

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**

In the Matter of the Application of

ALICE CHONGMI KIM,

Respondent.

File No. LBB 1195-AP

OAH NO. L-2003090702

DECISION

The Proposed Decision of Paul M. Hogan, Administrative Law Judge, dated April 12, 2004, in Los Angeles, California, is attached hereto. Said decision is hereby amended, pursuant to Government Code Section 11517(c)(2)(C), to make technical or other minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1, Findings of Fact, number 2, line three is hereby amended to read: "... no license has been issued ..."
2. Page 2, Findings of Fact, number 6, lines four and five are hereby amended to read: "...did not show the type of format for curriculum or instruction ..."

The proposed decision, as amended, is hereby adopted by the Insurance Commissioner as his decision in the above-entitled matter and is ordered officially filed.

This Decision shall be effective immediately.

IT IS SO ORDERED this day of April, 2004.

JOHN GARAMENDI
Insurance Commissioner

By /s/

CONNIE M. PERRY
Deputy General Counsel

BEFORE THE
INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

DANNY JAMES CRENSHAW,

Respondent.

File No. LBB 0588-AP
OAH No. L2002120774

PROPOSED DECISION

On March 12, 2003, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

J. Scott McNamara, Staff Counsel, represented the complainant.

Respondent, Danny James Crenshaw, represented himself.

Evidence was received, the record was closed and the matter was submitted on March 12, 2003.

FACTUAL FINDINGS

On November 12, 2002, Harry W. Low, Insurance Commissioner of the State of California, made and filed the Statement of Issues in his official capacity. On February 24, 2003, John Garamendi, Insurance Commissioner of the State of California, made and filed the First Amended Statement of Issues in his official capacity.

Danny James Crenshaw, (hereafter "respondent") timely filed a Request For Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code Section 11500, *et. seq.*

Respondent's Application for Licensure

On April 8, 2002, respondent filed an application for a license to act as a Life Agent in the State of California (hereafter "application"). Question #36 of the application asks if the applicant has ever been convicted of a crime. Respondent checked the box "Yes". The question continues by advising the applicant of the following:

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

- (a) a written statement, with original signature, 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 the charges or any final judgment.

4. Respondent had sustained two criminal convictions, one in 1999 and one in 2000. He did not provide certified copies of the charging documents or the final judgments with his initial application. Respondent did submit written statements, dated March 18, 2002, regarding the circumstances of the convictions.

5. Respondent's statement regarding the 2000 conviction identified the charge as an "Assault with Deadly Weapon". He wrote that the charge was a result of a fight he had gotten into with four of his friends. He wrote that his friend had picked up a twelve pack of beer that belonged to another man, Burke. Burke began fighting with respondent's friend and pushed the friend to the ground. Burke got on top of respondent's friend and was punching him in the face. Respondent wrote that he proceeded to help his friend by kicking Burke off him. After respondent kicked him, Burke became violent toward respondent and was trying to get up to come after respondent. Respondent proceeded to kick him again, this time in the head. Shortly after, they all quit fighting.

6. The officers who had responded to the incident testified at the hearing and the court records were admitted in evidence. The evidence was persuasive that respondent had been the aggressor in the incident. He had stolen a six pack of beer from Burke. Burke protested and respondent grabbed him and held his arms behind his back while respondent's friends struck Burke. They knocked Burke to the ground and respondent's friends assaulted him. Respondent and his friends kicked Burke in the head. Respondent was wearing boots.

7. The evidence was persuasive that respondent was not protecting his friend from an attack, as he stated in his statement to the Department. Respondent was an unprovoked aggressor. The physical conditions of the participants, respondent's demeanor and intoxication, Burke's report, and the statements of others who witnessed the incident support this conclusion. Respondent also made an admission while in the back of the police car. Respondent was in the back seat of the patrol car when he used his cell phone to call his roommate to request that his roommate bail him out of jail. He told his roommate that he was in the backseat of a patrol car and that he was going to jail. He told his roommate that he had kicked a guy in the head and was going to jail because he "beat the fuck out of that guy".

8. Respondent's account of the circumstances of the 2000 conviction was intended to cast the event as a minor brawl, in which respondent was forced to intervene to save his friend from grievous harm. Respondent's letter to the Department was false and misleading.

Respondent testified that it was unfair for the Department to ask him for an explanation of his conviction, and then to use that explanation to accuse him of submitting false information. He contends that his explanation of the events was a subjective one, necessarily tied to his recollection of the events. Respondent's argument was not persuasive. The variance between the evidence at hearing and the information respondent provided was too great to be attributed to mere discrepancies in memory. Moreover, respondent's written description of the events was rich with detail, and he at no time claimed to have a faded memory. Respondent, rather, skewed his version of the events to exonerate himself from blame. Whether he first convinced himself that he "remembered" the events this way, or whether he carefully crafted his application to make it more favorable, is really not the issue. The fact is that respondent submitted false documentation, and has shown that he is capable of deceiving himself and others when it suits his purpose.

Respondent's Criminal Conviction

9. Respondent pled guilty to assault with a deadly weapon or force likely to produce great bodily injury, a violation of Penal Code section 245 (a) (1), misdemeanor. He

was convicted on December 21, 2000, in the Superior Court of Orange County. He was sentenced to three years of informal probation, fines and restitution, and ninety days of jail time. On October 24, 2001, respondent was found in violation of probation. He had been found in possession of one tablet of the drug “ecstasy” in August of 200. His probation was revoked and reinstated on the same terms and conditions. He completed a diversion program for the ecstasy possession and the conviction was dismissed.

10. Respondent attempted to impeach his criminal conviction by testifying that he was not guilty of assaulting Burke. He testified that he pled guilty in order to qualify for work release and because his friends were going to testify against him. However, respondent’s conviction stands as conclusive evidence of his guilt of the offense charged. “To hold otherwise would impose upon administrative boards extensive, time consuming hearings aimed at relitigating criminal charges which had culminated in final judgments of conviction.” *Arneson v Fox* (1980) 28 Cal 3d 440, at 449.

11. Moreover, respondent’s guilty plea was voluntary. Respondent pled guilty on the advice of counsel, as a result of which the felony count against him in the information was dismissed. He cannot now maintain that his plea was not voluntary.

12. Respondent’s conviction of assault with a deadly weapon or force likely to produce great bodily injury, is a crime of moral turpitude. A criminal act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. *In re Stuart K. Lesansky* (2001) 25 Cal. 4th 11, 16; (citing *In re Johnson* (1992) 1 Cal. 4th 689, 699; *In re Calaway* (1977) 20 Cal. 3d 165, 169-170; *In re Higbie* (1972) 6 Cal. 3d 562, 569-570). Acts of moral turpitude are acts which involve “bad character” and “readiness to do evil”. *People v Zataray* (1985 First District)) 173 Cal. App. 3d 390, 400.

Respondent’s offense involved the use of force or violence upon the person of another. Using force and violence on the body of another, as respondent did here by kicking his victim in the head, involves “bad character” and “readiness to do evil” as contemplated in *People v Zataray Id.* Kicking a man in the head constitutes a serious breach of duties owed to the victim and to society.

13. Respondent’s offense bears a substantial relationship to the qualifications, functions, and duties of an insurance licensee. The primary goal of licensing is the protection of the public from unscrupulous and irresponsible persons. Cf *Clerici v. Department of Motor Vehicles* (Fifth Dist. 1990) 224 Cal.App.3d 1016, 1027. The purpose of the departmental regulatory statutes is not to punish, but to protect members of the public when they deal with licensees. Cf *Clerici v. Department of Motor Vehicles* (Fifth Dist. 1990) 224 Cal.App.3d 1016, 1027; (citing *Brewer v Department of Motor Vehicles* (1979) 93 Cal. App. 3d 358, 367). Insurance agents are constantly interacting with members of the public. Customers, particularly those with complaints and demands, can be a source of frustration. A person who cannot control his temper and who has violently battered an individual is manifestly unfit for licensure as an insurance agent.

Factors in Mitigation and Rehabilitation

14. In order to determine whether to grant a professional license the finder of fact should consider the conduct of the licensee and should consider any factors introduced in justification, mitigation, aggravation and rehabilitation. “The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or

explanation, as well as any evidence of rehabilitation.” *Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* 90 Cal.App.3d 737 at p. 747.

15. There were no factors in justification or in mitigation. In aggravation, respondent had a prior conviction in 1999 for driving under the influence, and has had a subsequent conviction for possession of ecstasy. In aggravation, respondent violated his probation and sustained a conviction for said violation of probation.

16. Respondent introduced some evidence of rehabilitation. He testified that he took a four month class in connection with the Court’s diversion program following his conviction for possession of ecstasy. He was subject to eight months of random drug and alcohol screening between August 2001 and April 2002. He passed the class. However, respondent provided no evidence that he continues to abstain from drug and alcohol use. In fact, respondent had successfully completed alcohol classes and attended AA meetings in 1999 after his DUI conviction. These measures did not deter him from becoming intoxicated and getting involved in the 2000 assault or from possessing ecstasy in 2001. Respondent has not shown that he remains drug and alcohol free. In light of the fact the he suffered three convictions which arose from his use of alcohol and drugs, respondent must demonstrate his rehabilitation in this area.

17. Respondent testified that he has a different life now. He stays away from bars and does not associate with the same group of friends. He is involved in his church. He completed his BA in business in 2000 and works in mortgage lending. Respondent did not support this testimony with letters or other documentation.

LEGAL CONCLUSIONS

1. As set forth in Factual Findings 9 through 13, inclusive, respondent has committed a crime, the character of which demonstrates that it would be against public interest to grant him a license to act as a Life Agent. Cause for denial of respondent’s application to act as a Life Agent exists under California Insurance Code (hereafter “Insurance Code”) section 1668 (b).

2. As set forth in Factual Findings 3 through 13, inclusive, respondent has knowingly or willfully made a misstatement in a document filed in support of his application for licensure by the Insurance Commissioner. Cause for denial of respondent’s application to act as a Life Agent thus exists under Insurance Code sections 1668 (h).

3. A Life Agent is authorized to sell insurance in the State of California. The licensee has considerable access to the public and has access to the financial records of consumers. The licensee is in a position to harm the public, even if he is closely supervised. Insurance licenses bear the seal of the State of California and represent that the licensee is a trustworthy person, with whom it is safe to transact financial business.

Respondent has not shown that he has rehabilitated himself to the extent that he can now be trusted with the responsibilities of licensure. Respondent bears the burden of proving he has rehabilitated himself. As set forth in Factual Findings 14 through 17, inclusive, respondent’s evidence of rehabilitation is lacking. He has offered only his own testimony of change in character. Only two years have passed since respondent’s conviction for assault. During that time, respondent suffered a subsequent conviction and a probation violation. These subsequent convictions somewhat undermine his testimony that he has rehabilitated himself. Even had he not suffered new convictions, respondent has not presented sufficient evidence of rehabilitation. Respondent’s failure to be truthful and accurate in his description of the events leading to the assault conviction is further evidence that he has not rehabilitated himself to the point where he can be trusted to be honest and forthcoming in licensed activities.

ORDER

The Application of Danny J. Crenshaw for licensure as a Life Agent is DENIED.

Dated: _____

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings