

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

**IN RE: JARRELL LEE CLIFTON, II
 ADMINISTRATIVE PROCEEDING NO. 23-IC-02225**

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. It is consequently ORDERED that the Petitioner, be granted a West Virginia resident producer license.

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

ENTERED this 14th day of September, 2023.



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

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INSURANCE COMMISSIONER OF THE STATE OF WEST VIRGINIA**

**IN RE: JARRELL LEE CLIFTON, II
 ADMINISTRATIVE PROCEEDING NO. 23-IC-02225**

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On July 25, 2023, a hearing was held, before Hearing Examiner Mark W. Carbone, Esq., at the Offices of the Insurance Commissioner, Charleston, West Virginia. Jarrell Lee Clifton, II (hereinafter “Petitioner”) appeared in person at the hearing. Making an appearance at the hearing for the Complainant were John Wooton, Esq., Mary Beth Barr, Andrew “Frosty” McNabb, Mike McKenny, Brian Smith, John Hussell, Esq., Michael Johnson and Ellen Golford. On behalf of the West Virginia Offices of the Insurance Commissioner was Jeff Black, Esq., Greg Elam, Esq. and Robert Grishaber, Director of Licensing and Education for the West Virginia Offices of the Insurance Commissioner.

Statement of the Case

This matter arises out of the decision of the West Virginia Offices of the Insurance Commissioner to deny the Petitioner’s application for a resident producer license.

Findings of Fact

1. The Petitioner resides in Marlinton, West Virginia. He attended Marshall University majoring in Criminal Justice. After graduation, he went into the Army. When he left

the military, he opened a restaurant/lounge near Marlinton. He owned the restaurant/lounge from 1995 until 2000, when he declared bankruptcy. (Tr. PP. 14-15 and 21)

2. After owning the restaurant/lounge, the Petitioner applied to West Virginia University College of Law. He was admitted and attended law school from 2004 to 2007. After graduation, he was admitted to the bar and began his practice. (Tr. PP 14-15)

3. The Petitioner was hired as a part-time Pocahontas County Assistant Prosecutor from 2007 until 2009. He then became a full-time Assistant Prosecutor until 2011. In 2011, he left the Prosecutor's Office and went into private practice with Michael C. Doss.

4. While the Petitioner owned and operated the restaurant/lounge he failed to pay some of the state sales taxes and withholding taxes that were owed to the State of West Virginia. The WVOIC introduced into evidence three liens filed by the State of West Virginia.

5. A lien was filed on October 15, 2002, for the tax year ending in 1997. The lien was for \$20,205.40 for failing to submit to the state consumer sales taxes collected by the Petitioner. (Tr. PP 46-47; Respondent's Ex. 1)

6. The next lien was filed on October 15, 2002, for failure to remit state income taxes withheld from the Petitioner's employees. This lien amounted to \$2,094.23 for the period from December 1997 until January 1999. (Tr. P. 46; Respondent's Ex. 2)

7. Another lien for failure to pay consumer sales tax was also filed on August 15, 2002, which was for a period between August 1995 and January 1996. The amount of the lien was \$3,717.37. (Tr. P. 46; Respondent's Ex. 3)

8. The fact that the Petitioner owed these liens did not affect him from being admitted to law school or being admitted to the bar.

9. After graduating law school, the Petitioner was able to satisfy the tax liens when he sold some property and the house that was located on that property. (Tr. P. 7)

10. In August 2012, an investigation into the Petitioner was begun by a Marlinton police officer. Eventually the West Virginia State Police and the Federal Bureau of Investigation began an investigation of the Petitioner. (Supreme Court)¹

11. As a result of these investigations, the Petitioner was indicted for two counts of sexual intercourse on an incarcerated person and two counts of sexual assault in the second degree in the Circuit Court of Pocahontas County. (Supreme Court)

12. The Petitioner self-reported the indictment to the Office of Disciplinary Counsel (hereinafter “ODC”) on August 8, 2012. The ODC opened a complaint and sent a letter to the Petitioner on August 9, 2012. In response to the August 9, 2012 letter, the Petitioner invoked the Fifth Amendment and asked that any disciplinary action be stayed until the criminal issues were resolved. The ODC agreed to hold processing the complaint until after the criminal charges. (Supreme Court)

13. There was an Order entered by Judge John Henning on January 8, 2013, dismissing the charges against the Petitioner with prejudice. (Tr. P. 20; Petitioner’s Ex. 1)

14. Once the criminal charges were dismissed, the ODC continued its investigation into the Petitioner and obtained a copy of the investigation conducted by the State Police and the FBI. (Supreme Court)

15. Once the ODC began its process on the complaint, the issue was sent to a subcommittee of the ODC, the Hearing Panel Subcommittee (“HPS”). A hearing was held by the

¹¹ The references to the Supreme Court are references to Lawyer Disciplinary Board v. Jarrell L. Clifton, II, 236 W.Va. 362, 780 S.E.2d 628 (2015)

HPS on November 10 and 11, 2014. During the hearing, Mr. Clifton and several witnesses appeared. The testimony and evidence dealt with the allegations of three women.

16. The Based on this investigation, the HPS found that the Petitioner had engaged in unethical conduct with three women while he was an Assistant Prosecutor. The unethical conduct occurred in the Petitioner's office while he was serving as an Assistant Prosecutor Attorney. (Supreme Court)

17. The HPS recommended that the Petitioner receive a two-year suspension. (Supreme Court)

18. The ODC disagreed with the HPS's recommendation. The Supreme Court agreed with the ODC and held that the Petitioner's law license be annulled. (Supreme Court)

19. Without going into too much detail as to the accusations of the three women, below is a summary of their accusations. (Supreme Court)

20. The first victim had been indicted for the possession and intent to deliver a controlled substance and eventually put on Day Report. While she was on Day Report, she was contacted by the Petitioner via Facebook. The victim testified that the Petitioner stated he might help her with Day Report and asked her to stop by his office. (Supreme Court)

21. She did go to the Petitioner's office where certain sexual comments and actions occurred. The victim went on to testify that she was afraid that the Petitioner would send her back to jail if she did not comply with his sexual requests. She stated that her sexual relationship with the Petitioner was not consensual. (Supreme Court)

22. The West Virginia State Police and the Federal Bureau of Investigation began investigating the Petitioner. The Petitioner preserved sexually explicit photos on his computer. These photos were given to the investigators. (Supreme Court)

23. The investigators asked the first victim to visit the Petitioner wearing a wire. During this visit, the Petitioner asked to take photos of the first victim and asked her to touch his penis. (Supreme Court)

24. When the Petitioner was interviewed by the investigators, the Petitioner described the first victim as a professional acquaintance and that they were not friends. This statement was proven false. The Petitioner also stated that he was unaware of admitted that he had exchanged nude photographs. (Supreme Court)

25. As a result of the information provided by the first victim, the Petitioner was indicted on two counts of sexual assault in the second degree and two counts of sexual intercourse with an incarcerated person. The indictment was eventually dismissed by the Circuit Court of Pocahontas County since one of the investigators determined that the sexual relationship was consensual. (Supreme Court)

26. The second victim had a sexual relationship with the Petitioner when he owned the restaurant/lounge. Evidently at that time, the Petitioner secretly recorded the two of them having sex. When the second victim found out about the recording, she asked the Petitioner to destroy the video. Prior to going to law school, the Petitioner told the second victim that he had destroyed the video. (Supreme Court)

27. While the Petitioner was an Assistant Prosecuting Attorney, the second victim's son had been charged with brandishing. After running into the Petitioner at the grocery store, the Petitioner invited the second victim to visit him at his office to discuss her son's charge. The second victim testified that she went to the Petitioner's office where they initially discussed her son's case. (Supreme Court)

28. Eventually the conversation between the Petitioner and the second victim moved to a sexual one. At this point, the Petitioner told the second victim that he had not destroyed the video. In exchange for finally destroying the video, the Petitioner asked the second victim to show him her body and then exposed himself to her. (Supreme Court)

29. The Petitioner remained involved in the second victim's son's criminal matter. The matter was dismissed on a motion by the Petitioner. The Petitioner stated that it was appropriate for him to handle the second victim's son's matter. (Supreme Court)

30. The Petitioner testified that the statements of the second victim were mostly fabricated. He did admit that there were inappropriate comments made during his meeting with the second victim. (Supreme Court)

31. During his hearing with the HPS, the Petitioner admitted that he had not destroyed the video with the second victim. This statement was contrary to what he had asserted in his Answer and Affirmative Defenses to the complaint filed against him. (Supreme Court)

32. The third victim had had a relationship with the Petitioner before he entered law school. The third victim testified before HPS that she was a victim of a theft and asked the Respondent what she should do. (Supreme Court)

33. At about the same time, the third victim was involved in a domestic abuse situation. A domestic protective order had been brought against her boyfriend. The third victim wanted the charges dropped but the magistrate said that was up to the Petitioner. (Supreme Court)

34. The Petitioner invited her to his office and after discussing her complaint, their talk became sexual in nature. The Petitioner then asked the third victim to perform oral sex on him and she complied. (Supreme Court)

35. The third victim testified that she had performed oral sex on the Petitioner one or two times after her initial visit. (Supreme Court)

36. At some point, the third victim had been charged with destruction of property. She entered a diversion agreement approved by the Petitioner. Eventually the charges were dismissed, and the Petitioner signed off on the dismissal order. (Supreme Court)

37. In 2023 the Petitioner applied for a resident producer license. The application was reviewed by the Licensing and Education Department of the West Virginia Insurance Commissioner. (Supreme Court)

38. After review of the entire application package, which included the decision of the West Virginia Supreme Court decision, Lawyer Disciplinary Board v. Jarrell L. Clifton, II, 236 W.Va. 362, 780 S.E.2d 628 (2015) and the various tax liens that were incurred from 1997 to 2000, the West Virginia Offices of the Insurance Commissioner, in a letter dated June 12, 2023, denied the Petitioner's application. (Resp. Ex. 5)

39. The letter stated that the basis of the Insurance Commissioner's decision was that the West Virginia Supreme Court found that the Petitioner engaged in professional misconduct. The misconduct involved "dishonesty, fraud, deceit or misrepresentation". In addition, the Insurance Commissioner found that the Petitioner lied to the Office of the Disciplinary Counsel. (Resp. Ex. 5)

40. Finally, the denial letter stated that the prior tax liens indicated that the Petitioner was guilty of financial irresponsibility. (Resp. Ex. 5)

41. The denial letter cited W.Va. Code §33-12-6(a)(8) and W.Va. Code §33-12-6(a)(2) in support of its decision to deny the Petitioner's application. (Tr. 12; Resp. Ex. 5)

42. During the July 25, 2023, hearing, there were several witnesses that testified about the current character of the Petitioner.

43. The first character witness for the Petitioner was Ms. Mary Beth Barr. Ms. Barr is the former CEO of the Pocahontas Memorial Hospital. While Ms. Barr was the CEO of Pocahontas Memorial Hospital, the Petitioner was on the Board of Directors. Board members are appointed by the Pocahontas County Commission. (Tr. PP. 72-73)

44. While the Petitioner served on the Board, he was Chairman of the Finance Committee and Chairman of the Strategic Planning. (Tr. P. 74)

45. While Ms. Barr was the CEO, she met with the Petitioner at least once a month and sometimes more often. Ms. Barr stated that the Petitioner was, in her opinion, competent, honest and trustworthy. Ms. Barr also testified about the Petitioner's various activities in the community. (Tr. PP. 77-78)

46. As Chairman of the Finance Committee, the Petitioner would have to sign off on any notes the hospital had with the local funding agencies and banks. (Tr. P. 79)

47. Ms. Barr was aware of the fact that the Petitioner had his law license annulled and that it was due to moral and ethical issues. She was not aware that the West Virginia Supreme Court had found that the Petitioner had lied to the Office of Disciplinary Counsel and to the police who were investigating the allegations. (Tr. P. 81)

48. Ms. Barr was aware of some talk about tax liens but did not know it was \$25,000.00. Ms. Barr stated that now that she does know about the tax lines, which would not change her opinion that the Petitioner is competent, honest and trustworthy. (Tr. PP. 83-84)

49. The next character witness for the Petitioner was Andrew "Frosty" McNabb. Mr. McNabb testified that he had known the Petitioner since they were in fourth grade. He stated that

the Petitioner fills in at the pulpit at several different churches, he is involved with youth soccer and basketball. He went on to testify that the Petitioner does a lot of work in the Community. (Tr. PP. 86-87)

50. Mr. McNabb testified that the Petitioner has turned his life around, was now a committed Christian and a family man. He also stated that the Petitioner is honest, trustworthy and competent. (Tr. PP. 88-89)

51. Mr. McNabb does not know the exact reason the Petitioner had his law license annulled, other than rumors. He was aware of some financial difficulty on the part of the Petitioner but was not sure exactly what they were. Mr. McNabb went on to state that even with the information about the annulment of the Petitioner's law license and the tax liens, he still believes that the Petitioner is honest, competent and trustworthy. (Tr. PP 89-90)

52. The next character witness for the Petitioner was Michael C. McKenney. Mr. McKenney has known the Petitioner for four years. He met them when the Petitioner joined Community Watch. Community Watch does several tasks which benefit the community. Mr. McKenney testified that the Petitioner is very active in that organization. He stated that the Petitioner is also involved in the Community Emergency Response Team, Boy Scouts, bible study and substitute pastor at various churches. (Tr. PP. 92-93, 95)

53. Mr. McKenney stated that he did not know why the Petitioner had his law license annulled or that the Petitioner did not pay various withholding taxes. Mr. McKenney stated that this information does not change his opinion of the Petitioner. In his opinion, the Petitioner is competent, honest and trustworthy. (Tr. PP. 97-99)

54. The next witness for the Petitioner was Brian Smith. Mr. Smith is a schoolteacher at Marlinton Elementary School and has known the Petitioner since 2016. Mr. Smith knows the

Petitioner from coaching soccer. After the Petitioner coached Mr. Smith's kids, they became family friends. Mr. Smith taught one of the Petitioner's children and they were both involved in the cub scouts. (Tr. PP. 100-102)

55. Mr. Smith stated that he believes that the Petitioner is competent, honest and trustworthy. (Tr. P. 103)

56. Mr. Smith did not know that the Petitioner had lost his law license until the issue came up during the Petitioner's application to be a resident insurance producer. Mr. Smith did not know that the Petitioner lost his law license because of the Petitioner's actions with three different women, even though he was aware of some rumors. He was unaware that the Petitioner had lied to the Office of Disciplinary Counsel. He was not aware of the tax lien issue. (Tr. PP. 105-107)

57. Mr. Smith testified that since he now knows about the actions that the Petitioner had done in the past, it still would not change his opinion of the Petitioner. (Tr. P. 107)

58. The next witness called on behalf of the Petitioner was John Hussell, Esq. Mr. Hussell is a law partner of the Petitioner's lawyer, Mr. John Wooton, Esq. in the firm Wooton, Davis, Hussell, Johnson. The Petitioner worked for the law firm from 2016 until May 2023. (Tr. PP. 109-110)

59. While an employee of the law firm, the Petitioner would record deeds in Pocahontas County and would be responsible for firm checks to file those deeds. The Petitioner was on the witness's phone plan. Mr. Hussell testified that he believes that the Petitioner is trustworthy. (Tr. PP. 110-111)

60. Mr. Hussell was aware that the Petitioner had lost his law license. He testified that he had read the West Virginia Supreme Court's decision. Mr. Hussell was not aware of the Petitioner's tax lien issues. With the knowledge of the Supreme Court's decision and the tax liens,

Mr. Hussell testified that those facts would not change his opinion of the Petitioner. (Tr. PP. 112-114)

61. Michael Johnson was the next witness called by the Petitioner. Mr. Johnson is retired and was an instructor at Virginia Tech. He knows the Petitioner through the Pocahontas Community Watch. He also knows that the Petitioner is a minister and on the Hospital Board. He has known the Petitioner for approximately two years. He believes that the Petitioner is competent, honest and trustworthy. (Tr. PP. 117-120)

62. Mr. Johnson is aware that the Petitioner lost his law license and the basis for the annulment. However, he was not aware of the tax liens. He stated that those facts do not change his opinion of the Petitioner. (Tr. PP. 120-123)

63. The next character witness for the Petitioner was Ms. Ellen Galford. Ms. Galford is the owner of the Hannah Insurance Agency in Marlinton, West Virginia. She has been in the insurance industry for forty years. (Tr. P.125)

64. Ms. Galford testified that she has known the Petitioner “forever”. She is in the process of trying to sell her insurance agency. While she has been approached by several people that wanted to purchase her agency, she believes that the Petitioner is the right person to buy the agency. (Tr. PP. 126-128)

65. In her opinion, she wants to sell her agency to the Petitioner because he would take care of the business in the same manner that she has. She stated that the Petitioner is competent, honest and trustworthy. (Tr. PP. 127-129)

66. Ms. Galford stated that she had read the West Virginia Supreme Court decision and was aware of the tax problems that the Petitioner has had in the past. With this knowledge, she still believes that the Petitioner is competent, honest and trustworthy. (Tr. PP. 130-132)

67. Mr. Wooton made a proffer to the record as to what other witnesses would testify if called upon. This was done in the interest of time. Mr. Wooton stated that the following witnesses would testify to the competency, honesty and trustworthiness of the Petitioner as well as the Petitioner's activities in the community. Ron Hall, principal of Marlinton Elementary School; Philip Anderson, an elementary school principal; Mark and Teri Wagner, Mark is the manager of the IGA; Kendall Beverage, a bank employee; Sam Mitchell, owner of Mitchell Chevrolet; and, Christy Tanker, elementary school teacher.

Issue

Whether the WVOIC decision not to grant the Petitioner's application for a resident producer license was unreasonable, and if so, what should be the remedy.

Burden of Proof

The Petitioner has the burden of proof to prove, by a preponderance of the evidence, that the WVOIC erred when it failed to grant a resident producer license to the Petitioner.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this matter pursuant to West Virginia Code § 33-12-1, et. seq.

Analysis

The Petitioner applied for a West Virginia Resident Producer License which was denied by certified letter, on June 12, 2023. Under West Virginia Code § 33-12-24(a) the Commissioner

is authorized to “examine and investigate the business affairs and conduct of every person applying for or holding an insurance producer license...”

The certified letter contained the reasons for the denial. Following the denial, the Petitioner requested a hearing within the proper time requirements as designated in West Virginia Code § 33-12-24(c). In accordance with the requirement of the Code Section, a hearing was held within forty-five days of the request. Therefore, the requirements found in West Virginia Code § 33-12-24(c) were met.

The basis of the West Virginia Offices of the Insurance Commissioner’s denial was that the Respondent violated West Virginia Code § 33-12-6a(8) and West Virginia Code § 33-12-24(b)(9)

West Virginia Code § 33-12-6a(8) states that the Insurance Commissioner can deny an application if it is determined that the applicant is not trustworthy and competent. Under West Virginia Code § 33-12-24(b)(9), an application can be denied if it is determined that the applicant demonstrates that the applicant is incompetent, untrustworthy or is financially irresponsible.

The West Virginia Offices of the Insurance Commission cited two different events that indicated that the Petitioner was incompetent, untrustworthy and financially irresponsible. The first event was that fact that when the Petitioner owned a restaurant/lounge he failed to pay \$25,000.00 in state taxes. The State of West Virginia filed three tax liens against the Petitioner. The Petitioner eventually filed bankruptcy but the failure to remit the sales tax could not be discharged under bankruptcy law.

The Petitioner did satisfy all of the tax liens. This did not occur until after the Petitioner had attended law school and he sold some property to pay off the liens.

The second event on which the Commissioner denied the Petitioner's application was the fact that his law license was annulled by the West Virginia Supreme Court in 2015. As of the date of the hearing, the Petitioner has not completed his application to be readmitted to the West Virginia State Bar.

TAX LIENS

The first issue to address is the failure of the Petitioner to pay his state consumer sales tax and withholding taxes when they were due and his failure to satisfy the tax liens in a timely manner. The failure to pay his state sales tax when it was due does indicate that, at least at that time, that the Petitioner was financially irresponsible.

The amount owed by the Petitioner was significant and was more than an accounting mistake. It appears that the Petitioner conceded that he owed the money since there was no evidence that he ever challenged the State's liens.

Even though the tax liens were filed in 2002, the Petitioner did not satisfy those liens until 2008. Failure to timely remit sales tax and withholdings is a violation of the law and caused the Petitioner to incur interest and penalties from the failure to remit the taxes. This is financially irresponsible.

LAW LICENSE ANNULLED

The next issue that should be discussed is the annulment of the Petitioner's license. As discussed above, the Petitioner was an Assistant Prosecutor for Pocahontas County from 2007 to 2011. While the Petitioner was the Assistant Prosecutor, there were allegations that he improperly used his position over three different women.

According to the West Virginia Supreme Court, the first victim had been arrested for possession with the intent to deliver a controlled substance. After her conviction, she was sent to Day Report. Evidently, the first victim told the Petitioner that she did not want to do Day Report, so he asked her to come to his office. After a sexual encounter in the Petitioner's office, the first victim testified that she felt compelled to perform sexual acts because she felt that the Petitioner could send her back to jail if she did not comply.

As a result of this occurrence, the Marlinton Police began an investigation into the Petitioner. Eventually, the West Virginia State Police and the Federal Bureau of Investigation took over the investigation, at some point the first victim wore a wire while visiting the Petitioner in his office. While there were no overt sex acts, the Petitioner had asked the victim to kiss his penis and made other sexual innuendos.

There were two other victims cited by the Office of Disciplinary Counsel. The ODC found that the Petitioner had also used his power as an Assistant Prosecuting Attorney over the other two victims. The West Virginia Supreme Court adopted the findings of the ODC.

The Petitioner was indicted over the allegations of the first victim. It was never explained why the Petitioner's actions against the other two victims did not result in an indictment. Eventually the criminal allegations were dismissed by the Circuit Court of Pocahontas County. The dismissal was based on the prosecutor and judge's belief that the first victim testimony was not credible.

When the ODC and the West Virginia Supreme Court were considering any actions against the Petitioner, the criminal charges had been dismissed. While the Circuit Court had determined that the allegations of the first victim were not credible, the ODC and the Supreme Court took the opposite position.

The HPS interviewed all three witnesses and passed on that information to the ODC and eventually to the Supreme Court. When reviewing any action recommended by the ODC, the Supreme Court's review is de novo as to questions of law, application of the law to the facts and appropriate sanctions. Syl pt.3 Comm. On Legal Ethics v. McCorkle, 192 W.Va. 286, 452 S.E.2d 377 (1994). In other words, the Supreme Court reviews the information provided to it by the ODC to determine, independently of the ODC, whether the accusations are credible. In addition, the Supreme Court is not bound by the ODC's recommendations for punishment.

In this matter the Supreme Court treated all of the accusations by the three women as credible. Therefore, even though the Petitioner might not agree with the accusations, the Supreme Court held that they were true.

STANDARD OF REVIEW

The standard of review, for these types of matters, is whether the decision to deny the petitioner's application was reasonable. West Virginia Code § 33-12-24(c) which states as follows:

(c) In the event that the action by the Insurance Commissioner is to nonrenew or to deny an application for a license, the Insurance Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Insurance Commissioner within ten days for a hearing before the Insurance Commissioner to determine the reasonableness of the Insurance Commissioner's action. The hearing shall be held within forty-five days and shall be held pursuant to section thirteen, article two of this chapter.

The standard of review is the reasonableness of the Commissioner's decision at the time the application was denied. Reasonableness must be ascertained by taking into consideration the

information that the West Virginia Offices of the Insurance Commissioner had at the time of the decision and whether that knowledge was enough to reasonably deny the Petitioner's application.

At the time of the decision, the Insurance Commissioner knew that the Petitioner had \$25,000.00 worth of liens filed against him, arising out of the time that he owned the restaurant/lounge in Marlinton. He also knew that those liens had been released, but not for several years after they had been filed.

The Insurance Commissioner also knew about the West Virginia Supreme Court decision to annul the Petitioner's law license. He was also aware of the facts underlying the decision of the Supreme Court. It is clear from reading that decision that the Court took the allegations seriously, especially the fact that the Petitioner exercised power over these three women in his position of Assistant Prosecutor for Pocahontas County. In addition, he was aware that the Petitioner had lied to the investigators and the ODC.

In the letter sent to the Petitioner, the Commissioner stated that the Petitioner had "engaged in professional misconduct involving "dishonesty, fraud, deceit or misrepresentation"". He went on to state that the fact that the Petitioner's failure to pay consumer sales tax indicated financial irresponsibility.

With the information that was available at the time the Commissioner was making his decision, there can be no doubt that his decision was reasonable.

While it is true that the initial decision was reasonable, the Commissioner did not have any information about the Petitioner since his license was annulled in 2015.

During the hearing, the Petitioner brought in several witnesses to testify as to the current character of the Petitioner. Some of the witnesses had known the Petitioner since he was a child

and commented that they wondered when he was going to turn his life around. They went on to say that the last few years has seen a remarkable change in the Petitioner.

Currently the Petitioner is a part time pastor, a soccer and basketball coach, involved in boy scouts, Community Watch, and the Community Emergency Response Team. The Petitioner also serves on the Board of Directors for the Pocahontas Memorial Hospital as the Finance Chair and on the Strategic Planning Committee.

Many of the character witnesses were aware that the Petitioner had lost his law license. Most did not know the details about why he lost his license other than rumors that they heard locally. Most of the witnesses were unaware of the tax liens and if they were aware of them, they did not know that it was for \$25,000.

No matter what knowledge the witnesses had prior to the hearing, when they were informed of the reason the Petitioner lost his law license and the tax liens, each person said that that knowledge would not change their opinion of the Petitioner. Each witness testified that the Petitioner was competent, honest, and trustworthy.

Most telling of all the witnesses, was the testimony of Ms. Galford. Ms. Galford has owned her insurance agency in Marlinton for over forty years. She is ready to retire and wants to sell her business. While she had been approached by several individuals interested in purchasing her agency, she insists that the Petitioner is the type of person that she wants to buy her agency.

Ms. Galford testified that she had read the West Virginia Supreme Court decision about the Petitioner having his law license annulled. In addition, she was aware of the tax liens. It was Ms. Galford's opinion that the Petitioner has proven himself, that the Petitioner knew what he did was wrong, and he is trying to do everything he can to make it right. She stated that it was her opinion that the Petitioner is competent, honest and trustworthy.

As was discussed above, the West Virginia Offices of the Insurance Commissioner's decision was reasonable considering the information he had available at the time of the decision. However, the information now available, specifically the testimony of the Petitioner's witnesses, indicates that the Petitioner has rehabilitated himself.

It is persuasive that the Petitioner holds a responsible position with the Pocahontas County Memorial Hospital, as Finance Chairmen of the Board of Directors. His former employer also trusted the Petitioner with the firm's checks when filing deeds. There did not appear to be any sign of any immoral or dishonest behavior on the part of the Petitioner since his license was annulled eight years ago.

Each of the witnesses that testified talked about the community involvement of the Petitioner. In addition, it was impressive that all of these witnesses travelled from Pocahontas County to support the Petitioner. It takes approximately two and a half hours, one way, to make that trip.

It is clear that the Petitioner has turned his life around and now meets the requirements under West Virginia Code § 33-12-6(a)(8) and West Virginia Code § 33-12-24(b)(9) and should be granted a resident producer license.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commissioner has jurisdiction over the issuance of resident producer license by virtue of West Virginia Code § 33-12-6.
2. 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 under West

Virginia Code §§ 33-12-24(b)(9) and 33-12-6(a)(8)) when it denied the Complainant's application for a resident producer license.

3. West Virginia Code § 33-12-24(b)(9) gives the West Virginia Offices of the Insurance Commissioner great discretion on when to issue a resident producer's license when the applicant exhibited characteristics of being incompetent, dishonest and lack of financial responsibility.

4. The standard of review to determine whether the West Virginia Offices of the Insurance Commissioner erred in the denial of the Petitioner's application under West Virginia Code § 33-12-24(c) is whether the decision was reasonable.

5. Based on the information that the Insurance Commissioner had at the time of his decision to deny the Petitioner's application, the decision was reasonable.

6. Now that the Insurance Commissioner has the testimony of the various character witnesses, the original decision, while reasonable at the time, is no longer reasonable.

4. The Petitioner met his burden of proof and proved that the West Virginia Offices of the Insurance Commissioner should now reverse its original decision to deny the Petitioner's application for a resident producer's license.

Recommended Decision

It is recommended that the WVOIC grant the application of the Petitioner for a resident producer's license based on the totality of the evidence.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: Sept. 12, 2023