

**BEFORE ALLAN L . MCVEY INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA**

IN RE: Maria Garcia-Contreras

ADMINISTRATIVE NO.: 12-AP-PLRC-02023

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the findings of fact and conclusions of law contained in the Recommended Decision of the Hearing Examiner, appended hereto. The Commissioner finds that no improper action was taken on behalf of the Commissioner or this agency. As discussed in the Recommended Decision, the Petitioner failed to show that any substantial rights were prejudiced due to this administrative agency's findings, inferences, conclusions, decisions, or orders, and, therefore, vacation of the Commissioner's February 22, 2013, order is improper. It is consequently **ORDERED** that Respondent, Maria Garcia-Contreras, Petition to Vacate the Commissioner's Order dated February 22, 2013 be denied, per the recommendation of the Hearing Examiner.

However, upon the Hearing Examiner's finding that Ms. Garcia-Contreras's testimony was credible that she was unaware of the 2011 license application when it was filed and that she did not provide the false information found on the application, the Commissioner finds it appropriate to set aside the February 22, 2013, order, on his own motion.

Therefore, it is **ORDERED** that the Commissioner's February 22, 2013, order be **SET ASIDE**. The effect of this order shall be as though the Commissioner's February 22, 2023 order was never entered. The findings of fact, conclusions of law, and penalties imposed shall be void. Ms. Garcia-Contreras shall not owe the five-hundred dollar (\$500.00) fine to this agency. The

status of Ms. Garcia-Contreras's resident producer license shall henceforth be noted expired in West Virginia, rather than revoked. Notably, Ms. Garcia-Contreras testified that she has never lived in West Virginia and is therefore ineligible for a resident producer license.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted are preserved.

ENTERED this 8th day of December, 2023.



ALLAN L. MCVEY CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

**BEFORE ALLAN L. MCVEY
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

**IN RE: Maria Garcia-Contreras
 Petitioner**

ADMINISTRATIVE NO.: 12-AP-PLRC-02023

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On October 16, 2023, a hearing was held before Hearing Examiner Mark W. Carbone, Esq. There then being present on behalf of the West Virginia Offices of the Insurance Commissioner: Andrew Ryan, Esq., Jeff Black, Esq., Greg Elam, Esq. and Robert Grishaber, Director of Licensing and Education. Ms. Maria Garcia-Contreras (hereinafter “Petitioner”) made an appearance by telephone.

Statement of the Case

This matter arises out of a petition of the Petitioner to vacate a decision by the West Virginia Offices of the Insurance Commissioner issued on February 22, 2013. In that Order, the resident producer license of the Petitioner was revoked.

Findings of Fact

1. In 2011, the Petitioner allegedly applied for a resident producer license in the State of West Virginia. In that application the Petitioner listed her home and business address as 20 Lopez Drive, Martinsburg West Virginia 25405. (Ex. 3)

2. The West Virginia Offices of the Insurance Commissioner granted the Petitioner a resident producer license. (Tr. PP. 24-25)

3. There came a time in 2012 that the West Virginia Offices of the Insurance Commissioner became concerned about the information contained in the Petitioner's application. (Ex. 3)

4. It was discovered that there were several individuals that had applied for a producer license using the same business and home address of 20 Lopez Drive, Martinsburg, West Virginia, as the Petitioner. (Ex. 3)

5. An investigation was conducted into the Petitioner. After a background check, it was determined that the Petitioner had never been a resident of West Virginia. (Ex. 3)

6. On January 14, 2013, a hearing was held in front of the Honorable Jack W. Debolt concerning the validity of the petitioner's resident producer license. (Tr. P. 22; Ex. 3)

7. During that hearing, evidence was produced indicating that the resident and business address of the Petitioner were falsified. A search indicated that Petitioner resided in the State of Florida and not West Virginia. As a result of that hearing, the resident producer license of the Petitioner was revoked on February 22, 2013. (Ex 3)

8. In May of 2014, the Petitioner file a Petition to Vacate Oder Dated February 22, 2013. Attached to the document was an Affidavit from the Petitioner. (Ex.1)

9. In the Petitioner's Affidavit, she stated that at the time that the application for a West Virginia producer license was completed she was employed by A-United Bails Bond. She went on to describe her job history. The Petitioner also stated that the application indicated that she had been working at A-United Bails Bond in 2005. However, she was only fourteen years old in 2005 and was not working at A-United. (Tr. P. 8; Ex. 1)

10. As part of her Affidavit, the Petitioner stated that she was unaware that she had a resident producer license in West Virginia until she had learned that it had been revoked. She obtained this knowledge when she applied for a Surety License through the Florida Department of Financial Services. At that point she was informed that she would not be granted a Surety License due to the revocation of her resident producer license in West Virginia. (Tr. P. 7; Ex. 1)

11. In her testimony, the Petitioner stated that at some point an African American came into the office of A-United Bails Bond and asked her if she wanted a West Virginia license. According to the Petitioner, she declined the offer and stated that she had never been to West Virginia and had no intention of moving there. (Tr. P. 7)

12. In the first affidavit submitted to the West Virginia Offices of the Insurance Commissioner there was no mention of an African American asking her about a West Virginia license. (Ex. 1)

13. In 2023, the Petitioner submitted another affidavit which did state that an African American approached her about a West Virginia license. (Ex. 2)

14. During her testimony, the Petitioner stated that the name on the application and the Social Security number belonged to her. She denied that she was in any way associated with the address on the application. (Tr. P. 9)

15. When asked about why she waited from 2014 to 2023 to attempt to get the 2013 Order vacated, she stated that she had attended nursing school, had two children and her father had passed away. She also stated that she had given up on getting it resolved when Mr. Rardin died. Mr. Rardin of the West Virginia Offices of the Insurance Commissioner had been assisting the Petitioner. (Tr. P. 16)

16. There were several cities listed on the Petitioner's background check where she had allegedly resided. The Petitioner denied ever living in any of these cities. She claimed that she has lived in Bradenton, Florida, her entire life. (Tr, PP. 16-17)

Issue

Whether the Petitioner has presented sufficient evidence for the West Virginia Offices of the Insurance Commissioner to vacate its Order dated February 22, 2013.

Burden of Proof

The Petitioner has the burden of proof to prove, by a preponderance of the evidence, that the West Virginia Offices of the Insurance Commissioner erred when it issued its Order on February 22, 2013, revoking the Petitioner's license.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this matter pursuant to Article 12, Chapter 33 of the West Virginia Code.

Analysis

The Petitioner is asking the West Virginia Offices of the Insurance Commissioner to vacate its Order dated February 22, 2013, which revoked the Petitioner's resident producer license.

Vacating an Administrative Order is typically done by a West Virginia Circuit Court. While the Petitioner's petition is not before a Circuit Court, the standard of review would be the same. In Syllabus Point 1 of *Bloss & Dillard v. West Virginia Human Rights Comm'n*, 398 S.E.2d

528, 183 W.Va.702 (1990), the West Virginia Supreme Court established what must be proven in order to vacate and administrative order. It states as follows:

“Upon judicial review of a contested case under the West Virginia Administrative Procedure Act, Chapter 29A, Article 5, Section 4(g), the circuit court may affirm the order or decision of the agency or remand the case for further proceedings. The circuit court shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions or order are: ‘(1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.’” Syl. pt. 2, *Shepherdstown Volunteer Fire Dep’t v. State ex rel. State Human Rights Commission*, 172 W.Va. 627, 309 S.E.2d 342 (1983).

In order to vacate the original order, we must examine whether any of the six potential errors listed in *Bloss & Dillard* occurred when the Offices of the Insurance Commissioner issued its Order revoking the Petitioner’s resident producer license.

The first issue to determine is whether the decision of February 22, 2013, violated any statutory provisions. It is clear that the decision by the Honorable Jack DeBolt followed the statutory provisions. The statute requires that a person granted a resident producer must reside in West Virginia.

West Virginia Code § 33-12-6a states as follows:

(1) An individual applicant may qualify as a resident only if he or she resides in this state. Any license issued pursuant to any application claiming residency for licensing purposes shall constitute an election of residency in this state and shall be void if the licensee, while holding a resident license in this state, also holds or makes application for a license in or thereafter claims to be a resident of any other state or jurisdiction, or if the licensee ceases to be a resident of this state.

Based on the information available at the time of the initial hearing, there was no proof that the Petitioner resided in West Virginia. The background check did not indicate that she ever lived in West Virginia. Therefore, there was no violation of a constitutional or statutory provision.

The next step in the analysis is whether the action was in excess of statutory authority or jurisdiction. West Virginia Code § 33-12-24(b)(1) states as follows:

(b) The Insurance Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, solicitor's license or excess line broker's license, or may levy a civil penalty or any combination of actions, for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application[.]

The evidence at the initial hearing was that the Petitioner did not live in West Virginia, so the information on the application was untrue. Therefore, it was within the statutory authority for the Commissioner to revoke the Petitioner's resident producer license.

A decision by the Commissioner can be vacated if there is some error of law. The Petitioner did not cite any error of law, therefore, there was no proof that an error of law occurred at the initial hearing.

The next potential basis for a decision to be vacated is if the initial order was wrong based on the entirety of the evidence. Again, the Petitioner did not cite that the order was wrong based on the evidence presented at the initial hearing. In fact, the original decision was based solely on the evidence presented.

Finally, an order by the Commissioner can be vacated if it is shown that the decision was arbitrary, capricious or an abuse of discretion. No evidence was presented to show that the initial decision was either arbitrary, capricious or an abuse of discretion.

Based upon the above discussion, there is insufficient evidence to vacate the initial order. The original Order should not be vacated.

The Petitioner does not argue that the decision was in error based on the evidence that was presented at the initial hearing, but that the evidence was in error because she never applied for a resident producer license. The Petitioner stated that she had never been to West Virginia and was completely unaware of the Commissioner's Order until she applied for a license in Florida.

The Petitioner was believable in her testimony; however, her request to vacate the original Order is without merit. Even though the Petitioner's Petition to Vacate the Commissioner's original Order is denied, it is acceptable to set aside the original Order to allow the Petitioner to successfully apply for a license in Florida. The original Order of the Commissioner cannot be vacated but an explanation of mistaken identity in the application is acceptable.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commissioner have jurisdiction over resident producers by virtue of West Virginia Code § 33-12-24(a).

2. The West Virginia Supreme Court in Syllabus Point 1 of *Bloss & Dillard v. West Virginia Human Rights Comm'n*, 398 S.E.2d 528, 183 W.Va.702 (1990) stated the five bases for an Order of an Administrative Agency to be vacated.

3. Pursuant to Syllabus Point 1 of *Bloss & Dillard v. West Virginia Human Rights Comm'n*, 398 S.E.2d 528, 183 W.Va.702 (1990), the five reasons an administrative order can be vacated are, if the administrative agency exceeded its statutory authority; the decision was based on unlawful procedures; there was an error of law; the decision was wrong based on the entire evidence; or, the decision was arbitrary, capricious or an abuse of discretion.

4. The Petitioner did not provide any evidence that the original Order by the Commissioner could be vacated under the requirements of *Bloss & Dillard*.

5. Under *Bloss & Dillard*, the original Order of the Commissioner cannot be vacated, therefore the Petitioner's petition is denied.

Recommended Decision

It is recommended that the Petition of Maria Garcia-Contreras be denied but the Insurance Commissioner may set aside the original Order in order to allow the Petitioner to obtain her producer license in Florida as long as she pays the original fine of \$500.00.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: Dec 5, 2023

INTEROFFICE MEMORANDUM

TO: ALLAN L. MCVEY, INSURANCE COMMISSIONER

FROM: ANDREW S. RYAN, ATTORNEY

SUBJECT: MARIA GARCIA-CONTRERAS – ADMIN NO. 12-AP-PLRC-02023

DATE: 12/07/23

CC:

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Attached is a recommended decision and final order in the case of Maria Garcia-Contreras. Ms. Garcia-Contreras filed a motion to vacate a decision entered against her on February 22, 2013. In this prior decision, the Insurance Commissioner, after notice and hearing, found that Ms. Garcia-Contreras filed a resident producer application in 2011 that falsely represented that she was a West Virginia resident. Notably, Ms. Garcia-Contreras did not appear at that hearing. The February 22, 2013, order revoked Ms. Garcia-Contreras's resident producer license and fined her five-hundred dollars (\$500.00).

In 2023, Ms. Garcia-Contreras filed her petition to vacate the Commissioner's prior order. She appeared for a hearing and explained that she was unaware that the prior resident producer license was filed on her behalf. She readily admitted that she was not, nor had she ever been a West Virginia resident. Ms. Garcia-Contreras believed that she had been the victim of identify theft and someone applied for the license without her consent. Ms. Garcia-Contreras further explained that the prior order prevented her from obtaining a resident bail bondsmen license in her home state of Florida.

The Hearing Examiner found that Ms. Garcia-Contreras's testimony was believable and credible. However, upon his legal analysis, the Examiner found that Ms. Garcia-Contreras failed to prove that the prior order was erroneous for one of the six grounds provided for in Syllabus Point 1 of *Bloss & Dillard v. West Virginia Human Rights Comm'n*, 398 S.E.2d 528, 183 W.Va.702 (1990). (See page 5 for those six grounds). Therefore, the Examiner concluded that vacation of the Commissioner's February 22, 2013, order was unwarranted.

Nevertheless, considering that the Examiner found that Ms. Garcia-Contreras was credible in her explanation of the prior falsified producer application, it is recommended that the Commissioner, upon his own motion, set aside the February 22, 2013 order. In the Examiner's view, Ms. Garcia-Contreras is the victim of a crime and has been unjustly penalized for the actions of some unknown individual. Without any admission of fault upon this agency, the Commissioner may set aside the order, which will permit Ms. Garcia-Contreras to be free of any burden or obligation and allow her to pursue a bail bondsman license in Florida.

After your review of the attached recommended decision and final order, please sign and return the documents to legal so we can process it. If you have any questions, please do not hesitate to contact me or Jeff.

Thank you,



Andy Ryan