

JAN 30 2024

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

IN THE MATTER OF THE DENIAL OF	)	
APPLICATION OF LICENSE FOR STEVEN	)	FINDINGS OF FACT, CONCLUSIONS
KELLY	)	OF LAW, RECOMMENDED ORDER
	)	AND ORDER
	)	
	)	CAUSE NO. A-2351
	)	
	)	
	)	
	)	

This matter came on for hearing on the 23rd day of January 2024, 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. Steven Kelly ("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. On or about December 29, 2003, Applicant was sentenced by the Douglas County District Court of Nebraska to three years supervised probation, pursuant to a guilty plea (made on October 20, 2003) of one count of Theft by Unlawful Taking, a class 3 felony, in violation of Neb. Rev. Stat. 28-511(1). (Ex. 3, Attachment 1)
3. Applicant also has two prior misdemeanor convictions, both from 1998, for Assault and Battery, and Disorderly Conduct. The charges arise from a single arrest, and Applicant provided

testimony concerning these prior misdemeanor convictions at hearing, explaining the context as an instance of road rage, which escalated.

4. On December 19, 2023, Applicant applied for a Nebraska resident insurance producer's license. Applicant disclosed his criminal conviction on his application. (Ex. 3, Attachment 1)

7. On December 28, 2023, 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. 5, Attachment 2)

8. On July 11, 2022, Applicant submitted a timely request for appeal, via email. (Ex. 5, Attachment 3)

9. Applicant appeared at the administrative hearing, held on January 23, 2023, and offered testimony explaining the circumstances of his criminal convictions. Applicant stated that the misdemeanor convictions from 1998 stemmed from an incident of road rage, in which Applicant testified that another driver, while Applicant had several of his children in the car, including his severely-autistic daughter, came up to Applicant's parked car, after each party had pulled over, and in Applicant's words from the hearing "looked like he was trying to get in the car." Applicant stated that, in response, Applicant pushed the other driver away from his car, and this encounter resulted in the two misdemeanor charges of "Assault and Battery," and "Disorderly Conduct," for which Applicant was sentenced to and served five days of jail time. (Applicant's testimony at License Denial Hearing; Exhibit 3, Attachment 1)

Applicant also testified to his felony conviction, from 2003, for "Theft by Unlawful Taking," and his written, personal explanation is excerpted below:

"I am trying to start a new chapter of my life with the challenge of a new career with New York Life [Insurance] Company, after running my family business

for over 30 years. During those 30 years I did other jobs and ran other businesses. I worked for Entertainment Concepts, Guitars and Cadillacs, in Omaha, Lincoln and other venues. I was general manager for 3 specific clubs and regional manager for the corporation. I handled all operations of the business, including paying bills and operational expenses. I helped out under performing clubs with monetary injections of my own personal funds. While paying myself back, I did not correctly reimburse myself and was charged with theft by deception by one of the owners. I paid restitution and completed probation....I learned that I should have done things differently and have strived to be the best man I can be for my family.” (Exhibit 1)

In the time since his release from probation, Applicant testified he has made a complete change in his life. (Applicant’s testimony at License Denial Hearing)

Applicant stated that for the intervening years between his 2003 felony conviction and his present (contingent) employment with New York Life Insurance Company, Applicant ran a local restaurant-supply business, along with his wife and family. Applicant’s reason for applying for an insurance producer’s license is to obtain greater job security and financial stability for himself and his family than a self-employed business owner is able to provide. (Applicant’s testimony at License Denial Hearing; Ex 1)

Included with Applicant’s Application were eight letters of recommendation, both personal and professional references, all speaking highly of Applicant as a conscientious, intelligent, hard-working person. (Ex 2)

Applicant’s continued employment with New York Life Insurance Company is contingent on his receipt of an insurance license, a condition Applicant also disclosed at hearing. (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 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 was honest and forthcoming regarding his felony criminal conviction, as well as the circumstances thereof. Applicant's testimony shows the significant strides he has made in

building a life for himself after conviction, and his efforts should be commended. Applicant is requesting to be provided a resident insurance producer's license, after twenty years of distancing himself from negative figures in his life and pursuing a career to support his 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 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 30 day of January 2024.

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 Steven Kelly, Cause No. A-2351.

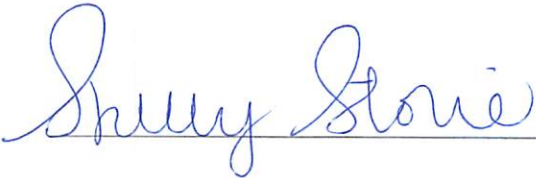
Dated this 30<sup>th</sup> day of January 2024.

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 his registered residential and mailing address, of 12326 Nicholas Street, Omaha, NE 68154, to his registered business address of 18140 Burke Street, Suite 201, Elkhorn, NE 68022, via regular U.S. mail, and by electronic delivery to Applicant's registered business email address, [stvkelly54@gmail.com](mailto:stvkelly54@gmail.com), on this 30<sup>th</sup> day of January 2024.

  
Sherry Storie