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NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE



BEFORE THE COMMISSIONER
OF INSURANCE
Docket Number: D # 1628

IN THE MATTER OF
THE LICENSURE OF
ERVIN M. CADE, JR.

FINAL AGENCY DECISION
AND ORDER

This matter was heard on June 20, 2012 by the undersigned Hearing Officer, as designated by the Commissioner of Insurance, pursuant to North Carolina General Statutes §§ 58-2-55, 58-33-30, 58-33-46, 150B-38, 150B-40 and 11 N.C.A.C. 1.0401 *et seq.* and other applicable statutes and regulations. Petitioner, the North Carolina Department of Insurance [“the Department”], was represented by Assistant Attorney General Anne Goco Kirby. Respondents appeared *pro se*.

Any finding of fact contained in this Final Agency Decision and Order that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this Final Agency Decision and Order that constitutes a finding of fact is hereby adopted as a finding of fact. After careful consideration of the evidence and arguments presented, and based upon the record as a whole, the undersigned Hearing Officer hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Department has the authority and responsibility for the enforcement of insurance laws of this State, and for regulating and licensing insurance agents.
2. On January 8, 2012, Respondent applied for a resident Producer’s-Life agent’s license. On his application, Respondent answered “yes” to the following question: “Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?”
3. As part of the screening process, Respondent provided the Department’s Agent Services Division [“Agent Services”] with a copy of a judgment entered against him on January 27, 2010 in the Wake County Superior Court upon Respondent’s guilty plea to the following felony offenses:

- (a) trafficking in marijuana by possession in violation of N.C.G.S. § 90-95(H)(1);
- (b) maintaining a dwelling for keeping and selling controlled substances in violation of N.C.G.S. § 90-108(A)(7);
- (c) possession with intent to sell and distribute marijuana in violation of N.C.G.S. § 90-95(A); and
- (d) manufacturing marijuana in violation of N.C.G.S. § 90-95(A)(1).

4. Respondent also provided Agent Services with copies of warrants for his arrest for the offenses of trafficking in marijuana, possession with intent to manufacture marijuana, and manufacture of marijuana. The warrants indicate that Respondent possessed approximately 22.8 pounds of marijuana on May 19, 2009.

5. Respondent was sentenced to a minimum term of 6 months and a maximum term of 8 months in the custody of the North Carolina Department of Corrections for these offenses. Respondent was also ordered to pay a \$5,000 fine and \$870.50 in court costs. The Respondent's sentence was suspended, and Respondent was placed on supervised probation for 18 months. Respondent satisfactorily completed the period of probation by July 2011.

6. On January 9, 2012, Respondent submitted a signed statement to Agent Services explaining the circumstances which led to his convictions. In his statement, Respondent admitted that he had been growing marijuana at his residence. Respondent further stated that he was growing marijuana in anticipation of the legalization of marijuana for medicinal use and that he had stopped all activity and packed up all his equipment. However, law enforcement discovered "a large amount of ripe plant matter in my green garbage can on the curb," while conducting a "trash pull." Subsequently, law enforcement obtained a search warrant and executed it the next day.

7. After passing the Producer-Life agent's examination, Agent Services informed Respondent via letter dated February 23, 2012 that it was denying Respondent's license application pursuant to N.C.G.S. §§ 58-33-30(g) and 58-33-46(a)(6) due to his felony convictions.

8. On March 20, 2012, Respondent participated in an informal conference with Agent Services representatives to discuss the basis for Agent Services' denial of his Life agent's license application.

9. After considering the matters which Respondent presented during the informal conference and the explanation which Respondent gave for his felony conviction, Agent Services decided to deny Respondent's license application for the reasons stated in its initial February 23, 2012 denial letter. Agent Services informed Respondent of this decision by letter dated March 22, 2012. On March 22, 2012, Respondent requested a formal hearing regarding the denial of

his license.

10. Respondent testified that he had been growing marijuana at his home for about 8 to 9 months when law enforcement discovered marijuana in his trash can. Respondent was 27 years old at the time. During the period that Respondent grew the marijuana, the plants went through two cycles of harvest. Respondent consumed the first cycle of marijuana and disposed of the second cycle which law enforcement found in his trash can. Respondent testified that he was teaching himself how to cultivate marijuana for medical use because he wants to grow marijuana for medical use if and when it becomes legalized. However, Respondent knew that it was illegal to grow marijuana and decided quit growing marijuana because he was concerned that he would eventually get into trouble for violating the law.

CONCLUSIONS OF LAW

1. Respondent was properly served with the Notice of Hearing in this matter. The Department has personal jurisdiction over Respondent and subject matter jurisdiction in this matter.


2. Respondent's license application may be denied pursuant to N.C.G.S. §§ 58-33-30(g) and 58-33-46(a)(6) because of his felony convictions.

3. Respondent's license application should be denied pursuant to N.C.G.S. §§ 58-33-30(g) and 58-33-46(a)(6) because of his felony convictions.

ORDER

Respondent's application for a resident Producer's-Life agent's license is hereby denied.

This the 27th day of July, 2012.


Stewart Johnson, Hearing Officer
Department of Insurance

APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days of receipt, as set forth in the General Statutes of North Carolina.

RECEIVED

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FBI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **FINAL AGENCY DECISION AND ORDER** by first class mail, postage prepaid, addressed as follows:

Ervin Cade, Jr.
5507 Kaplan Dr.
Raleigh, NC 27606

This the 31st day of July, 2012.



Anne Goco Kirby
Assistant Attorney General
N. C. Department of Justice
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