was the first time he had been subject to disciplinary action of any kind in approximately twelve years of military service. (Testimony of Dario Reid).

² In correspondence to an investigator, Mr. Reid stated in part: “...being a young man who felt that equipment was no longer usable could be sold. Was this wrong? Absolutely. I admitted that during my pretrial arrangements.” (Respondent Exhibit 4).

³ Mr. Reid served his confinement at Naval Air Station Jacksonville. He was not subject to actual detention and was permitted to carry out typical duties. (Testimony of Dario Reid).

9. After he was discharged from the military, Mr. Reid returned to Georgia and obtained additional education at Georgia Military College. After working as an appliance technician from May 2008 to December 2010, Mr. Reid became a general manager at TitleMax from December 2010 to April 2012. In April 2012, he accepted a position as a branch manager at Lucky Finance Co. where he remains employed. In his current position, Mr. Reid supervises four staff members and is tasked with duties which require a level of integrity commensurate to that of a resident insurance agent. Mr. Jeb Smith, owner of Lucky Finance's parent company, and Ms. Carolyn Thompson, Mr. Reid's supervisor, both testified that Mr. Reid is an exceptional employee of excellent character.⁴ (Testimony of Dario Reid; Testimony of Jeb Smith; Testimony of Carolyn Thompson).

10. Mr. Reid is also an active member of his church, where he is currently a deacon. Hayes Clinton, pastor of Mr. Reid's church, testified that, in his opinion, Mr. Reid is a "trustworthy," "genuine," and "truthful" individual. (Testimony of Dario Reid; Testimony of Hayes Clinton).

III. Conclusions of Law

1. Pursuant to O.C.G.A. § 33-23-21(15) the Department may refuse an application for a license if it finds that the applicant for the license "[h]as 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" O.C.G.A. § 33-23-21(15) (2014). The Code Section defines "felony" to include "any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere." *Id.* While an applicant's conviction of a felony or crime of moral turpitude may constitute sufficient grounds for denial of his or her license application, denial is not mandatory and is left to the Department's discretion. *See id.*

2. In the present case, the Department's denial of Mr. Reid's application was based upon his 2008 criminal convictions for the theft and unauthorized sale of government property. Mr. Reid gave credible testimony describing the conduct giving rise to his convictions. Mr. Reid's conduct, while a violation of the law, was not so egregious as to justify precluding him from obtaining a license, especially six years after he engaged in such conduct. The Court is convinced that Mr. Reid's criminal conviction, the only instances of misconduct in an otherwise outstanding military career, evidence at most a lapse in judgment for which Mr. Reid accepted full responsibility.

3. Mr. Reid also introduced sufficient evidence to demonstrate that he is fit to hold the license of a resident agent, prior criminal convictions notwithstanding. Since the time of his convictions, Mr. Reid has improved himself through education and is an active member in his church. He has also maintained employment as a Branch Manager at a finance company, a position with responsibilities and standards of character comparable to those of an insurance agent. Mr. Reid's employers and members of his community lauded him for his trustworthiness, work ethic, and overall excellent character. Mr. Reid has been privy to sensitive public information commensurate with that required in insurance applications for approximately four years without incident.


⁴ Mr. Reid's applied to obtain a resident insurance license on his employer's directive in order to offer loan customers credit insurance when available or requested.

4. Because this case concerns the Department's denial of Mr. Reid's application for a resident agent license, Mr. Reid bears the initial 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). Mr. Reid has met this burden and the Department has presented no evidence refuting his testimony or that of his witnesses.

IV. Decision

IT IS HEREBY RECOMMENDED that the decision of the Department to deny Mr. Reid's application for a resident agent license be **REVERSED** and that his application be **GRANTED**.

SO ORDERED, this 10th day of December 2014.


Steven W. Teate
Administrative Law Judge