

STATE OF NORTH DAKOTA
INSURANCE COMMISSIONER

IN THE MATTER OF:)	RECOMMENDED
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
James Randash)	AND ORDER
)	
)	OAH File No. 20130018

.....

PROCEDURAL BACKGROUND

On November 13, 2012, the North Dakota Insurance Department (Department) received an application for a nonresident individual insurance producer license submitted by James Randash ("Randash"), DOB October 2, 1942. Ex. 2. On his application, Randash disclosed that he had a prior felony conviction. Ex. 2. Randash submitted further documents concerning his conviction, which were considered by Department staff in determining Randash's application for licensure. Exs. 3-5.

On December 11, 2012, the Department sent a letter to Randash notifying him of the denial of his application for a nonresident individual insurance producer license due to his felony conviction. Ex. 8. On January 11, 2013, the Department received a timely request from Randash for a hearing relating to his license denial. *See* James Randash's January 8, 2012 (sic) letter.

On January 11, 2013, the Department requested an administrative law judge (ALJ) be assigned to conduct an administrative hearing. On January 14, 2013, the North Dakota Office of Administrative Hearings designated Administrative Law Judge Bonny M. Fetch to conduct these proceedings. On January 17, 2013, the ALJ set the hearing date for February 8, 2013.

On January 25, 2013, the Department sent a letter to Randash, notifying him that there were additional grounds to deny his application for a license. *See* Johannes Palsgraaf's January 25, 2013, letter. The Department received information that Randash failed to disclose administrative action taken by the Wyoming Insurance Department on two renewal applications for a North Dakota license in 2008 and 2010. Exs. 6 and 7. He further failed to disclose that administrative action on his most recent license application submitted in November 2012. Ex. 2. The Department notified Randash that those additional allegations would be asserted at the hearing. *See* Johannes Palsgraaf's January 25, 2013, letter.

The hearing was held on February 8, 2013, by telephone conference. The Department appeared through its attorney, Special Assistant Attorney General Johannes Palsgraaf. Special Assistant Attorney General Mary Hoberg was in attendance but did not participate. The Department called two witnesses, Kelvin Zimmer, Director, Producer Licensing Division, and James Randash. Randash appeared without counsel. He gave limited testimony but called no other witnesses. The Department's Exhibits 1-8, and Randash's Exhibits B and F were admitted into the record without objection. The record of the hearing was closed on February 8, 2013.

Having thoroughly considered the record, the undersigned ALJ makes the following recommended Findings of Fact, Conclusions of Law and Recommended Order for consideration of the Insurance Commissioner.

FINDINGS OF FACT

1. Randash is not currently licensed as an individual insurance producer in North Dakota. Ex. 1.
2. On November 13, 2012, the North Dakota Insurance Department received an application for a nonresident individual insurance producer license submitted by Randash. Ex. 2.

A review of Randash's history showed he had been licensed previously in the state of North Dakota, from December 30, 1992, through October 31, 2012. Ex. 1. Randash did not renew his North Dakota license at the required time when his North Dakota license expired. Exs. 1 and 2. He was therefore required to submit a new application.

3. On his November 13, 2012, application, Randash disclosed that he had a prior felony conviction. Ex. 2.

4. The Department requested Randash provide information concerning his conviction. Randash submitted several documents, which were considered by Department staff in determining Randash's application for licensure. Exs. 3-5. The documents show that Randash was convicted in United States District Court of the felony crime of Subscribing to a False Statement in November 1993. Ex. 5.

5. Randash failed to disclose his felony conviction when he made application for a nonresident insurance license in Wyoming in 2001. Ex. 3.

6. The Wyoming Department of Insurance took administrative action against Randash's license for failing to disclose his felony conviction. Ex. 3. He was assessed a penalty of \$1,000.00 and was required to surrender his license for a year. *Id.*

7. Randash failed to disclose the action taken by the Wyoming Insurance Department when he made application for nonresident renewals of his North Dakota license on January 14, 2008, and October 18, 2010. Exs. 6 and 7. On both applications he answered "no" to the question, "Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration which has not been previously reported to this state?" *Id.* Further, Randash failed to disclose the prior administrative action by

the Wyoming Insurance Department on his most recent application for a North Dakota license which he submitted November 13, 2012. Ex. 2.

8. On December 11, 2012, the Department sent a letter to Randash notifying him of the denial of his application for a nonresident individual insurance producer license due to his felony conviction. Ex. 8. The letter was sent by Kelvin Zimmer, but the decision to deny Randash's application was made by Adam Hamm, North Dakota Insurance Commissioner. *See* testimony of Kelvin Zimmer.

9. On January 11, 2013, the Department received Randash's timely request for a hearing relating to his license denial. *See* James Randash's January 8, 2012 (sic) letter.

10. On January 25, 2013, the Department sent a letter to Randash, notifying him that there were additional grounds to deny his application for a license. *See* Johannes Palsgraaf's January 25, 2013, letter. The Department determined that Randash's failure to disclose the administrative action taken by the Wyoming Insurance Department on his 2008 and 2010 renewal applications for a North Dakota license constituted a material untrue statement in his applications. *Id.*

11. Randash claimed he sent information (Ex. B) to North Dakota concerning the administrative action taken by the Wyoming Insurance Department. However, he acknowledged he had no documentation to back up his claim. *See* testimony of James Randash.

CONCLUSIONS OF LAW

1. A license to practice as an insurance producer in North Dakota 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.

2. Randash 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).

3. 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.

4. 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* testimony of Kelvin Zimmer, Director, Producer Licensing Division.

5. 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, specifically, "competent, trustworthy, financially responsible, and of good personal and business reputation." 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.

6. N.D.C.C. § 26.1-26-42(1) authorizes the Commissioner to refuse to issue an insurance producer license to any applicant who makes a materially untrue statement on the license application. By answering "no" to background question #2 on his insurance producer renewal applications in 2008 and 2010, and his most recent application submitted in November 2012, Randash made a materially untrue statement on his license applications. Such action calls

into question Randash's character and the Commissioner may rightfully consider that in his decision to grant or deny a license.

The Commissioner properly denied Randash's application due to Randash's materially untrue statements on his prior and current applications.

7. N.D.C.C. § 26.1-02.1-02.1(3)(a) provides that "[a] person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance." Randash was convicted of the felony crime of Subscribing to a False Statement, which is a felony involving dishonesty or breach of trust. Under that subsection, it is clear that the Commissioner has no discretion to grant a license for Randash to participate in the business of insurance. On that basis, the Commissioner properly denied Randash's application.

8. As an applicant for a North Dakota nonresident individual insurance producer license, Randash has the burden of proof to show, by the greater weight of the evidence, that he meets the statutory requirements for licensure. *See Layon V. North Dakota State Bar Bd.*, 458 N.W.2d 501 (N.D. 1990). Randash failed in his burden to show that he meets the statutory requirements for licensure.

9. Because of Randash's past felony conviction and the materially untrue statement he made on his license applications, the Commissioner now has, and continues to have, bases in law to refuse to issue a license to Randash.

RECOMMENDED ORDER

The evidence of record has been considered and appraised. The facts, as established by the greater weight of the evidence, establish grounds for denying James Randash's application for a North Dakota nonresident individual insurance producer license under applicable law.

The Administrative Law Judge recommends that James Randash's application for a North Dakota nonresident individual insurance producer license be denied

Dated at Bismarck, North Dakota, this 14 day of February 2013.

State of North Dakota
Insurance Commissioner

By: 
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