

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

IN THE MATTER OF) Docket No. 12IID002
)
WALTER MATLOCK,) **PROPOSED DECISION**
)
Respondent.)

The parties to this proceeding are the Iowa Insurance Division (“Division”) and Respondent Walter Matlock. A contested case hearing was held on April 11, 2012. Matlock appeared and testified. Attorney Emily Kimes-Schwiesow represented the Division. Rhonda Smith and Dennis Britson appeared and testified on behalf of the Division. Exhibits 1 through 8 were admitted into the record.

FINDINGS OF FACT

The Division received an Application for Preneed Sales Agent License (“Application”) from Matlock on January 6, 2012. The Division reviewed Matlock’s Application. The Application presents a series of questions. Question 1 asks:

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

“Crime” includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. “Convicted” includes, but is not limited to, having been given probation, a suspended sentence or a fine.

If you answer yes, you must attach to this application:

- (a) a written statement explaining the circumstances of each incident,
- (b) a certified copy of the charging document, and
- (c) a certified copy of the official document, which demonstrates the resolution of any charges or any final judgment.

(Exhibit 5). Matlock checked the box “Yes” next to the question and attached a written response, as follows:

In response to answering yes on question #1 of the background information, I received a misdemeanor approximately 12 years ago. I was charged with simple assault after hitting my daughter's boyfriend.

(Exhibit 5). Matlock submitted a notarized copy of the Application certifying the information he provided was true, accurate and complete.

Smith is the Division's Preneed/Licensing Coordinator. Upon receiving Matlock's Application Smith performed a criminal background check of Matlock, which revealed Matlock had been convicted of: (1) disorderly conduct in 1979; (2) carrying a weapon in 1983; (3) OWI in 1984; (4) interference and false information in 1991; (5) possession of controlled substance – crack cocaine in 1996; (6) possession of a controlled substance in 1998; (7) assault with injury in 2000; and (8) interference with official acts in 2000.

Smith compared Matlock's criminal background check with the information he provided on his Application. She noted he had been convicted of additional crimes he did not disclose on the Application. Briston is Smith's director supervisor. Smith took Matlock's Application and criminal background check to Briston to determine whether she should grant Matlock a license. Briston reviewed the Application and criminal history. Briston spoke with his supervisor and confirmed when an applicant fails to disclose criminal history information on an application the Division considers the failure to disclose a false representation to the Division, warranting a license denial. Briston told Smith she needed to deny Matlock's Application.

Smith sent Matlock a denial notice on January 13, 2012. After receiving the denial notice Matlock contacted Smith twice and asked what he could do and who to send the appeal to. Smith testified Matlock did not provide any additional explanation concerning his criminal history.

Briston testified the Division is concerned about an individual who makes a false representation on an application because of the nature of preneed sales. Briston reported that preneed sales agents have access to money for people who make advance arrangements for funerals or burials. Briston testified the preneed sales agents have trust accounts and merchandise on hand to ensure the preneed purchasers receive what they pay for. In Briston's experience each sale may involve between \$2,000 and \$12,000 and most preneed sales agents make many sales per year.

Briston spoke with Matlock after the Division denied his Application. Briston told Matlock he had the right to a hearing. Matlock responded that he wanted to appeal. During his conversation with Briston Matlock did not elaborate on his criminal background or provide any additional information.

Matlock testified he only disclosed one criminal conviction because he believed his convictions "had been taken off" his criminal history and he could not recall his convictions. Matlock reported the Banking Division granted him a mortgage loan officer license in 2007 and 2008. Matlock does not understand why the Division has denied his license when the Banking Division granted him a license. Matlock stated that when

he processed mortgages he received confidential information from customers and he never engaged in any dishonest acts.

At hearing Matlock did not dispute he was convicted of the crimes listed in Exhibit 6.

CONCLUSIONS OF LAW

Iowa Code chapter 523A governs Cemetery and Funeral Merchandise and Funeral Services in Iowa. A sales agent is a person doing business in Iowa, "who is authorized by a seller to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, on behalf of a seller."¹ A person may not sell or offer for sale any cemetery merchandise, funeral merchandise, funeral services, or any combination thereof, in Iowa, unless the person holds an active preneed seller license or sales agent license.²

When an individual submits an application for a sales license, the Division is required to request criminal history data on the applicant.³ The request is submitted to the Department of Public Safety, Division of Criminal Investigation.⁴ The Division obtained the criminal history data at issue in this case for Matlock from the Division of Criminal Investigation. Criminal history information concerning an applicant is confidential, but may be used in a license denial proceeding.⁵ The Legislature granted the Division express authority to adopt rules regarding criminal history information as it relates to licensure.⁶ The Division has adopted rules governing licensure found at 191 IAC chapter 103.

An individual seeking licensure as a preneed sales agent must: (1) be at least 18 years of age; (2) be appointed by at least one preneed seller; (3) submit a completed application form; (4) submit a signed waiver allowing the Division to request and obtain criminal history data information; (5) pay the licensure fee; and (6) not have committed any act that is grounds for denial under 191 IAC 100.4.⁷

In deciding whether to approve or deny an application for a license, the Division reviews the information submitted with the application, obtained through the criminal history investigation, and financial history.⁸ The Division may deny an application for a license for several reasons, including, but not limited to "committing a fraudulent act, engaging in a fraudulent practice, or violating any provision of [Iowa Code chapter 523A] or any implementing rule or order issued under [Iowa Code chapter 523A]."⁹ Under the Division's rules, engaging in fraudulent or deceptive acts in procuring a license includes, but is not limited to: (1) making false representations of material fact, whether by

¹ Iowa Code § 523A.102(26) (2011).

² *Id.* § 523A.502(1); 191 IAC 103.1(1).

³ Iowa Code § 523.502(4)a.

⁴ *Id.* § 523.502(4)b.

⁵ *Id.* § 523.502(4)c.

⁶ *Id.* § 523.502(4)a.

⁷ 191 IAC 103.2(2)a-f.

⁸ *Id.* 103.2(4)d.

⁹ Iowa Code § 523.503(1)a.

conduct or false or misleading statements; (2) concealing or omitting anything that should have been disclosed or included with the application; (3) filing a false identification; (4) filing an untrue certification or affidavit; or (5) falsifying documents.¹⁰

Matlock disclosed he had been convicted of a single simple assault on his Application. His criminal background check he had been convicted of: (1) disorderly conduct in 1979; (2) carrying a weapon in 1983; (3) OWI in 1984; (4) interference and false information in 1991; (5) possession of controlled substance – crack cocaine in 1996; (6) possession of a controlled substance in 1998; (7) assault with injury in 2000; and (8) interference with official acts in 2000. While the Application stated he did not need to report the OWI offense, the Application required him to disclose the remaining crimes.

Matlock testified he could not recall the other crimes and believed the crimes had been expunged. This raises an issue of credibility. There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness' appearance, conduct, age, intelligence, memory and knowledge of facts.
4. The witness' interest in the trial, their motive, candor, bias and prejudice.¹¹

Matlock's testimony is not reasonable and consistent with the other evidence I believe. Matlock testified he could not recall the crimes and believed the crimes had been expunged. His statement is inconsistent. If he could not recall the crimes, how could he have also believed the crimes had been expunged? The Application required him to report all crimes where he had been "found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine." (Exhibit 5). In addition to the assault charge he disclosed, and his OWI conviction, Matlock was found guilty of: (1) disorderly conduct in 1979 and received a fine; (2) carrying a weapon in 1983 and received a fine; and (3) possession of a controlled substance in 1998 and received a fine and his driver's license was revoked. He also entered a guilty plea to: (1) providing false information and interference in 1991 and received a fine; (2) possession of a controlled substance, crack cocaine in 1996 and received a fine; and (3) interference with official acts in 2000 and received one day in jail. I do not believe Matlock could not recall these crimes. He concealed the crimes from the Division. The Division has proven Matlock engaged in fraudulent or deceptive acts in procuring a license. The Division properly denied his Application for a preneed sales agent license.

¹⁰ 191 IAC 105.6(1).

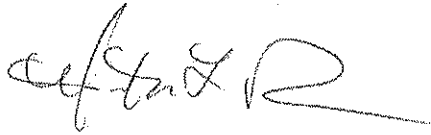
¹¹ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996).

Matlock argued the Division should grant his Application because the Banking Division granted him a license to be a mortgage loan officer. The Division is separate from the Banking Division. The governing statute and the Divisions' rules do not require the Division to grant a license to Matlock if another agency grants him a license in Iowa.

ORDER

Matlock engaged in fraudulent acts in procuring a license. The Division properly denied his license. The Division shall take any steps necessary to implement this decision.

Dated this 12th day of April, 2012.



Heather L. Palmer
Administrative Law Judge
515-281-7183

cc: Walter Matlock
Emily Kimes – Schwiesow & Irene Vega

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.¹² The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 330 Maple Street, Des Moines, Iowa 50319. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.

¹² 191 IAC 3.27.

