

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. 12IID025
)
TONY HULSTEIN, JR.,) **PROPOSED DECISION**
)
Respondent.)

A contested case hearing was held on April 29, 2013. Attorney Bob Koppin represented the Iowa Insurance Division. Wayne Lacher appeared and testified on behalf of the Division. Attorney Wallace Taylor represented Respondent Tony Hulstein, Jr. Hulstein also appeared and testified. Exhibits 1 through 4 and A through I were admitted into the record.

FINDINGS OF FACT

Hulstein has been licensed as an insurance producer in Iowa since July 23, 1983. The Division has not received any complaints regarding Hulstein's work as an insurance producer.

Hulstein has an interest in firearms and owned a large firearms collection. Hulstein was arrested following a sting by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). The United States Attorney filed firearms charges against Hulstein. On October 29, 2012, the United States District Court for the Northern District of Iowa convicted Hulstein of one count of dealing firearms without a license and four counts of traveling interstate to deal firearms without a license in violation of 18 U.S.C. section 922(a)(1)A, 924(a)(1)(D), and 924(n). The Court ordered Hulstein to pay an assessment of \$500, perform community service, and sentenced Hulstein to probation for a term of three years.

Hulstein self-reported his arrest and conviction to the Division. After learning of Hulstein's conviction, the Division filed a Statement of Charges against Hulstein, alleging Hulstein violated Iowa Code chapter 522B.11(1)(f) by receiving the felony convictions. The Division seeks revocation of Hulstein's insurance producer license.

Hulstein testified that in December 2005 he applied for a federal firearms license. An ATF agent interviewed Hulstein in January 2006. Hulstein told the ATF agent he was a large collector of guns and he wanted to make sure he could properly buy, sell, and trade guns. According to Hulstein, the agent inquired whether he had a store front and was operating the business full-time. Hulstein replied he did not have a store front and was not operating the business full-time. Hulstein testified the ATF agent told him he did not need a license. Hulstein signed a cancellation form.

Hulstein sold a number of guns to Cabelas in Minnesota and to another store in South Dakota. Hulstein testified he made other sales through individuals with licensed federal firearms dealers, including Tom Ginger and John Mulder.

Hulstein decided to sell his Iowa acreage. Ginger contacted Hulstein and told him he had been approached by an individual that may be interested in Hulstein's acreage. Ginger sent over a person to look at Hulstein's home. The person indicated he loved Hulstein's acreage and gun collection. The person asked Hulstein if he could buy a pistol from him for his father. The person was an undercover ATF agent.

At hearing Hulstein did not accept responsibility for his felony convictions and placed blame on people he did business with and with the ATF agent who told him he did not need a federal firearms license. Hulstein submitted Exhibit B, over the Division's objection, as a "Statement from ATF that Mr. Hulstein did not need a federal firearms license." Exhibit B is not such a statement. Exhibit B states "Application Withdrawn" and is signed by the area supervisor as "Reviewed" and "Concur." Exhibit B does not state the ATF believes Hulstein could buy and sell firearms without a Federal Firearms/Explosives License/Permit.

CONCLUSIONS OF LAW

The Iowa Legislature created the Insurance Division to regulate and supervise the conducting of the business of insurance in the state of Iowa.¹ The Insurance Commissioner is the chief executive officer of the Insurance Division.² A person must obtain an insurance producer license from the Insurance Commissioner to sell, solicit and negotiate insurance in Iowa.³

Hulstein's counsel relies on a decision issued In the Matter of Joseph Sehr, 12IID023, to support his position revocation is improper because the crime at issue is not a crime of dishonesty or related to the business of insurance. Sehr involved a request for consent to work in the business of insurance under 191 IAC chapter 13. This case does not involve a request for consent to work in the business of insurance.

The Division may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty if a producer is convicted of a felony.⁴ The statute does not mandate revocation if a person is convicted of a felony. Hulstein's crimes are not related to Hulstein's business as an insurance producer. Hulstein's crimes are not crimes of dishonesty. Hulstein has been licensed in Iowa since July 1983. The Division has no record of any complaints against Hulstein during the time he has been licensed. Revocation of his license is too harsh a penalty given his unblemished career of nearly 30 years. Hulstein's crimes are serious. At hearing he did not accept full responsibility for his behavior and placed blame on people he did business with and an ATF agent for providing him with incorrect information. Yet, the Court

¹ Iowa Code § 505.1 (2011).

² *Id.*

³ *Id.* §§ 522B.2., .5.

⁴ *Id.* § 522B.11.


sentenced Hulstein to probation for three years. Hulstein's insurance producer license should be placed on probation.

If an insurance producer is found to have violated Iowa Code chapter 522B, the producer may be assessed a civil penalty pursuant to Iowa Code chapter 507B.⁵ Iowa Code section 507B.8 allows for assessment of a civil penalty of not more than \$1,000 for each act or violation, not to exceed an aggregate of \$10,000, unless the person knew or reasonably should have known the person was violating the insurance laws, in which the penalty shall not exceed \$5,000 for each violation, or exceed and aggregate of \$50,000 in a six-month period. Imposition of a \$500 civil penalty is appropriate.

ORDER

Hulstein is assessed a \$500 civil penalty and his insurance producer's license is placed on probation through December 31, 2015. The Division shall take any steps necessary to implement this decision.

Dated this 3rd day of May, 2013.



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

cc: Wallace Taylor
Bob Koppin
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.⁶ 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.

⁵ *Id.* § 522B.17.

⁶ 191 IAC 3.27.