

MICHIGAN SUPREME COURT



Office of Public Information

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STATE INSURANCE LICENSE AT ISSUE IN CASE MICHIGAN SUPREME COURT WILL HEAR IN ADRIAN AS PART OF ‘COURT COMMUNITY CONNECTIONS’

State knew of applicant’s felony conviction, but granted insurance agent’s license; four years later, state says license was approved in error, seeks to revoke, citing insurance code; local students to hear oral argument, meet Michigan Supreme Court justices

LANSING, MI, October 11, 2010 – Can the state, after granting an insurance agent’s license to a man convicted of a felony, revoke it several years later on the basis that the state Insurance Code barred the state from granting the license in the first place? That is the question the [Michigan Supreme Court](#) will consider in a case it will hear on October 19 in Adrian as part of the “Court Community Connections” program.

The plaintiff in [King v State of Michigan](#) applied for a state license to act as a resident insurance producer, or insurance agent, in 2004. At the time, he disclosed his felony conviction in 2000 for operating a vehicle under the influence of liquor, third offense. The state Office of Financial and Insurance Services granted the license, but in 2008, OFIS sought to revoke it, contending that the staff who reviewed the plaintiff’s license application used outdated standards. OFIS stated that, under the clear terms of the Michigan Insurance Code at the time of the 2004 application, the license should never have been granted to a person convicted of a felony. But the circuit court and Court of Appeals both ruled in favor of the insurance agent, with the Court of Appeals stating that “principles of equity” prevented OFIS from revoking the license on the basis of a claimed mistake.

The Supreme Court, which normally hears oral arguments at the Michigan Hall of Justice in Lansing, will hear oral argument in [King v State of Michigan](#) at Siena Heights University as part of “Court Community Connections,” a Supreme Court program aimed principally at high school students. Students from Lenawee County high schools, Siena Heights University, Adrian College, and Jackson Community College will attend the 12:45 p.m. court session in the university’s Francoeur Theater. Students and teachers will study the case in advance with the help of local judges and attorneys. Following the argument, the students will meet with the attorneys in the case for a debriefing.

Chief Justice Marilyn Kelly explained, “The goal of Court Community Connections is to introduce the Supreme Court to students and communities throughout Michigan. About twice each year, the Court holds oral argument in locations outside Lansing.”

Kelly added, “The communities that have hosted us for these programs have been unfailingly gracious and supportive, and Lenawee County is no exception. The Court thanks Siena Heights University, Lenawee County judges, court staff, and area attorneys, the Lenawee and Monroe Intermediate School Districts, Adrian College, Jackson Community College, and community educators and students for making this event possible. My fellow justices and I are grateful for their efforts.”

Lenawee County 39th Judicial Circuit Judge Margaret M. S. Noe said, “Most citizens have some understanding of what goes on in a trial court; fewer understand the appellate courts. By inviting the Michigan Supreme Court to Lenawee County, we hope students, teachers, parents, and community alike will have a better grasp of the courts and justice system in everyday life.”

Please note: the summaries that follow are brief accounts of complicated cases and may not reflect the way that some or all of the Court’s seven justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. Briefs in the cases are online at http://www.courts.michigan.gov/supremecourt/Clerk/MSC_orals.htm. For further details about the cases, please contact the attorneys.

KING v STATE OF MICHIGAN, et al. (case no. 140684)

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Trial Court: Ingham County Circuit Court

At issue: About four years after granting an insurance agent license to a man who had been convicted of a felony, the state Office of Financial and Insurance Services sought to revoke the license. OFIS stated that, under the clear terms of the Michigan Insurance Code at the time of the license application in 2004, the license should never have been granted to a person convicted of a felony. The circuit court and Court of Appeals both disagreed. Were the courts required to interpret the code as of the 2004 application? Does the code as it existed in 2004 clearly bar the state insurance commissioner from licensing someone convicted of a felony? Do equitable principles bar the state from revoking the license?

Background: In 2000, Steven King was convicted of a felony – operating a vehicle under the influence of liquor, third offense. In 2004, he applied to the state for a license to act as a resident insurance producer, or insurance agent. At the time, King disclosed his felony conviction. The Michigan Office of Financial and Insurance Services reviewed King’s application and granted him the license. In a letter to King dated September 3, 2004, OFIS acknowledged that it had reviewed his felony conviction; the letter advised King to keep the letter with his license “in case your record and/or ability to engage in the business of insurance is ever challenged by someone in the industry, state government, or federal government.” King took a job in insurance sales. But on March 19, 2008, OFIS notified King that it was initiating administrative proceedings to revoke his license, based on his felony conviction in 2000. OFIS claimed that the licensing staff who reviewed King’s 2004 application used standards that were no longer in effect. Formerly, Michigan’s Insurance Code allowed the OFIS Commissioner to determine whether an applicant’s felony conviction indicated a lack of good moral character. But in 2002, the Insurance Code was amended to absolutely prohibit anyone with a felony conviction from getting a residence insurance producer license, OFIS said. Accordingly, OFIS maintained, King’s application should never have been granted in the first place.

King sued the state of Michigan, the Michigan Department of Labor and Economic Growth, and the state’s insurance commissioner in circuit court. His requests for relief included asking the court for an order declaring that the defendants had violated the Insurance Code and that they could not rescind his license based on the 2000 felony conviction. Following a hearing, the circuit court judge ordered the defendants not to revoke King’s insurance license. The judge

stated in part, “My decision is based on – let’s see, how would we phrase it – good faith You looked at his license, you determined that he had an OUIL third, you went ahead and gave him a license anyway, and then four years later some new commissioner decides, well – on the basis of a case which was decided prior to this license being issued – that we shouldn’t have done it in the first place, so rather than admit an error ... which most people do, by the way, unlike the government – and instead of doing that, they said, well, we’ll just take it away. I view that as being underhanded, heavy handed, and totally inappropriate.”

The defendants appealed to the Michigan Court of Appeals, but the appellate panel affirmed the trial court’s decision in a unanimous, unpublished decision. At issue, the Court of Appeals said, were three sections of the Insurance Code as it existed in 2004, when King applied for his license: MCL 500.205; MCL 500.1205; and MCL 500.1239. MCL 500.205 governed decisions of the Insurance Commissioner and provided that:

Orders, decisions, findings, rulings, determinations, opinions, actions, and inactions of the commissioner in this act shall be made or reached in the reasonable exercise of discretion.

MCL 500.1205(1)(b) provided that:

(1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual’s knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

* * *

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239 [MCL 500.1239].

In 2004, MCL 500.1239(1)(f) stated that:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer’s license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

The defendants cited an unpublished 2004 decision of the insurance commissioner, which was issued about two months before King’s application was granted. In this 2004 ruling, the commissioner determined that 2002 amendments to the Insurance Code had removed the commissioner’s discretion and replaced it with an absolute ban on licensing anyone convicted of a felony. But the Court of Appeals was not persuaded, stating that the commissioner’s ruling represented only one possible interpretation of the Insurance Code. Moreover, the ruling was never communicated to the public or even formally communicated internally at OFIS, the Court of Appeals said.

The Court of Appeals declined to interpret the 2004 provisions and determine whether the OFIS’ interpretation was correct. “Although this Court could engage in an analysis of the statute as written in 2004, and make a determination regarding the correct interpretation at the time, this would be a waste of judicial resources, as defendants have already granted plaintiff a license with full knowledge of plaintiff’s felony conviction and plaintiff’s criminal record has not changed in the last five years,” the panel stated.

“Furthermore, as MCL 500.1205 is currently written, it prohibits the insurance

commissioner from *issuing* a license to a convicted felon, but it does not prohibit a convicted felon from *being* a licensed insurance producer, nor does it, as defendants argue, require that a license previously granted to a felon, be revoked,” the Court of Appeals said. “MCL 500.1239(1) states that the Commissioner *may* revoke an insurance producer’s license if an individual is convicted of a felony. This is permissive, not mandatory language. Therefore ... [i]t is statutorily permissible for plaintiff to retain his license.”

Moreover, the Court of Appeals said, “principles of equity” required a ruling in King’s favor. The panel compared King’s case to another Court of Appeals case, *Kern v City of Flint*, 125 Mich App 24 (1983). In *Kern*, the Court of Appeals held that the doctrine of estoppel barred the defendant city from reducing a retired police officer’s benefits, after representing to him that his benefits would exceed \$700 per month. The city paid the officer’s benefits for two years, then claimed that it had done so by mistake. Although one who overpays by mistake is generally entitled to recover the amount of the overpayment, the *Kern* court said, “an exception to the rule exists where the party receiving the money has changed his position in reliance upon his receipt of it so that it would be inequitable to permit recovery.”

The same principles of equity apply to OFIS’ grant of a license to King, the Court of Appeals said. “There is no question that plaintiff has relied on defendants’ issuance of an insurance producer license to pursue and establish a career over the last five years,” the panel stated. “Defendants are the ones who claim to have made a ‘mistake’ in their application of their own internal procedures ... there is ample evidence that the ‘mistake’ was actually an unresolved internal dispute over the proper application of the statute, rather than a simple clerical error.”

The defendants appeal. The ultimate issue – whether King’s license was properly granted in the first place – was never reached by the trial court and Court of Appeals, the defendants argue. Under the clear provisions of the Insurance Code, King did not have a right to an insurance producer’s license, the defendants contend; they maintain that MCL 500.1205(1)(b) and MCL 500.1239(1)(f), when read together, prohibit granting a resident insurance producer license to anyone who has been convicted of a felony. In addition, the circuit court and Court of Appeals should have deferred to the insurance commissioner’s 2004 interpretation and should not have granted equitable relief to King without first determining whether the Insurance Code, as of 2004, barred the OFIS from issuing a license to King, the defendants argue.

King argues that the Supreme Court should deny the defendants’ application for leave to appeal, contending that this case is not jurisprudentially significant because it affects very few individuals; according to King, OFIS has admitted that only 30 people with prior felony convictions were granted licenses by OFIS in the wake of the insurance commissioner’s 2004 ruling. Moreover, the insurance commissioner’s 2004 ruling is wrong, King maintains; the Insurance Code, as it existed in 2004, required OFIS to use its discretion in the consideration of applicants with prior felony convictions, he claims.

In a July 15, 2010 order, the Supreme Court ordered the parties to appear for oral argument. At issue is whether the Court will grant the defendants’ application or take other peremptory action.

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