

SEP 01 2015

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
RON NITZEL.)	AND ORDER
)	
)	CAUSE NO. A-2022
)	

This matter came for hearing on the 12th day of August, 2015, before Martin W. Swanson, 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. Ron Nitzel (“Applicant”) was present and was represented by counsel, Galen Stehlik. 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.

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 renew his resident insurance producer license with the State of Nebraska on or about June 1, 2015. Kevin Schlautman (“Schlautman”), administrator for the Department’s licensing division, was made aware by his staff via a search of the Nebraska Trial Courts Case Search System that Applicant had been charged with two counts of “Issuing fake insurance policy/certificate/card” in Hamilton County, Nebraska, two counts of the same alleged crime in Adams County, Nebraska. Applicant had not, according to Schlautman, provided the

Department any notification regarding the aforementioned criminal court proceedings. Schlautman denied the renewal application because, in his view, this was a violation of Neb.Rev.Stat. §§ 44-4059(1)(b) for violating an insurance law and a violation of Neb.Rev.Stat. § 44-4065(3) for failing to report, within 30 days of a date of arraignment or waiver of an arraignment. Applicant was made aware of this decision on or about June 16, 2015. Applicant, on or about July 14, 2015, requested a hearing on this matter. (E2).

2. On July 16th, the Department sent Applicant a Notice of Hearing and Applicant, along with counsel, appeared on August 12, 2015. (E1).

3. During the course of the hearing, Applicant testified that he was aware of the charges in Hamilton and Adams County. Applicant believed, however, that because he had discussed the issues contained within the charges filed with Charles Starr (Starr), who is a fraud investigator with the Department, that the Department was on notice of the charges since the Department had referred those cases to the respective county attorneys in Hamilton and Adams Counties. The discussions, which took place between Applicant, Applicant's counsel and Starr took place before the charges were filed in the respective counties. (See E2).

4. Applicant admitted during the hearing that he was not aware of any requirement under the insurance code that a producer was required to report any pending criminal proceedings and that the Department failed to provide formal continuing education to insurance producers to train them on this particular issue. Applicant also acknowledged he had not sent in any written documentation to the Department regarding the pending criminal charges.

DISCUSSION

Pursuant to Neb. Rev. Stat. § 44-4059(2), the purpose of the license denial hearing is to determine the reasonableness of the denial. In this matter, Applicant was fully aware of the investigation and subsequent criminal charges filed against him in two different venues. Applicant is also presumed, despite his argument to the contrary about the lack of continuing education in this area, to know the entirety of the responsibilities of an insurance producer under Chapter 44 of the Insurance Code. The lack of formal training in this area is not an excuse or a defense for failure to report an impending criminal matter to the Department as required under Neb.Rev.Stat. §44-4065(3).

That same statute requires a report to the Director of Insurance that "...shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents." Applicant argues that this was satisfied because Starr, as an "agent of the Director" essentially placed the Department on notice because Starr, as the investigator, was clearly aware of the investigation and provided the evidence of said investigation to the respective county attorneys for prosecution. Applicant's argument is without merit.

While Starr was clearly aware of the investigation, Starr, nor the Department, would have any control as to timing of the filing of the charges, the time of the arraignment or, and perhaps more importantly, whether or not the county attorney of the county would file the charges in the first instance. Prosecutors, in most instances, have discretion as to whether or not to file charges and the investigating officer may or may not be aware of that decision of the county attorney.

Additionally, Applicant admitted in the hearing that he did not provide any written documentation to the Department within the time frame allotted under the aforementioned statute. Under Neb.Rev.Stat. §44-4065(3) copies of the complaint, orders and "any other

relevant legal documents” shall be included in the report. None of this written documentation was provided to any member of the Department by Applicant. As such, Applicant failed to provide the required report in a timely fashion to the Department and the denial of his license renewal was proper.

CONCLUSIONS OF LAW

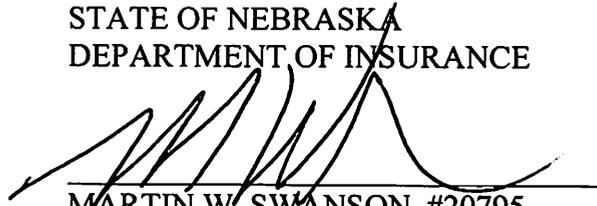
1. The Department has broad jurisdiction, control and discretion over the licensing of Applicant to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 to 44-4067.
2. The Department has personal jurisdiction over Applicant.
3. The Director may deny the issuance of an insurance producer license on the basis of Neb.Rev.Stat. § 44-4065(3) and violation by Applicant of Neb.Rev.Stat. § 44-4059(1)(b).

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 28th day of AUGUST, 2015.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



MARTIN W. SWANSON, #20795
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 Ronald L. Nitzel, Cause No. A-2022.

Dated this 1 day of September, 2015.

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's attorney, Galen E. Stehlik, at Lauritsen, Brownell, Brostrom, & Stehlik, P.C., 724 West Koenig Street, P.O. Box 400, Grand Island, NE 68002-0400 via certified mail, return receipt requested on this 1 day of September, 2015.

