

STATE OF INDIANA

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

COUNTY OF MARION

) SS:

)

IN THE MATTER OF:

Brett Muir
142 West Elm Street
Jamestown, IN 46147

Petitioner

Type of Agency Action: Enforcement

FILED

DEC 07 2021

STATE OF INDIANA
DEPT. OF INSURANCE

CAUSE NO.: DOI-0621-001162

20558-AD21-0511-083

FINAL ORDER

On September 29, 2021, the Administrative Law Judge, Reuben B. Hill, 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 Recommended Order on Petitioner by mailing the same to his address of record.

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 Findings of Fact, Conclusions of Law and 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. Refusal to issue Petitioner's resident producer license under license application number 864191 is **AFFIRMED**.

Under Ind. Code §4-21.5-5-5, Petitioner 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 7 day of December, 2021.



Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Brett Muir
142 West Elm Street
Jamestown, IN 46147

Victoria Hastings, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

RECOMMENDED ORDER

Pursuant to IC 4-21.5 this
Recommended Order is not final and
shall be presented to the ultimate
authority for issuance of a final order.



FILED: September 29,
2021

**STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

Administrative Cause No.: DOI-0621-001162
Underlying/State Agency Action No.: DOI-20558-AD21-0511-083

**Final Agency Authority: Commissioner of the Department of
Insurance**

Brett Muir
Petitioner,

v.

Indiana Department of Insurance
Respondent.

Type of Agency Action: Enforcement

License Application Number: 864191

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

Enforcement Division of the Indiana Department of Insurance ("Department") was represented by counsel, Victoria Hastings. This matter came to be heard by ALJ on June 28, 2021, and on July 26, 2021, at 10:00 a.m. via audio conferencing. Petitioner appeared for the June 28, 2021, hearing, but Petitioner failed to appear for the July 26, 2021, hearing. Testimony was heard, and exhibits were received into evidence.

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

FINDINGS OF FACT

1. Petitioner submitted an application to the Department for a Resident Producer License on or about May 3, 2021. (Department's Exhibit 1)
2. Petitioner failed to disclose an administrative action on his application for license. (Department's Exhibit 1)
3. Petitioner was involved in an administrative action from the State of Indiana, wherein Petitioner's Indiana Resident Producer License was not renewed on December 11, 2018. (Department's Exhibit 2, Hearing Transcript, p. 14)
4. Petitioner's 2018 administrative action was due to Petitioner's failure to timely report a criminal prosecution to the Department and for Petitioner's subsequent criminal conviction. (Department's Exhibit 2, Hearing Transcript, p. 16-17)
5. Petitioner failed to disclose the 2018 Indiana administrative action on his application for license. (Department's Exhibit 1)
6. Petitioner would have needed to disclose the 2018 Indiana administrative action on his 2021 application for licensure in Indiana. (Hearing Transcript, p. 14, 16) (Department's Exhibit 1)
7. On or about October 2, 2016, Petitioner was charged in Marion County Superior Court with three (3) counts of Domestic Battery, a Class A Misdemeanor. (Department's Exhibit 3)
8. On or about April 18, 2017, Petitioner pleaded guilty to and was convicted of one (1) count of Domestic Battery, a Class A Misdemeanor. (Department's Exhibit 4)
9. Petitioner did disclose his criminal history on his 2021 application for license. (Department's Exhibit 1)
10. The Commissioner of the Indiana Department of Insurance ("Commissioner") filed his Preliminary Administrative Order and Notice of License Denial on May 25, 2021, due to Petitioner's failure to disclose his 2018 Indiana administrative action on his application for license, and for Petitioner's April 18, 2017, conviction for Domestic Battery, a Class A Misdemeanor.
11. On or about June 2, Petitioner made his request for an evidentiary hearing.
12. An evidentiary hearing was scheduled and held on June 28, 2021, at 10:00 a.m. EDT via audio conferencing at the Indiana Department of Insurance.
13. Petitioner appeared for the June 28, 2021, hearing.

14. Petitioner stated on the record he would like to continue the June 28, 2021, hearing in order to have more time to prepare for the hearing.
15. On June 28, 2021, the parties discussed the new hearing date.
16. Petitioner agreed that the new hearing date of July 26, 2021, was amenable for him.
17. The hearing was continued out to July 26, 2021.
18. A Default Hearing was held on July 26, 2021.
19. Petitioner received proper notice for the July 26, 2021, hearing via U.S. Postal mail.
20. Petitioner failed to appear for the July 26, 2021, hearing.
21. Petitioner never contacted the Department, or why he failed to appear for the July 26, 2021, hearing.
22. Petitioner never informed the Department what happened, or why he failed to appear for the July 26, 2021, hearing.
23. Petitioner never requested that July 26, 2021, hearing be rescheduled.
24. Petitioner never reached out to the Department requesting that the July 26, 2021, hearing be rescheduled, or provided an explanation as to why Petitioner failed to appear for the hearing.
25. Department submitted four (4) exhibits at the hearing. Department's Exhibit 1 was Petitioner's Indiana application for license. Department's Exhibit 2 was a Final Order from 2018. Department's Exhibit 3 and 4 were records from Petitioner's criminal case.
26. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

1. The Commissioner of the Indiana Department of Insurance ("Commissioner") 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.
3. Indiana Code 27-1-15.6-12(b) states, in part, that the Commissioner may refuse to issue or renew an Insurance Producer License, due to a number of factors.
4. Indiana Code 27-1-15.6-12(b)(1), states, in part, that the Commissioner may refuse to issue or renew an Insurance Producer License for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
5. Indiana Code 27-1-15.6-12(b)(8), states, in part, that the Commissioner may refuse to issue or renew an Insurance Producer License for using fraudulent, coercive, or dishonest

practices, or demonstrating incompetence untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

6. Petitioner was involved in an administrative action in Indiana and failed to disclose the same on his application for license, in violation of Indiana Code 27-1-15.6-12(b)(1).

7. Petitioner has an April 18, 2017, conviction for Domestic Battery, a Class A Misdemeanor, in violation of Indiana Code 27-1-15.6-12(b)(8).

8. Indiana Code 4-21.5-3-14(c) states that the person requesting an agency take action has the burden of persuasion and the burden of going forward. Petitioner is requesting that the Department issue him a Resident Producer License and, therefore, bears the burden.

9. Pursuant to Indiana Code 4-21.5-3-24, at any stage of a proceeding, if a party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding, the ALJ may serve upon all parties written notice of a proposed default or dismiss order, including a statement of the grounds. This Proposed Default Order serves as that notice.

10. Petitioner failed to appear for the July 26, 2021, hearing.

11. Pursuant to Indiana Code 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Petitioner failed to meet his burden of proving the Commissioner's decision was unreasonable.

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

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED:

In consideration of the foregoing, 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 refusal to issue Petitioner's Resident Producer License under License Application Number 864191 be **AFFIRMED**.

ALL OF WHICH FOUND by the Administrative Law Judge and recommended to the **Commissioner of Insurance** on September 29, 2021. **This Recommended Default Order is not final.**

This matter is now before the ultimate authority, the Commissioner of Insurance who has the final authority over this matter and shall review this Recommended Default Order and issue a final order to all parties.

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the objection with reasonable particularity; and 2) Is filed with the ultimate authority for the Final Order, the Commissioner of the Department of Insurance, within eighteen (18) days from the date of this Order.

Any questions regarding this matter may now be directed to Dawn Bopp at dbopp@idoi.in.gov.

/s/Reuben B. Hill

Reuben B. Hill, Esq.

Administrative Law Judge

Distributed to Parties:

Brett Muir
142 West Elm Street
Jamestown, IN 46147

Victoria Hastings, Attorney
ATTN: Phil Holleman, Insurance Investigator
Indiana Department of Insurance
Enforcement Division
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787

IDOI Commissioner – Ultimate Authority and served by Dawn Bopp at dbopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 20558-AD21-0511-083

IN THE MATTER OF:)

Brett Muir)
142 West Elm St)
Jamestown, IN 46147)

Applicant,)

Type of Agency Action: Enforcement)

License Application #: 864191)

FILED

MAY 25 2021

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.* and Indiana Code § 27-1-15.6-12, hereby gives notice to Brett Muir ("Applicant") of the following Administrative Order:

1. Applicant filed an application for resident producer licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on May 3, 2021.
2. Before approving an application, the Commissioner must find that the applicant has met specific requirements under Indiana Code § 27-1-15.6-8 and Indiana Code § 27-1-15.6-12.
3. Indiana Code § 27-1-15.6-12(b)(1) provides, in part, that the Commissioner may refuse to issue an insurance producer license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
4. Indiana Code § 27-1-15.6-12(b)(8) provides, in part, that the Commissioner may refuse to issue an insurance producer license for using fraudulent, coercive, or dishonest practices,

or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

5. Following a review of public records and the 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 Indiana Codes §§ 27-1-15.6-12(b)(1) and 27-1-15.6-12(b)(8) due to Applicant's 2017 misdemeanor conviction and for Applicant's failure to disclose an administrative action, which involved a license nonrenewal, on his application for licensure.
6. Indiana Code § 27-1-15.6-12(d) provides that the applicant may, not more than sixty-three (63) days after notice of denial of the application is mailed, make written demand to the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.
7. This is considered an agency action. This action has been initiated by the aforementioned authority. If you choose to appeal this agency action, the State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter, and subsequently you will be contacted by the OALP with more information to begin the administrative process.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby **DENIED** pursuant to Indiana Codes §§ 27-1-15.6-12(b)(1) and 27-1-15.6-12(b)(8) due to Applicant's misdemeanor conviction and for Applicant's failure to disclose an administrative action, which

involved a license nonrenewal, on his application for licensure. Applicant may reapply for licensure not less than one (1) year from the date of this order.

5-25-2021

Date Signed

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 to:

Brett Muir
142 W Elm St
Jamestown, IN 46147

Victoria Hastings, Attorney
ATTN: Phil Holleman, Sr. Investigator
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
317 234-5885, fax 317 234-2103