

APR 23 2012

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
MACHELLE R. SANCHEZ.

)
) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER

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) CAUSE NO. A-1942
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This matter came on for hearing initially on the 14th day of March, 2012, and was continued on the 30th day of March, 2012, before Michael C. Boyd, 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, Joel Green. Machelle R. Sanchez (“Sanchez”) was present and was represented by attorney Bruce Teichman. The proceedings were tape recorded by Tracy Gruhn, 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. Sanchez has applied to become a resident licensed insurance producer with the State of Nebraska. Sanchez applied for said license on or about January 24, 2012, and the Department received the application on or about February 3, 2012. On her application, Sanchez answered in the affirmative that she had been convicted of a felony or misdemeanor crime, which included a 1991 DUI misdemeanor conviction, a 1999 Child Abuse Class III felony conviction, a 2004 Possession of Amphetamine misdemeanor conviction, a 2007 Third Degree Assault misdemeanor conviction and

a 2008 Possession with Intent to Distribute Methamphetamine felony conviction. Sanchez provided documentation of said criminal convictions. (See E1).

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. Jason McCartney (“McCartney”), licensing administrator for the Department, denied Sanchez’s license application on the grounds that she had been convicted of a felony or a Class I, II, or III misdemeanor, pursuant to Neb. Rev. Stat. §44-4059(1)(f), and sent her a letter to that effect on February 8, 2012. (See E2).

4. Sanchez submitted a written request for a hearing on the denial of her insurance producer license application, pursuant to Neb. Rev. Stat. §44- 4059(2). (See E3).

5. On or about February 27, 2012, the Notice of Hearing in this matter was submitted to Sanchez by certified mail, return receipt requested and regular U. S. Mail, and the return receipt was returned to the Department on or about March 2, 2012 confirming delivery of the Notice of Hearing. Sanchez appeared at the hearing. (See E4).

6. Sanchez has a criminal history that includes convictions for both felony and misdemeanor offenses, none of which involve financial crimes. The majority of Sanchez’s crimes stem from drug possession, with domestic abuse issues as well. (See E1).

7. Sanchez is currently enrolled as a student at Doane College, and has completed 39 credit hours towards an Arts degree in graphic design since her initial enrollment in the autumn 2010 academic term. (See E5).

8. At the hearing, Sanchez testified about the circumstances surrounding the various crimes listed on her application. She noted that a number of the convictions were related to her substance addiction for which she has been through treatment and has been “drug-free” since her

2008 conviction. She further noted that she had been offered an insurance sales position by American Income Life Insurance Company (“Company”) that was contingent upon her obtaining an insurance producer’s license; and that she submitted her insurance producer license application with the attached documentation regarding her criminal history through that Company.

DISCUSSION

In reviewing the record and testimony of Sanchez, while I am troubled about her criminal past, it appears from her testimony that she claims to have made progress in her life to address the issues that were underlying her criminal convictions. She is no longer in an abusive relationship. Also, according to her testimony, she claims to have sought treatment for her substance addiction, and has remained “drug-free” since her last conviction in 2008; however she did not present any independent documentation to support her testimony on that issue. Further, she claims to have continued to meet all the conditions of her supervised release from her 2008 conviction; however she did not present any written documentation to support her contention on that matter. Sanchez did not fully disclose her criminal convictions to the Department on her license application. Additionally, she has pursued educational opportunities to better herself, to lead a more constructive life, and become a better citizen. If granted a license, Sanchez would be afforded an opportunity to not only become a more productive member of society, but would be in a position to better the financial situation for her three children of which she is their sole support.

Therefore, although the Department presented a strong case for the upholding of the denial of the insurance producer license application of Sanchez, it is my recommendation that Sanchez be granted that license conditioned on her first providing the Licensing Division certain written documentation to support her testimony.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Sanchez to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047 et seq.
2. The Department has personal jurisdiction over Respondent.
3. The Director may deny the issuance of an insurance producer license on the basis of the applicant's previous conviction of a felony or a Class I, II, or III misdemeanor pursuant to Neb. Rev. Stat. §44-4059(1)(f).
4. Sanchez's previous felony and misdemeanor convictions are a sufficient basis for denial of her insurance producer license application. However, such denial is discretionary, not mandatory.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Machelle Sanchez have her insurance producer's license application approved conditioned on her first providing the Licensing Division the following written documentation: (1) a statement from a physician or drug treatment facility to support her testimony that she has sought treatment for her substance addiction and is currently "drug-free"; and (2) a statement from her Federal Probation Officer that Sanchez has complied with all the terms/conditions of her supervised release from her 2008 conviction. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter until Sanchez has complied with all provisions of this order.

Dated this 20th day of April, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Michael C. Boyd
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 Machelles R. Sanchez, Cause No. A-1942.

Dated this 23rd day of April, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Bruce R. Range
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 Machelles R. Sanchez by mailing a copy to her at 3045 Starr Street, Lincoln, NE 68503; and by mailing a copy to J. Bruce Teichman, US Bank Building, Suite 207, 2121 North Webb Road, P.O. Box 126, Grand Island, NE 68802, by certified mail, return receipt requested, on this 23rd day of April, 2012.


