

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

In the matter of:

SAWYER SKAGGS

Administrative Proceeding No. 22-1C-02010

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 Complainant, Sawyer Skaggs, failed to prove that the West Virginia Offices of the Insurance Commissioner abused its discretion when it failed to issue a resident producer license to Mr. Skaggs. It is found that the West Virginia Offices of the Insurance Commissioner's action was reasonable.

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

ENTERED this 27th day of April, 2022.



Allan L. McVey
Insurance Commissioner
State of West Virginia

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

In the matter of:

SAWYER SKAGGS

Administrative Proceeding No. 22-1C-02010

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On March 22, 2022, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire. There then being present on behalf of the West Virginia Offices of the Insurance Commissioner, Jeffrey C. Black, Attorney Supervisor for Regulatory Compliance, Robert Grishaber, Director of Licensing and Education and Ryan Bloomfield, Investigator. On behalf of Mr. Skaggs those being present were Sawyer Skaggs, Sokol Fazliu, Laureta Fazliu and Megan Blevins.

Statement of the Case

This case arises out of the decision of the West Virginia Offices of the Insurance Commissioner (hereinafter “WVOIC”) to deny Mr. Skaggs (hereinafter “Complainant”) a resident producer license for the state of West Virginia.

Findings of Fact

1. Complainant is a resident of Ansted, West Virginia. On or about January 3, 2022, the Complainant applied for a resident producer license with the WVOIC. In 2014, the

Complainant held a resident producer license when he was employed by American Income Life Insurance Company. (Tr. P. 15; Ex. 1)

2. The Complainant's father passed away when he was nine years old. After that, his family moved to Beckley, West Virginia. After graduating High School, he attended Marshall University. While he was at Marshall University, his mother got remarried and moved to Atlanta, Georgia. Eventually the Complainant quit college and moved to Morgantown, West Virginia. While living in Morgantown he was working for a GNC store in Uniontown, Pennsylvania and worked as a bouncer at a bar in Morgantown at night. (Tr. P. 9-12).

3. The Complainant had an opportunity to interview with American Income Life Insurance Company. He was hired by Sokol Fazliu, the manager of the Morgantown office. By October, 2014, he had completed his training and was authorized by his employer to go out on his own. (Tr. P. 14-16)

4. According to the testimony of the Complainant, his mother was diagnosed with lymphoma in 2014 and after travelling back and forth from West Virginia to Georgia, he decided he had to move to Georgia to be closer to his mother. When he went to Georgia, he transferred to an American Income Life agency there. (Tr. P. 17 - 18)

5. While the Complainant was in Georgia, he learned that his brother and his brother's girlfriend were killed in a house fire in West Virginia. Two to three months after the death of his brother, his mother passed away. (Tr. P. 19-20)

6. Following his mother's death it became difficult for him to work. A friend invited him to move to Miami Florida. When he moved to Florida, he began to run with an unsavory group of people. According to him, Miami was a party center. Even though it was an unsavory group of people, he denied that he was ever in a gang. (Tr. P. 21, 38)

7. On or about October 27, 2018, when the Complainant was out with his friends, they decided to steal a watch from a man, while the man was outside a restaurant in Miami Beach, Florida. To get the man away from the front of the restaurant, the Complainant went up to him and told him that the man needed to move his car so the Complainant could make a delivery. After asking the man to move his 2018 Mercedes Benz G Class Sport Utility Vehicle, his friends allegedly tried to steal the man's watch. One of the group, not the Complainant, had a BB gun. The Complainant admitted that the attempt to steal the watch probably looked like a carjacking. (Tr. P. 21-22, 31-32; Ex. 1)

8. A week or two after October 27, 2018, the Complainant was arrested and charged in the United States District Court for the Southern District of Florida with attempted carjacking and conspiracy to carjack a 2018 Mercedes Benz G Class Sport Utility Vehicle. The Complainant stated that the car may have been worth \$130,000.00 to \$140,000.00. The testimony of the Complainant was that he and his companions were only attempting to steal the gentleman's watch and not his vehicle, however there was no mention of stealing a watch in the charges filed against him. (Tr. P. 31-33; Ex. 1)

9. When the Complainant applied for his resident producer license a copy of the formal criminal documentation was submitted to the WVOIC. In the indictment, the Complainant was charged with two felony counts. The first count was for Conspiracy to commit carjacking. The second count was for attempted carjacking.

10. On July 26, 2019, the Complainant signed a plea agreement wherein the charge of attempted carjacking was dismissed and he pled guilty to the charge of conspiracy to commit a carjacking, which is a felony. The Complainant was sentenced to federal prison for a term of thirty months.

11. On June 6, 2021, upon release from prison, the Complainant was placed on probation for a period two years, however, he was told that period would be reduced to eighteen months. At the time of the hearing he had nine months left on his probation period. (Tr. P. 42-43)

12. As part of his probation, he talks to his probation officer approximately once a month and is randomly drug tested. (Tr. P. 45)

13. On behalf of the Complainant, Ms. Laureta Fazliu testified that she had known the Complainant for several years and had interned at American Income Life in the summer of 2014 while the Complainant was employed there. Ms. Fazliu stated that she had gotten to know the Complainant that summer. She testified that, at least at that time, the Complainant was an honest upstanding citizen. She did admit that when the Complainant left West Virginia and moved to Georgia and then to Florida, she lost contact with him and could not testify what occurred while the Complainant was in Florida. (Tr. P. 52-54)

14. Ms. Fazliu presented several letters in support of the Complainant, however, since those individuals were not present at the hearing, the letters were not admitted as evidence but were put into the record as an exhibit. (Tr. P. 53-54)

15. The next witness for the Complainant was his former supervisor at American Income Life, Mr. Sokol Fazliu. Mr. Fazliu testified that he hired and trained the Complainant. According to his testimony, the Complainant was well loved in the office and did a great job of educating his clients. (Tr. P. 69-70)

16. According to Mr. Fazliu, there is a huge turnover in new employees with less than eight per cent making it with the company for one year. The Complainant was an employee for Mr. Fazliu for approximately three years. Mr. Fazliu stated that the Complainant was good at his

job and believes he is an honest person who had just made a mistake. Mr. Fazliu testified that he would hire the Complainant if he is granted a resident producer license. (Tr. P. 78-81)

17. Mr. Fazliu admitted that he and the Complainant were close friends but also stated that he had lost contact with the Complainant while he was in Florida. When the Complainant was in prison he had reached out to Mr. Fazliu and they began communicating. The Complainant would contact Mr. Fazliu every five to six weeks while he was in prison. (Tr. P. 96-97)

18. Mr. Fazliu testified that he had contacted American Income Life concerning whether the Complainant would be able to work for them, assuming he gets a resident producer license. He stated that American Income Life would allow Mr. Fazliu to hire the Complainant. (Tr. P. 91)

19. Mr. Fazliu also said that if the Complainant is granted his license, he would closely supervise his activities. He went on to admit that he works out of the Morgantown office of American Income Life, while the Complainant would be working in the Beckley, West Virginia office. (Tr. P. 101-102)

20. After the Complainant was released from prison, he moved back to Ansted, West Virginia. According to him, he has maintained a clean record since he has been on probation. While his probation officer was not present at the hearing, the Complainant said that all he had to do is to call him and he would testify about the Complainant's stellar record in the first nine months of his probation. (Tr. P. 42-43)

21. On or about January 3, 2022, after completing seven months of his probation period, the Complainant applied for a resident producer license. Mr. Grishaber, Director of Licensing and Education for the WVOIC testified that his department is responsible for determining whether to grant an applicant a resident producer license. (Tr. P. 109-110)

22. When the Complainant submitted his application, he admitted that he was a convicted felon and was currently on probation. Included in his application package were documents showing the circumstances of his conviction and the fact that he was still on probation. (Tr. P. 29)

23. Mr. Grishaber said that after reviewing the application, the decision was made to deny the application. The three issues that Mr. Grishaber was concerned about when deciding whether to issue a license to the Complainant were the fact that the conviction was recent, possible untrustworthiness of the Complainant and that he was still on probation. (Tr. P. 112)

24. At the hearing, Mr. Grishaber was asked whether the evidence presented changed his mind about the Complainant's application. Mr. Grishaber stated that he still held the position that the application should be denied. (Tr. P. 116-117)

25. Mr. Grishaber testified that it was the duty of the WVOIC to protect the citizens of West Virginia and that giving a convicted felon a resident producer license, who is still on probation, was not in the State's best interest. He also stated that if they granted him a license he would not be required to remain working for Mr. Fazliu's firm but could work anywhere. So even with Mr. Fazliu's assurances that he would supervise the Complainant, once the Complainant was granted his producer's license he could leave American Life Insurance to work for any other insurance company without the same supervision. Also, if the Complainant filed for a license in another state, most states will defer to the applicant's home state's approval. (Tr. P. 114, 123-124, 130)

26. Mr. Ryan Bloomfield, an investigator for the WVOIC, was sent the application for further review. During Mr. Bloomfield's investigation, he attempted to contact the Complainant but evidently the Complainant had changed his phone number since the time he had completed his

application. After conducting his investigation, it was his determination that the Complainant should be denied a resident producer license. (Tr. P. 125, 129)

27. During the hearing the Complainant presented himself quite professionally and sincerely. In addition, it was clear that his witnesses were excellent and thought very highly of the Complainant.

Issue

Whether the WVOIC abused its discretion when it did not grant the Complainant's application for a resident producer license, and if so, what should be the remedy.

Burden of Proof

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

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 Complainant's only issue is that he contends that the WVOIC erred when it denied his application for a resident producer license. The relevant statute on this issue is West Virginia Code § 33-12-24(b)(6) which 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:

(6) Having been convicted of or pleaded nolo contendere to any felony;

It is the position of the WVOIC that since the Complainant has been convicted of a felony, conspiracy to hijack a vehicle and was still on probation, he should not be granted a resident producer license. The language of the statute states that the Insurance Commissioner may refuse to issue a producer's license if the applicant has been convicted of a felony. However, the statute does not require the Insurance Commissioner to deny an application because the applicant has been convicted of a felony. Therefore, based on the language of the statute, the Insurance Commissioner has total discretion whether to grant a license or not to a convicted felon.

In the instant matter, the Complainant was released from prison on June 6, 2021. As a condition of his release, he is required to be on probation for eighteen months. At the time of his application he still had eleven months remaining on his probation. In addition, at the time of the hearing, he still had nearly nine months left on his probationary period.

The Complainant testified that he has not had any problems since he was placed on probation. While he offered to get his probation officer on the phone to testify, the undersigned took him at his word.

The position of the WVOIC, garnered from the testimony of Mr. Grishaber, is that it has serious concerns about the Complainant's application. Mr. Grishaber stated that his department has a duty to protect the citizens of West Virginia. He went on to say that even if the Complainant had been exemplary during his first nine months of his probationary period, he still had nine months remaining. In addition, he testified that since the Insurance Commissioner has a duty to

the citizens of the state, the fact that the Complainant was still on probation presented a significant risk.

It is true that any convicted felon faces extreme challenges when attempting to return to the workforce. However, it is extremely difficult to put someone in a trusted position, such as an insurance producer, who may, during his daily business, be invited into people's homes. The Insurance Commissioner, simply due to the nature of the work of licensed producers, is held to a higher standard than many other entities.

It was obvious that the Complainant's witnesses were fully in support of the Complainant receiving his license. Each witness admitted that, while they only had nice things to say about the Complainant when he worked at American Income Life, they both had lost touch with him when he moved to Florida. They were also unaware of how much the death of his mother had affected his life.

Mr. Fazliu did reconnect with the Complainant while he was in prison. The testimony was that they talked at least once every five to six weeks. It was also apparent that Mr. Fazliu was attempting to help the Complainant once he was released from prison. Mr. Fazliu testified that he has had the Complainant do some work and he would pay him a couple of hundred dollars. Mr. Fazliu paid the Complainant out of his own pocket and stated that the Complainant has not been his employee since he was released from prison.

During the testimony of Mr. Fazliu, he stated that he would be willing to supervise the Complainant if he was granted his license. While I believe that Mr. Fazliu was being honest and sincere, the truth of the matter is that the Complainant would be in Beckley, West Virginia while Mr. Fazliu works out of the Morgantown, West Virginia office. Since they would not be working

in the same office and at a minimum two and a half hours away from each other, at the very least it would be extremely difficult for Mr. Fazliu to keep a close tab on the Complainant.

Another concern, even if Mr. Fazliu could properly supervise the Complainant, is that once the license is granted, there is nothing that would require the Complainant to continue to work for Mr. Fazliu. The Complainant could receive his license one day and begin working for a different company the next. In other words, there is no guarantee that the Mr. Fazliu would always be supervising the Complainant.

It may have been different, but whether it would be or not is unknown, if the Complainant had waited until he was off probation prior to applying for a resident producer's license. I believe the fact that the Complainant still had nine months left on his probation was an important fact considered by the WVOIC.

The WVOIC, when making the decision to deny the Complainant's application, correctly weighed the pros and cons of whether to grant him a license. It was, and is reasonable for the WVOIC to conclude, that the risks were too great now to grant him a license.

I do encourage the Complainant to continue with his stellar performance during the next nine months of his probation. While there is never any guarantee that the WVOIC will look more favorably on his application in nine months, it may well be worth it for him to apply again. However, the WVOIC is correct in denying his license at this time.

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 § 33-12-24(b)(6).

2. The Complainant has the burden of proof to prove, by a preponderance of the evidence, that the West Virginia Offices of the Insurance commission violated West Virginia Code § 33-12-24(b)(6) when it denied the Complainant's application for a resident producer license.


3. West Virginia Code § 33-12-24(b)(6) gives the West Virginia Offices of the Insurance Commissioner great discretion on when to issue a resident producer's license when the applicant has been convicted of a felony.

4. The West Virginia Offices of the Insurance Commissioner did not abuse its discretion when it denied the Complainant's application for a resident producer's license.

Recommended Decision

It is recommended that the decision of the WVOIC to deny the application of the Complainant for a resident producer's license was well founded and it was reasonable and within the power of the Insurance Commissioner.

Respectfully recommended,


MARK W. CARBONE
HEARING EXAMINER