



FILED  
OSAH

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS SEP 30 2014  
STATE OF GEORGIA

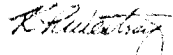
KERBY DEVON BULLARD,

Petitioner,

v.

GEORGIA DEPARTMENT OF  
INSURANCE,

Respondent.

  
Kevin Westray, Legal Assistant

Docket Number: OSAH-INS-DEN-  
1459122-107-Schroer

**INITIAL DECISION**

**I. INTRODUCTION**

Petitioner Kerby Devon Bullard submitted an application for a resident insurance agent’s license to Respondent Georgia Department of Insurance (“Department”). The Department issued an Order of License Refusal and Bullard requested a hearing. Pursuant to Department Rules 120-2-2-.04 and 120-2-2-.10 and O.C.G.A. § 33-2-17, an administrative hearing was held on August 18, 2014 before the Office of State Administrative Hearings (“OSAH”). Bullard appeared *pro se*. The Department was represented by Stephen Parker, Esq. After careful consideration of all the evidence of record in this case, the Court has determined that Bullard carried his burden of proof in this matter and recommends that the proposed denial of his application be **REVERSED**. However, for the reasons set forth below, the Court recommends that Bullard be granted a probationary license.

**II. FINDINGS OF FACT**

1.

On or about March 7, 2014, Bullard submitted a Resident Insurance Agent License Application to the Department. (Ex. R-1)

2.

On the application, Bullard answered "NO" to the following questions:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

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?

(Ex. R-1)

3.

Bullard's answers to these questions were not accurate. Specifically, on or about March 16, 2009, Bullard pled guilty to a misdemeanor charge of theft by shoplifting in the City Court of Conyers, Georgia. He paid a fine in the amount of \$480.50 and completed a pre-trial diversion program on or about May 18, 2009. (Ex. R-3)

4.

Shortly thereafter, on or about August 11, 2009, Bullard entered a plea of guilty in the Superior Court of Newton County, Georgia, to Attempted Armed Robbery. The charge arose out of an incident in February 2009, when Bullard, then a nineteen-year-old college student, accompanied a friend to an Ingles grocery store, wearing a ski mask and carrying a BB pistol in a bag. Bullard positioned himself in the back of the store, by the loading dock, while his friend, a former employee of Ingles, went to the front. When an Ingles employee opened the back door near where Bullard was standing, Bullard ran, throwing the bag and pistol away. (Testimony of Petitioner; Ex. R-2)

5.

Bullard was indicted on a charge of attempted armed robbery and entered a plea of not guilty. However, on August 11, 2009, Bullard withdrew his not guilty plea and tendered a plea of guilty. He received a ten-year sentence under the First Offender Act, with the provision that he serve four years of the sentence and the remaining six years on probation. Bullard served approximately one-and-a-half years at the Burruss Correctional Training Center before being released in February 2011 on parole. He has paid all his fines and is currently on “no show/no report” probation. (Testimony of Petitioner; Ex. R-2)

6.

At the administrative hearing, Bullard explained that he believed, based on the advice of his criminal attorney, that his status as a First Offender allowed him to deny his criminal record in matters relating to employment. Bullard further testified that he has re-enrolled in classes at Georgia State University and has been employed since his release as a security guard and as an employee of Auction.com, selling distressed real estate in Newton County. He currently has an offer of employment from American Family Insurance to work as an agent if he secures his resident insurance agent’s license. Bullard passed his insurance examination, but was denied a license by Respondent based on his concealment of his criminal record on his application and his first offender sentence for a felony. (Testimony of Petitioner; Exs. P-1, P-3, P-4; Ex. R-1)

7.

Bullard has considerable support from his family members, including his mother, with whom he resides, his father, a high school principal in DeKalb County, and his

grandmother, all of whom testified on his behalf at the administrative hearing. These witnesses testified convincingly that Bullard has matured in the five years since the Ingles incident and that he is now a responsible, hard-working, productive adult. In the three-and-a-half years since he has been released from Burruss, he has been reliable, respectful and dedicated to improving his life. In addition, Bullard and the witnesses explained that the incident in 2009 occurred at a difficult time in Bullard's life – his parents were divorcing, he had lost his HOPE scholarship, and he was spending time with friends who were a bad influence. The Court is persuaded by the evidence in the record that Bullard has learned from his youthful mistakes, that he has removed himself from the influence of his former associates, and that he is committed to leading a productive and law-abiding life. (Testimony of Petitioner, N. Bullard, F. Brown, K. Bullard, Jr.)

### III. CONCLUSIONS OF LAW

1.

Pursuant to OSAH Rule 7, Petitioner bears the burden of proof. GA. COMP. R. & REGS. 616-1-2-.07(1)(c). OSAH Rule 21 provides that the standard of proof is preponderance of the evidence. GA. COMP. R. & REGS. 616-1-2-.21(4).

2.

The administrative hearing is *de novo* and this Court must make an independent determination on the basis of the evidence presented at the hearing. See GA. COMP. R. & REGS. r. 616-1-2-.21(1), (3). See also Longleaf Energy Assocs., LLC v. Friends of Chattahoochee, Inc., 298 Ga. App. 753, 769 (2009) (ALJ must consider the applicable facts and law anew, without according deference or presumption of correctness to the decision of the agency).

3.

Under O.C.G.A. § 33-23-21(16), the Department may refuse a license, other than a probationary license, if an applicant “has been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where: (A) First offender treatment without adjudication of guilt pursuant to the charge was granted....” The Department also may refuse a license on the grounds that the applicant “[h]as misrepresented or concealed any material fact in any application for a license or any form filed with the Commissioner.” O.C.G.A. § 33-23-21(2).

4.

The Department also has the authority to issue a probationary license to an applicant for a period of not less than three months and not longer than 12 months. O.C.G.A. § 33-23-14(a) & (b). The Department, in its discretion, shall set the terms of probation, may extend the probationary period, or refuse to grant a license at the end of the probationary period. O.C.G.A. § 33-23-14(c). In addition, a probationary license is “subject to immediate revocation for cause at any time without a hearing.” O.C.G.A. § 33-23-14(b).

5.

Having considered the evidence presented by Bullard at the hearing, including the observation of Bullard’s mature demeanor and sincere manner of testifying, as well as the testimony regarding the circumstances surrounding the incident in 2009, Bullard’s acceptance of responsibility for his actions, his clean record since his release over three years ago, his subsequent employment and college enrollment, and the observations of his family members regarding his growth and change in the past five years, the Court

concludes that Bullard has met his burden to show that he is trustworthy and competent to act as an insurance licensee. However, the Court is persuaded that given the nature of the past offense and Bullard's current active probationary status, the Department should issue Bullard a twelve-month probationary license under appropriate terms and conditions, which, at a minimum, should require Bullard to comply with the following provisions:

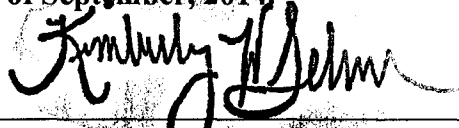
- a) Fully comply with the Georgia Insurance Code and the Rules and Regulations of the Georgia Insurance Department;
- b) Abstain from violation of any laws of the State of Georgia or any other states of the United States, or any federal law;
- c) Notify the Enforcement Division of the Office of the Commissioner of Insurance of the State of Georgia in writing within twenty-four (24) hours of any charge or arrests for any violation of law other than a minor traffic offense or of any changes to the terms of his probation or first offender status; and
- d) Notify the Enforcement Division of the Office of the Commissioner of Insurance of the State of Georgia in writing within twenty-four (24) hours of any formal or informal complaints related to his activity for which an agent's license from the Georgia Department of Insurance is required by law.

#### IV. DECISION

In accordance with the foregoing, the Court concludes that the Order of License Refusal should be **REVERSED**, and Petitioner Kirby Devon Bullard be issued a twelve-

month probationary license under specific terms and conditions established by the Department, as set forth more fully above.

**SO ORDERED THIS 30<sup>th</sup> day of September, 2014.**

A handwritten signature in cursive script, appearing to read "Kimberly W. Schroer".

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**Kimberly W. Schroer**  
**Administrative Law Judge**