

JUL 07 2022

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)	
APPLICATION OF LICENSE FOR)	FINDINGS OF FACT, CONCLUSIONS
ALFREDO ASCENSION, JR.)	OF LAW, RECOMMENDED ORDER
)	AND ORDER
)	
)	CAUSE NO. A-2298
)	
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This matter came on for hearing on the 8th day of June, 2022, 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, Michael Anderson. Alfredo Ascension, Jr. (“Applicant”) was present and was not represented by an attorney. 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. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
2. On or about November 10, 2009, Applicant was sentenced by the United States District Court of Arizona, to a period of one year and one day for a conviction of one count of Bulk Cash Smuggling, in violation of 31 U.S.C. §5332, and one count of Failure to Report Monetary Instruments, in violation of 31 U.S.C. §5317, both Class D felonies. Upon release, Applicant was placed on supervised probation for a period of thirty-six months (Ex. 3, Attachment 1).

3. On or about February 26, 2016, Applicant was convicted by the United States District Court for the District of Nebraska of Distribution of 5 Grams or More of Methamphetamine, a Class B felony, in violation of 21 U.S.C. §841(a)(1), 21 U.S.C. §841(b)(1)(B). Subsequently, Applicant was sentenced to a period of seventy-eight (78) months in the Federal Bureau of Prisons. Upon release, Applicant was placed on supervised probation for four years, with a projected date of completion of February 25, 2023 (Ex. 3, Attachment 1).

4. On April 27, 2022, Applicant applied for a 1033 waiver,¹ as well as for a Nebraska resident producer's license on the same date. Applicant disclosed his criminal convictions on his application. (Exhibit 3, Attachment 1)

4. On or about May 19, 2022, the Department denied Applicant's application for licensure due to Applicant's felony criminal conviction, as provided by Neb. Rev. Stat. §44-4059(1)(f). (Ex. 3, Attachment 2)

5. On or about May 19, 2022, Applicant submitted a timely request for appeal. (Ex. 3, Attachment 3)

6. Applicant testified at the administrative hearing, explaining the circumstances of his criminal conviction. Applicant admitted that he agreed to smuggle cash, concealed in the interior of the car he was attempting to drive over the United States border into Mexico. When stopped during this attempt, Border Control asked Applicant if he was carrying any currency with him. Applicant testified that he denied carrying any currency, which, when Border Control searched the car, was found to be a lie, and led to Applicant's conviction, in 2009, for Bulk Cash Smuggling and Failure to Report a Monetary Instrument.' As for Applicant's 2016 conviction for 'Distribution of 5 Grams or

¹ Any applicant for a producer's license who has been convicted of a felony involving dishonesty or breach of trust must obtain written consent of "any insurance regulatory official authorized to regulate the insurer," under 18 U.S.C. §1033(e)(2) in order to engage in the business of insurance.

more of Methamphetamine,' Applicant included in the explanation he attached to his application form: "I got involved with the wrong crowd, and I wanted to make fast and easy money."

Applicant went on to testify that after his 2016 felony conviction, during his second sentence in the Federal Bureau of Prisons, he completed a Residential Drug Treatment Program successfully. (Exhibit 3, Attachment 2)

In the time since his release from the Federal Bureau of Prisons, Applicant testified, he has made a complete change in his life. Applicant stated that he found steady employment with an automobile dealer as a Sales Guide, a job that he has held for more than two years. Included with Applicant's Application were two letters of recommendation, both authors speaking highly of Applicant as a conscientious, intelligent, compassionate person. Applicant also stated that an offer of employment had been extended from an insurer, contingent on Applicant receiving a producer license.

7. Applicant has been compliant with all of the terms of his supervised probation to date but has not yet completed the entire court-ordered four (4) years of supervised probation (Testimony of Applicant; Exhibit 3, Attachment 1).

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.

4. 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. §40-4059(2).

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 Applicant testified that his criminal conduct occurred due to the company he kept at the time of his convictions. Applicant has taken steps to distance himself or cut ties with these past associates. Applicant has certainly made significant strides in building a life for himself after incarceration, and his efforts should be commended. However, while the Applicant has been compliant with the probation requirements so far, at the time of the hearing he was still completing the four-year probation period. Applicant is requesting to be provided a resident insurance producer's license, despite it being only six years from the date of his conviction for distributing methamphetamine, and not having completed his court-ordered supervised probation. While the Department applauds the Applicant for his efforts so far, an application for licensure at this point in

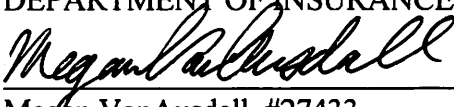
time is simply premature. Satisfactory completion of the court ordered probation would show that the Applicant not only successfully completed the punishment for his crime but would also allow adequate time to for the Applicant to show that future work-related stresses will not lead to either criminal activity or decision making that conflicts with the ethical standards required of an insurance producer.

Succinctly stated, the weight of the evidence presented by the Applicant does not sufficiently support a finding that the director's action in denying the Applicant's request for 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 be SUSTAINED, and that Applicant's request for licensure as a resident insurance producer is denied.

Dated this 8 day of July, 2022.


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 Alfredo Ascension, Jr., Cause No. A-2298.

Dated this 7th day of July, 2022.

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 him at 218 Saratoga Circle, Grand Island, NE 68801 via regular U.S. mail on this 11th day of July, 2022.


Smiley Storie