

Before the
Administrative Hearing Commission
State of Missouri



ANDREW GRIZZARD,)	
)	
Petitioner,)	
)	
v.)	No. 14-1520 DI
)	
DIRECTOR OF DEPARTMENT)	
OF INSURANCE, FINANCIAL)	
INSTITUTIONS AND PROFESSIONAL)	
REGISTRATION,)	
)	
Respondent.)	

DECISION

The Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director”) has cause to refuse to renew Andrew Grizzard’s non-resident insurance producer license.

Procedure

Grizzard filed a complaint on September 8, 2014, appealing the Director’s decision to refuse to renew his non-resident insurance producer license. The Director filed an answer on October 15, 2014.

The Director filed a motion for summary decision on December 18, 2014. We notified Grizzard that he could file a response by January 2, 2015. Grizzard filed a response to the motion on January 6, 2015. We accept his response out of time.

We base our findings of fact on the authenticated business records of the Department of Insurance, Financial Institutions and Professional Registration (“the Department”) attached to the Director’s motion, which includes certified copies of administrative orders from Colorado and Kentucky. We also take notice of the decision we entered in a related case, *Grizzard v. Director of Department of Insurance, Financial Institutions and Professional Registration*, No. 14-0524 (November 4, 2014) (*Grizzard I*), in which we found cause for the Director to refuse Grizzard’s application to add an additional line of authority to his non-resident insurance producer license.

Findings of Fact

1. On August 11, 2014, Grizzard filed his electronic “Uniform Application for Individual Producer License Renewal/Continuation” (“renewal application”) with the Department.
2. The Department investigated Grizzard’s renewal application and found that Grizzard had been a party to administrative proceedings involving his insurance license in Colorado and Kentucky.
3. Specifically, on September 24, 2012, the Colorado Division of Insurance denied Grizzard’s application for licensure as a non-resident insurance producer with accident and health authority. That action (“the Colorado denial”) became final on November 23, 2012.
4. On November 19, 2013, Grizzard and the Colorado Division of Insurance entered into a Stipulation for Entry of Final Agency Order (“the Colorado stipulation”) in which the Division agreed to issue him a producer license with life, accident, and health authority subject to certain conditions including a five-year probationary period.
5. In the Colorado stipulation, Grizzard admitted that he sold two policies to Colorado customers while he was not licensed in Colorado in violation of Colorado law, but contended he was unaware that he was not properly licensed to sell the policies or that his actions were illegal.

6. On February 27, 2013, the Kentucky Department of Insurance entered an order of revocation against Grizzard. That action (“the Kentucky revocation”) became final on April 29, 2013.

7. Grizzard reported neither the Colorado denial nor the Kentucky revocation to the Department within thirty days of their final dispositions.

8. On August 13, 2014, the Director issued an order refusing to renew Grizzard’s individual non-resident insurance producer license.

Conclusions of Law

We have jurisdiction to decide this matter. Sections 374.051.1 and 621.045.¹ We may grant a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely disputes such facts. 1 CSR 15-3.446(6)(A).² Facts must be established by admissible evidence such as affidavits or the adverse party’s pleading. 1 CSR 15-3.446(6)(B).

In his answer, the Director alleges there is cause to deny Grizzard’s application under § 375.141.1(2), (7), (8), and (9). The motion, however, cites only the following:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(9) Having an insurance producer license, or its equivalent,

¹ Statutory references are to the RSMo Supp. 2013 unless otherwise specified.

² All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

denied, suspended or revoked in any other state, province, district or territory[.]

The insurance law that the Director contends Grizzard violated is § 375.141.6, which states:

An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant documents.

Violation of Insurance Laws -- § 375.141.1(2)

Section 375.141.1(2) provides for discipline when a licensee violates any insurance laws. Grizzard did not report the Colorado denial or the Kentucky revocation to the Director within 30 days of when those administrative actions became final. Nor did he ever provide the Director with a copy of the orders or other legal documents. Therefore, he violated § 375.141.6, and there is cause to deny Grizzard's application under § 375.141.1(2).

The Director also argues that he has cause to deny Grizzard's application under this section because Grizzard violated the insurance laws of Colorado, as we found in *Grizzard I*. The Director asks us to apply the doctrine of collateral estoppel to that decision to make that conclusion.

Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. banc 2012) (citation omitted). Collateral estoppel may apply when the prior proceeding was an administrative hearing. *State ex rel. Div. of Family Services v. White*, 952 S.W.2d 716, 718 (Mo.App. E.D. 1997); *Bresnahan v. May Department Stores Co.*, 726 S.W.2d 327, 330 (Mo. 1987). For collateral estoppel to apply, the Director must establish four factors in his favor:

- that the issues involved in the prior adjudication and the present action are the same;

- that the prior judgment was on the merits and is final;
- that the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and
- that the party had a full and fair opportunity in the prior adjudication to litigate the issue for which collateral estoppel is asserted.

Brown, 370 S.W.3d. at 659.

In *Grizzard I*, we concluded, based on the Colorado revocation order, that Grizzard violated a Colorado insurance law when he sold insurance to two Colorado residents while he was not licensed in that state. We found that Grizzard was a party to the Colorado proceeding; the issue was identical to one of the issues in this case; the Colorado revocation order became final; and that Grizzard had an opportunity to litigate the issue before the Colorado revocation order became final.

As with the Colorado revocation order, Grizzard was a party to *Grizzard I*; the issues are identical to those decided in that case; and *Grizzard I* was a final decision. Although *Grizzard I* was decided on a motion for summary decision, “a summary judgment is a determination on the merits for collateral estoppel purposes.” *St. Louis University v. Hesselberg Drug Co.*, 35 S.W.3d 451, 455 (Mo. App. E.D. 2000), quoted in *FH Partners, LLC v. Complete Home Concepts, Inc.* 378 S.W.3d 387 , 404 (Mo. App. W.D., 2012). Grizzard had an opportunity to respond to the Director’s motion in *Grizzard I*, and he did respond. Therefore, we find, based on *Grizzard I*, that Grizzard violated a Colorado insurance law. Such a violation is additional cause for denial under § 375.141.1(2).

Denial or Revocation by Another State -- § 375.141.1(9)

The Colorado Division of Insurance denied Grizzard’s application for licensure as a non-resident insurance producer with authority to sell accident and health insurance, although a year

later it apparently granted his application. The Kentucky Department of Insurance revoked Grizzard's non-resident insurance agent license. There is cause to deny Grizzard's application under § 375.141.1(9).

Our Lack of Discretion -- § 374.051.1

In Grizzard's complaint, he states that even in Colorado, "where all this began," he was a victim of circumstances and that state eventually issued him a non-resident license. In his reply to the Director's motion, he attached a copy of the Colorado stipulation dated November 9, 2013, under which he was granted a probationary license and wrote that he believed that such a stipulation would be "an honest and fair settlement to this matter."

In many applicant cases, the appeal vests in this Commission the same degree of discretion as the licensing agency, and we need not exercise it in the same way. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012). But § 374.051.1 states:

Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141 may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in determining whether the applicant may be disqualified by statute. **Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.**

(Emphasis added). Under this provision, we have no discretion when there is any cause to refuse to issue a license. Thus, we cannot consider any of the circumstances surrounding Grizzard's violation of insurance laws, or his proposal to accept a probationary license.

We have found that the Director has cause to deny Grizzard's application under § 375.141.1(2) and (9). As we have no discretion in this matter, this finding is sufficient to uphold the Director's decision.

Summary

We grant the Director's motion for summary decision. The Director has cause to deny Grizzard's application under § 375.141.1(2) and (9). We cancel the hearing.

SO ORDERED on January 13, 2015.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner