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COMMISSIONER OF INSURANCE

Demitrios Economou, Petitioner
v.
Division of Insurance, Respondent
Docket No. E2013-01

Order on Respondent's Motion for Summary Decision

Introduction and Procedural History

On January 9, 2013, Demitrios Economou ("Economou") filed with the Division of Insurance ("Division") a notice of claim for an adjudicatory proceeding. Economou requested a hearing on a decision issued by the Division's Director of Producer Licensing ("Director") on December 11, 2012 denying his application for a public insurance adjuster's license (the "Denial Letter"). On January 10, 2013 a Notice of Procedure issued that, among other things, instructed the Division to file an answer. An order scheduling a prehearing conference and a hearing was issued on January 11, 2013.¹

The Division's answer, filed on January 14, 2013, consisted of a copy of the Denial Letter stating that the Director had concluded, based on Economou's criminal history, that he did not satisfy the statutory standards set out in Massachusetts General Laws, Chapter 175, §172 for licensure as a public insurance adjuster.² Subsequently, on January 16, 2013 and January 25, 2013, the Division filed additional documentation including copies of Economou's license application and documents submitted with it, dockets from the Worcester Superior Court, and a

¹The relevant licensing statute, Massachusetts General Laws Chapter 175, §172, does not require a hearing on a decision rejecting an application for a public insurance adjuster's license. The Denial Letter to Economou stated that he could appeal the decision. A hearing is appropriate in such circumstances. See, *Yerardi's Moody Street Restaurant v. Board of Selectmen of Randolph*, 19 Mass. App. Ct. 296 (1985).

² To qualify for a license, the applicant must be found to be suitable and must satisfy the Commissioner that he or she is trustworthy and competent.

decision in an earlier administrative proceeding at the Division, *James C. Economou v Division of Insurance*, Docket No. E2001-09.³ The Division identified these documents as exhibits that it would introduce at any hearing.

Robert Kelly, Esq. represents the Division in this matter. On February 6, 2013, Charles E. Berg, Esq. filed a notice of appearance on behalf of Economou; the prehearing conference initially scheduled for February 8, 2013 was continued to March 12, 2013. At the conclusion of that conference, Economou requested that a second prehearing conference be scheduled. At that second conference, held on April 9, 2013, Economou moved for a “formal adjudicatory proceeding.” The Division filed a memorandum opposing his motion on April 12, 2013. An order denying the motion was issued on April 18, 2013 (the “April 18, 2013 Order”.) That order also required Economou to submit, by May 1, 2013, a statement identifying any facts in the Denial Letter that he disputed. A third prehearing conference was scheduled for May 3, 2013.

Economou moved on April 30, 2013, to stay this proceeding because he was appealing the April 18, 2013 Order to the Superior Court. The Division filed an opposition to his motion. On May 10, 2013, an order was issued denying the motion to stay and enlarging to May 17, 2013 the time for compliance with the provisions of the April 18, 2013 Order requiring Economou to submit a statement of disputed facts. Petitioner, on May 15, 2013, submitted a “Statement of Disputed Facts” disputing the findings in the Director’s Denial Letter that he is not a suitable person to act as a public insurance adjuster and that he is not trustworthy and competent.

On June 28, 2013, the Division moved to dismiss Economou’s appeal for failure to prosecute or, alternatively, to enter summary decision in favor of the Division. On July 1, 2013, Economou was ordered to submit, by July 15, 2013, a memorandum of law addressing the legal merits of the Denial Letter. Petitioner filed his memorandum on July 13, 2013. The Division submitted a memorandum in support of its motion for summary decision on July 25, 2013.

After review of the record and the parties’ arguments, I conclude, for the following reasons, that the Division’s motion for summary decision should be allowed.

Discussion and Analysis

Pursuant to 801 CMR 1.01 (7)(h), summary decision is appropriate when a party to an adjudicatory proceeding is of the opinion that there is no genuine issue of fact relating to all or

³ Demitrios Economou was known as James Economou for many years and, in 1993, was licensed under that name as a public fire loss adjuster. The Division declined to renew his license in 2001. On appeal, the hearing officer upheld the Division’s decision.

part of a claim or defense and he is entitled to prevail as a matter of law. The Director denied Economou's application on the grounds that, after a review of his completed application and his Criminal Offender Record Information ("CORI") report, the Division was not satisfied that he 1) was a suitable person to act as a public adjuster; and 2) met the statutory standards of trustworthiness and competence, specifically because of his convictions for workers' compensation insurance fraud, conspiracy to commit such fraud, and larceny over \$250.

Economou does not dispute the factual record on which the Director relied, consisting of his application and supporting documents and his CORI report. His May 15, 2013 statement does not challenge his criminal record but improperly characterizes as disputed "facts" the Director's conclusions that the record did not demonstrate that Economou satisfied the statutory requirements for a public adjuster's license. I find that there is no genuine issue of material fact that would preclude summary decision in this matter.

The petitioner's burden on appeal, therefore, is to demonstrate that the Director's decision was incorrect as a matter of law, either because the factual record did not support her decision or she applied a legally incorrect standard. Economou's notice of claim set out two reasons for his appeal: 1) the stated grounds for denying his application were arbitrary and capricious; and 2) "to the extent the grounds are determinable they constitute an unacceptable denial of due process and equal protection." Economou contends that the Director's decision was arbitrary and capricious because the Denial Letter does not provide a reasoned explanation for her conclusions or indicate whether she considered evidence of his rehabilitation in denying him a license without a hearing.

Chapter 175, §172, in its entirety, sets out the qualifications for licensure as a public insurance adjuster. In brief, the Commissioner may, upon payment of a fee, completion of a written examination, and submission of a written application and supporting documents, issue a license to act as a public insurance adjuster to any "suitable person" over age 21. The Commissioner has discretion to issue a license to an applicant who satisfies those requirements, but "shall issue a license" if he is satisfied that the applicant is trustworthy and competent. The guiding principle applicable to an agency's exercise of discretionary power is that it must "exercise its discretion fairly and not act in an arbitrary and capricious manner." *Gurry v. Board of Public Accountancy*, 394 Mass. 118 , 128 (1985), quoting from *LaPointe v. License Bd. of Worcester*, 389 Mass. 454 , 462 (1983). Licensing authorities may not act in an unreasonable or arbitrary manner and must consider and determine each application on its own set of facts.

Turnpike Amusement Park, Inc. v. Licensing Commission of Cambridge, 343 Mass. 435 (1962).

Although Economou contends that the Director's decision was arbitrary and capricious because of the weight given to his criminal history and, without a hearing, to evidence of his rehabilitation, he offers no evidence that she applied an incorrect legal standard. A person seeking a public adjuster's license must report convictions, arrests or prosecutions on the application; Economou does not argue that his information is not relevant to his qualifications for a license. The Director specifically articulates Economou's criminal history of worker's compensation fraud, conspiracy to commit fraud, and larceny as evidence supporting a conclusion that he does not meet the standard of trustworthiness and competence.

Economou does not suggest that the Director's decision on his application is inconsistent with prior Division actions denying licenses to individuals with criminal records or initiating administrative actions against licensees who fail to disclose their criminal records.⁴ He pointed out the length of time since his convictions at the initial prehearing conference, but did not subsequently demonstrate that the passage of time was a legally sufficient reason to offset his criminal history that could render the Director's conclusion arbitrary or capricious as a matter of law.⁵ Because Economou's convictions were for fraud and larceny and, further, directly connected to insurance, it is appropriate to give them significant weight in determining his qualifications for a public insurance adjuster's license.

As evidence of his current suitability for a license, Economou attached to his application two letters of support, one from the Dean of St. Spyridon Greek Orthodox Cathedral and one from Kevin O'Sullivan.⁶ Economou argues that the Denial Letter is flawed because it does not specifically address evidence of his rehabilitation. His position fails to consider the Director's statement that she reached her conclusions "after a thorough review and consideration of your completed application..." I am not persuaded that the evidentiary value of the support letters is such that it was error not to address them squarely in the Denial Letter.

⁴ See, e.g., *Burke v. Division of Insurance*, DOI Docket No. E2011-04; *White v. Division of Insurance*, Docket No. E2009-17 (2009).

⁵ A recent Division decision noted that while "it is reasonable to consider the length of time between a license application and incidents that are relevant to the denial of that application, the passage of time is not the sole measure of the weight to be given to past misconduct. It must be balanced with considerations of the scope of the misconduct and the importance of the event in the context of industry standards." *Lanza v. Division of Insurance*, DOI Docket No. E2011-06 (2012), 8.

⁶ Economou's application refers to three character references commenting that one, from a past associate father of the St. Spyridon Greek Orthodox Cathedral, was not attached to his application but was "recently forwarded to the Commissioner of Insurance." Economou was responsible for ensuring that all the materials he wanted the Director to consider were sent to her as part of his application. The letter in question was not part of the record.

Recommendation letters offered as evidence of rehabilitation are appropriately reviewed to determine the extent to which they provide relevant and reliable information. In their respective letters, Dean Paleologos and Mr. O’Sullivan both state that they have known Economou for many years, but do not specify that their acquaintance is sufficiently longstanding to encompass the years of his legal difficulties. Both refer to his dedication to volunteer service to his church; Mr. O’ Sullivan refers to his current occupation as a process server. Neither writer addresses directly the question of the circumstances and factors that contributed to Economou’s past problems and his resulting criminal record, considers the seriousness of his actions, and addresses subsequent changes that could support a conclusion that similar problems are unlikely to recur.⁷ Viewed as a whole, the two letters have virtually no evidentiary value and do not provide information sufficient to nourish a discussion of the issue of Economou’s rehabilitation. Such a meager submission on a significant factor in determining Economou’s eligibility for a public insurance adjuster’s license is inadequate to outweigh Economou’s criminal history. For that reason, I am not persuaded that the omission of a direct discussion of rehabilitation in the Denial Letter was unfair, an abuse of discretion, or an error of law.

As the second prong of his appeal, Economou contends that he has been denied due process and equal protection. He asserts that an administrative hearing on the merits of a license denial that reviews the license application, ancillary materials submitted with it and the stated reasons in the Denial Letter, to determine whether the Director based her decision on substantial evidence and did not abuse her discretion, denies the applicant due process.⁸ Economou argues that Chapter 30A, §13 requires an agency, before it can revoke or refuse to renew a license, to hold a hearing at which the parties have a right to call witnesses, introduce exhibits, cross-examine witnesses who testify and submit rebuttal evidence. He expands that statute to a requirement that he be given “an evidentiary hearing *de novo*” on the denial of his license application. The Division correctly points out that the cited statutory language prescribes a

⁷ Both writers acknowledge that the letters are intended to support Economou’s application. Mr. O’Sullivan, however, refers to that application as a attempt to “reinstate” his license.

⁸ At the initial prehearing conference, Economou asserted that an evidentiary hearing would be required in this proceeding even if no facts were disputed, so that the presiding officer could judge his character. He then contended that the Director could have met with him before denying his application, but could identify no statute that would require such a meeting.

hearing only when an agency seeks to revoke or non-renew a license and is therefore inapplicable to Economou.⁹

Economou contends further that he is entitled to a hearing under Chapter 175, §162R (b) that permits a person whose application for a producer license has been denied to demand a hearing. Section 162R, however, specifically applies only to insurance producer licenses and therefore offers no statutory basis for Economou's appeal. Even if it did apply, the statute specifies that the purpose of the hearing is "to determine the reasonableness of the Commissioner's action" [denying the license.] It does not support Economou's contention that he is entitled to a *de novo* hearing.

Conclusion and Order

After careful review of the record in this matter, I find that the Director of Producer Licensing correctly determined that Demitrios Economou failed to meet the required standards of suitability, trustworthiness and competence and correctly denied his 2012 application for a Massachusetts public insurance adjuster's license. I find further that Economou did not offer evidence of rehabilitation sufficient to outweigh the evidence that supported denial of his application. The Division's Motion for Summary Decision is hereby allowed.

DATED: August 6, 2013

Jean F. Farrington
Presiding Officer

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

⁹ Documents that Economou has submitted in the course of this proceeding characterize his application as one to "regain" or "renew" his license. His complaint to the Superior Court, attached as an exhibit to his motion to stay, asserts that he is trying to regain a license that the Division declined to renew in 2002, and his motion for a formal adjudicatory proceeding refers to a "re-application" for a public adjuster's license. Pursuant to Chapter 175, §172, a public adjuster's license expires in three years from the date it is issued, unless sooner revoked or suspended, and may be renewed for succeeding three year periods without taking an additional examination. According to the Division's decision in *James Economou v. Division of Insurance*, DOI Docket E2001-09, Economou was licensed as a public fire loss adjuster from January 1993 to January 1999. His application to renew his license was denied in June 2001 and that denial was upheld on appeal. Economou cites to no statute or regulation in support of his proposed characterization of the 2012 application as one to "renew" a license that expired over a decade ago.