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Thomas J. Quinn

v.

Division of Insurance

Docket No. E2009-24

Decision and Order

Introduction and Procedural History

On December 30, 2009, Thomas J. Quinn (“Quinn”) filed a notice of claim for an adjudicatory proceeding (“Notice of Claim”), appealing the December 21, 2009 denial by the Director of Producer Licensing (“Director”) at the Division of Insurance (“Division”) of his application for an insurance producer’s license.¹ A hearing notice issued on January 4, 2010, scheduling a prehearing conference for January 26, 2010, and a hearing for February 9, 2010. The notice stated that the hearing would be conducted in accordance with G. L. c. 30A and the Standard Adjudicatory Rules of Administrative Practice and Procedure, 801 CMR 1.00 *et seq.* The Division filed its answer on January 12.

¹ On his producer license application form, Quinn gives his name as Thomas J. Quinn, Jr. He has not so identified himself on the other documents submitted in this proceeding.

Quinn has represented himself throughout this proceeding. Robert Kelly, Esq. represents the Division. At the January 26 prehearing conference, Quinn submitted a series of documents and a written statement describing materials that he had provided to the Division in the course of the license application process. To facilitate determination of the issues in this proceeding that are actually disputed, the Division agreed to submit copies of those materials, which were not included in its answer to Quinn's notice of claim, for the docket. Following that submission, a second prehearing conference took place on February 2. At that conference, the parties did not dispute the material facts relating to Quinn's criminal history and his license application, but took opposing positions on the significance of those facts with regard to the denial of Quinn's application. The parties agreed to submit a joint statement of agreed-upon facts ("Joint Statement") and thereafter to file memoranda stating their respective reasons for upholding or reversing the Director's denial of Quinn's application. The parties filed their Joint Statement on February 9, 2010. The Division submitted its memorandum on February 16. The Division received Quinn's statement, dated February 15, on February 22.

Summary of Undisputed Facts

Based on the Joint Statement and the documents Quinn submitted as part of the licensing process, I find the following facts.

1. Quinn submitted a Uniform Application for Individual Insurance Producer License ("Uniform Application"), dated August 19, 2009, to the Massachusetts Division of Insurance.
2. Question 1 in the Background Information section of the Uniform Application asks if the applicant has "ever been convicted of, or [is] currently charged with, committing a crime, whether or not adjudication was withheld?"² Quinn answered "Yes" to this question.
3. The Uniform Application instructs a person who answers "Yes" to Question 1 to attach to the application a written statement explaining the circumstances of each incident, a certified copy of the charging document, and a certified copy

² In their Joint Statement, the parties refer to this question as number 39. Although that number appears on the standard form, the question itself is number 1.

of the official document which demonstrates the resolution of the charges or any judgment.

4. Quinn attached to his application a copy of a one page Nolle Prosequi form filed on March 12, 2002 by an assistant district attorney for Middlesex County in the Superior Court for that county stating that the Commonwealth would not prosecute indictments Nos. 2000-1057-001-004. The document identifies Thomas Quinn, Jr. as the defendant in those actions.
5. On or about October 20, 2009, Quinn authorized the Division to obtain his Criminal Offender Record Information (“CORI”) from the Criminal History Systems Board. The CORI report that the Division received included a criminal prosecution against Quinn bearing docket number MICR1993-01270. Quinn’s Uniform Application did not refer to or include documents relating to that docket number.
6. Quinn had telephone conversations with Division staff about his pending application. By letter dated November 6, 2009, the Director notified Quinn that the Division was inclined to deny his application, based on the CORI report, but advised him that he could dispute the accuracy and relevance of the information in that report and provide copies of any relevant documents he wished the Division to consider in making its final determination. The letter informed Quinn that, if he disputed the CORI report, he could advise the Division of any steps he had taken to correct the criminal record.
7. On December 9 and 10, 2009, Quinn submitted additional information to the Division, including a letter in which he addressed the review of CORI reports, a letter of recommendation from the presiding elder of his Jehovah’s Witness congregation, and documents relating to actions for post-conviction relief in docket number MICR1993-01270 undertaken by counsel appointed for Quinn through the Committee for Public Counsel Services.
8. By letter dated December 21, the Director denied Quinn’s application for the following reasons: 1) his convictions, as shown in the CORI report; and 2) his failure to disclose those convictions on his license application. Her letter stated that G. L. c. 175, §162R, subsections (a)(1), which allows the

Commissioner of Insurance (“Commissioner”) to deny a license to an individual who provides “incorrect, misleading, incomplete or materially untrue information in the license application” and (a)(6), which allows her to deny a license to a person who has been convicted of a felony, support that denial.

II. The Parties’ Arguments

Quinn’s Notice of Claim disputed no facts in the Director’s letter and presented no specific reasons for reversing her denial of his application, instead referring to G.L. c. 175, §162R (b), which authorizes an applicant for a license to appeal the denial to the Commissioner. He presented a written submission, titled “Opening Statements,” at the January 26 prehearing conference. In that document, he stated that he was not guilty of “this crime,” and was qualified for a license because he had passed the test and paid the fees. Quinn further noted that he checked the box on the application that asked about his criminal history, gave the Division permission to obtain his CORI report, and thereafter submitted additional materials to the Division. He attached to his statement copies of four documents relating to CORI reports: Executive Order No. 495, issued by Governor Patrick on January 11, 2008; Fact Sheet on Discrimination on the Basis of Criminal Record, from the website of the Massachusetts Commission Against Discrimination (“MCAD”); CORI: Public Access to Criminal Record Information, from the website of the Massachusetts District Attorneys Association (“MDAA”); and one page of a Massachusetts Bar Association (“MBA”) publication titled *CORI: The criminal offender record information law*. Quinn also provided a copy of G.L. c. 233, §21, which addresses the use of a witness’s criminal record to challenge the credibility of his testimony.

In his memorandum, Quinn argues that the stated reason for denial of his license is the CORI report, not a felony. He asserts that he disclosed the felony by answering “Yes” to the question about his criminal record, and when he spoke by telephone to Division staff. Quinn notes that he complied with all requests to provide paperwork to the Division. He asserts that denial of his producer license constitutes discrimination against him on the basis of a criminal record, which violates Executive Order 495 and

G.L. c. 151B. At the second prehearing conference, he reviewed the steps undertaken on his behalf to withdraw the guilty plea entered in docket number MICR1993-01270.

The Division argues that the Division's denial is based on applicable law and should be upheld. It contends that Quinn, as the applicant for a license, was obligated to disclose any criminal convictions but that his August 19, 2009 application made no reference to his two felony convictions, and included no attachments explaining or providing details about those convictions. The Division asserts that Quinn, by providing with his application only a Nolle Prosequi form disposing of prosecutions in 2000, led the Division to believe that his criminal record was limited to those episodes. It concludes that Quinn, by submitting his application without disclosing or referencing his complete criminal history, provided incorrect, misleading, untrue and incomplete information to the Division. In such circumstances, the Commissioner may, pursuant to G.L. c. 175, §162R (a)(1), deny the application. The Division further notes that the Commissioner may deny a license to an applicant who has been convicted of a felony. It points out that Quinn does not dispute the felony convictions, and that G.L. c. 175, §162R (a)(6) therefore supports denial of his application.

The Division argues that the Commissioner has broad discretion to deny a license application, which she must exercise fairly and in a manner that is not arbitrary or capricious. It further notes that an applicant for a license has the burden to ensure that the answers to questions on the form are correct. The Division observes that the facts underlying the stated reasons for denying Quinn's application are not disputed. It states that Quinn chose not to acknowledge or explain the difficult circumstances relating to docket number MICR1993-01270 as part of his application. It argues that the well-established principle that truthfulness on an application is imperative to enable the Division to determine eligibility for licensing supports denial of Quinn's application.

III. Discussion and Analysis

The Massachusetts Insurance Producer Licensing statute, G.L. c. 175, §§162G through 162X, among other things sets out the requirements for obtaining and maintaining a Massachusetts insurance producer license. G.L. c. 175, §162R (a) specifies fourteen grounds on which the Commissioner may deny an application for a producer's license. The Director identified subsections §162R (a)(1), providing "incorrect,

misleading, incomplete or materially untrue information in the license application” and (6), conviction of a felony, as the two grounds for denying Quinn’s application. The evidence presented supports the Director’s decision.

The facts do not support Quinn’s position that his application fully satisfied the licensing requirements. Although he checked “Yes” in answer to Question 1 on the Uniform Application and submitted the Nolle Prosequi Form with respect to certain criminal prosecutions, he omitted any reference to docket number MICR1993-01270. Without that information, the information he provided was “incorrect, misleading, untrue and incomplete.” Later discussions with Division staff do not compensate for failure to follow the instructions on the Uniform Application carefully and to disclose all relevant information at the outset of the licensing process.³ Quinn offered no justification for his omission of the 1993 prosecutions from his application. His failure to provide complete information is, by itself, a sufficient reason to deny his license application.

Quinn’s objections to the Division’s reliance on his CORI report are without merit. By statute, commission of a felony is a specifically identified ground on which the Commissioner may deny an application for an insurance producer’s license. Quinn authorized release of his CORI to the Division and cannot now complain that it should not have relied on the contents of that report in evaluating his application. Quinn’s reliance on documents relating to CORI which he submitted at the first prehearing conference in this matter is misplaced. Executive Order 495 and G.L. c. 151 B, summarized in the MCAD Fact Sheet, both address restrictions on using CORI in making employment decisions. The documents from the MDAA and the MBA provide more general information about access to and the administration of CORI.⁴ This proceeding is an appeal from a licensing decision made by an agency pursuant to a statute which specifically identifies conviction of a felony as a relevant factor in determining qualifications for licensure.⁵

³ It is evident from Quinn’s submissions following the CORI report that he is actively engaged in legal proceedings to change the outcome of MICR1993-01270. Those materials should have been submitted with his application.

⁴ G.L. c. 233, §21, as noted above, relates to the use of criminal records to impeach the testimony of a witness; it has no relevance to this matter.

⁵ Although Quinn is attempting to re-open the 1993 proceeding and to withdraw his guilty plea, it is still on his record at this time.

IV. Conclusion

For the above reasons, I find that the evidence supports the Director's decision to deny Thomas Quinn's application for a producer's license. I therefore deny his appeal and uphold her decision.

Dated: March 8, 2010

Jean F. Farrington
Presiding Officer

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