

FEB 01 2023

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF	)	
APPLICATION FOR RENEWAL OF	)	FINDINGS OF FACT, CONCLUSIONS
LICENSE FOR CALEB MUIA	)	OF LAW, RECOMMENDED ORDER
(NAIC Producer #20263498)	)	AND ORDER
	)	
	)	CAUSE NO. A-2310
	)	

This matter came on for hearing on January 24, 2023, 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. Caleb Muia (“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. The hearing officer, upon request by the Department’s representative, and with no objection from Applicant, took judicial notice of the entirety of the proceedings in the matter entitled “Cause No. A-2301, STATE OF NEBRASKA, DEPARTMENT OF INSURANCE, Petitioner, vs. CALEB MUIA (NAIC Producer #20263498), Respondent.”
3. On January 9, 2023, the Department received a renewal application from Applicant, requesting licensure in the “Life” line of insurance. Muia’s registered business and mailing address

with the Nebraska Department of Insurance, as of the date of his application, was 2405 Peterson Ave, Fremont, Nebraska, 68025. (Ex. 2, Attachment 1)

4. Upon a review of Applicant's licensing record, it was found that Applicant's resident insurance producer license had been previously revoked in Nebraska, under case number "A-2301." (Ex. 2, Attachment 1)

5. As a result of the finding that Applicant's insurance producer license had been previously revoked, on January 11, 2023, the Department's licensing administrator sent a letter to Applicant, denying his application. (Ex. 2, Attachment 2)

6. On January 12, 2023, the Department received an email from Applicant, requesting a hearing on the denial of his application. (Ex 2, Attachment 3)

7. On January 18, 2023, the Department filed an Amended Notice of Hearing, stating that a hearing would be held on the denial of his application on January 24, 2023. A copy of this Amended Notice of Hearing was sent to Applicant via both email and mail, to Applicant's address listed on his January 9, 2023 Application.

8. Applicant testified at the administrative hearing, explaining the circumstances of his criminal misdemeanor conviction, as well as why Applicant did not disclose this conviction on his previous application for a license (the application dated March 10, 2022).

9. Upon his first criminal conviction, Applicant testified that the misdemeanor Trespass conviction happened because Applicant was caught, with friends, on private property after hours, specifically a football field. Applicant further stated that he was offered a fine by the prosecuting attorney, instead of jail time or any probation term, and based on this Applicant believed he had been convicted of a minor crime, an offense which would not fall under those convictions of which the application for producer licensing requires disclosure. (Applicant's testimony at License Denial Hearing)

10. As to the non-response to the Department's previous contact attempts, Applicant testified in his affidavit that he moved out of the residence at the address initially registered with the

Department, in Columbus, Nebraska (hereafter, “Columbus address”) on May 6, 2022, and “never had the opportunity to see the letters or respond to the letters from the department of insurance that were mailed to my previous address.” (Ex. 1)

Applicant further testified that he was not aware of the requirement to keep his address updated with the Department. Applicant stated that his address had changed from the registered address taken from Applicant’s first application, and provided the Department with a signed, notarized affidavit containing his updated contact information and address. (Ex. 1)

Applicant further stated that in the future, if the denial of his application was overturned and his insurance license re-instated, he would make efforts to update his address and contact information with the Department of Insurance, promptly and as needed. (Applicant’s testimony at License Denial Hearing)

Applicant stated that he has employment lined up with an insurer as an independent contractor, which motivated his appeal of the denial, but such employment is contingent on Applicant obtaining an active insurance producer license. (Applicant’s testimony at License Denial Hearing)

11. It should be noted that Applicant fully disclosed his misdemeanor conviction and prior administrative action (Case no. A-2301, referenced in Paragraph 2 of the “Findings of Fact”) on his January 9, 2023 Application, the denial of which prompted this appeal and subsequent hearing. (Ex. 2, 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 Class III misdemeanor.

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, as well as the previous violations of Nebraska's Insurance Producer's Act found in Case No. A-2301 (referenced above), constitute 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 fully disclosed his misdemeanor charge, as well as the previous administrative action against his producer's license (Case No. A-2301), and submitted a record of the criminal conviction, and a statement providing answers to questions on the Application which asked for further explanation. Applicant appeared at the hearing and testified in detail as to the context for his failure to respond to the Department's requests for information.

Applicant's Application for licensure at this point in time can be seriously considered, despite Applicant's criminal history, and past failure to respond to Department queries, because per Applicant's own testimony, Applicant is now aware of the importance of keeping his contact information updated with the Department, and has affirmed to provide this information as and when needed in the future. Applicant's presence at the hearing, as well as his testimony, indicating that he had obtained employment as an independent contractor with an insurer in the time since his misdemeanor conviction, shows Applicant has been successful in making a change, and demonstrate a substantial likelihood that Applicant will not re-offend, or make decisions which conflict with the ethical standards required of an insurance producer.


Succinctly stated, the weight of the evidence presented by the Applicant sufficiently supports a finding that the denial of the Applicant's request for license may be overturned without endangering any Nebraska citizens.

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 OVERTURNED, and that Applicant's request for licensure as a resident insurance producer is granted.

Dated this 1st day of February, 2023.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



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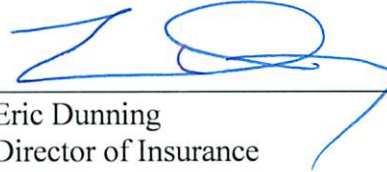
Megan VanAusdall, #27433  
Hearing Officer

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 Caleb Muia, Cause No. A-2310.

Dated this 1<sup>st</sup> day of February, 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 the Applicant by mailing a copy to him at 2405 Peterson Ave, Fremont, Nebraska, 68025, via regular U.S. mail on this 1st day of February, 2023.



Sherry Stovall