

OCT 16 2023

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF  
APPLICATION FOR LICENSE FOR  
MARK KIROFF

) FINDINGS OF FACT, CONCLUSIONS  
) OF LAW, RECOMMENDED ORDER  
) AND ORDER  
)  
) CAUSE NO. A-2333  
)

This matter came on for hearing on August 29, 2023, before Cheryl Wolff, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its counsel, Megan VanAusdall. Mark Kiroff (“Applicant”) appeared pro se. The proceedings were recorded by Shelly Storie, a licensed Notary Public. The Department and Applicant presented evidence at the hearing and the matter was taken under advisement. 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. Applicant is appealing the denial of his resident producer’s license pursuant to Neb. Rev. Stat. §44-4059(1)(f) for having been convicted of a felony, and Neb. Rev. Stat. §44-4059(1)(h) for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
3. On or about July 19, 2023, Applicant applied for a Nebraska resident producer’s license requesting licensure in Life and Health Lines of Insurance. On the Application, he marked

“yes” to questions regarding the existence of any prior felony conviction(s) but marked “no” to questions regarding been named or involved in an administrative proceeding regarding any professional or occupational license or registration. (Department’s Ex. 1, Attachment 1).

4. In reviewing the application, the Department was made aware that the Applicant pled guilty to a felony count of Bank Fraud on July 26, 2004, in a case in the U.S. Dist. Ct. of South Dakota (Southern Div.), CR04-40031-01. (Department’s Ex. 1 and Department’s Ex. 1, Attachment 1).

5. Upon further research by the Department, it was discovered that the Applicant also failed to disclose two administrative proceedings involving a professional license. (Department’s Ex. 1).

a. On or about July 15, 2011, the Nebraska Board of Public Accountancy revoked the Applicant’s permit to practice as a certified public accountant (CPA) for failing to disclose his felony criminal conviction in the U.S. Dist. Ct. of South Dakota (Southern Div.), CR04-40031-01, and obtaining an active permit to practice in 2010 through fraud, deceit, and dishonesty. (Department’s Ex. 1 and Department’s Ex. 1, Attachment 2).

b. On or about October 21, 2011, the South Dakota Board of Accountancy denied Applicant’s renewal application as he “used fraud and deceit to obtain a license” by failing to disclose his felony conviction to the Board. (Department’s Ex. 1 and Department’s Ex. 1, Attachment 3).

6. On or about July 28, 2023, the Department denied Applicant’s application for licensure due to Applicant’s felony criminal conviction and for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility

in the conduct of business in this state or elsewhere. Applicant appealed on November 30, 2022. (Department's Ex. 1, Attachments 4 and 5).

7. On or about August 1, 2022, Applicant was served with a Notice of Hearing by certified and regular mail to his residential address at 15931 Martha Circle, Omaha, NE 68130, his business address of 12329 Southport Parkway 101, La Vista, NE 68128, and by electronic mail to [makadvisory@yahoo.com](mailto:makadvisory@yahoo.com), from which the Applicant responded to the Department. (Department's Ex. 2 and Department's Ex. 2, Attachment 1).

8. Applicant appeared before the Department at an administrative hearing on August 29, 2023, at approximately 10:00 a.m. The Applicant offered Applicant's Exhibits 1 through 8, which are statements of support for the Applicant's license despite his conviction from individuals with whom he has a business relationship or personal friendship. Applicant testified that he wished to obtain his resident producer license in order to accept an opportunity to work in the insurance industry. He also testified that he would have disclosed the administrative proceedings, but they slipped his mind. Failing to disclose was unintentional. He has established a successful business aiding over 200 clients with financial matters. He worked hard to overcome his past and he discloses his past felony conviction to his current clients. (Applicant's Ex. 1-8 and Testimony of the Applicant).

9. Applicant's Witness appeared and testified that he was a licensed resident insurance producer who had met the Applicant through work, though they did not work for the same company. The businesses are affiliated and located across the hall. He knows the Applicant to be an honorable man. The witness offered Applicant's Exhibit 9. (Ex. 9 and Testimony of Applicant's Witness).

## 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 Applicant.

3. Pursuant to Neb. Rev. Stat. §§44-4059(1)(h), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

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 and use of fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere constitutes a sufficient statutory basis to deny his license renewal application as a Nebraska resident insurance producer. However, such denial is discretionary, not mandatory. The purpose of the license renewal 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 to provide the context of his felony conviction and take responsibility for his actions. He indicated it has taken years to overcome his mistakes and disclosure of his past has been important. There were several letters of support that also shared that the Applicant has moved forward successfully. The Department applauds the Applicant for his continued efforts to move forward with his life. However, the evidence supports that the Applicant committed a serious felony involving dishonesty and breach of trust and has a history of failing to disclose matters to regulatory entities in order to obtain a license. This failure to disclose both the Nebraska and South Dakota administrative procedures on his licensing application cannot be overlooked as a harmless error. It is representative of potential dishonesty and undermines the trust necessary in an insurance producer.

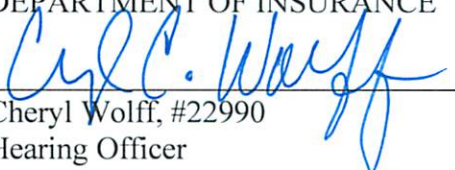
The weight of the evidence presented by the Applicant does not sufficiently support a finding that the director's action in denying the Applicant's request for license was unreasonable.

#### 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 16<sup>th</sup> day of October 2023.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
Cheryl Wolff, #22990  
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 Mark Kiroff, Cause No. A-2333.

Dated this 10<sup>th</sup> day of October 2023.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
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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 his residential address of 15931 Martha Circle, Omaha, NE 68130, his business address of 12329 Southport Parkway 101, La Vista, NE 68128, and by electronic mail to makadvisory@yahoo.com, via regular U.S. mail on this 10<sup>th</sup> day of October 2023.

  
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Shelly Storie