

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

IN THE MATTER OF:)	RECOMMENDED
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Scott Lara)	AND ORDER
)	
)	OAH File No. 20120027
)	Case No. AG-12-338

.....

PROCEDURAL BACKGROUND

On December 9, 2011, the North Dakota Insurance Department (Department) received an application for a resident individual insurance producer license submitted by Scott S. Lara (Lara), DOB May 16, 1962. On January 19, 2012, the Department sent a letter to Lara notifying him of the denial of his application for an insurance producer's license due to his criminal convictions and failure to disclose his criminal convictions on his insurance producer application. On January 24, 2012, the Department received Lara's request for a hearing relating to his license denial.

On January 26, 2012, the Department requested an administrative law judge (ALJ) be assigned to conduct the hearing. On January 27, 2012, the North Dakota Office of Administrative Hearings designated the Honorable Bonny M. Fetch to conduct these proceedings. On January 31, 2012, the ALJ set the hearing date for February 17, 2012. On February 3, 2012, the Department requested the ALJ conduct a prehearing conference. On February 6, 2012, the ALJ scheduled a prehearing conference to be held February 9, 2012. At the prehearing conference, Lara and the Department agreed to waive the 30-day hearing

requirement, and by Order dated February 9, 2012, the ALJ indefinitely continued the February 17, 2012, hearing date to allow time for prehearing motions. On February 10, 2012, the Department filed a Motion for Summary Judgment. Lara timely responded to the Department's Motion for Summary Judgment on February 19, 2012.

In a letter dated February 28, 2012, the ALJ requested both parties submit supplemental information regarding Lara's criminal convictions by March 14, 2012. Specifically, the ALJ sought the following clarification, "According to Exhibits 7 and 8, the Court in Illinois entered an Order of Conditional Discharge on all convictions on May 27, 2009. I need to know what this means in the state of Illinois and how such a disposition affects Mr. Lara's application for a North Dakota resident insurance producer's license. Is his record cleared or does a record of the convictions remain?" On March 14, 2012, the Department submitted supplemental information in support of the Department's Motion for Summary Judgment. Lara also timely submitted supplemental information in opposition to the Department's Motion for Summary Judgment.

In an Order dated March 20, 2012, the ALJ granted the Department's Motion for Summary Judgment and instructed the Department to submit proposed Findings of Fact and Conclusions of Law for consideration by April 4, 2012. In accordance with the ALJ'S Order, Lara was instructed to file his proposed findings by April 18, 2012. Lara sent an email to the ALJ on April 19, 2012, but failed to submit any proposed findings of his own. As such, he failed to contest the Department's proposed Findings of Fact and Conclusions of Law. The record of this matter was closed on April 20, 2012.

Having thoroughly considered the record, the undersigned ALJ adopts the Department's proposed Findings of Fact, Conclusions of Law, and Recommended Order.

The following facts serve as the “Findings of Fact” for purposes of the requirement of N.D.C.C. § 28-32-39(1) that the agency make and state concisely and explicitly its findings of fact. Following are the recommended Findings of Fact, Conclusions of Law and Recommended Order for consideration of the Insurance Commissioner.

FINDINGS OF FACT

1. Lara is not currently licensed as an individual insurance producer in North Dakota. *See* Department's Motion for Summary Judgment (SJ) Exs. 1, 8.
2. On December 9, 2011, Lara submitted an application to the Department for an individual insurance producer license. *See* SJ Ex. 1.
3. On January 19, 2012, the Department denied Lara's application and informed Lara he could request a hearing. *See* SJ Ex. 8.
4. The Department's denial letter to Lara explained that his application was denied due to the nature of his felony convictions and for making a materially untrue statement on his application by failing to disclose his felony convictions. *See* SJ Ex. 8.
5. Lara timely requested a hearing. *See* Lara letter dated January 22, 2012.
6. On February 6, 2012, at a prehearing conference, Lara waived the 30-day hearing requirement.
7. On February 10, 2012, Lara was served with the Department's Motion for Summary Judgment as a matter of law.
8. On February 26, 2009, Lara was ordered to be transferred from North Dakota to the custody of the State of Illinois due to a warrant issued for his arrest. *See* SJ Exs. 3, 4.
9. On February 21, 2007, Lara was indicted in Will County, Illinois, on two counts of Aggravated Driving While Under the Influence, each a Class 2 felony. *See* SJ Exs. 5, 7.

10. On February 21, 2007, Lara was indicted in Will County, Illinois, on three counts of Aggravated Battery of Will County, Illinois, correctional officers, each a Class 2 felony. *See* Exs. 5, 7.

11. On May 27, 2009, Lara pled guilty and was convicted of one count of Aggravated Driving Under the Influence. *See* SJ Ex. 6.

12. On May 27, 2009, Lara pled guilty and was convicted of three counts of Aggravated Battery. *See* SJ Ex. 6.

13. On May 27, 2009, Lara was sentenced to a 24-month conditional discharge after serving at least 140 days in custody. *See* SJ Ex. 6.

14. Background question #1 on the North Dakota insurance producer license application requests applicants answer 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?" *See* SJ Ex. 1.

15. Lara answered "no" to background question #1 on the North Dakota insurance producer license application. *See* SJ Ex. 1.

16. Lara failed to disclose his May 27, 2009, conviction of Aggravated Driving Under the Influence on his December 9, 2011, application for an insurance producer license. *See* SJ Ex. 1.

17. Lara failed to disclose his May 27, 2009, conviction of three counts of Aggravated Battery on his December 9, 2011, application for an insurance producer license. *See* SJ Ex. 1.

CONCLUSIONS OF LAW

1. There is no genuine issue of material fact presented here. No evidentiary hearing need be held where there is no fact issue to be resolved. N.D. Admin. Code § 98-02-03-01. Summary judgment is appropriate where there is no genuine issue of material fact. Rule 56, N.D.R.Civ. P.; Union State Bank of Woell, 434 N.W.2d 712, 716 (N.D.1989).

2. Marked as Exhibits 3 through 7 and submitted with the Department's Motion for Summary Judgment are certified copies of court records relating to Lara's criminal convictions, which were not disputed by Lara.

3. A license to practice as an insurance producer is subject to the control and regulation of the state under the provisions of N.D.C.C. chapter 26.1-26 and any rules adopted by the Department pursuant to that chapter.

4. Lara does not currently have an insurance producer license that may be entitled to constitutional protection as a property right. *See Bland v. Comm'n. on Med. Competency*, 557 N.W.2d 379, 381 (N.D. 1996). "A regulated privilege is not a right." *North Dakota Dep't. of Transp. v. DuPaul*, 487 N.W.2d 593,598 (N.D. 1992).

5. An individual applicant may be granted the regulated privilege to practice as an insurance producer by the Commissioner only as authorized under N.D.C.C. title 26.1 generally, and the Commissioner is statutorily responsible to license and regulate individual insurance producers under N.D.C.C. chapter 26.1-26.

6. The primary purpose of the Department's licensing of insurance producers is to protect the public from incompetence and lack of integrity by ensuring that individuals and entities that sell, solicit, or negotiate insurance have met the requirements to do those activities. *See* SJ Ex. 2, Affidavit of Kelvin Zimmer, Director, Producer Licensing Division.

7. N.D.C.C. § 26.1-26-15 requires that an applicant for an insurance producer license must be deemed by the Commissioner to be of good character prior to granting an applicant an insurance producer license. The good character requirement of N.D.C.C. § 26.1-26-15 is material to the Commissioner's decision to grant or deny an insurance producer license.

8. N.D.C.C. § 26.1-26-15 requires that an applicant for an insurance producer license must be deemed by the Commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. N.D.C.C. § 26.1-26-42 authorizes the Commissioner to refuse to issue an insurance producer license to any applicant who makes a materially untrue statement on the license application or attempts to acquire a license through misrepresentation or fraud. By answering "no" to background question #1 on his insurance producer application and failing to disclose his criminal convictions for Aggravated Driving Under the Influence and three counts of Aggravated Battery on his insurance producer license application, Lara made a materially untrue statement on his license application and attempted to acquire an insurance producer license through misrepresentation of his criminal history. The Commissioner properly denied Lara's application due to Lara's materially untrue statement on the application.

9. N.D.C.C. § 26.1-26-42 authorizes the Commissioner to refuse to issue an insurance producer license to any applicant convicted of a felony or an offense, as defined by N.D.C.C. § 12.1-01-04, determined by the Commissioner to have a direct bearing upon a person's ability to serve the public as an insurance producer. The Commissioner properly denied Lara's application for an insurance producer license due to his felony convictions on three counts of Aggravated Battery, crimes that have a direct bearing on a person's ability to serve the public as an insurance producer. The Insurance Department has a duty to uphold statutes that are meant

to protect the unsuspecting public from a person with a violent criminal background. Because Lara's aggravated felony convictions bear directly on his ability to serve the public, the rehabilitation exception under N.D.C.C. § 26.1-26-42(5) is inapplicable to Lara's license denial.

10. Despite Lara's claim that his conditional discharge means his record is cleared and the convictions no longer exist, the evidence shows his criminal convictions for Aggravated DUI and three counts of Aggravated Battery remain on his criminal record. *See* SJ Exs. 6, 7, and Supplemental Brief of Insurance Department in Support of Motion for Summary Judgment.

11. Lara has failed to meet his burden of proof to demonstrate he is currently competent, trustworthy, financially responsible, and of good personal and business reputation. N.D.C.C. § 26.1-26-15 imposes character requirements on insurance producer license applicants which Lara was unable to satisfy. The Commissioner properly concluded that Lara is not competent, trustworthy, financially responsible, and of good personal and business reputation due to Lara's criminal convictions and his failure to truthfully disclose his criminal history.

12. Because of Lara's past criminal conduct, the Commissioner now has, and continues to have, bases in law to refuse to issue a license to Lara.

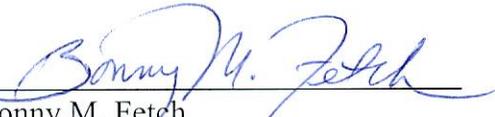
RECOMMENDED ORDER

The evidence of record has been considered and appraised. The facts, as established by undisputed evidence, establish ample grounds for denying Lara's application for a North Dakota resident individual insurance producer license under applicable law.

IT IS ORDERED that Scott Lara's application for a North Dakota resident individual insurance producer license is **DENIED**.

Dated at Bismarck, North Dakota, this 26th day of April, 2012.

State of North Dakota
Insurance Commissioner

By: 
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