

He explained that his prior conduct and violations outlined in the April 2011 Stipulation and Consent Order (Department's Exhibit (Exh.) 1) occurred at the height of his struggle. T.O.:5:17-25; T:6:1-25; T:7:1-25; T:8:1-25.

This order considers the entire record in this matter, and ultimately adopts the hearing officer's recommendation to uphold the Department's decision to deny Respondent a producer license.

Findings of Fact

The Commissioner makes the following findings of fact:

1. Respondent was previously licensed as a Vermont producer until March 31, 2011 when his license expired. Exh. 1 ¶ 35.
2. On or about December 9, 2013, Respondent applied for his producer license. Exh. 4-5.
3. On January 16, 2014, the Department denied Respondent's producer license application in writing. Exh. 3. Pursuant to the producer licensing requirements, including 8 V.S.A. § 4800(3)(C), the Department found that Respondent could not be deemed trustworthy based on his prior conduct and violations of insurance laws and regulations as set forth in the April 2011 Stipulation and Consent Order. Exh. 1, 3.
4. Respondent's application did not include any submissions pertaining to the statutorily required examinations he may have taken since December 9, 2011, or any reference thereof for the lines of authority he had applied, as required by 8 V.S.A. §§ 4800(3)(D) and 4813f (a)(5). Exh. 4-5. Respondent acknowledges that he has not met the necessary testing requirements. T.O.:17:18-25.

Conclusions of Law

The conclusions of law are based on the above findings of fact. Pursuant to 8 V.S.A. § 4804(c), in the event that the action by the Department¹ is to deny an application for a license, the applicant may request a hearing before the Commissioner to determine the reasonableness of the Department's action. Therefore, the central question to be decided is whether the Department acted reasonably in denying Respondent's application for a producer license.

1. The statutory requirements to obtain a producer license are set forth in 8 V.S.A. §§ 4800, 4804, and 4813f.
2. Pursuant to 8 V.S.A. § 4813f(a), before approving an individual's application for a producer license in Vermont the Department shall find that the individual: (1) is at least 18 years of age; (2) has not committed any act that is ground for denial, suspension or revocation set forth in section 8 V.S.A § 4804; (3) is competent, trustworthy, financially responsible and of good personal and business reputation; (4) has paid the fees set forth in section 4800 if this title; and (5) has successfully passed the examinations for the lines of authority for which the person has applied.
3. Additionally, an applicant for a producer license is required to submit as part of his or her individual application a passing licensing examination that occurred within 24 months (2 years) of applying for the producer license. 8 V.S.A. § 4800(3)(D).
4. Respondent failed to meet the licensing criteria in § 4813f(a)(5), which requires that an applicant successfully pass the examinations for the lines of authority for which the individual has applied. Findings of Fact (FF) ¶ 4.

¹ The statute references "the action by the Commissioner," but for clarity purposes this Order will reference "the Department" when discussing the process for approving or denying an application for a producer license.

5. Respondent also failed to meet the licensing criteria in § 4800(3)(D), which requires that an applicant submit a passing licensing examination that occurred within 24 months (2 years) of applying for the producer license. FF ¶ 4.
6. It was reasonable for the Department to deny Respondent's application for a producer license based on his failure to meet the statutory criteria for obtaining a license as set forth in 8 V.S.A. §§ 4800(3)(D) and 4813f(a)(5).
7. Although the reasonableness of the denial is established by Respondent's failure to meet the necessary testing requirements, the reasonableness of the Department's action is also established by Respondent's failure to meet the licensing criteria set forth in 8 V.S.A. § 4813f(a)(2) and (3). Respondent failed to meet 8 V.S.A. § 4813f(a)(2), which requires that an applicant has not committed any act that is ground for denial, suspension or revocation set forth in 8 V.S.A § 4804. Respondent also failed to meet 8 V.S.A. § 4813f(a)(3), which requires that an applicant be deemed trustworthy by the Department. FF ¶ 3.

Decision and Order

The record establishes that the Department acted reasonably in denying Respondent's application for a producer license. Respondent failed to meet the statutory criteria for obtaining a license in Vermont as set forth in 8 V.S.A. § 4800(3)(D) and 4813f(a)(5) by failing to meet the necessary testing requirements. While this failure alone supports the reasonableness of the Department's action, the reasonableness is also established by 1) the Department's finding that Respondent committed an act that is ground for denial, suspension or revocation set forth in 8 V.S.A § 4804, as required for licensure under 8 V.S.A. § 4813f(a)(3), and 2) the Department's finding that Respondent could not be deemed trustworthy, as required for licensure under 8

V.S.A. § 4813f(a)(3). These findings by the Department were based on Respondent's prior conduct and violations of insurance laws and regulations as set forth in the April 2011 Stipulation and Consent Order.

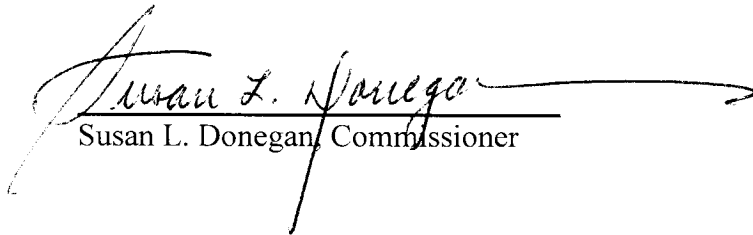
Nothing in this Order precludes Respondent from reapplying for a producer license in the State of Vermont. Certainly, Respondent would, at the very least, need to pass the required licensing examinations within the statutory timeframe. Respondent is also strongly encouraged to locate an insurance company willing to sponsor him and place him under elevated supervision. However, nothing in this Order shall be construed as any guarantee or promise that Respondent will receive his license even if he takes the aforementioned steps.

Therefore, this ORDER upholds the DEPARTMENT'S decision to deny RESPONDENT a Vermont resident producer insurance license.

Right to Appeal

This order exhausts all administrative remedies within the Department. Respondent may appeal this decision to the Vermont Supreme Court in accordance with 8 V.S.A. § 16.

Dated at Montpelier, Vermont this 22nd day of January, 2015.


Susan L. Donegan, Commissioner