

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

IN THE MATTER OF:

LYNN HOLSTON

RESPONDENT.

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DBR No. 09-I-0179

DECISION

Hearing Officer: Catherine R. Warren, Esquire

Hearing Held: December 18, 2009 and January 21, 2010

Appearances:

For the Department of Business Regulation: Elizabeth Dwyer, Esquire

For Lynn Holston, Respondent: Ronald J. Resmini, Esquire

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation (“Department”) pursuant to a Notice of Hearing and Appointment of Hearing Officer issued to Lynn Holston (“Respondent”) on September 9, 2009 in response to his application (“Application”) for an insurance producer’s license. A prehearing conference was waived by the parties and a hearing on this matter commenced before the undersigned on December 18, 2009 with a second day held on January 21, 2010. Both parties were represented by counsel during the hearing.¹ The attorneys chose to rest on the record and not file briefs.

¹ The Respondent’s counsel was not present at the second day of hearing but the Respondent requested that he be heard without counsel.

II. JURISDICTION

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

III. ISSUE

Whether the Respondent's application for an insurance producer's license ("License") should be denied pursuant to R.I. Gen. Laws § 27-2.4-14(a)(3) and (a)(6).

IV. MATERIAL FACTS AND TESTIMONY

The following exhibits were admitted into evidence:

1. The Respondent was charged with committing two (2) felonies on August 10, 1995: 1) assault with a dangerous weapon in a dwelling house with intent to murder and 2) possession of a controlled substance. See Department's Exhibit One (1).

2. Superior Court judgment of conviction and commitment dated March 5, 1997. Respondent entered a plea of guilty to two (2) felony charges: 1) assault with a dangerous weapon in a dwelling house with intent to murder and 2) possession of a controlled substance. For the first charge, the Respondent received a thirty (30) year sentence with fifteen (15) years to serve and fifteen (15) years suspended with probation. For the second charge, he received a three (3) year suspended sentence and three (3) years probation to be served concurrently. See Department's Exhibit Two (2).

2. Respondent's December 15, 2008 letter of explanation regarding his felony convictions submitted to the Department. See Department's Exhibit Three (3).

3. Request for Written Consent to Engage in the Business of Insurance pursuant to 18 U.S.C. § 1033 ("§ 1033 Application"). See Department's Exhibit Four (4).

4. Respondent's January 16, 2009 letter of explanation regarding his felony convictions submitted to the Department. See Department's Exhibit Five (5).

Upon questioning by the Department, the Respondent testified about the following statement in his December 15, 2008 letter to the Department:

On Aug. 10th 1995 in the city of Providence, RI I was arrested and charged with ADW in a dwelling as well as being in a possession of cocaine. The circumstances surrounding (sic) this matter involved my wife of 22 years being in bed with another man. I am not proud of my actions and did not

handle this matter in a professional matter to say the least. See Department's Exhibit Three (3).

The Respondent testified that he was factually inaccurate in that letter in that he knew his wife² was having an affair so he knew what was happening but he didn't actually catch her in bed with her boyfriend. He testified that at the time of the assault, his wife was the only other person in the room and she was in bed by herself. He further testified that both of his letters to the Department and his § 1033 Application mention his wife's affair but that he did not go to trial because he wanted to spare his wife and children and wanted to take full responsibility for his actions. He testified that at that time, he was under the influence of drugs and alcohol and was depressed about how after 22 years and three (3) sons, his wife was going to leave him. He testified that his wife is recovered and remarried. He further testified that during the 22 year marriage, he was unfaithful as well and had children during this time with other women.

The Respondent testified on his own behalf. He testified that he was not the perfect husband and he put his wife through so much that she was going to leave him. He testified that he realized that he knew the relationship was over. He testified that he was under the influence of drugs, alcohol, and prescription drugs when the assault happened. He testified that he lost it that night and wasn't thinking correctly. He testified that he can never forget that night because it was like he was standing outside his body doing something that wasn't him and he thanks God every day that his wife lived. He testified that he prays and hopes his wife will find a way to forgive him. He testified that he is grateful that he has reconnected with some of his children. He testified that there were

² Respondent represented that this wife was a common-in-law wife but for sake of efficiency, she will be referred to as his wife in this decision.

not any prior violent incidences in their marriage and he never had any previous arrests. The Respondent testified that he was under great stress and pressure when the assault occurred and had financial problems, including bankruptcy. He testified that he pled guilty to the crimes because he did not want to put his wife through a trial. The Respondent testified he had great remorse for the assault.

The Respondent testified that while he was incarcerated he acted as a mentor to the other inmates, served as chairman at the Narcotics Anonymous and Alcoholics Anonymous meetings, and took numerous classes in prison. See Respondent's Exhibit Ten (10) (list of classes such as anger management, peer counseling, etc.; certification of completion of correctional recovery academy). He testified that he owns a home in Coventry, R.I. and lives there with his new wife and step-daughter. He testified that he also owns two (2) homes in Florida. He testified that he was released from prison in 2003 and presently is on unsupervised probation. He testified that he hasn't used drugs or alcohol in the last fifteen (15) years. He testified that he and his new wife both lost their father three (3) days apart two (2) years ago and he and wife stood and stand by each other.

The Respondent testified that he graduated from the University of Rhode Island in 1975 and became a licensed insurance producer. He testified that he worked for many years selling life, accident, and health insurance for numerous companies until his convictions. He testified that he never had any discipline problems with the Department while licensed. The Department represented that it did not believe that the Respondent had any issues while he was licensed for approximately 20 years. The Respondent testified that presently works as a top-ranked sales associate at furniture store where he

was promoted from the position of delivery man to sales associate. He testified that American Income Life has offered him a position if he obtains his License and that the company is aware of his background and that the position would be as an insurance agent selling supplemental insurance to union members. The Department represented that the Respondent has currently passed the LAH examination and met all requirements for licensure except for this issue of denial.

The Respondent presently has a parole officer, Matthew Degnan (“Degnan”) assigned to monitor his probation. Though Degnan was unable to appear at the hearing to offer his testimony, it was mutually agreed by the attorneys that the undersigned would speak with him via telephone. The undersigned spoke to Degnan on January 4, 2010. The parties agreed that the undersigned could put a summary of that conversation on the record which was done. Degnan indicated to the undersigned that the Respondent had been sentenced to 30 years with fifteen (15) years to serve and fifteen (15) years parole. Degnan stated that the Respondent was released in 2003 to parole and that he, Degnan, supervised the Respondent while he was on parole. He stated that the Respondent completed his parole by July, 2007 and then went to supervised probation and after one (1) year on probation without any problems, a person on supervised probation goes to unsupervised probation and that is what Respondent did. He stated that the Respondent is on unsupervised probation so only has to report a change of address. He stated that the Respondent has not had any issues since he was released and has rejoined society and he (Degnan) has seen him on the floor selling furniture.

Brent Arbour (“Arbour”), general manager at American Income Life (“AIL”), testified on behalf of the Appellant. He testified that he is licensed as an insurance

producer in Rhode Island and Massachusetts. He testified that he met the Respondent approximately two (2) months ago when he interviewed him for a sales position at AIL. He testified that the Respondent impressed him with his professionalism and one of the first things that Respondent told him (Arbour) was about his (Respondent) past. He testified that he is aware of the Respondent's criminal record and thinks that the Respondent has paid his debt to society. Arbour testified that he thinks that the Respondent would be successful. He testified that he spoke to AIL's State Director (for Rhode Island and Massachusetts) and they both agreed to hire Respondent if he is licensed. He testified that AIL has a market niche providing supplemental insurance such as life, accidental, or disability to unions. See Respondent's Exhibit Six (6) (letter of support from Arbour).

Rhonda Holston ("Holston"), Respondent's current wife, testified on behalf of the Respondent. She testified that she met the Respondent while he was in prison and she was working there as a nurse and has known him for ten (10) years. She testified that her family thought she was crazy but she waited until he got out of prison and made sure he was the person she thought he was. She testified that he is family orientated and they have been happily married for six (6) years. She testified that the Respondent is a hard worker and her best friend and they do everything together. She testified that she and the Respondent live a drug and alcohol-free lifestyle and do everything together. She testified that he was promoted from delivering to sales at the furniture store. She testified that if Respondent was going to go back to drugs and alcohol he would have done that when he got out of prison with that stress of getting back into society. See Respondent's Exhibit Eight (8) (letter of support from Holston).

The Respondent provided a letter of reference from an attorney who indicated he knew of the Respondent's convictions and felt that the Respondent was truly remorseful and was seeking the opportunity to be a productive member of society. See Respondent's Exhibit Five (5). The Respondent also entered into evidence two (2) letters from his children (one of who is the son of the Respondent's first wife who he assaulted) both of which indicated that their father has learned from his past and is remorseful and is trying to better himself. See Respondent's Exhibits Seven (7) and Nine (9).

V. DISCUSSION

The Department's basis for denial are R.I. Gen. Laws § 27-2.4-14(a)(3) and (a)(6) which state 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 in accordance with § 42-14-16 or any combination of actions, for any one or more of the following causes:

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(6) Having been convicted of a felony;

A. Misrepresentation

The Department argued that the Respondent's December 15, 2008 letter to the Department (Department's Exhibit Three (3)) misrepresented the circumstances of his assault on his first wife in that the letter made it seem that he had come home and caught her in bed with another man when in fact he had come home drunk and mad that their 22 year relationship was over and his wife was home alone in bed.

The Department represented that 18 USC § 1033 was not applicable to this situation and was not a basis for the Department's denial of the Respondent's application.

However, the Respondent's § 1033 Application (Department's Exhibit Four (4)) dated December 22, 2008 answers the question about any felony convictions truthfully by stating the Respondent's crimes and felony convictions. In the § 1033 Application, the Respondent described his two (2) felonies and stated that his wife was having an affair and that he didn't handle the matter professionally.

The Respondent also submitted a second letter dated January 16, 2010 (Department's Exhibit Five (5)) to the Department regarding his felony convictions. In that letter the Respondent reiterated his remorse for his actions and again expressed his acceptance of responsibility for the assault. The Respondent further elaborated that he had suspected that his wife was having an affair with another man and that she wanted a separation. He explained that he was under the influence of cocaine, alcohol, and prescription drugs when he committed the assault and attempted suicide afterwards.

The Respondent submitted all three (3) explanations to the Department regarding his crimes and convictions in the space of one (1) month. In all of them, he expressed remorse and explained that he assaulted his wife. He testified at hearing that his first letter of explanation was more in the way of figuratively speaking in that he knew that his wife was in bed with another man but he didn't actually catch her in bed with another man. In his January, 2010 letter, the Respondent explained his crimes in more detail.

The Respondent did not lie on his application but rather admitted that he had been convicted of felonies. Instead, he chose an inopportune time to engage in hyperbole in explaining one (1) of his felony convictions. However, the Respondent was consistent in his explanation in his January, 2010 letter and his § 1033 Application regarding his assault on his wife and his remorse for his actions. Furthermore, the Respondent's

testimony at hearing regarding his hyperbole was credible about why he chose the terminology that he did. Therefore, the Respondent's poor choice of words do not rise to trying to obtain a license through misrepresentation under R.I. Gen. Laws § 27-2.4-14(3).

B. Felony Convictions: the Stanton Criteria

The second basis for the Department's denial is the Respondent's felony convictions. 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. *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 acknowledgement of responsibility for the crime(s), and (vi) whether the misconduct relates to the license for which applicant has applied. *Stanton*, at 5-6.

1. Nature and Circumstances of the Misconduct

The first criteria delineated in *Stanton* include the nature and circumstances of the crime. The Respondent committed the felonies fifteen (15) years ago and the felony convictions occurred thirteen (13) years ago and he was released from prison in 2003.

The Respondent explained the nature of his crimes and that he had great remorse for his actions. While the Respondent testified that his wife was unfaithful, he did not use that as a reason to justify his assault. Rather, the Respondent attempted to explain what he was thinking at the time and how he was under the influence of alcohol, drugs, and prescription drugs at the time. The Respondent explained that he pled guilty rather than put his wife and children through a trial. He admitted his responsibility to all of the charges.

2. Conduct and Reformation; Present Character

The second and third factors to be considered under *Stanton* are the applicant's subsequent conduct and reformation and his present character. Since the Respondent's release from prison, he has worked for a furniture company and was promoted from delivering to selling (confirmed by Degnan). The Respondent has fully acknowledged his wrongdoing, expressed contriteness, and remorse. The Respondent has fully taken responsibility for his actions.

Arbour, a Rhode Island licensed insurance producer, testified on the Respondent's behalf. He is aware of Respondent's criminal convictions and his company is willing to hire the Respondent as an insurance producer.

Respondent's current wife testified on his behalf. Holston confirmed the Respondent is sober and that they own a home in Rhode Island and homes in Florida. She also confirmed (along with Degnan) that Respondent has been working and successfully has been promoted. The Respondent provided two (2) letters from his children. One of his children that wrote in support of him is a child of the Respondent's first wife. It is a credit that the Respondent is trying to repair his relationship with his children.

3. Present Qualifications

The fourth factor to consider under *Stanton* is the applicant's present qualifications and competence in the area of the license requested. The Respondent has passed the licensing examination. Arbour is willing to employ Respondent.

C. Whether the Respondent Should be Licensed

Stanton held that these four (4) factors are not to be given equal weight in determining whether to deny an application. Instead, a combination of these factors

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 applicant's application to the Department and the applicant cooperated with the authorities investigating the applicant's crimes and his co-conspirators.

As in *Stanton*, the Respondent in this matter provided a full explanation of his crimes and showed extensive evidence of rehabilitation. The Respondent's felonies are of a very serious and violent nature. While the Respondent's felonies do not fall under the dishonesty or breach of trust felonies considered by 18 USC § 1033, the Department may consider any felony convictions as a basis to deny an insurance producer license application. The Respondent committed his felonies in 1995 and was released from prison in 2003. While in prison, he became sober and took many classes to improve himself. Since his release, the Respondent has stayed sober, married, owns a home in Rhode Island, gained employment, and has been promoted at his job. While it isn't a surprise that the Respondent's new wife testified on his behalf, the Respondent has been reintegrated into the community in that he is employed, owns a home, and has remarried.

The Respondent currently is on probation. However, unlike *In the Matter of: David Catalano*, DBR No. 02-L-0060 (10/25/02) where that respondent was still on probation but also failed to give a complete explanation of his criminal charges and plea, and did not fully accept responsibility for such, this Respondent has fully explained his crimes and convictions and accepted responsibility. He has not tried to hide his convictions from the Department.

The Respondent has an offer of employment from a Rhode Island insurance licensee that is aware of his felony convictions. He has established that he has ties to this

community. He has communicated his desire to return to the field at which he worked without any issue for twenty (20) years prior to his convictions.

Based on the *Stanton* criteria, the Respondent has demonstrated that he has met the criteria for licensing subject to the recommended conditions enumerated below in the Recommendation section.

VI. FINDINGS OF FACT

1. On or about on September 9, 2009, a Notice of Hearing and Appointment of Hearing Officer was issued by the Department to the Respondent.

2. A prehearing conference was waived by the parties and a hearing on this matter was held on December 18, 2009 and January 21, 2010.

3. The Respondent's December 15, 2008 letter did not rise to the level of trying to obtain a license through misrepresentation under R.I. Gen. Laws § 27-2.4-14(a)(3)

3. The Respondent committed the two (2) above-delineated felonies on August 10, 1995.

4. The Respondent pled guilty to the two (2) felonies on March 5, 1997 and was sentenced to prison from where he was released in 2003 and is currently on unsupervised probation.

5. Pursuant to R.I. Gen. Laws § 27-2.4-14(a)(6), these felonies may be considered in deciding whether to grant Respondent's application for a License.

6. The facts contained in Section 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 Respondent's application for License pursuant to R.I. Gen. Laws § 27-1-1 *et seq.*
3. However, 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 during the remaining years of his probation for this conditional License.

VIII. RECOMMENDATION

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

1. 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 produce 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 Respondent stops acting as an insurance producer for AIL (or any other insurance companies/agencies that he may affiliate with in 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 produce license.

5. Assuming no change in the circumstances and the Respondent's currently clean criminal record, the Respondent may request that the Department waive these conditions anytime subsequent to two (2) renewal cycles from this decision and prior to the completion of his criminal probation period. At the end of the Respondent's criminal probation period³ and if there are no changes in circumstances, 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: April 29, 2010

signature on file
Catherine R. Warren
Hearing Officer

ORDER

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

 x ADOPT
 REJECT
 MODIFY

Dated: April 30, 2010

signature on file
A. Michael Marques
Director

³ **The Respondent must promptly confirm the date this his probation ends to the Department.**

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. 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 (30) DAYS OF 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.