

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:11498-AD12-1212-066

IN THE MATTER OF:)
)
Insurance Agent License)
Application of:)
)
Robert Todd McCarthy)
505 W. Smith Valley Road)
Greenwood, IN 46142)

FILED

JUL 19 2013

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On May 21, 2013, the Administrative Law Judge, filed her 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 Recommended Order on Applicant by mailing the same to his 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:

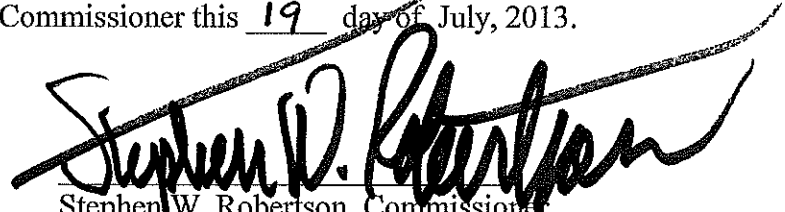
IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Preliminary Administrative Order and Notice of License Denial of December 14, 2012, is reversed, granting Applicant's insurance producer license on a probationary basis.

2. Applicant's insurance producer license is subject to a probationary period of two (2) years. During the first year of probation, it is Applicant's responsibility to make certain that written reports are submitted to Department Investigator Ronda Ankney by Applicant's supervisor, Justin Fowler, or whoever is Applicant's supervisor, every ninety (90) days. The reports should include:

- a. The total number of insurance policies sold by Applicant during the ninety (90) day period;
- b. The total amount of insurance premiums generated by Applicant's activities during the ninety (90) day period, and;
- c. A summary by Mr. Fowler, or whoever is Applicant's supervisor, summarizing Applicant's status and progress as an employee and licensed insurance producer.

ALL OF WHICH IS ORDERED by the Commissioner this 19 day of July, 2013.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

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

Robert Todd McCarthy
505 W. Smith Valley Road
Greenwood, IN 46142

STATE OF INDIANA)
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COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:11498-AD12-1212-066


IN THE MATTER OF:)
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Application of:)
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Robert Todd McCarthy)
505 W. Smith Valley Road)
Greenwood, IN 46142)

FILED
MAY 21 2013
STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF FILING OF RECOMMENDED ORDER

The parties to this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order are deemed filed as of this date.

To preserve an objection to this Order for judicial review, you must object to the Order in a writing that: (1) identifies the basis of your objection with reasonable particularity; and (2) is filed with the ultimate authority for the Final Order, Stephen W. Robertson, Commissioner of the Department of Insurance, within eighteen (18) days from the date stamped on this Order.


Holly Williams
Administrative Law Judge

Distribution:
Robert L. Hummel
Indiana Department of Insurance
Washington Street, Suite 103
Indianapolis, Indiana 46204

Robert Todd McCarthy
505 W. Smith Valley Road
Greenwood, IN 46142

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:11498-AD12-1212-066

IN THE MATTER OF:)
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Robert Todd McCarthy)
505 W. Smith Valley Road)
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FILED
MAY 21 2013
STATE OF INDIANA
DEPT. OF INSURANCE

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

Administrative Law Judge, Holly Williams, having considered and reviewed all of the evidence, will now render a decision in the matter of Applicant Robert Todd McCarthy (“Applicant”) under Cause No. **11498-AD12-1212-066**. This matter came to be heard on February 20, 2013, before Administrative Law Judge Holly Williams at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana.

The Indiana Department of Insurance (“Department”) was represented at the hearing by counsel, Robert L. Hummel. Applicant attended the hearing and was not represented by counsel. At the hearing, witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

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

FINDINGS OF FACT

1. Applicant was properly notified of the above referenced hearing date and time by U.S. Certified Mail #9214 8901 0661 5400 0008 8539 63.
2. Arizona issued Applicant resident Accident/Health and Life insurance producer licenses in May 2009 with expiration dates in February 2013. *Exhibit 1.*
3. On February 23, 2012, Applicant submitted an application for an Indiana non-resident life, accident, and health insurance producer license. *Exhibit 2.*
4. Applicant answered "Yes" to the question on the application asking "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" *Exhibit 2, pg. 4.*
5. Applicant has two (2) felony convictions for Possession of Drug Paraphernalia in Arizona in August 2007 and April 2008. Initially the offenses were undesignated; however, Applicant violated the terms of his probation, so the offenses were later re-designated as Class 6 felonies on December 15, 2009. *Exhibit 4.*
6. On August 1, 2012, the Department sent Applicant a letter ("August 1, 2012, letter") at his Yuma, Arizona address asking for documentation from the Arizona Department of Insurance demonstrating that his Arizona license is currently in good standing that the Arizona Department is aware of his felony conviction. *Exhibit 7.*
7. The U.S. Postal Service returned the August 1, 2012, letter, indicating that the forwarding time had expired, return to sender, and set forth a current address for Applicant in Greenwood, Indiana. *Exhibit 8.*
8. On September 10, 2012, the August 1, 2012, letter was re-sent to Applicant at the Greenwood, Indiana address. *Exhibit 9.*

9. On November 30, 2012, the Department received Applicant's Indiana resident property and casualty insurance producer license application. The application listed Applicant's home address in Greenwood, Indiana. *Exhibit 10.*
10. On December 14, 2012, the Commissioner denied Applicant's license application due to Applicant's two (2) felony convictions for possession of drug paraphernalia. *Preliminary Administrative Order and Notice of License Denial.*
11. On January 2, 2012, Applicant requested an administrative hearing to reconsider the Commissioner's initial denial of his insurance producer license application. *Exhibit 12.*
12. Applicant initially applied for an Indiana non-resident insurance producer license when he was only temporarily living in Indiana, but had plans to return to Arizona, his home state. *Transcript pg. 29.*
13. Applicant and his family decided to permanently reside in Indiana. Applicant then submitted a resident insurance producer license application. *Transcript pg. 29.*
14. Applicant has felony convictions for possession of drug paraphernalia. Applicant was arrested on two (2) separate occasions with a pipe in Arizona. *Transcript pgs. 36-37.*
15. Applicant's convictions are classified as Class 6 felonies, which is the lowest felony level in Arizona. *Transcript pg. 38.*
16. Applicant completed an eight (8) week substance abuse treatment program in September 2012. *Exhibit E; Transcript pg. 41.*
17. Applicant has additional misdemeanor convictions, including convictions for possession of drug paraphernalia, violation of a promise to appear, and failure to appear. *Exhibit 6, Transcript pgs. 57-64.*

18. Applicant acknowledged his past drug problems, but stated that he has never been a thief or cheated people. For the past few years, Applicant has been working on turning his life around. *Transcript pgs. 14-15.*
19. When Applicant applied for his Arizona insurance producer license in 2009, he had not yet been convicted of a felony; he was on probation. Applicant did disclose that he was on probation to the Arizona Department of Insurance. *Transcript pg. 25.*
20. Applicant did not notify the Arizona Department of Insurance of his felony convictions with the thirty (30) day time period. Applicant was incarcerated from the moment of conviction, so he sent the Arizona Department of Insurance a packet of information along with a letter notifying them of his felony convictions after his release. *Transcript pgs. 25-27.*
21. Applicant submitted a letter of recommendation from Cesar Delgadillo who worked with Applicant at Prepaid Legal Services, Inc. The letter was dated June 20, 2011. *Exhibit C.*
22. Applicant also submitted a letter of recommendation from Justin Fowler of Fowler and Associates in San Ramon, California, his current supervisor, dated January 2, 2013. *Exhibit D.*
23. Applicant has three (3) college degrees including an associate's degree in business administration, a bachelor's degree in business management, and a master's degree in adult education and distance learning. *Transcript pg. 43.*
24. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

25. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.
26. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, codified at Ind. Code § 4-21.5 et seq. All procedures and rules set forth by such Act have been followed in this matter.
27. Service of process was completed via the use of the United States Mail in compliance with the statute and due process requirements.
28. Ind. Code §27-1-15.6-12(b)(6) states that the Commissioner may refuse to issue an insurance producer license if the applicant has been convicted of a felony.
29. Applicant's criminal convictions do not involve dishonesty or violence and are of the lowest felony level in Arizona.
30. Applicant has demonstrated his attempt at creating a better life by completing and earning three (3) college degrees as well as successfully completing a drug treatment program.
31. Applicant has met his burden of proof to showing that the Commissioner's Preliminary Administrative Order and Notice of License Denial was in error and should be reversed.
32. 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 Preliminary Administrative Order and Notice of License Denial of December 14, 2012, should be reversed, granting Applicant's insurance producer license application on a probationary basis.

2. Applicant's insurance producer license should be subject to a probationary period of two (2) years. During the first year of probation, it should be Applicant's responsibility to make certain that written reports are submitted to Department Investigator Ronda Ankney by Applicant's supervisor, Justin Fowler, or whoever is Applicant's supervisor, every ninety (90) days. The reports should include:

- a. The total number of insurance policies sold by Applicant during the ninety (90) day period;
- b. The total amount of insurance premiums generated by Applicant's activities during the ninety (90) day period, and;
- c. A summary by Mr. Fowler, or whoever is Applicant's supervisor, summarizing Applicant's status and progress as an employee and licensed insurance producer.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 21st day of May, 2013.


Holly Williams
Administrative Law Judge

Distribution:

Robert Todd McCarthy
505 W. Smith Valley Road
Greenwood, IN 46142

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

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NO.: 11498-AD12-1212-066

IN THE MATTER OF:

INSURANCE AGENT LICENSE
APPLICATION OF:

Robert Todd McCarthy
505 W. Smith Valley Rd.
Greenwood, IN 46142

FILED

DEC. 14 2012

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance ("Department"), pursuant to the Indiana Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3-5 and Ind. Code § 27-1-15.6-12, hereby gives notice to **Robert Todd McCarthy** ("Applicant") of the following Administrative Order:

1. Applicant filed an application for licensure with the Commissioner of the Department ("Commissioner") on July 9, 2012. Following a review of materials submitted by Applicant in support of his non-resident application, the Department requested evidence that Arizona, Applicant's resident state, was aware of Applicant's August 15, 2007 and April 23, 2008 Felony convictions for possession of drug paraphernalia. Applicant's application was placed in "pending" status awaiting a response. Applicant failed to respond to the Department's request. However, the Department later discovered that the Arizona Department of Insurance was unaware of Applicant's felony convictions.

2. On November 30, 2012, Applicant filed an application for a resident producer license with the Commissioner. Following a review of materials submitted by Applicant in support of his application, the Commissioner being fully advised, now hereby notifies Applicant that he has not fully met the requirements of licensure as stated by Ind. Code § 27-1-15.6-12(b); specifically, on August 15, 2007, Applicant pled guilty to a Class Six Felony for Possession of Drug Paraphernalia; and, on April 23, 2008, Applicant pled guilty to a Class Six Felony for Possession of Drug Paraphernalia.

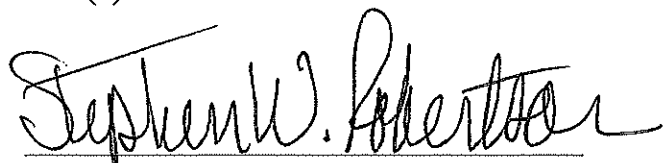
3. Pursuant to Ind. Code § 27-1-15.6-12(d), if the Commissioner refuses to renew a license or denies an application for a license, the Commissioner must notify the applicant in writing of the reason for the denial of the applicant's application.

4. Applicant may, not more than sixty-three (63) days after notice of denial is mailed, make written demand to the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall be held not more than thirty (30) days after Applicant makes the written demand, and shall be conducted under Ind. Code 4-21.5.

IT IS THEREFORE ORDERED that Applicant's July 9, 2012 request for non-resident licensure is hereby **DENIED** pursuant to Ind. Code § 27-1-15.6-12(b).

FURTHERMORE, Applicant's November 30, 2012 request for Indiana resident licensure is hereby **DENIED** pursuant to Ind. Code § 27-1-15.6-12(b).

12-14-12
Date Signed


Stephen W. Robertson
Commissioner
Indiana Department of Insurance