



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

1000 Washington Street, Suite 810, • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
<http://www.mass.gov/doi>

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

BARBARA ANTHONY
UNDERSECRETARY

JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Paul Burke, Petitioner
v.
Division of Insurance, Respondent

Docket No. E2011-04

Decision

Procedural Background

Paul Burke ("Mr. Burke") submitted a Uniform Application for Individual Producer License/Registration with the Division of Insurance ("Division") dated January 31, 2011. A letter from Mr. Burke dated January 31, 2011, accompanied the application.

By letter dated March 25, 2011, Diane Silverman Black, Director of Producer Licensing for the Division ("Ms. Black"), informed Mr. Burke that his application for an insurance producer license was being denied based on seven felony convictions. Ms. Black also informed Mr. Burke that "[a]lthough your license has been denied for more than one conviction, be advised that I may have denied your license independently for each conviction listed." Ms. Black also advised Mr. Burke of his entitlement to a hearing.

Mr. Burke filed a Notice of Claim for an Adjudicatory Proceeding, which was received by Hearings & Appeals at the Division on March 29, 2011. Following pre-Hearing conferences held on April 25 and May 11, 2011, a Hearing was held on June 13, 2011.¹

Discussion and Findings of Fact

This hearing on Mr. Burke's Claim for an Adjudicatory Proceeding was held pursuant to G.L. c. 175, § 162R(b), which provides in pertinent part as follows:

¹ The digital recording apparatus in Hearing Room 1-E apparently malfunctioned, or did not function, during the pre-hearing conference held on May 11. Unfortunately, therefore, no recording of that pre-hearing conference was created. Digital recordings of the April 25 pre-Hearing conference and the June 13 Hearing are extant.

(b) In the event that the action by the commissioner is to ... to deny an application for a license, the commissioner shall notify the applicant ... and advise, in writing, the applicant ... of the reason for the denial ... of the applicant's ... license. The applicant ... may make written demand upon the commissioner within 30 days for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held pursuant to chapter 30A.

Pursuant to this statutory authority, the purpose of this proceeding is to determine the reasonableness of Ms. Black's denial of Mr. Burke's application for an insurance producer's license.

Ms. Black denied Mr. Burke's application for an insurance producer's license pursuant to G.L. c. 175, § 162R(a)(6), which provides in relevant part as follows: "(a) The commissioner may ... refuse to issue ... an insurance producer's license ... for any 1 or more of the following causes:— ... (6) having been convicted of a felony." In her letter dated March 25, 2011, contained in Hearing Exhibit #1, Ms. Black informed Mr. Burke that his application for an insurance producer license was being denied pursuant to G.L. c. 175, § 162R(a)(6), conviction of a felony, based on the following seven convictions:

- (1) carjacking (June 29, 1999);
- (2) larceny of motor vehicle (May 8, 1996);
- (3) possession of burglarious tools (May 8, 1996);
- (4) robbery, unarmed, over 65 (May 21, 1996);
- (5) breaking and entering with intent to commit a felony (May 21, 1996);
- (6) assault and battery with a dangerous weapon (September 13, 1995); and
- (7) armed robbery (April 19, 1989).

At the pre-Hearing conference on April 25, 2011, Mr. Burke acknowledged that his seven convictions listed in Ms. Black's letter are described accurately. He did not dispute that these seven convictions are all felony convictions.² I find that Mr. Burke was convicted of seven felonies between 1989 and 1999.

Mr. Burke argues that the age of the seven convictions makes it unreasonable to rely on them as the basis for denying him an insurance producer's license in 2011. The statute, G.L. c. 175, § 162R(a)(6), however, does not limit felonies that may be considered to those committed within any particular timeframe.

Mr. Burke also argues that his convictions cannot reasonably constitute a basis for denying him an insurance producer's license because they did not involve fraudulent activity, embezzlement, fraud, larceny by check, misappropriation of funds, or similar behavior, and had no nexus to the insurance business. The statute, however, does not limit the Division's consideration of a felony conviction to any

² At the Hearing on June 13, 2011, Mr. Burke referred to "the felonies that I have been convicted of" and complained that Ms. Black should have told him if the Division was going to deny his insurance producer application "because of my felonies."

particular types of felony, or to criminal acts involving the business of insurance. Mr. Burke's convictions involved serious disregard for the integrity of persons and property.

Considering the magnitude and nature of Mr. Burke's criminal acts, it was not unreasonable to consider them relevant to evaluating his qualifications and suitability for an insurance producer's license, notwithstanding the passage of time.

Conclusion

Having carefully considered the facts that have been established in this proceeding, the denial of an individual insurance producer's license to Mr. Burke based on his felony convictions was not unreasonable.

Filed: June 22, 2011

Stephen M. Sumner
Presiding Officer

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

Paul Burke
34 Circuit Road
Medford, MA 02155

Douglas A. Hale, Esq.
Counsel to the Commissioner
1000 Washington Street, Suite 810
Boston, MA 02118-6200