

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation
Petitioner

v

Enforcement Case No. 09-7363

Ronald Pepler
Respondent

For the Petitioner:

Patrick MacLean
Office of Financial and Insurance Regulation
611 W. Ottawa, 3rd Floor
Lansing, MI 48933

For the Respondent:

Ronald Pepler


Issued and entered
this 30th day of September 2009
by Ken Ross
Commissioner

FINAL DECISION

BACKGROUND

This case concerns the application of Ronald Pepler (Respondent) for a resident insurance producer license. Respondent filed his application with the Office of Financial and Insurance Regulation (OFIR) in January 2009. On the application, Respondent disclosed that he had been convicted of felony drug possession on four occasions between August 2001 and September 2004. The license application was denied based on those convictions. Deputy Commissioner Jean Boven issued a Notice of License Denial and Opportunity for Hearing on June 4, 2009. Respondent appealed the denial and requested a hearing.

On August 28, 2009, the OFIR staff filed a motion for summary decision pursuant to OFIR Hearing Rule 11 (1983 AACRS R 500.2111). Hearing Rule 11 provides:

A party may move for a summary decision in the party's favor upon any 1 of the following grounds:

- (a) The commissioner lacks jurisdiction over the person or the subject matter.
- (b) The opposing party has failed to state a claim upon which relief can be granted.
- (c) There is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law.

The staff asserts that the case has no genuine issue as to any material fact and that the staff is therefore entitled to a decision in its favor as a matter of law.

Respondent filed a response to the staff's motion on September 9, 2009.

ANALYSIS

It is appropriate that the matter be resolved by summary decision under Rule 11 because there are no genuine issues of material fact in this case. The following facts, which appear in Respondent's license application and his other filings for this case, are not in dispute:

- Respondent was first licensed as an insurance agent in Michigan in 1973. He maintained an active license until September 2004 when his license became inactive due to his failure to maintain continuing education requirements.
- Between August 2001 and September 2004, Respondent was convicted four times of the felony of possession of a controlled substance (cocaine).
- Respondent applied for a Michigan insurance producer license in January 2009. He was denied the license because of his felony convictions.

These facts are the only facts needed to resolve the licensing question presented by this case. Respondent's appeal is not based on resolving questions of fact but rather presents a question of how the licensing statute for insurance producers should be applied.

Respondent argues that his efforts to be relicensed are not subject to the requirements of section 1205 of the Michigan Insurance Code (MCL 500.1205) but rather are governed by section 1204 of the Code (MCL 500.1204). Respondent argues that section 1204 confers on the Commissioner the discretion to grant him a license. According to Respondent, "new applicants" are licensed pursuant to section 1205 and are subject to the requirement that a license be denied to an individual with a felony conviction. The Respondent asserts that he is not subject to such a ruling: as a previous licensee holder, his application must be considered under section 1204, under which, according to Respondent, the Commissioner has the discretion to grant him a producer license.

The Insurance Code provisions raised in this appeal are reprinted below:

Section 1204 of the Michigan Insurance Code, MCL 500.1204, provides:

- (1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 1206b.
- (2) Within a reasonable time after receipt of a properly completed application for examination, the commissioner shall subject the applicant to a written examination. An applicant shall not be given an examination unless the applicant has completed a program of study registered with the commissioner pursuant to section 1204a. An applicant shall file a certificate of completion of the registered program of study with the commissioner on a form prescribed by the commissioner indicating that the course of study was completed by the applicant not more than 12 months before the application for examination is received by the commissioner. The commissioner may waive the applicable examination

or program of study requirements of this section for a person who meets any of the following:

- (a) Applies for a limited license as designated by the commissioner.
- (b) Has been a licensed insurance producer within the preceding 12 months.
- (c) Has obtained the chartered property and casualty underwriter designation, the chartered life underwriter designation, certified insurance counselor designation, accredited advisor in insurance designation, the chartered financial consultant designation, the certified employee benefit specialist designation, the certified financial planner designation, the fellow life management institute designation, the life underwriting training council fellow designation, the registered health underwriter designation, the registered employee benefits consultant designation, the health insurance associate designation, or the associate in risk management designation.
- (d) Has an associate's, bachelor's, or master's degree with a concentration in insurance from an institution approved by the commissioner.
- (3) The examination shall be entry level and shall test the knowledge of the individual concerning the qualifications for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted as prescribed by the commissioner.
- (4) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations under this section and collecting the nonrefundable fee in section 240(1)(h) or (4).
- (5) Each individual applying for an examination under this section shall remit a nonrefundable fee as prescribed in section 240(1)(h) or (4).
- (6) An individual who fails to appear for the examination required under this section as scheduled or fails to pass the examination shall reapply for an examination and remit all required examination fees and forms to be rescheduled for another examination.

Section 1205(1)(b) of the Insurance Code, MCL 500.1205(1) provides:

- (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and

belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

* * *

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

Section 1239(1)(f) of the Insurance Code, MCL 500.1239(1)(f) provides:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

There is nothing in section 1204 or 1205 that would indicate that one section is intended to govern the licensing of individuals who have never been licensed while the other governs the licensing of persons who were licensed in the past. This is a distinction which does not exist in the Insurance Code. OFIR has never treated the licensing process differently for new applicants and for former license holders.

Section 1204 deals exclusively with the licensing examination process. It does not describe the standards for licensure. Those standards appear in section 1205 and, with reference to section 1239, require that a producer license be denied to individuals convicted of a felony.

By virtue of his felony convictions, Respondent has "committed [an] act that is a ground for denial, suspension, or revocation under section 1239." In such cases, section 1205 of the Code requires that the license not be approved.

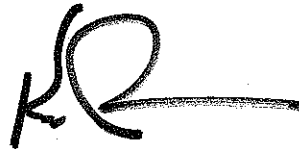
In May 2004, this agency issued a final decision in the contested case *Mazur v Office of Financial and Insurance Services* (Case No. 03-384-L). *Mazur* was a licensing case similar to this case in that the applicant had been convicted of a felony before applying for a resident

insurance producer license. *Mazur* held that no insurance producer license could be issued to an individual who had been convicted of a felony. In all the felony/producer licensing cases since *Mazur*, the Commissioner has ruled that section 1205 prohibits licensing an individual who has been convicted of a felony.

The Commissioner concludes that Respondent is not qualified to receive an insurance producer license. It is appropriate to grant the OFIR staff's motion for summary decision.

ORDER

Therefore, it is ORDERED that the Respondent's application for an insurance producer license is denied.

A handwritten signature in black ink, consisting of the letters 'KR' followed by a horizontal line extending to the right.

Ken Ross
Commissioner