

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA



STATE OF NORTH CAROLINA)
COUNTY OF WAKE)
)
IN THE MATTER OF THE LICENSURE)
OF NATHANIEL FUNDERBURKE)
)
)
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)

BEFORE THE COMMISSIONER OF
INSURANCE

ORDER AND FINAL AGENCY DECISION
Docket Number: 1607

THIS CAUSE was heard on Thursday, April 19, 2012, by the undersigned hearing officer, designated by the Commissioner of Insurance pursuant to N.C.G.S. §58-2-55, pursuant to a notice of hearing that was duly issued and served.

The North Carolina Department of Insurance (hereinafter "Department") was present, represented by the Agent Services Division. The Department was represented by Assistant Attorney General Robert D. Croom.

Petitioner, Nathaniel Funderburke (hereinafter "Petitioner"), failed to appear after being duly served with the notice of hearing.

At the hearing, Assistant Deputy Commissioner Teresa Knowles was called to testify for the Department.

The Department offered into evidence Exhibits 1 through 14, and said documents were admitted into evidence.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Notice of Administrative Hearing was properly served on Petitioner on March 31, 2012.
2. Petitioner applied for a producer license with Property and Casualty lines of authority on or about June 3, 2011 (hereinafter "Petitioner's application" or "his application").
3. Petitioner's application was denied by the Department on or about August 11, 2011.

4. Petitioner requested in writing a review of the Department's denial of his application on August 16, 2011.
5. A denial review conference was held and Petitioner attended it.
6. Following the denial review conference, the Department upheld its initial denial of Petitioner's application.
7. Petitioner received written notice that the Department upheld its initial denial of his application on October 19, 2011.
8. Petitioner made a written request for a formal hearing on the denial of his application on October 26, 2011.
9. On Petitioner's application, Petitioner answered "no" to the background question, "Have you ever been convicted of a crime, had judgment withheld or deferred, or are you currently charged with committing a crime?"
10. On May 4, 2010, Petitioner was convicted of carrying a concealed weapon in Mecklenburg County, Virginia, General District Court.
11. On May 4, 2010, Petitioner was convicted of misdemeanor possession of marijuana in Mecklenburg County, Virginia, General District Court.
12. On August 14, 1995, Petitioner was convicted of harassment in Nassau County, New York, District Court.
13. On August 14, 1995, Petitioner was convicted of criminal contempt in Nassau County, New York, District Court.
14. On September 21, 1995, Petitioner was convicted of criminal contempt in Nassau County, New York, District Court.
15. At the request of the Department, Petitioner provided a written statement in which he said "I did not mention on my application violations dating back more than a decade. Not realizing it was necessary due to the enormous amount [sic] of time that had lapsed[sic]."

Based on the forgoing Findings of Fact, the Hearing Officer makes the following:

Conclusions of Law

1. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to North Carolina General Statutes §§58-33-30,

58-33-46, 150B-38, 150B-40, 11 NCAC 1.0401 et seq. and other applicable statutes and regulations.

2. Petitioner was properly served with the Notice of Administrative Hearing.
3. Pursuant to N.C.G.S. § 58-33-30(g), an application may be denied for any reason for which a license may be suspended or revoked or not renewed under N.C.G.S. § 58-33-46.
4. Pursuant to N.C.G.S. § 58-33-46(a)(1) that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Chapter 58, Article 33 of the General Statutes for providing materially incorrect, misleading, incomplete, or materially untrue information in the license application.
5. Pursuant to N.C.G.S. § 58-33-46(a)(3), that the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Chapter 58, Article 33 of the General Statutes for obtaining or attempting to obtain a license through misrepresentation or fraud.
6. By failing to disclose his criminal convictions on his application, Petitioner provided materially incorrect and incomplete information in his application, in violation of N.C.G.S. § 58-33-46(a)(1).
7. By answering no to the background question, "Have you ever been convicted of a crime, had judgment withheld or deferred, or are you currently charged with committing a crime?", Petitioner provided materially incorrect, misleading and materially untrue information in his license application, in violation of N.C.G.S. § 58-33-46(a)(1).
8. By answering no to the background question, "Have you ever been convicted of a crime, had judgment withheld or deferred, or are you currently charged with committing a crime?" and by failing to disclose his criminal convictions on his application, Petitioner attempted to obtain his license through misrepresentation or fraud, in violation of N.C.G.S. § 58-33-46(a)(3)
9. Each violation of N.C.G.S. § 58-33-46(a)(1), by itself, is grounds for which a license may be suspended, revoked or not renewed.
10. The violation of N.C.G.S. § 58-33-46(a)(3), is also sufficient to support revocation of Petitioner's licenses.
11. Pursuant to 11 NCAC 1.0423(a)(1), if a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence.

12. Additionally, the allegations contained in the Notice of Hearing, are taken as true pursuant to 11 NCAC 1.0423(a)(1), and provide independent and alternative grounds sufficient to support a denial of Petitioner's application.

13. The hearing officer finds that Petitioner's application should be denied.

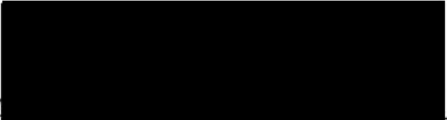
14. The hearing officer finds that Petitioner's application was properly denied by the Department.

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

Order

It is hereby ordered that the decision of the Department to deny Petitioner Nathaniel Funderburke's application for a producer license with Property and Casualty lines of authority is affirmed and Petitioner Nathaniel Funderburke's application for a producer license with Property and Casualty lines of authority is denied.

This 8th day of May, 2012.

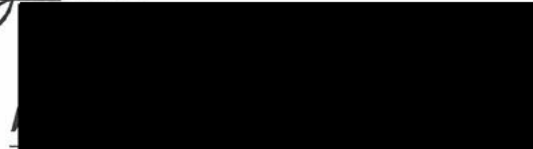

Stewart L. Johnson, Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing NOTICE OF ADMINISTRATIVE HEARING by mailing a copy of the same via certified U.S. mail, return receipt requested, in a first class postage prepaid envelope addressed as follows:

Nathaniel Funderburke
6240 Bonnybrook Lane
Charlotte, NC 28212

This the 15th day of May, 2012.



Robert D. Croom
Assistant Attorney General
N. C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
(919) 716-6610

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

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BEFORE THE COMMISSIONER OF
INSURANCE

CERTIFICATE OF SERVICE
Docket Number: 1607

I HEREBY CERTIFY that I have this day served a copy of the attached *Order and Final Agency Decision* by licensed overnight delivery service, addressed as follows:

Nathaniel Funderburke
6240 Bonnybrook Lane
Charlotte, NC 28212

This the 4th day of June, 2012.



Robert D. Croom
Assistant Attorney General
N. C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
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