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FILED *9j*

MAR 1 2007

Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:)
)
MELVIN SWATZENBERG,) Docket No. 18-2371-06
)
) HEARING OFFICER'S FINDINGS
) OF FACT, CONCLUSIONS OF LAW
) AND PRELIMINARY ORDER
)
_____)

This matter came on for hearing on December 18, 2006, before Jean R. Uranga, the designated Hearing Officer. The Department of Insurance appeared by and through its Deputy Attorney General, Michael Naethe, and the Respondent, Melvin Swatzenberg, appeared representing himself. The parties submitted testimony and evidence at the hearing. Thereafter a briefing schedule was established. The Department's Closing Brief was received January 8, 2007. Mr. Swatzenberg's letter response was received January 27, 2007. The Hearing Officer was notified February 5, 2007, the Department of Insurance would not file a reply to Mr. Swatzenberg's letter brief.

FINDINGS OF FACT

1. In an application dated October 9, 2006, Melvin Swatzenberg filed an application with the Idaho Department of Finance to obtain a license as a bail bondsman. The application was admitted as Exhibit A. The application was received by the Department on October 16, 2006.

2. The application was signed under penalty of perjury. On Page 3, the application requires a response to the following question: "1. Have you ever been convicted of, or are currently charged with, committing a crime, whether or not adjudication was withheld?" Mr. Swatzenberg answered "no". Within the same question, "crime" is clearly defined to include a misdemeanor, felony or military offense. "Convicted" is defined to include being found guilty by verdict of a Judge or a jury, entering a guilty plea or nolo contendere, or being placed on probation, a suspended sentence or fine. The last page of Exhibit A, line 1, states:

I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

3. That page further states the Department would be verifying the information in the application and provided a release for additional information.

4. Consistent with their established procedures, the Department runs a FBI criminal background check and compared that information to information on Mr. Swatzenberg's application.

5. The FBI background check on Mr. Swatzenberg was admitted as Exhibit B. That background check revealed three (3) criminal convictions and a fourth charge which was dismissed. The report reveals charges and sentences for grand theft in Kootenai County, with an arrest date of July 31, 1995. Mr. Swatzenberg also had a criminal charge for insufficient funds checks in Ada County, with an arrest date of June 6, 1991, and another arrest for insufficient funds checks in Ada County, with an arrest date of August 29, 1990. Mr. Swatzenberg further had a spousal battery conviction following a trial in Nevada with a disposition date of April 1, 1993.

6. The Department of Insurance then obtained more detailed information on some of the charges. Exhibit C is the court register for the two (2) Ada County felony charges of issuing checks without funds. Mr. Swatzenberg pled guilty to one of the charges and was sentenced to a withheld judgment and restitution. Detailed documents from Ada County setting forth the information and disposition of criminal charges in Ada County was also included as Exhibit F.

7. Exhibit D is the court record for the criminal complaint filed against Mr. Swatzenberg in Kootenai County November 23, 1994. A copy of the criminal complaint and pleadings disposing of the charges were admitted as Exhibit E. Those exhibits establish Mr. Swatzenberg was charged with a felony of stealing \$1,200 between

September 30, 1994, and October 6, 1994. He was convicted by a jury of the crime of grand theft. A sentence was issued by District Judge Haman.

8. By letter dated October 23, 2006, the Department sent a letter to Mr. Swatzenberg providing him with the information they had obtained regarding his criminal history. He was given 21 days to provide the Department with any further information he wanted. Exhibit G.

9. Mr. Swatzenberg's response was admitted as Exhibit H, a letter dated October 24, 2006. His explanation was he did not fully understand the question. He further stated that since the crimes occurred when he was younger and the matters were satisfactorily resolved, he did not give the convictions much thought.

10. By letter dated November 7, 2006, the Department notified Mr. Swatzenberg they were denying his application for bail agent license based upon his providing incorrect, misleading, incomplete or materially untrue information in the licensing application. Exhibit I.

11. Thereafter, Mr. Swatzenberg requested a hearing.

12. The Hearing Officer finds Question 1 on page 3 of the application is clear and unambiguous. The undisputed evidence establishes Mr. Swatzenberg failed to disclose multiple criminal convictions as required by the application question and Idaho statutes. His defense that the crimes occurred in his younger years is insufficient. In fact, his false statements in his application is current evidence of dishonesty.

13. The evidence clearly establishes grounds to deny Mr. Swatzenberg's application.

CONCLUSIONS OF LAW

14. Pursuant to Idaho Code §41-1016(1)(a), Mr. Swatzenberg has provided incorrect, misleading, incomplete or materially untrue information in his licensing application and his application should be DENIED.

PRELIMINARY ORDER

Based upon the foregoing, IT IS HEREBY ORDERED That Mr. Swatzenberg's appeal be DENIED and the Department's decision to deny Mr. Swatzenberg's application be AFFIRMED.

DATED This 28 day of February, 2007.

JEAN R. URANGA

JEAN R. URANGA
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 28 day of February, 2007, I served true and correct copies of the foregoing HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

Melvin Swatzenberg
15038 N. Hwy 41, #11
Rathdrum, Idaho 83858

Michael K. Naethe
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