

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 69-2
CRANSTON, RHODE ISLAND 02920

IN THE MATTER OF:	:	
	:	
MIKE WILSON,	:	DBR No. 11-I-0008
	:	
RESPONDENT.	:	

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: May 11, 2011

Appearances:

For the Respondent: Mike Wilson, *Pro se*

For the Department of Business Regulation: Elizabeth Kelleher Dwyer, Esq.

I. INTRODUCTION

Respondent Mike Wilson (“Respondent”) applied for an insurance producer’s license in accordance with R.I. Gen. Laws § 27-2.4-8 on June 26, 2009. The Department of Business Regulation’s Insurance Division (“Department”) denied his application on October 5, 2010, in accordance with the provisions of R.I. Gen. Laws § 27-2.4-14(a)(6) based on his criminal history record, which included his having pled *nolo contendere* to assault with a deadly weapon, a felony, on December 10, 2004. Respondent made a timely request for a hearing in a letter received by the Department on October 28, 2010.

The pre-hearing conference was held on February 22, 2011, at which the Respondent appeared *pro se*. The matter was scheduled for full evidentiary hearing on April

19, 2011, but the Respondent was unable to appear due to illness, and requested that the matter be continued. The hearing date was rescheduled to May 11, 2011, and took place on that date.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 27-2.4-1, *et seq.*, R. I. Gen. Laws § 42-14-1, *et seq.*, and R.I. Gen. Laws § 42-35-1, *et seq.*

III. ISSUE PRESENTED

The issue presented in this matter is whether or not Respondent's application for an insurance producer's license should be denied pursuant to R.I. Gen. Laws § 27-2.4-14(A)(6).

IV. MATERIAL FACTS AND TESTIMONY

The Department presented no witnesses at hearing. Instead, it relied on five exhibits, admitted into evidence without objection, to support its case for the denial of Respondent's application for an insurance producer's license, in addition to asking several questions of the Respondent during his own testimony.

The first exhibit is a Superior Court plea form, signed by the Respondent on December 10, 2004 in Case No. P2/04-1119A, which states that the Respondent entered a plea of *nolo contendere* to the charge of assault with a deadly weapon. See Department's Exhibit One (1).

The second document admitted is a Superior Court Certificate of Judge form, executed by the judge on December 10, 2004 in Respondent's criminal case. See Department's Exhibit Two (2).

The third exhibit is a No-Contact Order from the Superior Court signed by the Respondent on May 10, 2004. See Department's Exhibit Three (3)

The fourth exhibit is a letter dated October 5, 2010 from Joseph Torti, Superintendent of Insurance, informing the Respondent that his prior conviction has led to a denial of his license application and that Respondent has a right to an administrative hearing. See Department's Exhibit Four (4).

The fifth, and final, exhibit is a letter received on October 28, 2010 from Respondent to the Department acknowledging receipt of the letter from Mr. Torti, which includes a timely request for a hearing. See Department's Exhibit Five (5).

The Respondent was duly sworn and testified on his own behalf. He stated that he had thrown a glass at the victim in a nightclub. Both parties had been drinking and a fight broke out between the victim's group and another group. The Respondent testified that the victim must have mistakenly believed the Respondent was part of the group he was fighting and thus threatened the Respondent. In response to the victim's intimidating movements, the Respondent threw a glass at the victim causing injuries to his head that required stitches. The Respondent testified that he had never met the victim until the night of the assault. Also, the Respondent stated that the victim was a "scary guy" in his view. He, in essence, explained the assault as having been one made in self-defense.

The Respondent testified that the private attorney he hired gave him poor advice when he went to court. He stated that his attorney had advised him that pleading guilty or *nolo contendere* would be his best option because the victim "had family members in the Providence Police Department." The Respondent testified that English is not his first language and that Arabic is. He also testified that the court provided no interpreter for him

so that he could understand the plea form (Department's Exhibit One (1)). The Respondent also testified that his confusion concerning the plea form might have arisen from the fact that he was about 22 at the time and he had only had four years of English experience. The Respondent testified that he believed his attorney was going to have the felony charge reduced down from felony assault to a "normal" assault.

The Respondent testified that he served no time for his conviction and that he completed all the requirements of his sentence. See Department's Exhibit One (1). He also testified that at the time of the hearing he was still on probation. The Respondent had no other criminal contacts in his record as of the date of the hearing.

The Respondent stated that he is currently employed at an auto dealership at which he has worked since since 2005. He testified that his current employer is aware of his felony conviction.

V. DISCUSSION

The Department's basis for denial is R.I. Gen. Laws § 27-2.4-14(a)(6), which states as follows.

Licenses – Denial – Nonrenewal – Suspension or revocation – (a) The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy an administrative penalty to accordance with § 42-14-16 or any combination of actions, for any one or more of the causes:

(6) Having been convicted of a felony;

A. Felony Convictions: The *Stanton* Criteria

The basis for the Department's denial is the Respondent's felony conviction. Counsel for the Department indicated that what precipitated the Department's denial of

this Respondent's application was that the severity of the penalty handed down by the Court and the explanation initially offered by the Respondent did not seem to match up.

The Department follows the four (4) criteria set forth in *In the Matter of William J. Stanton*, DBR No. 98-L-0035 (12/15/98) when determining whether to license felons.

The Hearing Officer in *Stanton* found as follows:

Considerations in this area include: (i) when the misconduct took place, (ii) whether the misconduct was a misdemeanor or a felony, (iii) the type of sentence imposed, (iv) the age of the applicant at the time of the misconduct, (v) the reason(s) given by the applicant for committing the misconduct and the applicant's acknowledgment of responsibility for the crime(s), and (vi) whether the misconduct relates to the license for which applicant has applied. *Stanton*, at 5-6.

The first criterion delineated in *Stanton* includes the nature and circumstances of the crime. This Respondent committed his felony and received his conviction seven (7) years ago. He testified at the hearing that he was confused about pleading to the conviction because of both his language barrier and the poor legal advice from his attorney at the time. The Respondent accepted responsibility for his actions that night, but did state that what he did was more akin to self-defense than an act of aggression.

The second and third criteria to be considered under *Stanton* are the applicant's subsequent conduct and reformation and his present character. The Respondent testified that he has successfully completed the anger management classes required by his sentence, and that he completed his 100 hours of community service. The Respondent testified that he fulfilled his community service hours by painting the equipment room for a Peewee football league, and that he helped with a little league softball coach. He has had no probation violations or contacts with law enforcement since this charge.

The Respondent is currently employed with a car dealership. His employer is aware of the criminal conviction. He stated that he was hired in 2005. The Respondent's employer is in Connecticut.

Further, the Respondent testified that he paid restitution to the victim for all medical expenses in addition to a civil judgment against the Respondent. To satisfy the monetary penalties awarded to the victim in the civil litigation, the Respondent took out a loan, which he is still repaying. The Respondent testified that he completed his alcohol counseling and currently is on probation until December 2012.

The fourth criterion under *Stanton* is the applicant's present qualifications and competence in the area of the license requested. The Respondent has completed all pre-licensing requirements. AAA Rhode Island made an offer of employment to the Respondent, which he believes may still be available to him, and AAA Rhode Island assisted him in his pre-licensing preparation and examination.

Stanton held that these four (4) criteria are not to be given equal weight in determining whether to deny an application. Instead, a combination of these criteria provides guidance for deciding whether to grant or deny a license. In *Stanton*, the felonies had taken place over ten (10) years prior to the Respondent's application to the Department and he cooperated with the authorities investigating his own crimes and that of his co-conspirators. *In the Matter of Lynn Holston*, DBR No. 09-I-0179 (4/29/10) at 10-11.

As in both *Stanton* and *Holston*, the Respondent in this matter provided a full explanation of his crimes and showed evidence of his subsequent rehabilitation. This Respondent's felony is similarly a serious and violent one. While the Respondent's

felony does not fall under the dishonesty or breach of trust felonies considered by 18 USC § 1033, the Department may consider any felony conviction as a basis to deny an insurance producer license application. The Respondent committed his felony in 2004 and was placed on probation since his sentencing.

Based on the criteria established in *Stanton*, and the later application of that criteria in *Holston*, this Respondent has demonstrated that he has met the criteria for licensing subject to the recommended conditions enumerated below.

VI. FINDINGS OF FACT

1. On or about February 4, 2011, a Notice of Hearing and Appointment of Hearing Officer was issued by the Department to the Respondent.

2. A pre-hearing conference was held on February 22, 2011 and a hearing on this matter was held on May 11, 2011.

3. The Respondent was convicted of the felony of an assault with a deadly weapon on December 10, 2004 and was sentenced to probation, alcohol screenings, anger management classes and payment of the victim's medical bills.

4. Pursuant to R.I. Gen. Laws § 27-2.4-14(a)(6), this felony may be considered in deciding whether to grant Respondent's application for a license.

5. The facts contained in sections IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 27-1-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. There exists a sufficient basis for the conditional granting of the Respondent's application for license pursuant to R.I. Gen. Laws § 27-1-1 *et seq.*

3. Given the Respondent's conduct and the statutory requirements of R.I. Gen. Laws § 27-2.4-1 *et seq.*, it is necessary to monitor the Respondent's conduct for the remaining years of his probation and for the beginning terms of licensing.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that Respondent's application for license be granted conditioned upon the following:

1. The Respondent shall inform the Department in writing within ten (10) days of any criminal charges brought against him. Such charges may result in administrative action against Respondent's license.

2. The Respondent shall provide a letter to any and all insurance companies/firms with which he becomes affiliated as an insurance producer explaining that as a term of issuance of his insurance producer license, he is required to disclose the terms of this decision. The letter shall be copied to the Superintendent of Insurance at the Department.

3. If the Respondent's employment as an insurance producer for AAA Rhode Island or any other insurance companies/agencies that he may affiliate with in the future, he shall notify the Department in writing within ten (10) days.

4. That at such time that the Department receives written notice of a complaint against Respondent regarding his insurance license, the Department may initiate an action to revoke the Respondent's insurance producer license.

5. Assuming no change in circumstances and that the Respondent's criminal record reveals no new criminal charges, the Respondent may request that the Department waive these conditions anytime subsequent to two (2) renewal cycles from the date of this Decision. At the end of the Respondent's probation period, provided the Respondent has not had any further criminal charges and he has successfully followed the conditions of this Decision, the conditions on his license shall be lifted.

6. The Respondent must pay all statutory or regulatory licensing fees, comply with all other statutory requirements, and submit an updated application, if determined to be necessary by the Department.

Dated: 23 June 2011



Ellen R. Balasco, Esq.
Hearing Officer

ORDER

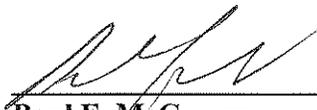
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

DATED: 23 June 2011



Paul E. McGreevy
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY DAYS FROM THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 24th day of June, 2011, a true copy of this Decision was sent by first class mail postage prepaid to Mike Wilson, 23 Blue Sky Drive, Westerly, Rhode Island 02891, and by electronic mail to Elizabeth Kelleher Dwyer, Esq., Department of Business Regulation Insurance Division at edwyer@dbr.state.ri.us.

A B Ellison