

1, 2009, Respondent issued an Order of License Revocation with an effective date of April 21, 2009. *Testimony of Petitioner; Exhibits R-1, R-2.*

4.

Respondent revoked Petitioner's insurance agent license in 2009 after determining that Petitioner submitted at least four applications for insurance to AFLAC in 2008 that contained false and misleading information. Respondent further determined that Petitioner had completed an "Employer's Disability Statement" wherein he fraudulently certified the employment of an individual applying for disability benefits from AFLAC. Based on Respondent's findings, Petitioner's license was revoked for committing fraudulent or dishonest practices pursuant to Georgia Code Section 33-23-21(5), and for having shown a lack of trustworthiness or lack of competence to act as a licensee pursuant to Georgia Code Section 33-23-21(11). *Exhibits R-1, R-2.*

Disclosure of Disciplinary History to Clients and Public

5.

Since the revocation of Petitioner's license, he has continued to accept telephone calls from former clients. Although Petitioner has not written any insurance policy, he has continued to answer questions and/or attempt to provide guidance and advice to his former clients because he wants to provide "good customer service." At no time prior to seeking witnesses for the hearing in this matter has Petitioner notified any former client that his license was revoked. *Testimony of Petitioner; Testimony of Chancey Troutman, Chief of Police for Stone Mountain, Georgia.*

Determination and Appeal

6.

Respondent issued a Notice and Order of License Refusal on October 6, 2014, in which Respondent refused Petitioner's resident agent license application, on the grounds that he (1) has committed fraudulent or dishonest practices, and (2) has shown lack of trustworthiness or lack of competence to act as a licensee. *Exhibit ALJ-1.*

7.

Petitioner timely requested a hearing in response to Respondent's notice of refusal. *Exhibit ALJ-2.*

Petitioner's Explanation of Incident Leading to 2009 Revocation

8.

Petitioner worked with AFLAC for 18 years. He made an error in judgment in 2008 solely because he wanted to help individuals who needed insurance. He thought that AFLAC would discipline him internally by suspending him or issuing a fine based on his long history with their company and because he "made them millions" over the years. Instead, AFLAC terminated his license with their company and reported his actions to Respondent. *Testimony of Petitioner.*

9.

Petitioner explained that the underlying four policies that resulted in the revocation of his license were "very minimal." His commission on each policy was less than \$200. Petitioner offered to repay the commissions to AFLAC, but AFLAC still reported him to Respondent. *Testimony of Petitioner.*

10.

From Petitioner's perspective, he was simply helping individuals who needed insurance and did not hurt anyone. He acknowledges he should have told each individual that they could not get an insurance policy, but he wanted to help them. Petitioner believed he was providing good service, something that he opines is very important to him. In fact, over the past five years, Petitioner continued to provide "customer service." He did not charge anyone any fees or request any payment. Instead, if anyone called him he still serviced them by answering questions without cost. Petitioner has never told anyone that his license was revoked. *Testimony of Petitioner.*

Petitioner's Character Witness

11.

Chancey Troutman, Chief of Police for Stone Mountain, met Petitioner several years ago when Petitioner served as the Stone Mountain Police Department's insurance agent. Chief Troutman has never heard any Stone Mountain Police Department employee complain about the insurance services Petitioner rendered. From his perspective,

Petitioner has always been honest and truthful with him and all other officers/employees.¹
Testimony of Troutman.

12.

Earlier this year, Petitioner assisted Chief Troutman with filing a claim with AFLAC. He did not charge Chief Troutman for his services. *Testimony of Troutman.*

13.

Chief Troutman only learned of Petitioner's license revocation in November, 2014 when Petitioner asked him to speak on his behalf as a character witness for this hearing.
Testimony of Troutman.

Petitioner's Request for License and Respondent's Position Regarding His Request

14.

Petitioner testified that he is competent to hold an insurance license, in part, because of his vast experience from his many years working in the industry. While he held a license, he sold over 2,400 policies. Of those 2,400, only 4 were found to have been issued in violation of applicable rules and regulations. *Testimony of Petitioner.*

15.

Petitioner thoroughly enjoyed working in the insurance industry and enjoyed helping the citizens of Georgia. He hopes that he can return to his chosen profession now that five years have passed since the revocation of his license. He believes he has "paid his dues" and "paid a big heavy price," in part, because he suffered a loss of income that adversely impacted himself and his family, and he lost the respect of his spouse as a result of the revocation. Petitioner believes now that five years have passed he should be given another opportunity to work within the insurance industry. At a minimum Petitioner requests that he be issued a probationary license so he can prove he has changed.
Testimony of Petitioner.

¹ The court read a statement submitted after the hearing by Retired Lieutenant Tony Biello, but did not rely on the statement (1) because it was cumulative of the testimony given by Chief Troutman, though it addressed Petitioner's dealings with the Atlanta Police Department rather than Stone Mountain Police Department, and (2) because Ret. Lt. Biello was not subject to cross-examination.

16.

The insurance industry is a highly regulated industry for the protection of the public. *Testimony of Patti Farha, Senior Paralegal with Department of Insurance.*

17.

When an individual has violated the trust placed in him and has shown he will disregard applicable rules and regulations of the industry by having violated such rules and regulations, Respondent is concerned that the behavior may reoccur. Respondent's primary concern is consumer protection. Accordingly, it is not unusual for Respondent to deny the application of an individual who has a prior revocation. *Testimony of Farha.*

18.

Petitioner has no other complaints or disciplinary history outside of the incidents that occurred in 2008. However, Petitioner, based on his years of working in the industry "should have known better" than to commit the acts that he did in 2008 that led to the revocation of his license. *Testimony of Farha.*

19.

Although Petitioner believes no harm was caused by writing the four policies in 2008 that led to the revocation of his license, Respondent asserts Petitioner's actions did harm the public because when an individual deceives an insurance company that company will typically pass along its losses to the general population. Additionally, the reputation of the industry as a whole is marred by the actions of insurance agents who fail to follow applicable rules and regulations. Therefore, even though Petitioner may not have directly harmed his personal clients, his actions harmed the insurance industry. *Testimony of Farha.*

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.

No licensee whose license has been revoked shall be entitled to file an application for a license within five years from the effective date of the revocation. O.C.G.A. § 33-23-23. Petitioner's license was revoked April 21, 2009. He submitted an application to be granted a new license on July 11, 2014. Petitioner's application was filed more than five years after the effective date of the revocation. Accordingly, Petitioner's application was properly submitted after the required time period following a revocation. However, it does not mean that he is automatically entitled to approval of his application.

4.

Petitioner committed fraudulent or dishonest practices in 2008, which ultimately led to the revocation of his license. O.C.G.A. § 33-23-21(5). Petitioner continued to act in a manner that could arguably be considered dishonest following the revocation of his license. Petitioner's failure to notify any former client that his license was revoked is troublesome. Petitioner may have been ashamed or embarrassed by what occurred, but to continue to answer questions and assist former clients without fully informing them of the situation and the status of his license raises concerns regarding Petitioner's ability to be forthright and honest and, thus, calls into question the appropriateness of granting his application.

5.

Petitioner has previously shown a lack of trustworthiness or lack of competence to act as a licensee. O.C.G.A. § 33-23-21(11). Petitioner worked within the insurance industry for 18 years. He knew or should have known that his actions in 2008 were inappropriate. However, his desire to provide customer service and help clients clouded his judgment and resulted in actions that led to the revocation of his license. The evidence presented at the hearing, as noted above, continues to raise concerns regarding Petitioner's trustworthiness.²

² Petitioner submitted a statement after the hearing detailing his work history from March 2009 through November 2013. According to his statement, Petitioner worked in private security, handled funds as an armored car security officer and worked as a correctional officer. Petitioner asserts that all three positions were highly classified, required good character and outstanding trustworthiness. It does not appear that a copy of his statement and/or supporting documentation was served on the opposing party as no Certificate of Service or Acknowledgement of Service was attached. Petitioner's self-serving testimony/statement is insufficient to overcome the concerns raised by Petitioner's actions in continuing to assist former clients and not notifying them of the status of his license.

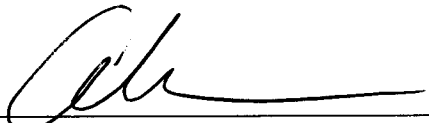
6.

Although Petitioner has maintained a good reputation with the Stone Mountain Police Department, this evidence is insufficient to meet Petitioner's burden. Based on the record as a whole, the court concludes Petitioner has not met his burden and that Respondent was authorized to deny Petitioner's application.

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 8th day of January, 2015.



Ana Kennedy
Administrative Law Judge