

BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA

FILED

MAR 11 2011

STATE OF OKLAHOMA, ex rel. JOHN D.)

DOAK, Insurance Commissioner,)

Petitioner)

v.)

SHERRY KIRKLAND,)

Respondent.)

INSURANCE COMMISSIONER
OKLAHOMA

Case No. 11-0009-DEN

ORDER DENYING LICENSURE

This matter is a denial proceeding under the Oklahoma Producer Licensing Act, 36 O.S. §§ 1435.1 *et seq.* The Oklahoma Insurance Department notified Respondent on January 4, 2011 that her application for licensure was denied for providing incorrect, misleading, incomplete, or materially untrue information in the license application. 36 O.S. §§ 1435.13(A)(1). Petitioner received Respondent's request for a formal administrative hearing before an independent hearing examiner concerning the matter on January 11, 2011.

A hearing scheduled for February 4, 2011 was continued due to bad weather. A hearing was held before the undersigned Hearing Examiner on February 23, 2011. Petitioner appeared by counsel Julie Meaders. Respondent appeared without counsel. Witnesses were sworn and testified, exhibits were presented and argument of counsel heard.

FINDINGS OF FACT

1. The criminal background question on Respondent's electronic application asked: "Have you ever been convicted of a crime, had a judgment withheld or deferred,

or are you currently charged with committing a crime?" "Crime" is defined on the application as both misdemeanors and felonies. The answer to this question was marked "no".

2. A background check by the Licensing Division discovered that Respondent was convicted March 11, 2009 of obtaining cash or merchandise with bogus checks in Canadian County. She received a one year suspended sentence and was ordered to pay restitution, fines and costs. A bench warrant was issued on August 11, 2009 when she failed to pay the restitution, fines and costs

3. Respondent's application was subsequently referred to the Legal Division due to the incorrect and materially untrue information in the application.

4. Petitioner denied Respondent's request for licensure due to violation of 36 O.S. § 1435.13(A)(1) on January 4, 2011.

5. Petitioner received Respondent's written request for an administrative hearing on the matter of the denial on January 10, 2011. The initial hearing set for February 4, 2011 was continued due to bad weather. A hearing was held on February 23, 2011.

6. The Insurance Commissioner appointed Leamon Freeman to hear the case as the independent Hearing Examiner.

7. The Hearing was recorded electronically by employees of the Oklahoma Insurance Department. Neither party requested a full stenographic record of the proceedings.

8. The following exhibits were introduced and admitted:

Petitioner's Exhibit 1: Respondent's on-line application;

Petitioner's Exhibit 2: OSCN Docket Sheet for CM-2008-697;
Petitioner's Exhibit 3: Judgment & Sentence in CM-2008-697;
Petitioner's Exhibit 4: Bench Warrant for Arrest in CM-2008-697;
Respondent's Exhibit 1 Respondent's application for provisional license;
Respondent's Exhibit 2 Documentation of hearing set in Canadian
County District Court.

9. Brandon Cain and Respondent were sworn and testified under oath.
10. The Hearing Examiner heard testimony and entered the following findings of fact:
 - a. Brandon Cain testified that the person applying for licensure must be the person who completes the application. Testimony was presented that the attestation clause on the on-line application states that, "under penalty of perjury, all of the information submitted in this application and attachments are true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties".
 - b. Respondent testified that her employer completed her on-line application and submitted it to the Oklahoma Insurance Department. Respondent further testified that she never reviewed the application until the week of the hearing.
 - c. Respondent testified that she had a hearing scheduled in Canadian County District Court to complete payment of the restitution, fines and costs from the bogus check conviction. Testimony was presented that Respondent demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state.

CONCLUSIONS OF LAW


Respondent violated 36 O.S. § 1435.13(A)(1), by providing incorrect, misleading and incomplete information in her license application. Respondent violated 36 O.S. § 1435.13(A)(8), by demonstrating untrustworthiness and financial irresponsibility in the conduct of business in this state.

ORDER

IT IS THEREFORE ORDERED THAT THE APPLICATION FOR LICENSURE OF RESPONDENT SHERRY KIRKLAND IS HEREBY DENIED.

Done this 27th day of March, 2011.




LEAMON FREEMAN
Hearing Examiner
Oklahoma Insurance Department
2401 N. W. 23rd Street, Suite 28
P. O. Box 53408
Oklahoma City, OK 73152-3408

CERTIFICATE OF SERVICE

I certify that on the 11th day of March 2011, a copy of this Final Order was sent by certified mail, return receipt requested, to:

Sherry Kirkland
P.O. Box 670
El Reno, OK 73036

CERTIFIED MAIL No: 7008 1830 0003 9410 8598

And a copy was delivered to:

Leah Scoles
Licensing Division



Julie Meaders

