

JUN 02 2014

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)	FINDINGS OF FACT, CONCLUSIONS
APPLICATION FOR LICENSE FOR)	OF LAW, RECOMMENDED ORDER
LORI STEVENS.)	AND ORDER
)	
)	CAUSE NO. A-2002
)	

This matter came for hearing on the 13th day of May, 2014, 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. Lori Stevens (“Applicant”) was present and was not represented by counsel. The proceedings were tape recorded by Brandis Courser, a licensed Notary Public. Evidence was received, testimony was adduced and the matter was taken under advisement. The record was held open for a period of two weeks for the purpose of allowing Applicant to submit evidence from Physician’s Mutual Insurance Company regarding her potential employment.

On May 19, 2014 Applicant submitted to the Hearing Officer via e-mail a letter which she indicated was from Rhonda K. Juarez “Ronnie” at Physicians Mutual. This e-mail was forwarded to the Department’s counsel, and the e-mail chain has been made a part of the hearing record. On May 20, 2014 a post-hearing conference call was held with Applicant and the Department. At this time, the letter from Rhonda Juarez was received into evidence and marked as Exhibit 3. Also at this time, Applicant indicated she had submitted all her evidence and it was not necessary to hold the record open any longer. As such, the record was closed and the matter was taken under advisement. As a result of the hearing and the post-hearing conference, 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 April 4, 2014. Within the Uniform Application for Individual Producer License, Applicant answered the question in the affirmative that she has been convicted of a crime, had a judgment withheld or deferred, or is currently charged with committing a crime. (Ex. 2)

2. On or about November 21, 1991, in the District Court of Douglas County, Applicant plead and was found guilty of Theft By Deception in excess of \$1,000, a Class III felony. Applicant was sentenced to three to five years imprisonment. (Ex. 2)

3. On or about April 8, 2014, Jason McCartney ("McCartney"), licensing administrator for the Nebraska Department of Insurance, denied Applicant's producer license renewal application on the grounds that Applicant had been convicted of a felony. (Ex. 2)

4. On or about April 8, 2014, McCartney provided written notice of said denial to Applicant at the address listed in her license application via certified mail. (Ex. 2)

5. On or about April 16, 2014, the Department received written correspondence from Applicant, pursuant to Neb. Rev. Stat. § 44-4059(2), requesting an administrative hearing regarding the denial of her insurance producer license application. (Ex. 2)

6. On or about April 17, 2014, a Notice of Hearing in this matter was submitted to Applicant at 5054 North 155th Street, Omaha, NE 68116 via certified mail, return receipt requested, and by regular United States mail. On or about April 22, 2014, the Domestic Return

Receipt attached to the certified letter was returned to the Department by the United States Postal Service confirming delivery. (Ex. 1)

7. At the hearing, Applicant testified that she takes responsibility for her actions which led to her prior conviction, that she successfully completed a work-release program following her conviction, and that she has no other criminal conviction history. Applicant further testified that she has held continuous employment in retail management positions since her conviction, with the exception of time spent raising her children. Applicant stated she has had significant responsibility for her employers, including buying power and decision making authority.

8. At the hearing, Applicant testified that a recruiter from Physicians Mutual discussed potential employment with Applicant, and that individuals at Physicians Mutual wanted Applicant to “come on board.” Applicant testified that if she were granted a license she would likely have a job with Physicians, and that she has been contacted by other recruiters as well. Applicant further testified that, if her license is granted she plans to work for an insurance agency in the area of Life and Annuities.

9. Applicant submitted an unsigned letter from Rhonda K. Juarez. Applicant indicated that this letter was from a recruiter at Physicians Mutual, though the letter is not on company letterhead, nor does it indicate Ms. Juarez works for Physicians Mutual. The content of the letter states that Applicant will not be offered a job with Ms. Juarez’s company. (Ex. 3)

DISCUSSION

While Applicant’s previous felony conviction is a sufficient basis for the denial of Applicant’s insurance producer license pursuant to Neb. Rev. Stat. § 44-4059(1)(f), such denial is discretionary, not mandatory. Pursuant to Neb. Rev. Stat. § 44-4059(2), the purpose of the

license denial hearing is to determine the reasonableness of the denial. Once a license has been denied, the hearing procedure gives applicants an opportunity to explain circumstances and show why a license should be granted.

Felony theft by deception is obviously a serious concern for the Department, as an insurance producer operates in a fiduciary capacity handling significant consumer funds. While certain crimes may be more ancillary, theft by deception is directly applicable to the business of insurance. In this case, Applicant's felony conviction occurred approximately 23 years ago. Applicant has had significant time to take responsibility and change her life's path. No evidence was submitted that Applicant has had any subsequent criminal history, and Applicant indicates she has worked in retail management consistently and successfully since her conviction.

Unfortunately, Applicant has not provided any evidence to corroborate her testimony or to show she is a reformed and responsible individual. Applicant has not provided any character or employment references, she asked no one to testify on her behalf, and she has provided no evidence of potential employment in which she would receive appropriate supervision and guidance. The letter submitted from Rhonda Juarez, is not signed, is not on company letterhead, and does not mention the name Physicians Mutual. Furthermore, the letter indicates that Applicant will not have the opportunity to work for Ms. Juarez's company. While the letter does outline Ms. Juarez's positive retail experience with Applicant, it provides no substantive evidence that Applicant has reformed her life or that she is capable of acting as a responsible insurance producer. The mere passage of time following a criminal conviction is insufficient to show reform.

It may well be the case that Applicant has the capacity to operate successfully as an insurance producer. However, in the face of a statutorily authorized denial, an applicant must

show the denial was unreasonable. In the present case, Applicant has failed to show that the denial of her license was unreasonable.

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 conviction of a felony pursuant to Neb. Rev. Stat. § 44-4059(1)(f).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the denial of Applicant's insurance producer license be upheld. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter.

Dated this 28 day of May, 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 Lori Stevens, Cause No. A-2002.

Dated this 2 day of June, 2014.

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, Lori Stevens, by mailing a copy to her at 5054 N 155th Street, Omaha, NE 68116, via certified mail, return receipt requested and by regular United States mail on this 2 day of June, 2014.


