NEBRASKA DEPARTMENT
OF INSURANCE

JAN 06 2014

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BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

IN THE MATTER OF THE DENIAL OF APPLICATION FOR LICENSE RENEWAL FOR ROBERT THIELEN	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDED ORDER AND ORDER CAUSE NO. A-1995

This matter came for hearing on the 26th day of December, 2013, before Matthew Holman, 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. Robert Thielen ("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 was previously licensed as a resident insurance producer. On or about October 15, 2013, Applicant submitted a Producer Renewal Form to the Department in order to renew his producer license. The Producer Renewal Form submitted does not request any information from Applicant regarding criminal history. (**See** Ex. 2)

2. On or about September 14, 2009, in the District Court of Sarpy County, CR 09 0000194, Applicant plead and was found guilty of Criminal Attempt – Burglary, a Class IV

felony, Criminal Mischief, More than $1,500, a Class IV felony, Theft by Unlawful Taking, More Than $500, Less Than $1,500, a Class IV Felony. Applicant was sentenced to 90 days in jail and 36 months of probation. (See Exs. 2, 4)

3. Applicant's 2009 convictions were not reported to the Nebraska Department of Insurance. (See Ex. 2)

4. On or about October 18, 2013, Jason McCartney ("McCartney"), licensing administrator for the Nebraska Department of Insurance, denied Applicant's producer license renewal application pursuant to Neb. Rev. Stat. § 44-4059(1)(f) on the grounds that Applicant had been convicted of multiple felonies. (See Ex. 2)

5. On or about October 18, 2013, McCartney provided written notice of said denial to Applicant at his registered address, 13304 West Center Road, Suite 210, Omaha, NE 68144, via certified mail. (See Ex. 2)

6. On or about November 8, 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 renewal application. (See Ex. 2)

7. On or about November 19, 2013, a Notice of Hearing in this matter was submitted to Applicant at 13304 West Center Road, Suite 210, Omaha, NE 68144, via certified mail, return receipt requested, and by regular United States mail. On or about November 22, 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 on November 21, 2013. (See Ex. 1)

8. At the hearing, Applicant testified that he has completed the terms of his sentencing and has sufficiently maintained employment following his incarceration. Applicant

further testified that, if his producer license is renewed, he will resume part time employment at his father's insurance agency.

9. Applicant submitted multiple recommendation letters of from family, friends, and co-workers. (See Exs. 5-9)

10. At the hearing, Mark Thielen, Applicant's father and employer, testified that if Applicant is granted his insurance producer license renewal, he will resume working in a part-time capacity in a largely customer service role. Mr. Thielen indicated that Applicant handles incoming calls at the agency and does not solicit new business.

DISCUSSION

While Applicant's previous felony convictions are a sufficient basis for the denial of the renewal of Applicant's insurance producer license, such denial is discretionary, not mandatory. Although Applicant admitted that he could not recount details of conduct underlying his conviction due to his mental state at the time, it is clear the underlying behavior and his convictions stem from drug related issues. Applicant's 2009 convictions are very serious and pose significant concern to the Department regarding potential licensure. Furthermore, Applicant has been convicted of a felony involving breach of trust or dishonesty. As such, the federal Violent Crime Control and Law Enforcement Act requires Applicant to obtain the written consent of the Director of the Nebraska Department of Insurance before he may engage in the business of insurance. Additionally, Applicant failed to report his 2009 convictions to the Department, as is required by licensed insurance producers. Applicant admits that he did not report the convictions, but testified that the failure to report was an honest mistake because he was not working in the insurance industry at the time.

The evidence presented indicates that since his 2009 conviction, Applicant has complied with all sentencing requirements, including 36 months of probation and a six month drug rehabilitation program. Applicant currently participates in weekly to bi-weekly AA meetings. Further, Applicant has held an insurance license since 2007 and has not received any complaints or disciplinary action as a result of his work as an insurance producer. If his renewal is approved, Applicant plans to continue working on a part-time basis in a relatively small five-man agency owned by his father. Such employment will result in significant oversight and accountability. Several family members, friends, and coworkers (including licensed insurance producers) have submitted letters of recommendation indicating that, despite his previous criminal convictions, Applicant has overcome his past behaviors and functions as a hardworking and ethical individual.

Applicant testified that he takes responsibility for his past behavior, and indicates he has put such behavior behind him. Applicant's testimony reveals that, since his 2009 conviction, Applicant has graduated from commercial diving school and has successfully maintained a career in underwater construction. Recently Applicant has been offered a position as vice president at his company. Applicant has the support of friends, family, and coworkers and his recent professional achievements indicate that Applicant has made great strides in turning his life in a positive direction.

Applicant's criminal history is relatively recent. Both his convictions and his failure to report them to the Department are cause for significant concern. However, his crimes were not related to his insurance business, and it appears that Applicant has made significant steps to take responsibility for his past actions and move his life forward in a positive and responsible manner. Further, Applicant has acted as an insurance producer, off and on, since 2007 with no known

problems. Given Applicant's post-conviction achievements, his support network, and his relatively limited involvement in the insurance industry, it appears that Applicant can continue to successfully function as an insurance producer. As such, it is my recommendation that the denial of Applicant's application for a renewal of his 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 to 44-4067.

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 convictions of a felony or Class I, II, or III misdemeanor pursuant to Neb. Rev. Stat. § 44-4059(1)(f).

4. Applicant's 2009 convictions of attempted burglary and theft by unlawful taking constitute convictions of a criminal felony involving dishonesty or a breach of trust for purposes of Title 18 U.S.C. § 1033.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Applicant have his insurance producer's license renewal application approved. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter. Furthermore, it is recommended the Director of Insurance grant a Title 18 U.S.C. § 1033(e)(2) waiver for Applicant to engage in the business of insurance. This waiver should be conditioned upon Applicant remaining in the insurance employment position described in the above Findings of Fact.

Dated this 6 day of January, 2014.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

MATTHEW HOLMAN
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 Robert Thielen, Cause No. A-1995.

Furthermore I hereby grant a Title 18 U.S.C. § 1033(e)(2) waiver for Robert Thielen to engage in the business of insurance. This waiver is issued upon the condition of Robert Thielen remaining in the employment position described within the attached Findings of Fact relative to

his insurance activities. A change in Robert Thielen's insurance related duties or employment will necessitate the filing of a new request for written consent.

Dated this 6 day of January, 2014.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Bruce R. Ramge

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, Robert Thielen, by mailing a copy to him at 13304 West Center Road, Suite 210, Omaha, NE 68144, via certified mail, return receipt requested and by regular United States mail on this 6th day of January, 2014.

Victoria D Morehead