

NOV 18 2024

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF	)	
APPLICATION OF LICENSE FOR	)	FINDINGS OF FACT, CONCLUSIONS
WILLIAM D. ZITTERKOPF II	)	OF LAW, RECOMMENDED ORDER
	)	AND ORDER
	)	
	)	CAUSE NO. A-2415
	)	
	)	
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This matter came on for hearing on the 22<sup>nd</sup> day of October 2024, before Megan VanAusdall, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its attorney, Cheryl Wolff. William D. Zitterkopf II (“Applicant”) was present and was not represented by an attorney. The proceedings were tape recorded by Shelly Storie, a licensed Notary Public. Evidence was received, testimony was adduced, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
2. Previously, the Applicant submitted an Application to renew his resident insurance producer license with the State of Nebraska on August 30, 2022, which was received by the Department on the same date. Applicant’s business and mailing address, as stated in the Application, is 2325 6<sup>th</sup> Ave, Scottsbluff, NE 69361.
3. On the license application, Background Question 1A of the Application asks whether the applicant has ever been convicted of a misdemeanor, had a judgment withheld or deferred, or is

currently charged with committing a misdemeanor that has not been previously reported to the Nebraska Department of Insurance. On his August 2022 Application, Applicant responded “NO” to Background Question 1A, and subsequently the Department granted an Applicant a resident insurance producer license. (See Ex. 1, Attachment 1).

4. On or about August 28, 2024, Applicant again applied to renew his resident insurance producer license with the State of Nebraska. The Department received his Application on the same date. Applicant’s business and mailing address, as stated in the August 28<sup>th</sup> application, is 2325 6<sup>th</sup> Ave, Scottsbluff, NE 69361.

5. In his August 2024 renewal application, Applicant reported a felony conviction, with an arraignment date given as April 28, 2022. Materials attached to the Application showed Applicant was charged in the District Court of Scotts Bluff County, Nebraska, with an arraignment date of April 28, 2022, though the conviction date was in August 2024.

6. The application, specifically Background Question 1A, asks whether the applicant has ever been convicted of a misdemeanor, had a judgment withheld or deferred, or is currently charged with committing a misdemeanor that has not been previously reported to the Nebraska Department of Insurance. On his August 2024 Application, Applicant again responded “NO” to Background Question 1A. (See Ex. 1, Attachment 2).

7. On or about September 4, 2024, Kevin Schlautman, (“Schlautman,”) the Department’s administrator of the licensing division, conducted a search of the Nebraska Judicial Branch’s statewide trial case management system, known as “JUSTICE,” (Judicial User System to Increase Court Effectiveness), an official government website of the state. The JUSTICE court case search system provides access to criminal, civil, traffic, juvenile, and probate cases filed in all 93 of Nebraska’s county and district courts. This record showed the following:

- i. Applicant was convicted of a Class II felony for the Unlawful Distribution of an Intimate Image in April 2023, and sentenced in June 2023. The file indicated that the case was appealed to the Nebraska Supreme Court and Applicant's conviction was affirmed in August 2024.
- ii. Applicant was convicted of a Class I Misdemeanor after entry of a guilty plea in May 2021 and Sentenced in July 2021.

(See: Ex. 1, Attachment 3)

8. Applicant did not disclose or report the 2021 misdemeanor conviction to the Department, and Applicant admitted his failure to report this misdemeanor conviction during his testimony at the hearing. (See: Ex. 1)

9. Applicant's indicated that he had intended to appeal the 2023 felony conviction which, he had, in fact, done.

10. On or about October 7, 2024, the Department retrieved a copy of the Nebraska Supreme Court Advance Sheet for the case State of Nebraska v. William Zitterkopf, 317 Neb. 312, (August 9, 2024), from the Nebraska Supreme Court Online Library, in which the Nebraska Supreme Court affirmed the Applicant's felony conviction. (See: Ex. 1, Attachment 4).

11. On or about September 12, 2024, Schlautman sent Applicant a letter, denying his renewal Application pursuant to Neb. Rev. Stat. §44-4059(1)(f), which allows the Director of the Department to refuse to renew an insurance license if the Applicant has been convicted of a felony or a Class I, II, or III misdemeanor. (See: Ex. 1, Attachment 5).

12. On or about October 4, 2024, the Department received written correspondence from Applicant, pursuant to Neb. Rev. Stat. §44-4059(2), requesting an administrative hearing regarding

the denial of the renewal of Applicant's resident insurance producer license. (See: Ex. 1, Attachment 6).

9. On or about October 7, 2024, the Department through its employee, Shelly Storie, ("Storie") sent notice of this proceeding to the Applicant at his residential, mailing, and business address registered with the Department, 2325 6<sup>th</sup> Ave, Scottsbluff, NE 69361, via certified mail, return receipt requested, and by United States Postal Service ("USPS") regular mail. (See: Ex. 2).

10. On or about October 21, 2024, Storie checked the USPS's website to find the tracking history associated with delivery to the Applicant. The following tracking information was found: "[y]our item was delivered to an individual at the address at 5:51 p.m. on October 15, 2024, in SCOTTSBLUFF, NE 69361." (See: Ex. 2, Attachment 1).

13. 11. On October 22, 2024, the Applicant appeared at the offices of the Petitioner's Office for an administrative hearing held there, at approximately 10:00 a.m.

14. At the administrative hearing, held on October 22, 2024, the Applicant testified regarding the circumstances of his felony conviction for the charge of "Unlawful Distribution of an Intimate Image," a violation of Neb. Rev. Stat. §28-311.08(3). Applicant testified that at the time immediately preceding his felony charge, he was in the midst of divorce proceedings from his (now ex- wife) Due to ongoing divorce and custody proceedings, Applicant installed cameras in several rooms of his home, which recorded constantly. While these cameras were running, a woman who Applicant identified as his ex-wife's then-roommate came to Applicant's residence in June 2021 and had a sexual encounter with Applicant which was captured by the cameras. Applicant then sent a screenshot from the video recording of himself and the ex-wife's roommate to his ex-wife. Applicant testified that he sent the screenshot to prove the roommate's testimony on an affidavit, offered as support for Applicant's ex-wife in the divorce and custody proceedings, was false. Applicant sent this

screenshot both to his ex-wife and to the roommate. The screenshot included a message from Applicant stating “she should confess to the judge that she lied in her affidavit.” *State v. Zitterkopf*, 317 Neb. 312, 316. (See: Ex. 1, Attachment 4, Testimony of Applicant).

15. The felony conviction of the Applicant was affirmed by the Nebraska Supreme Court on (insert date case number)

16.

At hearing, Applicant admitted to not disclosing his May 2019 conviction for “Obstruction of Government Operations,” a Class I misdemeanor, but characterized this as a mistake he made due to the age and (relative) lack of severity of the charge. (Ex. 1, Attachment 3, Testimony of Applicant).

Applicant went on to testify that he has worked as an insurance producer since 2006, when he first received an insurance license in Colorado, then he moved to Nebraska and received a resident license there around 2013, which he used to work in the insurance industry until recently. Applicant indicated that if his license denial were overturned, and his license granted, Applicant would continue to work as an insurance producer in his own agency. (Applicant’s testimony at License Denial Hearing).

#### DISCUSSION

Applicant’s criminal conviction constitutes a sufficient statutory basis to deny his application as a Nebraska resident insurance producer. However, such denial is discretionary, not mandatory. The purpose of the license denial hearing is to determine the reasonableness of the denial. In the context of a proper denial, the hearing gives an applicant the opportunity, and the burden, to show why a license should be granted.

The Department denied the Applicant’s licensure Application because Applicant had been convicted of “Distribution of an Intimate Image,” a Class II felony. In this instance, the Applicant

appeared at the hearing and attempted to justify his previous actions that led to both a felony and misdemeanor conviction. His demeanor and testimony were not persuasive to overcome his failure to previously report the misdemeanor or to excuse and ignore his recent felony conviction. The weight of the evidence presented by the Applicant does not sufficiently support a finding that the denial was unreasonable.

All of Applicant's testimony has been taken into consideration. For the reasons stated above, the Department has shown that the denial of Applicant's license was proper.

#### CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance producers in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 to 40-4069.
2. The Department has personal jurisdiction over Respondent.
3. Pursuant to Neb. Rev. Stat. §§44-4059(1)(f), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license for the conviction of a felony, or a class I, II, or III misdemeanor.

#### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law made herein, it is recommended that the initial decision to deny Applicant's licensure request, which is supported by a sufficient evidentiary basis, be SUSTAINED, and that Applicant's request for licensure as a resident insurance producer is DENIED. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter.

Dated this 12<sup>th</sup> day of November 2024.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



Megan VanAusdall #27433  
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of the Denial of Application for License for William D. Zitterkopf II, Cause No. A-2415.

Dated this 18<sup>th</sup> day of November 2024.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



Eric Dunning  
Director of Insurance

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant by mailing a copy to him at his registered address of 2325 6<sup>th</sup> Ave, Scottsbluff, NE 69361, via certified mail, return receipt requested, and regular U.S. mail, on this 18<sup>th</sup> day of November 2024.

Shelly Storie