

JAN 19 2023

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
JAMES HALL)	AND ORDER
)	
)	CAUSE NO. A-2307
)	

This matter came for hearing on the 28th day of December, 2022, 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, Cheryl Wolff. James Hall (“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 November 14, 2022. 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. (Ex. 2, Attachment 1) Applicant submitted additional information informing the Department of the following criminal convictions (appearing in the order in which they were disclosed):

- a. CR 05-400- Class IV Felony of Theft by Receiving Stolen Property (reduced from Burglary) in Lancaster County District Court, for which Applicant was sentenced on October 31, 2005, and was given “intensive supervision probation” for a term of 3 years. (Ex. 2, Attachment 1)
 - i. On October 17, 2006, Applicant’s probation was revoked, and he was sentenced to one year in the Nebraska Department of Corrections.
- b. CR 05-401- Class III Felony of Accessory to Felony (reduced from Robbery) in Lancaster County District Court, for which Applicant was sentenced on October 31, 2005 under the same terms as CR 05-400. (Ex. 2, Attachment 1)
- c. CR 19-14863- Class III Misdemeanor of Disturbing the Peace in the County Court of Lancaster County, for which Applicant was assessed a fine of \$250 on September 28, 2020. (Ex. 2, Attachment 1)
- d. CR 11-21648- Class I Misdemeanor of False Reporting in the County Court of Lancaster County, for which Applicant paid a fine of \$150. (Ex. 2, Attachment 1)

- i. Although disclosed in the application, this conviction was set aside on April 19, 2018. (Ex. 2)
- e. CR 09-6243- Misdemeanor of Making False Statements to Police Officer in the County Court of Lancaster County, for which Applicant was assessed a fine of \$150 on April 30, 2009. (Ex. 2, Attachment 1)
- f. CR 08-919- Class I Misdemeanor of "Attempted Aiding Consummation of Felony" (reduced from Possession of Controlled Substance with Intent to Deliver) in the District Court of Lancaster County, for which Applicant was sentenced to one year in the Department of Corrections, said sentence imposed on May 4, 2009. (Ex. 2, Attachment 1)
- g. CR 08-11105- Misdemeanor of Refuse to Comply with Order of Police in the County Court of Lancaster County, for which Applicant was assessed a fine of \$100 on August 13, 2008. (Ex. 2, Attachment 1)
- h. CR 08-10571- Misdemeanor of Failure to Appear in Court in the County Court of Lancaster County, for which Applicant was assessed a fine of \$25 on July 14, 2008. (Ex. 2, Attachment 1)
- i. CR 07-24515- Misdemeanor of Pawn Property by a Convicted Person in the County Court of Lancaster County, for which Applicant was assessed a \$25 fine on June 17, 2008. (Ex. 2, Attachment 1)
- j. CR 06-22119- Misdemeanor of Make False Statement to Police Officer in the County Court of Lancaster County, for which Applicant was assessed a fine of \$150 on June 17, 2008. (Ex. 2, Attachment 1)

k. Applicant also disclosed the existence of additional court cases with case numbers CR 05-539, CR 06-5451, and CR 06-19857, but provided documentation asserting that certified copies of such cases could not be obtained.

i. A search of the official website of the Nebraska Judicial Branch known as Justice uncovered supporting documentation of these matters but confirmed that they were unable to be certified. (Ex. 2 and Ex. 2, Attachment 2)

2. On or about November 23, 2022, 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, Attachment 3)

3. On or about November 23, 2022, Schlautman provided written notice of said denial to Applicant at the address listed in his license application via certified mail. (Ex. 2, Attachment 3)

4. On or about November 23, 2022, 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, Attachment 4)

5. On or about December 2, 2022, the Department sent notice of this proceeding to the Applicant at his address, 3458 Portia Street, Lincoln, Nebraska 68521, via certified mail, return receipt requested, and by regular United States mail. (Ex. 3)

6. On December 7, 2022, the Domestic Return Receipt Card was returned, confirming delivery to the Applicant. (Ex. 3, Attachment 1)

7. Applicant testified at the administrative hearing, explaining the circumstances of his criminal convictions and his personal history which he asserted led him to these convictions. Applicant also believes that his situation has changed in recent years and provided as examples his status as a single father of five and providing a good example for his children, and his recently received bachelor's degree in Applied Psychology from the University of Phoenix. Applicant also provided extensive written explanations of his actions and personal situation at the time of the offenses and now. (Testimony of Applicant/Ex. 1)

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 several felony and misdemeanor offenses. In this instance, Applicant appeared at the hearing and outlined the steps he has taken to, and his reasons for, avoiding further commission of offenses 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 19th day of January, 2023.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



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 James Hall, Cause No. A-2307.

Dated this 19th day of January, 2023.

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 Applicant, James Hall, by mailing a copy to him at 3458 Portia Street, Lincoln, Nebraska 68521, via certified mail, return receipt requested, and by regular United States mail on this 19th day of January, 2023.

Shelly Storie