

AUG 03 2023

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)
APPLICATION OF LICENSE FOR KRISTIN) FINDINGS OF FACT, CONCLUSIONS
RASTALL) OF LAW, RECOMMENDED ORDER
) AND ORDER
)
) CAUSE NO. A-2332
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This matter came on for hearing on the 18th day of July 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. Kristin Rastall, the Applicant, was present electronically via WebEx, 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. On June 8th, 2023, the Department received an application for a non-resident insurance producer’s license from Kristin Rastall (hereafter, “Applicant”). When answering both Background Questions 1a, and 1b, respectively, “Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor,” and “Have you

ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?” Applicant marked “Yes.” (Ex. 3, Attachment 1)

3. Applicant attached court records to her application submitted June 8th, 2023, which showed the following criminal history:

- a. On September 1, 2021, Applicant was charged with a felony in the circuit court of Tuscaloosa County, Alabama, namely, Possession of a Forged Instrument – Third Degree, a Class D felony. Applicant was offered a chance to complete a court-supervised diversion program (the “Second Chance Program” referenced in Applicant’s statement).

On or about July 29, 2022, the circuit court accepted Applicant’s “Second Chance Program Plea Agreement,” from which the following quote is taken:

“The defendant, Kristin [L.] Rastall, appeared before the court [i.e., the circuit court of Tuscaloosa, Alabama] on this date and pled guilty to Possession of a Forged Instrument – 3rd under Count I. All other counts are dismissed....Pursuant to the plea agreement with the State, the defendant is **NOT ADJUDGED GUILTY**. The defendant remains on the same bond with the same bond conditions....” (See Ex. 3, Attachment 1)

- i. As part of the Second Chance Program, Applicant was required to complete 50 hours of community service and undergo

regular, required drug screens, along with other conditions. (See Ex. 3, Attachment 1)

ii. On June 29, 2023, upon Applicant's successful completion of the Second Chance Program, the Tuscaloosa County Circuit Court dismissed the felony charge against Applicant with prejudice. (See Ex. 2)

b. On or about July 8, 1999, Applicant was convicted by a superior court of Rhode Island of a misdemeanor charge for Fraudulent Use of Credit Card. Applicant was sentenced to a three-year suspended sentence, three years of probation, and was ordered to pay restitution. (See Ex. 1)

c. On or about May 27, 1999, a superior court in Rhode Island, upon Applicant's plea of *nolo contendere* to two counts of misdemeanor Theft/Obtaining A Credit Card, found Applicant guilty on both counts. Applicant was sentenced to 1 year of probation on each count, to run concurrent and ordered to pay restitution, as well as a note: "Def must be employed or in school within 6 months...." (See Ex. 3, Attachment 1)

d. On or about June 26, 1998, a superior court in Rhode Island, upon Applicant's plea of *nolo contendere* to one count of Larceny under \$500, a misdemeanor, and one count of Shoplifting, also a misdemeanor, found Applicant guilty of both charges. (See Ex. 1)

4. On June 15, 2023, Kevin Schlautman, in his role as administrator of the Department's Licensing Division, sent a letter to Applicant, denying her June 8th, 2023 Application

pursuant to Neb. Rev. Stat. §44-4059(1)(f), which states that the Director of Insurance may deny a licensing application if the Applicant has been “convicted of a felony, or a Class I, II, or III misdemeanor...” This letter also informed Applicant of her right to make a written request to the Director on the matter of her license denial. (See Ex. 3, Attachment 2)

5. On June 21, 2023, the Department, through its employee, Kevin Schlautman, received Applicant’s timely request for appeal, sent via letter. (Ex. 3, Attachment 3)

6. Applicant testified at the administrative hearing and provided the following testimony regarding her prior misdemeanor convictions

“In 1997, I had just graduated high school and was working at Macy’s....I wasn’t choosing good people to surround myself with and was going through a period of rebellion...I stole things to fit in because my friends were doing it too, and I was the one that got caught. This was my very first time in trouble and they were very harsh, however I learned that I needed to not do what everyone else was doing to be cool. I was young and impressionable and didn’t realize that my actions would impact me for the rest of my life....”

(See Ex. 3, Attachment 1)

Applicant went on to testify at the hearing that in 1999, at the time of her second misdemeanor conviction, she was 19 years old and a single mother in an abusive relationship with the father of her child. Applicant stated that, under the influence of her child’s father, she agreed to steal and use her mother’s credit charge over a period of several months, amassing a total of around \$10,000.00 in fraudulent charges. Upon being charged and convicted for the actions described, the court ordered Applicant to pay full restitution of the fraudulent credit card charges, as well as court costs. Applicant

testified that she paid the full balance of restitution owed on the misdemeanor case referenced by 2001, and that she no longer has contact with her child's father. Applicant also took the court's instructions about continuing her education - in 2004, she graduated with a Bachelors Degree in Hospitality Services. (*Id*; see also: Applicant's Testimony at Hearing)

7. Concerning the felony charge of Possession of Forged Instrument – 3rd, Applicant explained that she had met a man she identified as “Caleb”. After they had been acquainted a while, Applicant stated her impression was that Caleb sincerely wanted to make changes in his life and circumstances, so Applicant invited Caleb to live with her and her family in January 2020. (See Ex. 3, Attachment 1; Applicant's Testimony at Hearing)

From January 2020 through September 2020, Applicant testified that her relationship with Caleb began to deteriorate, culminating in Caleb being convicted and serving jail time for an incident of domestic violence against Applicant during this time. Applicant ended her relationship with Caleb in September 2020. (*Id*)

After ending the relationship, Applicant stated she did not have further contact with Caleb, except for a phone call about the charge of Possession of Forged Instrument. Applicant testified at hearing that Caleb forged Applicant's signature on a check (the “instrument” in question) after Applicant had placed several checks in the central console of her vehicle, to store them before deposit. Applicant acknowledged her own role in not securing the checks, but in her statement and testimony affirmed the amount of the check was paid back in full before the charges against Applicant were dismissed on June 29th, 2023. (See Ex. 2; Applicant's Testimony at Hearing)

It should be noted that Applicant's application was submitted June 8th, 2023, however on June 29, 2023, her plea on the felony charge, for Possession of a Forged Instrument – 3rd, was set aside by

an order of the Circuit Court of Tuscaloosa County, Alabama, and the felony case dismissed on the same charge, approximately three weeks after the date of her Application to the Department for a producer's license. (See Exhibit 2)

Applicant stated at the hearing that she is currently employed by Allstate Insurance in a position which does not require an insurance license, however continued employment with Allstate is contingent on her receipt of an insurance license. Applicant testified that she had successfully obtained a resident license in her home state of Alabama, as well as non-resident licenses in several states, which was later confirmed. (Applicant's testimony at License Denial Hearing)

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 any 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 misdemeanor convictions constitutes a sufficient statutory basis to deny her application as a Nebraska non-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 her conduct leading to her misdemeanor convictions occurred due to the company she kept at the time and noted that her last misdemeanor conviction had been in 1999, over twenty years ago. Applicant testified she has taken steps to distance himself or cut ties with these past associates.

As for the felony charge of Possession of Forged Instrument – 3rd, Applicant entered into and successfully graduated from a court-supervised diversion program, and the case was ultimately dismissed, which while it does not erase history, at least demonstrates that Applicant has taken significant strides to re-build her life, and her efforts should be commended. Applicant is requesting to be provided a non-resident insurance producer's license in order to pursue a career to support her family. Applicant's Application for licensure at this point in time can be seriously considered, despite Applicant's criminal history, because the records show that Applicant has been successful in making a change, that Applicant has cut ties with individuals in her life that may have been negative influences in the past 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 non-resident insurance producer is granted.

Dated this 3rd day of August 2023.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



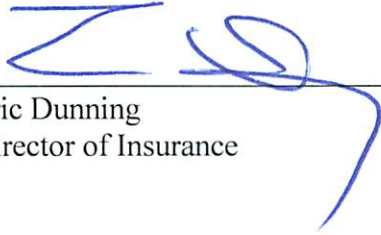
Megan VanAusdall, #27433
Hearing Officer

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 Kristin L. Rastall, Cause No. A-2332.

Dated this 3rd day of August 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 her at 3550 Watermelon Road, Apt. 2C, Northport, AL 35473 via regular U.S. mail on this 3rd day of August 2023.

Shelly Stone