

NOV 18 2013

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
FARHOD TAHIROV) AND ORDER
)
)
) CAUSE NO. A-1994
)

This matter came for hearing on the 15 day of November 2013, before Eric Dunning, 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, Krystle Ledvina Garcia. Farhod Tahirov (“Applicant”) was present and was not represented by counsel. The proceedings were tape recorded by Victoria Morehead, 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 September 27, 2013. 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. Applicant's application disclosed that on or about October 10, 2008, Applicant was sentenced in the in the District Court of Douglas County Nebraska to Probation as he had been found Guilty of Assault in the Third Degree – Class I Misdemeanor. Applicant was required to attend and complete treatment and counseling on drug and/or alcohol abuse, attend Batterer's Program at the YWCA, and attend one AA/NA meeting per week. Applicant successfully completed these requirements. (See Ex. 2)

3. Applicant's application did not disclose that on August 12, 2008, Applicant was sentenced to eighteen months of probation in the County Court of Douglas County Nebraska as he had pled guilty to Third Degree Assault, a Class I Misdemeanor. On April 7, 2010 the judgment and sentence were satisfied. (See Ex. 2 and 3)

4. Applicant's application did not disclose that on November 3, 2003, Applicant was sentenced to a two hundred and fifty dollar fine in the County Court of Douglas County Nebraska as he had pled guilty to Disorderly Conduct, a Misdemeanor. (See Ex. 2 and 4)

5. Applicant's application did not disclose that on May 16, 2011, Applicant was sentenced to a fifty dollar fine in the County Court of Douglas County Nebraska as he had pled guilty to Theft by Shoplifting, a Class 2 Misdemeanor. On June 23, 2011, the conviction against the defendant was "set aside nullified". (See Ex. 2 and 5)

6. 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)

7. On or about October 4, 2013, McCartney provided written notice of said denial to Applicant at the business address provided on his application, 7108 South 124th Circle, La Vista, NE 68128, via certified mail, return receipt requested. (See Ex. 2)

8. On or about October 15, 2013, 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)

9. On or about October 22, 2013, a Notice of Hearing in this matter was served to Applicant at 7108 South 124th Circle, La Vista, NE 68128, via certified mail, return receipt requested. On or about October 25, 2013, 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. (See Ex. 1)

10. On or about November 14, 2013, a Notice of Hearing in this matter was served to Applicant at 7108 South 124th Circle, La Vista, NE 68128, via certified mail, return receipt requested and via email to fahirov@performanceauto.com. (See Ex. 1)

11. At the hearing, Applicant testified that he had completed the terms of his probation described in paragraph 2, had completed a twelve step program successfully, and had remarried. Applicant further testified that he has become a father. Applicant described his failure to document other criminal violations as a “misunderstanding.”

12. At the hearing, Applicant submitted a strong recommendation from his current employer.

DISCUSSION

While Applicant’s previous misdemeanor conviction are a sufficient basis for the denial of Applicant’s insurance producer license application, and particularly when the applicant failed

to disclose all criminal history, such denial is discretionary, not mandatory. The evidence presented suggested, since his October 10, 2008 conviction, Applicant has complied with all probationary requirements, and successfully participated in drug and alcohol abuse and domestic violence programs.

The failure to list the earlier convictions is more troubling as it potentially denies the Director an opportunity to make a decision with all of the facts in front of him. However, further attention should be paid to the specific violations at issue in the matter. The most recent, which occurred after the October 10, 2008 sentencing, was a shoplifting charge that was declared by the Court as set aside or nullified. Even a nullified sentence would be subject to disclosure on the form. In this case, Applicant described the events leading to the citation as a “misunderstanding”.

The remaining two undisclosed convictions occurred before the October 10, 2008 sentencing. It appears that the requirements of the October 10, 2008 sentencing, however, required Applicant to take actions to improve his conduct in the future.

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).

RECOMMENDED ORDER

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

Dated this 16 day of November, 2013.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



ERIC DUNNING
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 Farhod Tahirov, Cause No. A-1994.

Dated this 18 day of November, 2013.

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, Farhod Tahirov, by mailing a copy to him at 7108 South 124th Cir, Lavista, NE 68128 via certified mail, return receipt requested and by regular United States mail on this 19th day of November, 2013.



Victoria D. Morehead