



FILED  
OSAH

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

AUG 8 2014

GERRETT KEITH GREEN, :  
Petitioner, :  
v. :  
GEORGIA DEPARTMENT OF :  
INSURANCE, :  
Respondent. :

Kevin Westray, Legal Assistant

Docket No.  
OSAH-INS-DEN-1458251-60-KENNEDY  
Agency Reference No. 11013203

**INITIAL DECISION**

**INTRODUCTION**

Petitioner appealed Respondent's refusal of his Application for a Resident Agent License for the Casualty and Property classes of insurance. The evidentiary hearing was held on July 31, 2014. Petitioner represented himself. Sweta Patel, Esq., Enforcement Attorney with the Georgia Department of Insurance, represented Respondent. Upon consideration of the evidence presented, the refusal is **AFFIRMED**.

**FINDINGS OF FACT**

Application

1.

Petitioner submitted an application to Respondent, on March 20, 2014, seeking to be licensed as a Resident Agent for the Casualty and Property classes of insurance. *Testimony of Petitioner; Exhibit R-1.*

2.

On the application, Petitioner answered "Yes" to the question that reads:

Have you been convicted of or are you currently charged with the commission of any crime or pled nolo contendere in a criminal proceeding or *have you received first offender treatment* or had adjudication of guilt withheld in a criminal proceeding, other than a minor traffic offense?

*Exhibit R-1 (emphasis added).*

### Criminal History

3.

On January 31, 2014, Petitioner entered a non-negotiated plea of guilty to one felony count of Criminal Damage to Property in the 2<sup>nd</sup> Degree, and to one misdemeanor count of Battery in the Superior Court of Fulton County. He was sentenced under the First Offender Act to probation for a period of 2 years on the felony count, and 12 months on the misdemeanor. Petitioner's misdemeanor sentence was commuted to time served. Petitioner is currently serving his probation sentence for the felony charge. *Exhibit R-2.*

4.

Upon violation of the terms of his probation, or upon conviction for another crime during the period of probation, the Fulton County Superior Court can enter an adjudication of guilt against Petitioner and proceed to sentence Petitioner to the maximum sentence provided by law. On the other hand, if Petitioner successfully completes the terms of his sentence under the First Offender Act, Petitioner will be discharged without court adjudication of guilt, and will be completely exonerated of guilt. Petitioner fully anticipates successfully completing his probation and obtaining a First Offender discharge without court adjudication of guilt. *Exhibit R-2.*

### License Denial

5.

Respondent issued a Notice and Order of License Refusal on June 11, 2014, in which Respondent refused Petitioner's Resident Agent license application on the grounds that he has been arrested, charged, and sentenced for the commission of a felony or a crime involving moral turpitude, where first offender treatment without adjudication of guilt pursuant to the charge was granted. *Exhibit ALJ-1, Order of License Refusal, which is hereby admitted subject to an objection being filed within the 10-day reconsideration period.*

6.

Petitioner timely requested a hearing in response to Respondent's notice of refusal. Petitioner asserts that the crimes for which he was sentenced under the First Offender Act are non-financial crimes and should not be held against him in determining whether he

should be issued a resident agent insurance license. Petitioner further asserts that the underlying events that led to his convictions occurred in 2011,<sup>1</sup> and occurred solely as a result of a personal relationship that did not end well. Petitioner explained that the incident was an isolated incident that will never be repeated because he has learned from this experience. *Testimony of Petitioner; Exhibit ALJ-2, Appeal Letter, which is hereby admitted subject to an objection being filed within the 10-day reconsideration period.*

### CONCLUSIONS OF LAW

1.

Respondent is authorized to refuse Petitioner's application because he has been arrested, charged, and sentenced for the commission of a felony, which also constitutes a crime involving moral turpitude, where first offender treatment without adjudication of guilt pursuant to the charge was granted.<sup>2</sup> O.C.G.A. § 33-23-21(16)(a).

2.

Petitioner bears the burden of proof to show that Respondent's refusal of his application was not justified. O.C.G.A. § 24-4-1; OSAH Rule 616-1-2-.07(1)(d). The standard of proof is by a preponderance of the evidence. O.C.G.A. §§ 50-13-15(1), 24-4-3; OSAH Rule 616-1-2-.21(4).

3.

Petitioner has not met his burden to show that his application was improperly denied. Although Petitioner's prior criminal history consists of only one isolated incident, the fact remains that he has been sentenced under the First Offender Act and is currently serving a probationary term.

4.

Respondent, who is charged with protecting consumers from individuals who *may* pose a risk of harm, properly considered that Petitioner recently exhibited a disregard for the law by engaging in an altercation that resulted in damage to property and battery. Moreover, given that Petitioner is under a probationary sentence, if he were to violate his probation

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<sup>1</sup> Petitioner was 29 years old at the time the underlying events occurred. *Exhibits R-1, R-2.*

<sup>2</sup> A felony is a crime involving moral turpitude. See Hall v. Hall, 261 Ga. 188 (1991) (citing Lewis v. State, 243 Ga. 443, 444 (1979); O'Neal v. Kammin, 263 Ga. 218 (1993) (same)).

for any reason, his probation could be revoked and he could be adjudicated guilty and sentenced to serve time in jail. If Petitioner was working within the insurance industry and this occurred, it could be detrimental to any clients who trusted Petitioner based on him having been issued a license.

5.

Based on the foregoing, and especially in light of the fact that Petitioner was sentenced less than one year ago, Respondent properly denied Petitioner's license application. Petitioner's current situation is not appropriate and/or suitable for the issuance of a limited sub-agent, temporary or probationary license while he is serving a criminal probation sentence.

**RECOMMENDED DISPOSITION**

**IT IS HEREBY ORDERED** that Respondent's refusal to grant Petitioner's resident license application be **AFFIRMED**.

This 8<sup>th</sup> day of AUGUST, 2014.



Ana Kennedy  
Administrative Law Judge