

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

Cause No.: 12928 -AD14-0325-014

IN THE MATTER OF:)
)
BAIL AGENT LICENSE)
APPLICATION OF:)
)
Arthur Cruz)
P.O. Box 8003)
Fort Wayne, IN 46898)

FILED

AUG 28 2014

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On July 22, 2014, the appointed Administrative Law Judge, Amy Beard, 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 of 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. Applicant has not 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 March 25, 2014 is upheld, denying Applicant's bail agent license application.

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 28th day of August, 2014.

A handwritten signature in black ink, appearing to read "Stephen W. Robertson", written over a horizontal line.

Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

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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 Arthur Cruz under Cause Number 12928 -AD14-0325-014. 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 April 23, 2014.

The Indiana Department of Insurance ("Department") was represented at the hearing by counsel, Robert L. Hummel. The Petitioner, Arthur Cruz, ("Petitioner") 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 March 13, 2014, the Petitioner submitted an application for a bail agent license ("Application") to the Department. *Exhibit 1 ("Ex. 1")*.
2. On the questionnaire portion of the Application, the Petitioner answered "no" to the question, "Has your driver's license ever been suspended?" The Petitioner also answered "no" to the question, "Do you have any outstanding State or Federal tax liens or warrants?" *Ex. 1*.
3. On March 25, 2014, the Commissioner issued a Preliminary Administrative Order and Notice of License Denial denying the Petitioner's Application. Specifically, licensure was denied for Petitioner having Indiana driver's license suspensions, outstanding state income tax warrants, and for failing to disclose such information on his Application. *Preliminary Administrative Order and Notice of License Denial ("Preliminary Admin. Order & Notice of License Denial")*.
4. On or about April 1, 2014, the Petitioner requested a hearing to determine the reasonableness of the Commissioner's decision. On April 7, 2014, a Notice of Hearing was filed in this matter, which set a hearing date for April 23, 2014 at 10:00 a.m. *Exhibit 3 ("Ex. 3"); Notice of Hearing*.
5. At the hearing, the Petitioner submitted into evidence a copy of a United States Postal Service Certified Mail Receipt dated April 15, 2014, showing that a certified letter was sent to "IND IRS" on that date. The Petitioner testified that the letter was sent to the Indiana Department of Revenue ("IDOR") along with a check in the amount of six hundred and eight dollars (\$608.00), in payment of last year's taxes. The Petitioner stated that he is current with his state taxes. *Exhibit B ("Ex. B"); Transcript ("Tr.") p.13-15, 23-25*.

6. An IDOR Outstanding Liability Spreadsheet printed on March 14, 2014, shows three (3) outstanding income tax warrants for the Petitioner for tax years 2005 and 2006, and a total tax liability of two thousand two hundred and fifty dollars and seven cents (\$2,250.07). *Exhibit 4 ("Ex. 4")*.

7. The Petitioner testified that he was not aware of the state tax warrants when he filled out the Application. He became aware of the tax liability only when he checked with the IDOR. *Tr. p. 30, 64*.

8. The Petitioner testified that even though his state tax liabilities went back to tax years 2005 and 2006, the IDOR never contacted him concerning the liabilities. *Tr. p. 37-38*.

9. The Petitioner testified that due to the delay in receiving his bail agent license, he realized that he must have a problem with his taxes before he was contacted by the Department. *Tr. 39, 42-43*.

10. The Petitioner printed a copy of his credit report on February 27, 2014, prior to applying for a bail agent license. The credit report lists four (4) outstanding state tax warrants in Allen County, Indiana. The Petitioner stated that he did not read his credit report. *Exhibit 10 ("Ex. 10")*, *Tr. p. 63-66*.

11. On March 28, 2014, Daniel Markey, the office manager of Markey Bonding in Fort Wayne, Indiana, faxed a letter to the Department along with a copy of a check payable to the IDOR on behalf of the Petitioner, dated March 28, 2014, in the amount of two thousand two hundred and fifty-one dollars and fifty-seven cents (\$2,251.57). *Exhibit 5 ("Ex. 5")*; *Tr. p. 30*.

12. On April 22, 2014, Department attorney Robert Hummel sent an email to the IDOR requesting a tax liability update for the Petitioner. The IDOR responded through email, and confirmed that the Petitioner's account was clear. *Exhibit 6 ("Ex. 6")*.

13. The Petitioner's Indiana Official Driver Record shows two (2) driver's license suspensions; one suspension has an effective date of May 8, 1998, for failure to appear for a driver safety program, and the second suspension has an effective date of October 2, 1998, for being involved in an accident with no insurance. *Exhibit 7 ("Ex. 7")*.

14. The Petitioner testified that his answer "no" on his Application in response to the question, "Has your driver's license ever been suspended?" is inaccurate. *Ex. 1, Tr. p. 29*.

15. The Petitioner thinks that his two (2) driver's license suspensions were related. He remembered being in an automobile accident, but that he had insurance. He does not remember anything about a driver safety program. *Ex. 7, Tr. p. 29, 46-48*.

16. The Petitioner previously held a bail agent license from 2001 to 2007. *Tr. p. 9, 56-62*.

17. In 2007, Jean Markey, owner of Markey Bonding and the Petitioner's former employer when the Petitioner was previously licensed, decided that she did not want to renew the Petitioner's bail agent license because the Petitioner was not following office procedures. *Tr. p. 56-63*.

18. The Petitioner's previous bail agent license was cancelled by the Commissioner on April 2, 2007, for failure to obtain an appointment with another surety company after the termination of his appointment with Allegheny Casualty Company. The Petitioner testified that although he had received the Commissioner's Order dated April 2, 2007.

19. The Petitioner testified that he also had received a letter from the Department instructing him to surrender his license within thirty (30) days if he did not become appointed with another surety company. The Petitioner turned in his powers of attorney and his license to

the bail agency, and not to the Department as instructed. *Exhibit 9 ("Ex. 9"); Tr. p. 56-58, 60-62.*

20. The Petitioner testified that he is bilingual, knows American Sign Language, and has worked as a volunteer translator. *Tr. p. 8, 15-16, 19-20.*

21. The Petitioner submitted into evidence four (4) letters of reference. One (1) of the letters was from Daniel P. Markey, the office manager of Markey Bonding in Fort Wayne, Indiana. Markey Bonding is the bail bond agency that would employ the Petitioner if the Petitioner were to receive a bail agent license. The Petitioner testified that Markey Bonding wants him to work weekends and also to translate some documents. *Exhibit A ("Ex. A"), Tr. p. 11-13, 17-21.*

22. The Petitioner currently works as a regulation trainer for the United States Postal Service, and has been employed with the and has worked for the United States Postal Service for twenty-six (26) years. *Tr. p. 26-27.*

23. 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 § IC 27-10-3-8.*

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 I.C. § 27-10-3-8(a)(8), the Commissioner shall refuse to renew any bail agent license for the "listing of the name of the applicant or licensee on the most recent tax warrant list supplied to the commissioner by the department of state revenue."

5. At the time he submitted his Application, the Petitioner had outstanding state income tax warrants, grounds for denial of his license application under I.C. §27-10-3-8(a)(8).

6. Pursuant to I.C. § 27-10-3-8(a)(3), the Commissioner shall deny any bail agent license if there is a material misstatement, misrepresentation, or fraud in obtaining the license.

7. By failing to disclose driver's license suspensions and the outstanding tax warrants on the application, the Petitioner made material misstatements or misrepresentations on his Application, which is grounds for license denial under I.C. § 27-10-3-8(a)(3).

8. Pursuant to I.C. § 27-10-3-3(a), a bail license Applicant must affirmatively show that he or she is of good moral character.

9. The Petitioner's driver's license suspensions and outstanding tax warrants, and his failure to disclose that information on his Application, indicate a failure of the Petitioner to affirmatively show good moral character as required under I.C. § 27-10-3-3(a).

10. 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.

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

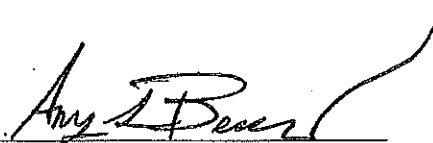
RECOMMENDED ORDER

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 March 25, 2014, shall be AFFIRMED.

2. The Petitioner's request for a bail agent license shall be DENIED.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 22nd day of July, 2014.



Amy L. Beard
Administrative Law Judge

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