

APR 08 2025

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
DONALD "DON" BAUERMEISTER

) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER
)
) CAUSE NO. A-2425
)

This matter came on for hearing on January 28, 2025, before Cheryl Wolff, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its counsel, Megan VanAusdall. Donald "Don" Bauermeister ("Applicant") was represented by his counsel, Justin Wayne. The proceedings were recorded by Shelly Storie, a licensed Notary Public. The Department and Applicant presented evidence at the hearing and the matter was taken under advisement. 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. Applicant is appealing the denial of his application for a resident public adjuster's license pursuant to Neb. Rev. Stat. §44-9211(1)(f) and (i) for having been convicted of a felony and having an insurance or public adjuster license, or the equivalent thereof, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory.
3. Applicant applied to become a resident public adjuster with the State of Nebraska. Applicant's application for said license was submitted to the Department and received by the Department on or about November 4, 2024. (Ex. 3, Attachment 1).

4. Within the Uniform Application for Individual Adjuster or Apprentice License/Registration (“Application”), Applicant answered the Background Information Question 1 in the affirmative indicating that he had been convicted of a crime. (Ex. 3, Attachment 1). Applicant submitted additional information regarding his August 24, 2017, felony indictment in the United States District Court for the District of Nebraska for one count of conspiring to possess and distribute marijuana in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(D), and 846 (2012). Applicant also disclosed his October 30, 2017, guilty plea and his January 29, 2018, sentencing to five years of probation. (Ex. 3, Attachment 1).

5. Applicant’s felony conviction was based on the conspiracy to purchase marijuana in Oregon and sell it in Omaha, Nebraska. Between November 18, 2016, and January 9, 2017, the Applicant paid a co-conspirator to transport six pounds on the first trip and eight pounds of marijuana on the second trip. On the third trip, the co-conspirator was stopped by a Utah state trooper and was found to possess twelve pounds of marijuana and one package of THC wax. (Ex. 3, Attachment 1).

6. Under the guilty plea and terms of probation included mandatory conditions and included both standard and special conditions of supervision. Among other terms, the mandatory conditions prohibited the Applicant from committing another federal, state, or local crime; unlawful possession of a controlled substance; and from any unlawful use of a controlled substance. The standard conditions of supervision included a prohibition of the Applicant from communicating or interacting with someone he knows that is engaged in criminal activity and the special conditions of supervision prohibiting him from the possession and use of alcohol. (Ex. 3, Attachment 1).

7. Within the Application, the Applicant also answered the Background Information Question 2 in the affirmative indicating that he had been part of an administrative proceeding regarding his professional or occupational license. Applicant submitted the Order and Opinion of the

Supreme Court of Iowa revoking his attorney's license to practice law for violation of a disciplinary rule on May 3, 2019. (Ex. 3, Attachment 1). The Applicant admitted his Iowa attorney license was revoked at the time of the hearing. (Testimony of Applicant).

8. The Applicant was admitted to practice law in Iowa in 2002, He worked as a full-time assistant city attorney for the City of Council Bluffs and maintained a small, part-time private practice there as well. His private practice consisted of defending criminal cases. He resigned from the city attorney's office after his arrest. (Ex. 3, Attachment 1).

9. The Probation and Pretrial Services Office of the U.S. District Court for the District of Nebraska discharged the Applicant from supervision on September 25, 2024. (Ex. 3, Attachment 1).

10. On or about November 14, 2024, the Department denied Applicant's Application for licensure due to Applicant's felony conviction and for having the equivalent of a public adjuster license revoked in another state in a letter sent via certified and regular mail to the business and mailing address listed on the Application. (Ex. 1, Attachment 2).

11. On or about December 13, 2024, the Department received written correspondence from Applicant's legal counsel, pursuant to Neb. Rev. Stat. § 44-4059, requesting an administrative hearing regarding the denial of his resident public adjuster's license. (Ex. 1, Attachment 3).

12. The Applicant stipulated that he was properly served with a Notice of Hearing and was able to appear and fully participate in the proceedings. The Department's representative agreed to the stipulation of proper service. (Stipulated Fact).

13. On January 7, 2025, a Motion for Continuance was filed by the Department's representative requesting an alternate hearing date because the Applicant retained counsel, and the original hearing date presented a scheduling conflict for Applicant's counsel.

Additionally, the setting of an alternate hearing date would allow adequate time for Applicant's counsel and the Department's representative to prepare for the hearing. (Motion for Continuance).

14. On January 7, 2025, the Motion to Continue was granted moving the hearing date from January 14, 2025, to January 28, 2025. (Order Granting Motion for Continuance).

15. Applicant and his counsel appeared before the Department at an administrative hearing held on January 28, 2025, at approximately 10:10 a.m.

16. At the hearing, the Applicant offered *Diamond v. State of Nebraska, Department of Insurance*, 302 Neb. 892 (2019), into evidence. He cited this case in support of his argument that the Department erred in its denial and that it operated as a "blanket denial" as the Department did not offer a reason why he was a risk to the public. (Ex. 2). No factual evidence, other than the denial letter later offered into evidence by the Department (Ex. 3, Attachment 2), was offered to support this statement.

17. At the administrative hearing, the Applicant testified regarding the circumstances of his criminal conviction and license revocation. He also described steps he had taken since his conviction to move forward with his life. He emphasized that his criminal activity was selfish and rationalized his illegal behavior as providing for his family. After he was implicated by a friend, he cooperated in the FBI investigation which subsequently led to his indictment and his guilty plea for one felony count of conspiring to possess and distribute marijuana. In 2017, due to the investigation, he resigned his position as an attorney for the City of Council Bluffs, Iowa. This conviction was the basis for the revocation of his Iowa attorney license in 2019. Applicant testified that he had been subject to scorn and took steps to change, including obtaining counseling, volunteering, joining a support system through his church, and abstaining from drinking or smoking. He has worked for four

and a half years for a roofing company. During that time, he worked on many cases and with several insurance companies without any issues or complaints. (Testimony of Applicant).

18. The Applicant provided numerous positive letters of support from friends and coworkers. (Ex. 1, pages 1-21).

19. The Applicant also provided copies of Neb. Rev. Stat. § 44-4059 and 18 U.S.C.A. § 1033. (Ex. 1, pages 24 to 26).

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 Applicant.

3. Pursuant to Neb. Rev. Stat. §44-9211(1)(f) and (i), the director may suspend, revoke, or refuse to issue or renew a resident public adjuster license for having been convicted of a felony and having an insurance or public adjuster license, or the equivalent thereof, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory.

4. If the director does not renew or denies an application for a public adjuster license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days and shall be held pursuant to the Administrative Procedure Act, pursuant to Neb. Rev. Stat. §44-9211(2).

5. If the director does not renew or denies an application for a license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days and shall be held pursuant to the Administrative Procedure Act, pursuant to Neb. Rev. Stat. § 44-4059(2).

DISCUSSION

Applicant's felony conviction and revocation of his attorney license in the State of Iowa constitutes a sufficient statutory basis to deny his license application as a Nebraska resident public adjuster. However, such denial is discretionary, not mandatory. The purpose of the license renewal 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 Applicant's counsel argued the Department erred in the denial in that it operated as a blanket denial. He offered the case of *Diamond v. State of Nebraska, Department of Insurance*, 302 Neb. 892 (2019), in support of his allegation. No facts other than the denial letter were offered in support of this conclusory statement. In *Diamond*, the court upheld the Department of Insurance's license denial. This case did not require the Department to provide a reason other than those listed in the applicable statute. The evidence demonstrates that the denial letter was addressed to the Applicant and cited two statutory grounds as the reasons for the denial. Such grounds were clearly supported by the attachments submitted by the Applicant with the Application. The case presented does not impose a requirement that the Department cite specific risks to the public by the Applicant and both Neb. Rev. Stat. § 44-9211(2) and § 44-4059(2) only require the Department to provide the reason for the denial.

The denial letter sent by the Department cited Neb. Rev. Stat. § 44-4059(2), in offering the right to a denial hearing. As Neb. Rev. Stat. § 44-9211(2) and § 44-4059(2) are essentially identical in providing an applicant a hearing when a license is denied, and the Applicant requested, received, and participated in a hearing regarding his denial, the citation error did not affect the statutory rights of the Applicant.

The Applicant testified regarding the circumstances of his felony conviction seven years ago. He testified that he took responsibility for his actions after he was being investigated by the FBI for transporting marijuana from Oregon multiple times for distribution in Iowa while employed as a assistant city attorney in Council Bluffs, Iowa. He cited several rehabilitative actions such as joining a church group and stopping drinking and smoking. It is noted that not using or possessing alcohol was a special condition of supervision during his five-year probation. Additionally, statements made by the Applicant attempted to diminish the felony nature of the crime alluding that the conspiracy to illegally distribute a total of 26 pounds of marijuana was a less significant felony offense than the illegal distribution of other controlled substances. He also mentioned the recent Nebraska ballot initiative to allow for medical marijuana to note changing attitudes towards the drug. These statements minimize the legal and ethical breach of a licensed attorney, practicing criminal law, knowingly committing a felony offense for monetary gain.

Applicant is requesting to be provided a resident public adjuster license in order to pursue advancement in his career. While the Department recognizes the Applicant has made progress in his rehabilitation, some of the positive changes he cited in his testimony were also conditions of his probation which ended just two months prior to filing his application. This is little time in which to mitigate concerns over whether the changes will be permanently sustained. The loss of his license to practice law due to his criminal activity also weighs heavily in the considerations as it demonstrates

that professional sanctions against his license would not likely act as a deterrent to illegal or unethical behavior.

The weight of the evidence presented by the Applicant does not sufficiently support a finding that the Department's action in denying the Applicant's request for a public adjuster license was unreasonable.

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, while supported by a sufficient evidentiary basis, be UPHELD, and that Applicant's request for licensure as a resident public adjuster be denied.

Dated this 8th day of April 2025.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Cheryl Wolff, #22990
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 Donald "Don" Bauermeister, Cause No. A-2425.

Dated this 8th day of April 2025.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Eric Dunning
Director of Insurance

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 his residential, business and mailing address, 18645 Anne Street, Omaha, NE, 68135, via regular U.S. mail on this 8th day of April 2025.


