

DEC 06 2012

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)	FINDINGS OF FACT, CONCLUSIONS
APPLICATION OF LICENSE FOR)	OF LAW, RECOMMENDED ORDER
RYAN BURDEN.)	AND ORDER
)	
)	CAUSE NO. A-1963
)	

This matter came for hearing on the 13th day of November, 2012, before Joel F. Green, 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, Eric B. Dunning. Ryan Burden (“Applicant”) was present and was not represented by counsel. 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. Applicant applied to become a resident licensed insurance producer with the State of Nebraska. Applicant’s application for said license was submitted to the Department on or about October 3, 2012. Within the Uniform Application for Individual Producer License, Applicant answered in the affirmative that he has been convicted of a crime, had a judgment withheld or deferred, or is currently charged with committing a crime. (See Ex. 2)

2. On or about August 18, 2005, Applicant was charged by the County Attorney of Douglas County, Nebraska, with felony possession of marijuana with intent to distribute. The matter was subsequently transferred to the District Court of Douglas County Drug Court. Upon successful completion of the Douglas County Drug Court program by Applicant, all felony charges pending against Applicant were dismissed by the Court on March 22, 2007. (See Ex. 2)

3. In 2008, Applicant was charged by the County Attorney of Douglas County, Nebraska, with felony possession of marijuana. Applicant pled guilty to the criminal charge on March 19th, 2009. The matter was subsequently transferred to the District Court of Douglas County Drug Court. Upon successful completion of the Douglas County Drug Court program by Applicant, the Court allowed Applicant to withdraw his guilty plea and all felony charges in this matter were dismissed by the Court on March 24, 2010. (See Ex. 2)

4. On or about October 18, 2011, Applicant was charged by the United States Attorney's Office before the United States District Court Southern District of Iowa (Case No. 1:11-cr-00057-JEG-CFB-1) with felony conspiracy to distribute marijuana. On or about June 22, 2012, all charges in this matter were dismissed without prejudice by the Court. (See Ex. 3)

5. On or about June 18, 2012, Applicant pled guilty to felony possession of marijuana before the District Court for Pottawattamie County, Iowa, (Case No. FECR048223). Judgment in this case was deferred by the Court for a period of two years and Applicant was placed on supervised probation for a period of two years. Applicant's supervised probation for Case No. FECR048223 will terminate on June 18, 2014, at which point the Court will have the option to dismiss all charges against Applicant. As part of Applicant's probation, Applicant was ordered to obtain a Chemical Dependency Evaluation and refrain from entering establishments

whose primary income is from the sale of alcohol, abstain from alcohol and controlled substances, and submit to drug testing. (See Ex. 2 and 4)

6. On or about October 1, 2012, the State of Nebraska assumed supervision of Applicant on October 1, 2012. As of October 22, 2012, Christine Trosper, probation officer assigned to Applicant by the State of Nebraska, confirmed Applicant's compliance with the terms of probation and found no violations had been filed. (See Ex. 4)

7. Within the Uniform Application for Individual Producer License, Applicant also answered in the affirmative that he had been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration. (See Ex. 2)

8. In October 2011, Applicant passed both the Uniform Securities Agent State Law Examination and the General Securities Representative Exam and received a series 7 and 63 license authorizing him to act as a registered representative for an authorized securities broker-dealer. Upon pleading guilty to felony possession of marijuana before the District Court for Pottawattamie, Iowa, (Case No. FECR048223), Applicant's series 7 and 63 were disqualified by FINRA. (See Ex. 2)

9. Jason McCartney ("McCartney"), licensing administrator for the Nebraska Department of Insurance, denied Applicant's current license application pursuant to NEB. REV. STAT. § 44-4059(1)(f) on the grounds that Applicant had been convicted of a felony. (See Ex. 2)

10. On or about October 9, 2012, McCartney provided written notice of said denial to Applicant at the address provided on his application, 2809 S. 160th Street, #201, Omaha, NE 68130, via certified mail, return receipt requested. (See Ex. 2)

11. On or about October 15, 2012, the Department received written correspondence from Applicant, pursuant to NEB. REV. STAT. § 44-4059(2), requesting an administrative hearing regarding the denial of his insurance producer license application. (See Ex. 2)

12. On or about October 23, 2012, a Notice of Hearing in this matter was submitted to Applicant at 2809 S. 160th Street, #201, Omaha, NE 68130, via certified mail, return receipt requested, and by regular United States mail. On or about October 31, 2012, the Domestic Return Receipt attached to the certified letter was returned to the Department by the United States Postal Service confirming delivery of the Notice of Hearing to Applicant on October 29, 2012. (See Ex. 1)

13. On or about November 6, 2012, an Amended Notice of Hearing in this matter was submitted to Applicant at 2809 S. 160th Street, #201, Omaha, NE 68130, via certified mail, return receipt requested, and by regular United States mail. The Domestic Return Receipt has not been returned to the Department by the United States Postal Service. The Notice of Hearing sent by regular United States mail to Applicant has not been returned to the Department nor has the Department received notice from the United States Postal Service indicating improper delivery of the Notice of Hearing to Applicant. (See Ex. 1)

14. At the hearing, Applicant testified the guilty plea for felony possession of marijuana before the District Court for Pottawattamie County, Iowa, (Case No. FECR048223) in June 2012, was as a result of Applicant's use of marijuana between the years 2003 through 2008.

15. Applicant also testified that he is currently thirty years old and that between eighteen years of age and twenty-five years of age he was a heavy marijuana user. Applicant further testified that he has not used marijuana in the last four years, has completed two

outpatient drug treatment programs and has stopped using marijuana after appearing before the District Court of Douglas County Drug Court.

16. Applicant further testified that approximately two months prior to this hearing, he completed the Chemical Dependency Evaluation the results of which recommended no additional outpatient treatment for Applicant.

DISCUSSION

Having reviewed the evidence presented by the Department and taking into account the testimony provided by Applicant, I am concerned with Applicant's past use of marijuana resulting in Applicant's guilty plea for felony possession of marijuana before the District Court for Pottawattamie County, Iowa in June 2012. At the hearing, Applicant admitted to having a previous addiction to and heavily using marijuana for approximately seven years of his life. Though Applicant is currently on supervised probation while the judgment against him is deferred for two years, it is important to note Applicant's actions that lead to his criminal record occurred over four years ago.

While Applicant's previous felony conviction, which may eventually be dismissed by District Court for Pottawattamie County, Iowa, is a sufficient basis for the denial of Applicant's insurance producer license application, such denial is discretionary, not mandatory. The evidence presented suggested Applicant, in the past four years, has complied, or is attempting to comply, with all of his probationary requirements, completed two outpatient drug treatment programs, passed numerous drug tests, and wholly refrained from using marijuana. Applicant completed a Chemical Dependency Evaluation which determined Applicant needed no additional outpatient treatment. By all accounts, Applicant has admitted to his prior mistakes to the Department,

indicated he has grown as a person, and is seeking to atone for his past errors in judgment. If granted a license, Applicant would be afforded an opportunity to not only become a more productive member of society, but he would be in a position to better the financial situation for his young family. As such, it is my recommendation that the denial of Applicant's application for an insurance producer license be overturned.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of Applicant 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 Applicant.
3. The Director may deny the issuance of an insurance producer license on the basis of Applicant's previous conviction of a felony or Class I, II, or III misdemeanor pursuant to NEB. REV. STAT. § 44-4059(1)(f).

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RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, the following is recommended for adoption by the Director of Insurance that Ryan D. Burden have his insurance producer's license application approved. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter.

Dated this 29th day of November, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



JOEL F. GREEN
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 the Department in the matter of the Denial of Application for License for Ryan Burden, Cause No. A-1963.

Dated this 5 day of December, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



BRUCE R. RAMGE
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 Applicant, Ryan D. Burden, by mailing a copy to him at 2809 S. 160th Street, #201, Omaha, NE 68130, via certified mail, return receipt requested and by regular United States mail on this 6 day of December, 2012.

A handwritten signature in blue ink, reading "Tracy A. Guber", is written over a horizontal line.