

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

Cause No.: 10649-AD11-0930-035

IN THE MATTER OF:

BAIL AGENT LICENSE
APPLICATION OF:

Kimberly J. Jackson
504 S. Cory Lane
Bloomington, IN 47403

FILED

FEB 10 2012

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On January 18, 2012, the appointed Administrative Law Judge, Bryan Shade, filed his Findings of Fact, Conclusions of Law, and Recommended Order in the above-captioned matter.

1. 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 her home address.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Recommended Order, and more than eighteen (18) days have elapsed.

THEREFORE, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order, and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

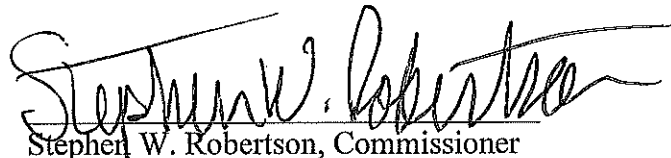
1. The Preliminary Administrative Order and Notice of License Denial of October 11, 2011 is reversed.

2. Applicant is granted a probationary bail agent license for a one (1) year period.

3. As a condition of probation, Applicant must submit her reports filed with her employer, Liberty Bail Bonds, twice per month to the Department's Bail Bond Division to the attention of Attorney Robert Hummel.

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 10th day of February, 2012.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Kimberly J. Jackson
504 S. Cory Lane
Bloomington, IN 47403

Robert L. Hummel, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION) COMMISSIONER OF INSURANCE

CAUSE NO.: 10649-AD11-0930-035

IN THE MATTER OF:

BAIL AGENT LICENSE
APPLICATION OF:

Kimberly J. Jackson
504 S. Cory Lane
Bloomington, IN 47403

FILED

JAN 18 2012

STATE OF INDIANA
DEPT. OF INSURANCE

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

The Administrative Law Judge, having considered and reviewed all of the evidence, will now render a decision in the matter of Kimberly J. Jackson ("Applicant"). This matter came to be heard on November 17, 2011, at approximately 9:15 a.m. at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana 46202.

The Indiana Department of Insurance ("Department") was represented by counsel, Robert L. Hummel. Applicant appeared in person. Witnesses 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 and Conclusions of Law, and issues his Recommended Order as follows:

FINDINGS OF FACT

1. On September 14, 2011, Applicant submitted an application for a bail agent license. (Exhibit 2).
2. Subsequently on October 11, 2011, Applicant's application was denied by the

Department for the following reasons:

- A. Applicant answered yes to the question “Has a disciplinary action been taken against you by any public authority (law enforcement agency, Bureau of Motor Vehicles, etc.)?”. Applicant wrote to the side of the question the following – “check deception PTD 1994 dismissed.”
 - i. Department found Applicant was convicted of Class A Misdemeanor check deception in 1990. Applicant was charged with Class A Misdemeanor check deception in 2007, but was dismissed after entering Pretrial Diversion Agreement.
 - ii. Applicant’s driver’s license was suspended nine (9) times from 1990 to 1996.
- B. Applicant, through her business, had thirty-nine (39) outstanding tax warrants for failing to pay retail sales and withholding taxes.
- C. Applicant had twenty-nine (29) civil cases brought against her between October 1987 and September 2010, including three (3) delinquent tax judgments.
 - i. Applicant failed to appear in court twenty-seven (27) times in those civil cases.
 - ii. Applicant’s credit report showed four (4) outstanding court judgments against her and twenty-eight (28) adverse accounts.

(See Preliminary Administrative Order and Notice of License Denial).

- 3. On October 26, 2011, Applicant requested a hearing regarding the denial of her bail agent license application. (Exhibit 1).

4. According to the State Police record, Applicant has no limited criminal history. (Transcript at 84; Exhibit 3).

Check Deception

5. Applicant indicated on her bail agent application that disciplinary action had been taken against her by a public authority and in the margin hand wrote "check deception – PTD 1994 dismiss." (Exhibit 2).
6. Applicant was convicted of a Class A Misdemeanor check deception in 1990. (Exhibit D).
7. Applicant testified that she mistakenly wrote the wrong date on her application because she couldn't remember. Applicant searched her personal records and public records in an attempt to find the correct date, but was unable to locate any information on her case. (Transcript at 39).
8. At the time of the case, Applicant held a joint checking account with her ex-husband, who was an alcoholic and he took all the money out of their account. (Transcript at 43).
9. Applicant testified that she did not know she had a check out there with insufficient funds. (Transcript at 39-40).
10. As a result, Applicant paid the check, a fine of fifty dollars (\$50), and completed twenty-four (24) hours of community service. (Transcript at 45; Exhibit D).
11. Applicant did not provide a more detailed explanation because she believed once her case was dismissed it was no longer on her record. (Transcript at 79-80; 148-49).
12. Applicant was charged with a second Class A Misdemeanor check deception in March of 2007. (Exhibit E).

13. As indicated on the application, Applicant entered into a pre-trial diversion program. (Transcript at 40; Exhibit E).
14. Applicant testified that she had written a check for her sons when she was out of town for her job. She did not realize there were not enough funds to cover it. (Transcript at 41).
15. Again the Applicant paid the check, all court fees, and completed the pre-trial diversion in April 2011; and as a result her case was dismissed. (Transcript at 47-49; Exhibit E).

Failure to Disclose Driver's License Suspensions

16. Applicant's official driving record from the Bureau of Motor Vehicles ("BMV") indicates that her license was suspended nine (9) times between 1990 and 1996. (Exhibit C).
17. However, in response to question number two (2) on the bail agent application, which asks "has a disciplinary action been taken against you by any public authority (law enforcement agency, Bureau of Motor Vehicle, etc.)?", Applicant answered "yes" but did not mention her driver's license suspensions. (Exhibit 2).
18. Applicant testified that she was confused by the question and believed it was only asking for issues within the last five (5) years. (Transcript at 81, 148).
19. Applicant testified that many of the suspension were the result of a serious accident in which she was in a coma for six (6) months. (Transcript at 23-24, 37).
20. Although Applicant had trouble recalling the exact time period of the accident, based on the record as a whole it occurred in 1989. (Transcript at 37, 53-55; Exhibit C).

21. As a result of the accident, Applicant received a citation for disregarding a traffic signal. (Transcript at 23; Exhibit C).
22. Applicant was not aware she received a citation and failed to appear for her scheduled hearing because she was in a coma, which led to the first of the suspensions in 1990. (Transcript at 23; Exhibit C).
23. Applicant was in a subsequent accident in 1991 and her other suspensions follow as a result. (Exhibit C; Exhibit 10).
24. Applicant has not had any driving issues since 1996 and currently holds a valid driver's license. (Exhibit C).

Outstanding Tax Warrants for J.J. Construction Enterprises

25. Applicant was an incorporator in a business, J J Construction Enterprises, Inc. ("J J Construction") (Transcript at 11, 122-23; Exhibit F, Exhibit 30).
26. In addition, The Corporation Report from the Indiana Secretary of State lists a Kin J Scoggan as Vice President, which may be a typographical error. (Transcript at 123; Exhibit 30).
27. J J Construction has unpaid taxes owed to the State of Indiana, the total liability is fifty-four thousand five hundred twenty six dollars and eighty-nine cents (\$54,526.89). (Transcript at 126; Exhibit 31).
28. Applicant's name is not listed on the outstanding liability spreadsheet for J.J. Construction obtained from the Indiana Department of Revenue. (Transcript at 125; Exhibit 31).

29. Department's witness testified that the liability spreadsheet was obtained from the Department of Revenue using the Applicant's name, full social security number, and date of birth. (Transcript at 126).
30. Applicant testified that J J Construction never "got off the ground" and that she was not a shareholder or owner in the company. (Transcript at 14).
31. Applicant also went to the Indiana Department of Revenue and it informed her that she had no interest in J J Construction. (Transcript at 12; Exhibit A).
32. Applicant asked the Department of Revenue to use all three of her names, her social security number and J J Construction and the Department of Revenue informed her that she had no outstanding tax liabilities and had no interest in J J Construction. (Transcript at 133; Exhibit A).

Delinquent Tax Judgments

33. Department alleged Applicant had three (3) delinquent tax judgments in Davies County, Indiana.
34. Applicant owned property with her previous husband and as a result of their divorce her ex-husband took possession of the home. (Transcript at 21)
35. It was her ex-husband who was responsible for the property taxes. (Transcript at 19).
36. Applicant obtained documentation from Daviess County Indiana showing the three (3) delinquent tax judgments have been satisfied. (Exhibit B).

Multiple Civil Cases

37. Department submitted twenty-six (26) exhibits regarding civil cases against Applicant

from 1987 to present. (Exhibits 4-29).¹

38. Twenty (20) of those cases are more than ten (10) years old. (Exhibits 4-23).²
39. At least four (4) of the cases involved issues with unpaid medical bills. (Exhibits 5, 6, 11, and 12).
40. Applicant testified that she had some serious medical problems in the past, including silicone poisoning, blood clots, and a heart attack, which created the medical bills and also rendered her unable to work in order to pay off the bills. (Transcript at 52-52, 119).
41. Five (5) cases involved issues with the North Lawrence Community Schools, most likely for her children's school book fees. (Transcript at 104; Exhibits 7, 16, 18, 23, and 24).
42. Although both have different cause numbers, Exhibit 8 and 9 were filed on the same day by the same Plaintiff and appeared to be the same issue, as no action was ever taken on the matter in Exhibit 8. (Transcript at 95; Exhibits 8, 9).
43. Two (2) matters involved Applicant's driver's license, one of which was discussed previously. (Exhibit 10; 15).
44. The other case involving Applicant's driver's license was subsequently expunged on the State's own motion. (Transcript at 103; Exhibit 15).
45. Although Applicant was listed on as a co-defendant with her ex-husband on two (2) cases, it appears that her ex-husband took responsibility for both issues as only his

¹ The Department alleged in the Preliminary Administrative Order and Notice of License Denial that Applicant had twenty-nine (29) civil cases against her, but after hearing and seeing Applicant's evidence regarding the delinquent tax judgments, discussed above, did not submit those three cases into evidence. (Transcript at 122).

² Exhibit 4 was Applicant's 1990 check deception case already discussed previously. (Transcript at 84).

wages were garnished and the judgments were ultimately satisfied. (Transcript at 99-100; Exhibit 11, 12).

46. Additionally, Applicant was a co-defendant with her ex-husband in a third case, which was a foreclosure action on a jointly owned. Applicant stated that they voluntarily returned possession of the home because they could no longer make the monthly payments. (Transcript at 117; Exhibit 28).
47. Applicant has filed for bankruptcy protection twice in 1991 and 1999. Applicant may have to file for bankruptcy protection again, per her attorney's advice, because of a potential lawsuit by former employees and it may be more costly to fight than to simply file for bankruptcy protection. (Transcript at 88-90, 114-116; Exhibit 27).
48. One former employee of J J Construction already filed an action to enforce a worker's compensation award. As mentioned previously, Applicant stated she is not responsible for the actions of J J Construction. (Transcript at 114; Exhibit 27).
49. As a result of her 1999 bankruptcy at least five (5) of the cases submitted were dismissed. (Exhibits 21, 22, 23, 24, & 25).

Failures to Appear

50. Department also claimed Applicant failed to appear twenty-seven (27) times in those civil cases.
51. One such case was Applicant's 2007 check deception, in which the Department alleged Applicant failed to appear four (4) times. (Transcript at 59; Exhibit E).
 - A. Applicant stated she was not aware of the matter until January 19, 2010, and if she would have been aware, then she would have appeared at the hearing.

(Transcript at 58-59).

- B. On the Chronological Case Summary ("CCS") an entry was made on February 5, 2008, that Applicant failed to appear. However, on February 14, 2008, an entry was also made that service was returned and Applicant was not served. (Exhibit E).
 - C. Again on March 5, 2008, an entry was made on the CCS that Applicant failed to appear. Then on March 18, 2008, an entry states that service was returned and Applicant was not served. (Exhibit E).
 - D. On September 19, 2009, another entry was made on the CCS that Applicant failed to appear. Again on September 23, 2009, a separate entry was made again noting service returned and Applicant was not served. (Exhibit E).
52. Again, over half of the cases were more than ten (10) years old. Applicant had trouble recalling whether she had adequate notice or if she did have notice, then why she did not attend the hearing. (Transcript at 87-88, 105; Exhibit 5).
53. At least fifteen (15) exhibits list Applicant as a co-defendant. However, the minute entries for those cases do not distinguish between defendants. Often it does not indicate whether both defendants were properly served or whether both defendants failed to appear. The records use the word defendant in the singular and plural tense interchangeably.
54. In one matter notice was served by leaving a copy with Applicant's grandmother and then Applicant failed to appear, but the judgment was satisfied. (Exhibit 16).

55. In another matter with North Lawrence Community Schools, service for Applicant was left with John and then left with Helen. Nothing in the entries indicates Applicant received notice. (Exhibit 24).
56. Finally, in a small claims matter filed by a former employer regarding a dispute over wages the minute entries indicate that Applicant failed to appear twice. On the September 29, 2008 entry it states that paperwork was left with a person at the MCSD. Then on the February 18, 2009 entry states that papers were left in a front door and mailed. (Transcript at 120-21; Exhibit 29).
57. Applicant indicated that if the documents stated she failed to appear, then she either was not aware of the matter or had a genuine reason for not appearing. (Transcript at 150-51).
58. Applicant exhibited an understanding that her conduct was inappropriate.

Credit Report

59. Applicant has four (4) outstanding court judgments listed on her credit report. (Exhibit 32)
60. One of those outstanding judgments related to a small claims matter mentioned previously. (Transcript at 142; Exhibit 29).
61. The third judgment listed on the report, also discussed above, involved void and unenforceable contracts regarding a business venture between Applicant and the plaintiff, which Applicant does not believe she owed. (Transcript at 111-12; Exhibit 26).
62. The first judgment from Lawrence Superior Court was related to medical bills.

Applicant stated that she filed for insurance to cover this matter, but has not heard anything regarding it since. (Transcript at 142).

63. Applicant testified that the fourth judgment from Owen Circuit Court was her son's gas bill, which was listed in her name. Her son is responsible for paying that despite the bill being in her name. (Transcript at 144).
64. In addition, Department noted that Applicant has twenty-eight (28) adverse accounts listed on her credit report. (Transcript at 145).
65. Twenty-seven (27) of those accounts are in collections, twenty-two have a balance less than one-thousand dollars (\$1,000), and at least twenty (20) of the accounts relate to her unpaid medical bills. (Exhibit 32).
66. Applicant stated that she is attempting to pay off her accounts, but she doesn't have the money and didn't have insurance at the time to cover her medical procedures. (Transcript at 52-53, 145).

General Findings

67. Applicant currently owns a business, Fur Kids LLC, which is a dog training, boarding and grooming business. (Transcript at 49).
68. Mr. Mike Miller is a partner with her in that business. (Transcript at 49).
69. Mr. Miller also is a partner in another business, Liberty Bail Bonds, a bail agency. (Transcript at 64).
70. If Applicant was granted a Bail Agent license she would be working solely for Mr. Miller and his partner at Liberty Bail Bonds. (Transcript at 50-51).
71. Mr. Miller also stated that Applicant would sign a contract containing a non-compete clause, likely for a period of three (3) years. Thus, she would not be able to work on

her own or at another agency for that period. (Transcript at 167).

72. Applicant would not be another partner in Liberty Bail Bonds, but simply for as a bail agent for the company. (Transcript at 64).
73. Applicant will be under close supervision of Mr. Miller and his partner at Liberty Bail Bonds, and will be at least partially liable for the bonds that she writes. (Transcript at 67-68).
74. As part of the supervision, Applicant will file reports twice per month to Mr. Miller and Liberty Bail Bonds. Also at the beginning of her employment she will only go out with Mr. Miller or his partner and will not be on her own. (Transcript at 70).
75. All of Applicant's bail records will be kept at Liberty Bail Bonds. (Transcript at 83).
76. Mr. Miller did not believe Applicant would be a concern to the Department if granted a bail agent license and had confidence in her working at his business. (Transcript at 161-63).

CONCLUSIONS OF LAW

77. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.
78. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.
79. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.
80. Pursuant to Indiana Code § 27-10-3-8(a)(3), the Commissioner may refuse to issue an Indiana Bail Agent License if the applicant makes a material misstatement, misrepresentation or fraud in obtaining the license.

81. Although Applicant mistakenly listed the wrong year, she did disclose her check deception cases. This was not a material misstatement or misrepresentation.
82. Applicant failed to disclose her driver's license history on her application. However, this was not a material misstatement. Applicant testified that she believed the question only concerned issues within the past five (5) years and did not believe the question wanted information about her driver's license. Moreover, disclosure of these items would not have prohibited Applicant from obtaining an Indiana Bail Agent license.
83. The Commissioner may also refuse to issue a Bail Agent License if the applicant's name is listed on the most recent tax warrant list supplied by the department of state revenue. Indiana Code § 27-10-3-8(a)(8).
84. Applicant's name was not on the tax warrant list. The Department claimed her name was associated with J J Construction Enterprises, Inc., which was on the tax warrant list for unpaid retail sales and withholding tax.
85. Applicant submitted recent information from the Department of Revenue stating she was not liable for and had no interest in J J Construction. Applicant was not associated with J J Construction as owner or shareholder and therefore was not responsible for any outstanding tax liabilities of the company. Thus, Applicant's name was not on the recent tax warrant list.
86. Finally, the Commissioner may refuse to issue a Bail Agent License if the applicant fails to show that she is of good moral character. Indiana Code § 27-10-3-3(a)(1).
87. It was alleged that Applicant has had approximately twenty-nine (29) civil cases brought against her in the past twenty-three (23) years. However, more than three fourths of those cases, twenty (20) in all, are more than ten (10) years old.

88. Three (3) cases were related to delinquent tax judgments from Davies County. Applicant submitted documentation showing that all three were dismissed and the Department did not pursue those claims further.
89. Additionally, Applicant filed for bankruptcy protection on two separate occasions in 1991 and 1999 and thus satisfied her obligations.
90. Of the nine (9) most recent civil cases, five (5) were discharged in Applicant's most recent bankruptcy; two (2) of those discharged were cases with the school system involving payments for her children's books; one (1) involved a home foreclosure and one (1) involved repossession of an automobile.
91. The remaining cases involved issues with Applicant's involvement with J J Construction, a home that was forfeited, and a dispute with a former employer regarding her wages.
92. Applicant's involvement in these matters does not show that she is not of good moral character.
93. Although Applicant may have failed to appear on a number of occasions, it was not as many as originally alleged by the Department. From the records submitted and reviewed Applicant did fail to appear, for various reasons, at court hearings approximately thirteen (13) times over a period of twenty-three (23) years.
94. Additionally, Applicant has had serious medical issues in her past causing significant medical bills, which caused some of the court cases resulting in those failures to appear as well as outstanding accounts.
95. Applicant's credit report reflects this past. At least twenty-seven (27) of her twenty-eight (28) adverse accounts relate to outstanding medical bills. However, most of the

accounts have amounts less than one thousand dollars (\$1,000). One (1) of the outstanding court judgments listed is also related to medical bills.

96. Another outstanding judgment belongs to her son and a third one is related to a lawsuit regarding J J Construction to which Applicant has no ownership or shareholder interest.
97. Applicant currently owns a dog training and grooming business and is attempting to pay her adverse accounts.
98. Applicant will be under the supervision of a licensed and experienced bail agent with no history of administrative actions against him.
99. Applicant has affirmatively shown that she has the requisite moral character to hold an Indiana Bail Agent License.
100. Therefore, Applicant has met her burden of proof showing that the Commissioner's prior Preliminary Administrative Order and Notice of License Denial was in error.

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. That the Preliminary Administrative Order and Notice of License Denial of October 11, 2011, should be reversed.
2. That the Applicant be granted a probationary Bail Agent License for a one (1) year period.
3. In addition, as a condition of the probationary license, Applicant shall submit her reports filed with her employer, Liberty Bail Bonds, twice per month to the Department's Bail Bond Division to the attention of Robert Hummel.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 18th day of January, 2012.



Bryan Shade
Administrative Law Judge

Distribution:

Robert L. Hummel, Attorney
Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, Indiana 46204-2787

Kimberly J. Jackson
504 S. Cory Lane
Bloomington, IN 47403