

MAR 18 2021

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF	)	FINDINGS OF FACT, CONCLUSIONS
APPLICATION FOR LICENSE FOR	)	OF LAW, RECOMMENDED ORDER
ANDRE S. GRAVES	)	AND ORDER
	)	
	)	CAUSE NO. A-2249
	)	

This matter came for hearing on the 10<sup>th</sup> day of March, 2021, before Michael W. Anderson, 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, Tracy Burns. Andre S. Graves (“Applicant”) was present by telephone. The proceedings were 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. Applicant applied to become a resident licensed insurance producer with the State of Nebraska. Applicant’s application for said license was submitted to the Department on or about February 4, 2021. Within the Uniform Application for Individual Producer License (“Application”), Applicant answered question 1a in the affirmative indicating that he has been convicted of a misdemeanor, had a judgement withheld or deferred, or is currently charged with committing a misdemeanor, and answered question 1b in the affirmative indicating that he has been convicted of a felony, had a judgment withheld or deferred, or is currently charged with committing a felony. Applicant submitted additional information informing the Department that he is currently on parole for charges of Driving Under the Influence of Alcohol or Drugs, 5<sup>th</sup> or subsequent offense, a class IIA felony, Third Degree Assault, a Class 1 Misdemeanor, and Resisting Arrest, a Class 1 misdemeanor. (Ex. 2)

2. On or about February 11, 2021, Kevin Schlautman (“Schlautman”), licensing administrator of the Department, reviewed the application and supporting documentation. Schlautman determined to deny Applicant’s request for a license on the grounds of Neb. Rev. Stat. § 44-4059(1)(f), ‘having been convicted of a felony or a class I, II, or III misdemeanor.’ (Ex. 2)

3. On or about February 11, 2021, Schlautman provided written notice of said denial to Applicant at the address listed in his license application via certified mail. (Ex. 2)

4. On or about February 18, 2021, the Department received written correspondence from Applicant, pursuant to Neb. Rev. Stat. § 44-4059(2), requesting an administrative hearing regarding the denial of his insurance producer license application. (Ex. 2)

5. On or about February 25<sup>th</sup>, 2021, the Department sent notice of this proceeding to the Applicant at his address, 10119 Plymouth PT Apt K, Bellevue, Nebraska, 68123, via certified mail, return receipt requested, regular United States mail, and to his email at [andre34g@yahoo.com](mailto:andre34g@yahoo.com). (Ex. 1)

7. Applicant testified at the administrative hearing, explaining the circumstances of his criminal conviction. Applicant stated that he is currently on parole in Nebraska for the charges he pled guilty to referenced in section 1, and further stated that he does not offer excuses for the charges, but instead states that he now takes his sobriety seriously. Applicant admitted that his previous experience selling insurance in a call-center setting had caused his alcohol use to intensify, and further, that should his insurance license be approved, that he has no immediate plans to use said license. (Testimony of Applicant)

#### DISCUSSION

Applicant’s felony and misdemeanor convictions constitute sufficient basis for the denial of Applicant’s insurance producer license; however, such denial is discretionary, not mandatory. Pursuant to Neb. Rev. Stat. § 44-4059(2), the purpose of the license denial hearing is to determine the reasonableness of the denial. The Department has statutory authority to deny an applicant’s license if the applicant has been convicted of a felony or a class I, II, or III misdemeanor pursuant to Neb. Rev. Stat. § 44-4059(1)(f). As such, the initial denial of the application was proper. In the context of a proper denial, the license denial hearing

procedure gives applicants an opportunity to explain circumstances and show why a license should be granted.

The Department denied the Applicant's license because he had been convicted of Driving Under the Influence of Alcohol or Drugs, 5th or subsequent offense, a class IIA felony, Third Degree Assault, a Class 1 Misdemeanor, and Resisting Arrest, a Class 1 misdemeanor. In this instance, Applicant appeared telephonically at the hearing and provided some context for the charges, however it is concerning that he admits that he has no immediate plans to use such license, and that he still has the greater part of a year remaining on his parole. Applicant also outlined the steps he had taken to address his issues concerning alcohol use, and Applicant's testimony to that effect has been taken into consideration. For the reasons stated above, the Department has shown that the denial of Applicant's license was proper. The Applicant has not shown that the denial was unreasonable.

#### CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of Applicant to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 to 44-4069.
2. The Department has personal jurisdiction over Applicant.
3. The Director may deny the issuance of an insurance producer license on the basis of Applicant's having been convicted of a felony or a class I, II, or III misdemeanor pursuant to Neb. Rev. Stat. § 44-4059(1)(f).

#### RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the denial of Applicant's insurance producer license be upheld. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter.

Dated this 18<sup>th</sup> day of March, 2021.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



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MICHAEL W. ANDERSON  
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 the Department in the matter of the Denial of Application for License for Andre S. Graves, Cause No. A-2249.

Dated this 18 day of March, 2021.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



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BRUCE R. RAMGE  
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 Applicant, Andre S. Graves, by mailing a copy to him at 10119 Plymouth PT Apt K, Bellevue, Nebraska, 68123, via certified mail, return receipt requested, by regular United States mail, and by email to andre34g@yahoo.com on this 18<sup>th</sup> day of March, 2021.

