
Michael J. C. Despres, Petitioner
v.
Division of Insurance, Respondent
Docket No. E2004-18

Order on Respondent's Motion for Summary Decision

Introduction and Procedural History

By Notice of Claim for an Adjudicatory Proceeding dated July 27, 2004, Michael J. C. Despres ("Despres") appealed to the Commissioner of Insurance ("Commissioner") a decision of Division of Insurance ("Division") staff denying his application for an individual insurance producer's license. I was designated presiding officer for this proceeding. A Notice of Procedure, issued on August 30, 2004, scheduled a prehearing conference for September 23 and a hearing for October 14. On September 21, the Division filed its answer, to which it attached copies of documents including Despres's uniform application for a producer license.

At Despres's request, the September 23 prehearing conference was conducted by telephone. Participating, in addition to Despres, were Jay Mackenzie, Western Michigan district manager for Wachovia Securities ("Wachovia"), Deborah Szymchack, administrative assistant at Wachovia, and Douglas Hale, Esq., counsel for the Division. MacKenzie indicated that he expected counsel for Wachovia to represent Despres, and stated that Wachovia had not yet received the Division's answer. I therefore continued the prehearing conference to permit counsel to review the Division's answer and to file an

appearance. Later on September 23, I received a telephone call from Ron Long, Esq., of Richmond, Virginia, who stated that he would be counsel for Despres. I asked him, after he had reviewed the Division's answer, to contact Mr. Hale to determine a mutually agreeable time for a prehearing conference. On October 8, Mr. Hale informed me that the parties had agreed to hold a telephone conference on October 14, at the time scheduled for an evidentiary hearing.

Attorney Long did not file a notice of appearance. On October 12, I received a written request from Despres to suspend the October 14 hearing and to return his application to the Division's Director of Producer Licensing ("Director") for reconsideration. Submitted with his request was a copy of a National Association of Securities Dealers document entitled NASD Brokercheck Response to Request for Information. Despres also stated that he would obtain a copy of his record with the State of Michigan. I allowed the request to cancel the October 14 conference, and advised the parties that I would reschedule a conference after receiving the additional information. On November 5, the Division received copies of Despres's Nevada non-resident insurance producer license, his Michigan record, and a second copy of the NASD Brokercheck.

On February 15, I denied Despres's request to return his application to the Director for reconsideration, and stated that I would hold a prehearing conference by telephone on February 23 to address scheduling of future proceedings in this appeal. Despres and Mr. Hale participated in that conference. Despres confirmed that he was not represented by counsel. The parties agreed that the facts underlying this appeal are not in dispute, and that they would submit their arguments in memoranda. The Division submitted a motion for summary decision and supporting memorandum on March 3. Despres's memorandum, dated February 25, was received on March 4. At the Division's request, March 14 was set as the date for filing reply memoranda. No such memoranda were received.

Statement of Facts

Despres filed a Massachusetts application for appointment as a non-resident individual insurance producer dated May 20, 2004. Question 2 on the application asks, in brief, if the applicant has ever been involved in an administrative proceeding regarding any professional or occupational license. "Involved" is defined as including denial of a license application. Despres answered "no" to question 2, although the State of

Indiana had, in 2001, denied his application for a producer license. On July 2, 2004, the Director of Producer Licensing for Massachusetts (“Director”) denied Despres’s application for two stated reasons: 1) failure to disclose the Indiana denial; and 2) Indiana’s denial of Despres’s application. Despres, in his October 12, 2004 letter requesting reconsideration, agrees that Indiana had denied his application for an insurance license and that he failed to disclose the Indiana action on his Massachusetts application.

The Parties’ Arguments

The Division argues that M.G.L. c. 175, §162R (a)(1) and (a)(9), respectively, permit the Commissioner to refuse to issue a license to a person who provides incorrect or incomplete information on a license application or to a person who has had an insurance producer license denied in any other state. It points out that Despres does not dispute the facts and has admitted that he did not disclose the Indiana license denial. The Division argues that the Commissioner has broad discretion to deny a license, so long as the discretion is exercised fairly, and that the Director, in this case, acted within her statutory discretion and did not act in a manner that was arbitrary or capricious. To the contrary, it asserts, the facts in the record demonstrate a substantial basis for her action.

Despres argues that Massachusetts law permits the Commissioner to deny an application for a license on the grounds set out in the Director’s July 2, 2004 letter. He states, however, that his failure to report the Indiana denial was an error, but that he did not intend to hide the information. He notes that he did not make that error on two subsequent applications for producer licenses in other jurisdictions, both of which approved his application. Despres recognizes that states may have different criteria for judging applications, but requests that Massachusetts look at his business record. He argues that he is dedicated to doing what is right for his clients, even when they move out of Michigan, and seeks a Massachusetts license so that he can service the needs of a client who now lives here. He states that he does not intend to prospect for new business in any state other than Michigan. Despres argues that he has provided information on both his personal and business background to the Division and states that he has made some mistakes in the past that will not happen again. He requests that the Director make a decision based on his business background and his identity as a business person, and not solely on his mistake on his application.

Analysis

Despres has appealed the Director's decision to deny his license application; he agrees, however, that the facts on which she relied in reaching that decision were correct and that her action was permissible under Massachusetts law. The gist of his appeal is a request that the Director reconsider his application, taking into account additional information about his business record and considering his licensing status in other jurisdictions. This record, however, amply demonstrates that the Director's decision, as set out in her July 2, 2004 letter to Despres, was fully supported by the facts and consonant with Massachusetts law.

As noted in my order of February 15 denying Despres's request for reconsideration of his application, the Uniform Application for an Individual Insurance Producer's license identifies the denial of a license as an event that must be reported. The interest of ensuring an accurate record of Despres's licensing history is best served by ensuring that a decision on appeal does not obliterate any part of that history that was supported on the record then before the Director.

Conclusion

For the above-stated reasons, Despres's appeal is denied, and the July 2, 2004 decision of the Director is upheld. A copy of this decision shall be sent to Despres by certified mail, return receipt requested as well as by regular first class mail, postage prepaid.

Dated: March 23, 2005

Jean F. Farrington
Presiding Officer

Pursuant to G.L. c. 26, §7, this decision may be appealed to the Commissioner of Insurance.