

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 12548-AD13-1030-030

IN THE MATTER OF:)
)
Insurance Agent License)
Application of:)
)
Daniel Wu)
6811 Winnock Drive)
Indianapolis, Indiana 46220)
)
Applicant)

FILED
JUN 13 2014
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On May 8, 2014, 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. An Objection to the Administrative Law Judge's Recommended Order is due within eighteen (18) days. I.C. §4-21.5-3-28(d). The deadline for the objection was May 26, 2014. The Department received an e-mail from Applicant on May 28, 2014 with a letter attached dated May 26, 2014. Applicant did not file his objection with the Commissioner regarding the Administrative Law Judge's Recommended Order in the allotted time.

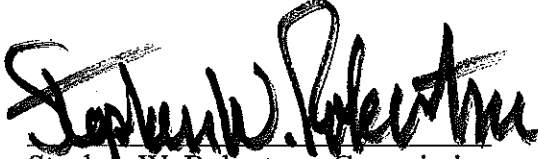
Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Preliminary Administrative Order and Notice of License Denial filed on November 5, 2013, is AFFIRMED.
2. The Applicant's request for credit insurance licensure is DENIED.
3. The Applicant's 1033 Application for written consent to engage in the business of insurance is DENIED.

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 13th day of June, 2014.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

Daniel Wu
6811 Winnock Drive
Indianapolis, Indiana 46220

Robert Hummel
Indiana Department of Insurance
Enforcement Division
311 West Washington Street, Suite 103
Indianapolis, IN 46204-2787

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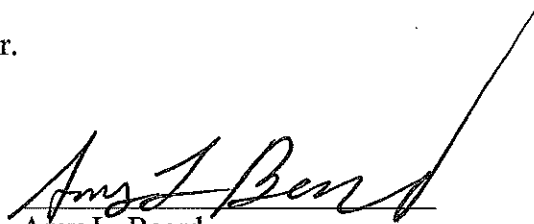
MAY 08 2014

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 Recommended 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 Indiana Department of Insurance, within eighteen (18) days from the date stamped on this Recommended Order.


Amy L. Beard
Administrative Law Judge

Distribution:

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

Daniel Wu
6811 Winnock Drive
Indianapolis, Indiana 46220

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

Administrative Law Judge, Amy L. Beard, (“ALJ”) having considered and reviewed all of the evidence, now renders a decision in the matter of the Insurance Producer License Application of Daniel Wu (“Petitioner”) under Cause Number 12548-AD13-1030-030. This matter came to be heard by the ALJ at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana, at 10:00 a.m. on February 7, 2014.

The Indiana Department of Insurance (“Department”) was represented at the hearing by counsel, Robert L. Hummel. The Petitioner, Daniel Wu, appeared in person and without legal 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 ALJ now makes the following Findings of Fact, Conclusions of Law, and Recommended Order pursuant to Indiana Code section 4-21.5-3-27.

FINDINGS OF FACT

1. On October 9, 2013, the Petitioner submitted an application for credit insurance licensure ("Application") to the Department. *Exhibit 1 ("Ex. 1")*.
2. The Petitioner also submitted an application for written consent to engage in the business of insurance pursuant to 18 U.S.C. § 1033 ("1033 Application"). *Exhibit 13 ("Ex. 13"); Transcript ("Tr.") p. 28, 77-78.*
3. On November 5, 2013, the Commissioner filed a Preliminary Administrative Order and Notice of License Denial. Specifically, the Commissioner denied the Petitioner's request under Indiana Code section 27-1-15.6-12(b)(6), because the Petitioner was convicted of a felony for Theft in August 2010. *Preliminary Administrative Order and Notice of License Denial ("Preliminary Admin. Order & Notice of License Denial")*.
4. On December 26, 2013, the Petitioner requested a hearing to determine the reasonableness of the Commissioner's decision. On December 31, 2013, a Notice of Hearing was filed in this matter, which set a hearing date for January 23, 2014 at 10:00 a.m. *Exhibit 4 ("Ex. 4"); Notice of Hearing.*
5. On January 16, 2014, the Petitioner requested that the hearing date be changed and rescheduled for a Friday morning. The ALJ granted the Petitioner's request and rescheduled the hearing for January 31, 2014 at 10:00 a.m. *Notice of New Hearing Date Ordered January 16, 2014.*
6. On January 21, 2014, the Petitioner requested that the hearing be rescheduled. The ALJ granted the Petitioner's request and rescheduled the hearing for February 7, 2014 at 10:00 a.m. *Notice of New Hearing Date Ordered January 22, 2014.*

7. On or about October 9, 2009, at approximately 1:00 a.m., the Petitioner drove his vehicle to pick up two (2) friends from a party in Westfield, Indiana. One friend put a backpack in the trunk of the Petitioner's vehicle and the other friend had a DVD player with him in the backseat of the vehicle. *Tr. p. 49-53.*

8. The Petitioner's vehicle was later stopped by police. The Petitioner and his friends were taken into custody. Police had the Petitioner take a sobriety test and a portable breathalyzer test. Results showed that the Petitioner's alcohol levels were below the legal limit of intoxication. However, when the Petitioner was asked to take a third test, the Petitioner refused and the police had to obtain a warrant. Because the Petitioner refused to take a chemical test, his driver's license was suspended until October 2010. *Ex. 8; Exhibit 12 ("Ex. 12"); Tr. 49-51; 62.*

9. On October 9, 2009, the Petitioner was charged initially with several counts of theft and for operating a vehicle while intoxicated. Subsequently, all of the charges were dismissed for lack of probable cause. *Tr. 49.*

10. On or about November 4, 2009, an investigator re-opened the case and an information was filed in the Hamilton County Superior Court. The Petitioner was charged with five counts of Class D Felony Theft and one count of Class A Misdemeanor Operating a Vehicle While Intoxicated Endangering a Person. Count One was for the Theft of RCA digital video disc players. Counts Two through Five were for Theft of coins; Pringles; a back pack with books, pens, and paper; a Texas Instrument brand calculator; credit cards; or Mike's Express Carwash coupons. *Tr. 49-50; Ex. 8; Exhibit 9 ("Ex. 9").*

11. On or about August 30, 2010, the Petitioner pleaded guilty to Count One, Class D Felony Theft and was sentenced; the remaining charges were dismissed. The Petitioner was

sentenced to serve one thousand ninety- five (1095) days, with one thousand fifty-five (1055) days suspended to probation and two (2) days jail credit. The Petitioner's actual time served was eighteen (18) days in jail and probation for a period of two (2) years. *Ex. 8; Ex. 9; Tr. p. 57, 61.*

12. On January 6, 2012, a First Information for Violation of Probation was filed by the Probation Department against the Petitioner. The Petitioner had failed a random drug test and tested positive for cocaine. *Exhibit 10 ("Ex. 10"); Tr. p. 62.*

13. On April 24, 2012, the Petitioner admitted to violating probation for testing positive for cocaine. The Petitioner was on house arrest for ninety (90) days. *Ex. 10; Tr. p. 66-67.*

14. On August 17, 2012, the Probation Department filed a Second Information for Violation of Probation against the Petitioner for a public intoxication charge. Upon the State's motion, the court ordered that the Second Information for Violation of Probation be dismissed, without prejudice. *Ex. 10; Tr. p. 66.*

15. On October 19, 2012, the Petitioner was released from probation unsuccessfully due to an outstanding balance of fees. A civil judgment was entered against the Petitioner for the amount of \$448.00. *Ex. 10.*

16. On November 8, 2012, the Petitioner wrote a letter to the court requesting that the Class D Felony conviction be reduced to a Class A Misdemeanor. The court denied the Petitioner's request. *Ex. 10; Tr. p. 68-69.*

17. The Petitioner has been employed with Hare Chevrolet as a Sales and Finance Representative since September 5, 2013. *Employer 1033 Application Letter.*

18. Sabrina Williams testified at the hearing as a witness for the Petitioner. Ms. Williams has been the Petitioner's girlfriend for eight (8) years. Ms. Williams and the Petitioner

live together along with their two (2) biological children and three (3) children from Ms. Williams's prior relationship. *Tr. p. 11-20.*

19. The Petitioner is taking classes at Ivy Tech Community College. *Tr. p. 84-86.*

20. Stephanie Emery, HR Manager at Hare Chevrolet, submitted a notarized letter to the Department on February 11, 2014. For clarity of the record, this letter was submitted after the date of the hearing, but was accepted and completes the Petitioner's 1033 Application.

Employer 1033 Application Letter.

21. At the conclusion of the administrative hearing, attorney Robert L. Hummel, representing the Enforcement Division of the Department of Insurance, recommended granting the Petitioner a credit insurance license subject to a two (2) year probationary period. *Tr. p. 90-92.*

22. 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. *Ind. Code § 27-1-15.6-12.*

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code ("Act"). *I.C. § 4-21.5-3 et. seq.*

3. Service of process was completed through use of the United States Postal Service in compliance with the Act and due process requirements. *I.C. § 4-21.5-3-1(b)*

4. Pursuant to Indiana Code section 27-1-15.6-12(b)(6), the Commissioner may refuse to issue an insurance producer license to a person having been convicted of a felony.

5. It has only been approximately four (4) years since the Petitioner was convicted of a Class D Felony for Theft in June 2010.

6. The Petitioner's probation violation for testing positive for cocaine also occurred relatively recently.

7. While the Petitioner submitted evidence showing that he has held a job at Hare Chevrolet since September 2013, has been living with Ms. Williams for eight (8) years, and is taking classes at Ivy Tech Community College, this evidence does not outweigh the Petitioner's Class D Felony conviction for Theft in 2010 and the Petitioner's probation violation for testing positive for cocaine in 2012.

8. The Petitioner has not met his burden of proof in demonstrating that the Commissioner's Preliminary Administrative Order and Notice of License Denial was in error.

9. Findings of Fact that can be adopted as Conclusions 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 filed on November 5, 2013, shall be AFFIRMED.

2. The Petitioner's request for credit insurance licensure shall be DENIED.

3. The Petitioner's 1033 Application for written consent to engage in the business of insurance shall be DENIED.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to
the Commissioner this 8th day of May, 2014.


Amy L. Beard
Administrative Law Judge

Distribution:

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