

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:11297-AG12-0502-032

IN THE MATTER OF:)

Insurance Agent License)
Application of:)

Ivan A. Lemus)
8766 N 21 W)
Lizton, IN 46149)

FILED

OCT 22 2012

STATE OF INDIANA
DEPT. OF INSURANCE

Producer License Number 491402
Type of Action: Enforcement

FINAL ORDER

On August 31, 2012, the appointed Administrative Law Judge, Wade D. Fulford (the "ALJ"), filed his Findings of Fact, Conclusions of Law, and Recommended Order in the above-captioned matter.

- A. The Department served Findings of Fact, Conclusions of Law, and Recommended Order and Notice of Filing of Recommended Order on Applicant by mailing the same to Applicant's attorney, William A. Maschmeyer, Esq.
- B. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.
- C. Applicant has not filed an objection with the Commissioner regarding the ALJ's Recommended Order, and more than eighteen (18) days have elapsed.

THEREFORE, the Commissioner of Insurance, being fully advised, now hereby issues the following order:

FINDINGS OF FACT

1. The ALJ's Findings of Fact are adopted in full and incorporated herein.
2. 18 U.S.C. §1033 prohibits an individual who has been convicted of a criminal felony involving dishonesty or breach of trust to engage in the business of insurance.

CONCLUSIONS OF LAW

3. The ALJ's Conclusions of Law are adopted in full and incorporated herein.
4. Applicant's felony of battery on a child, together with the special probation conditions required of him, lead the Commissioner to conclude that his felony involved dishonesty or breach of trust.

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Administrative Order and Notice of Nonrenewal of License filed on May 4, 2012 is upheld.
2. Applicant may re-apply for an insurance producer license provided that:
 - a. Applicant completes his criminal probation; or
 - b. The felony conviction of Applicant is reduced to alternate misdemeanor sentencing at the completion of probation or upon substantial completion of probation in Cause No. 32D04-0911-FC-31; and
 - c. Applicant is not charged with or convicted of additional criminal charges.

The ability to re-apply for an insurance producer license does not guarantee that one will be granted.

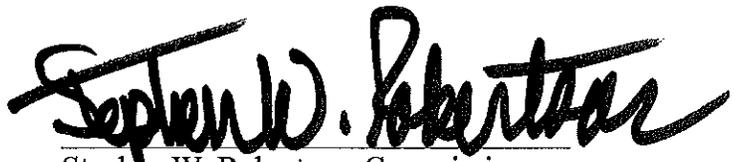
3. Applicant's is not granted consent to engage in the business of insurance under the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §1033.

Thus, Applicant may not engage in the business of insurance unless and until:

- a. The felony conviction of Applicant is reduced to alternate misdemeanor sentencing at the completion of probation or upon substantial completion of probation in Cause No. 32D04-0911-FC-31; or
- b. Applicant obtains consent to engage in the business of insurance under the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §1033.

Under Ind. Code §4-21.5-5-5, Applicant has the right to appeal this Final Order by filing a petition for judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS Ordered by the Commissioner this 22nd day of October 2012.



Stephen W. Robertson, Commissioner
Indiana Department of Insurance

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STATE OF INDIANA)
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BEFORE THE INDIANA
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Cause No. 11297-AG12-0502-032

IN THE MATTER OF:)
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INSURANCE AGENT LICENSE)
APPLICATION OF:)
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Ivan A. Lemus)
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Indianapolis, IN 46149)

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AUG 31 2012
STATE OF INDIANA
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**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER**

Administrative Law Judge, Wade Fulford, having considered and reviewed all the evidence, will now render a decision in the matter of Applicant Ivan A. Lemus ("Applicant") which came to be heard on June 21, 2012 p.m., at the Indiana Department of Insurance, 311 W. Washington Street, Indianapolis, Indiana.

The Indiana Department of Insurance ("Department") was represented by counsel, Robert L. Hummel. Applicant appeared in person and was represented by William A. Maschmeyer. Applicant testified under oath, evidence was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the Administrative Law Judge now makes the following Findings of Fact, Conclusions of Law, and issues his Recommended Order.

FINDINGS OF FACT

1. Applicant was properly notified of the above hearing date and time by U.S. Certified Mail #7005 3110 0002 4444 1950.

2. The State of Indiana issued two resident producers licenses (Life, Accident, Health and Casualty Insurance) to Applicant in April 2006. Said licenses expired on April 30, 2012. *Exhibit A*

3. On May 1, 2012, Applicant submitted a license renewal application to the Department.

4. On November 1, 2006, Applicant was charged with two counts of child molestation, a Class C felony, and one count of battery, a Class D felony in Hendricks County Superior Court 4, Cause No. 32D04-0911-FC-31. *Exhibit C.*

5. On or about July 28, 2011, Applicant pled guilty to one count of battery as a Class D Felony and was sentenced to 1095 days in the Indiana Department of Corrections and 1093 days suspended to active probation. The court also ordered Applicant to complete special probation terms for sex offenders as part of his probation. *Exhibit H.*

6. On January 29, 2011, Applicant was charged with Operating a Vehicle While Intoxicated, a Class C misdemeanor in Allen Superior Court, Cause No. 02D04-1101-CM-000614. He was convicted on April 1, 2011 and sentenced to sixty (60) days in jail, which was suspended. *Exhibit L and M.*

7. On February 13, 2012, a Petition and Notice of Probation Violation was filed against Applicant for violating the terms of his court-ordered probation by accessing the internet for non-work related purposes without authorization from his parole officer and failing to maintain steady progress towards treatment goals, Applicants initial hearing on these matters was scheduled for July 31, 2012. *Exhibit K.*

8. Applicant for the first time disclosed said criminal charges on his license renewal application on or about May 1, 2012.

9. On May 4, 2012, the Commissioner denied Applicant's application due to Applicant's felony conviction and failure to notify the Department of his criminal charges within thirty (30) days of his initial pre-trial hearings, as required by Ind. Code. 27-1-15.6-17. *Administrative Order and Notice of Nonrenewal of License.*

10. On May 11, 2012, the Department received a letter from Applicant requesting a hearing to determine the reasonableness of the application denial. *Exhibit B.*

11. Applicant testified that he pled guilty to the battery charge because he spanked his co-worker's young daughter for misbehaving. The daughter's mother disliked Applicant's actions at the time but did not object to the spankings. *Transcript pgs. 59-60; 80-82.*

12. Applicant also testified that the child molestation charges were dismissed. *Transcript pg. 56.*

13. Applicant further testified that he was alleged to have first violated probation because he took a picture of his Thanksgiving turkey on his cell phone and posted the picture on a pre-existing Facebook. *Transcript pg. 62-63.*

14. Applicant also testified he was alleged to violate probation a second time because he refused to admit guilt to the child molestation charges, which he was not convicted of and he has professed innocence, during a polygraph test. *Transcripts pg. 33.*

15. Further, applicant's driver's license was suspended from January 31, 2011 to May 1, 2011. There is also a pending suspension against his license for failure to file

financial responsibility form with the Bureau of Motor Vehicles ("BMV"). *Exhibits L and M and Transcripts pg. 34.*

16. In addition, on November 5, 2010, the Department fined Applicant two hundred fifty (\$250) dollars for the charge of using an unlicensed individual to solicit insurance. *Exhibit N.*

17. Applicant testified that he did not agree with the charge, but ultimately did pay the Department fine in order to avoid hiring an attorney and going through the investigation process. *Transcript pgs. 95-96.*

18. Applicant presented four (4) letters of reference from insurance companies he works with as to his character and integrity in business dealings (i.e. Unique Insurance, Assurance America Corp., First Chicago Insurance Co., and American Freedom Insurance Co.). *Exhibit 1.*

19. On August 3, 2012, the Department received notification from his counsel that Applicant entered a preliminary denial for Applicant's probation violations and that the fact finding hearing is set for September 25, 2012.

20. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code and all procedures and rules set forth by such Act have been followed in this matter.

3. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.

4. Ind. Code §27-1-15.6-12(b)(2)(A) states the Commissioner may refuse to renew an insurance producer license for violating an insurance law.

5. Ind. Code §27-1-15.6-12(b)(6) states the Commissioner may refuse to renew an insurance producer license for having been convicted of a felony.

6. Ind. Code §27-1-15.6-17(b) states a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction within thirty (30) days after an initial pretrial hearing date.

7. The Department demonstrated Applicant was in violation of Indiana Code §27-1-15.6-17(b) for failing to notify the Insurance Commissioner of his arrest for two (2) counts of child molestation and one (1) count of battery under Cause No. 32D04-0911-FC-31, within thirty (30) days of the December 3, 2009, Initial Hearing, i.e. on or before June 13, 2010.

8. The Department demonstrated Applicant was in violation of Indiana Code § 27-1-15.6-17(b) for failing to notify the Insurance Commissioner of his arrest for DUI under Cause No. 02D04-1101-CM-000614, within thirty (30) days of the January 31, 2011, Initial Hearing, i.e. on or before March 3, 2011.

9. Applicant entered into a criminal plea agreement under Cause No. 32D04-0911-FC-31 and was convicted of a Class D felony for battery, relevant to Indiana Code §27-1-15.6-12(b)(6).

10. The Department demonstrated that the Commissioner's denial of Applicant's application was proper.

11. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

RECOMMENDED ORDER

With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. The Administrative Order and Notice of Nonrenewal of License filed on May 4, 2012, should be upheld.

2. Applicant should be allowed to re-apply for an insurance producer license, provided that:

1) Applicant completes his criminal probation; or

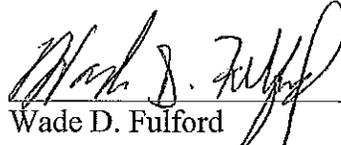
2) The felony conviction of Applicant is reduced to alternate misdemeanor sentencing at the completion of probation or upon substantial completion of probation in Cause No. 32D04-0911-FC-31; and

3) Applicant is not charged or convicted of additional criminal charges.

3. Applicant must notify the Department within ten (10) business days of any arrest for any crime (misdemeanor or felony) in any state, or any driver's license suspension.

4. That the Insurance Commissioner approve a 1033 waiver for Applicant to work for the insurance agency during the timeframe of his criminal probation. Guidelines for acceptable clerical activities have been provided as Exhibit A.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 31st day of August, 2012.


Wade D. Fulford
Administrative Law Judge

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