

NOV 23 2016

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF	)	FINDINGS OF FACT,
APPLICATION FOR LICENSE FOR	)	CONCLUSIONS OF LAW,
RODNEY A. ROZANEK II	)	RECOMMENDED ORDER AND
	)	ORDER
	)	
	)	CAUSE NO. A-2049
	)	

This matter came on for hearing on November 17, 2016, before Laura L. Arp, 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, Matthew W. Holman. Applicant Rodney A. Rozanek II (“Applicant”) was present and was not represented by an attorney. The proceedings were recorded by Brandis Courser, a licensed Notary Public. Exhibits 1 through 6 were received, and the matter was taken under advisement. As a result of the hearing and evidence, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department of Insurance is the duly designated agency of the State of Nebraska empowered to exercise jurisdiction and control over the licensing of insurance agents in Nebraska pursuant to Neb. Rev. Stat. § 44-101.01 and § 44-4047 et seq. Said jurisdiction and control have been present at all times material hereto.
2. 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 12, 2016. (E6, Attachment 1).
3. The Department’s Producer Licensing Administrator, Kevin Schlautman, sent a letter to Applicant on September 27, 2016, denying the application for “Providing incorrect, misleading, incomplete, or materially untrue information in the license application” and “Having been convicted

of a felony or a Class I, II, or III misdemeanor.” The letter gave Applicant notice of his right to request a hearing on the denial. (E6, Attachment 5).

4. Applicant timely sent a request for hearing via email. (E6, Attachment 6). The hearing was set for November 17, 2016 at 2:00 p.m. at the Department, and the Notice of Hearing was served on Applicant. (E5).

5. Evidence offered by Applicant and accepted into the record includes: confirmation that Applicant completed one month of inpatient chemical dependency treatment from September 7, 2014 to October 7, 2014 (E1); a July 11, 2016 letter confirming that Applicant participated in a 16-week aftercare program (dates of the program uncertain), Applicant was a positive member of the group, and in the author’s opinion, Applicant is serious about changing his life (E2); a November 16, 2016 letter from an addiction counselor stating that Applicant has been seeing him for counseling for a few months and includes, “He tells me that he is not drinking. I have no reason to not believe him. I am very optimistic about his prognosis, at this time.” (E3); and a November 12, 2016 letter from a friend that has known Applicant for 36 years, and gives Applicant her highest recommendation (E4).

6. On his application, Applicant answered “Yes” to question 1b, which inquires if the applicant has ever been convicted of a felony. Applicant submitted additional documents as required when answering “Yes” to question 1. The attachment disclosed a Class 3A Felony conviction for refusal of a chemical test on or about July 28, 2014, with 2 prior DUI convictions. In the sentencing Order dated October 15, 2015, Applicant was sentenced to three years of probation with terms including, in part: regular attendance and successful completion of substance abuse treatment, community support meetings with verified attendance, obtaining a sponsor, continuous alcohol monitoring for 60 days following release from custody, random alcohol testing at least two times each month with at least twelve tests each year during the term of probation, and at least six times per year, a controlled substance test to determine the presence of controlled substances other than alcohol.

Applicant's license to operate a motor vehicle was revoked for six years, with the option to seek a restricted license with ignition interlock device after three years. (E6, Attachment 1). At the hearing, Applicant testified that he had been drinking on the night of the underlying offense when he refused to submit to an alcohol test; however, Applicant testified that he had not been driving that night, another individual was driving his car but fled the scene before the police arrived.

7. On his application, Applicant answered "No" to question 2, which inquires if the applicant has "ever 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." Applicant had a professional license subject to administrative action from both the Nebraska Department of Insurance and the Nebraska Department of Health and Human Services. Copies of those administrative actions were offered at the hearing, as part of Exhibit 6.

8. The prior Department of Insurance action against Applicant was taken after Applicant allowed his insurance license to lapse, and was resolved by Consent Order. In that Consent Order, Applicant stipulated that his insurance license expired August 31, 2003, that Rozanek Funeral Home failed to have a licensed insurance producer designated and responsible for its compliance with Nebraska insurance laws, and Applicant failed to respond to a letter from Reva Vandevoorde, Market Conduct Examination Supervisor for the Department within the required time. Applicant agreed to pay an administrative fine of \$1,000 and signed the Consent Order. (E6, Attachment 2).

9. The prior Department of Health and Human Services ("DHHS") administrative actions were taken against Applicant's license to practice funeral directing and embalming. The most recent action was filed September 14, 2016. The Petition for Disciplinary Action alleged, among other things, that: on March 14, 1991, Applicant's initial application for licensure as an embalmer was denied due to repeated convictions for the use of alcohol and possession of a controlled substance and evidence of Applicant practicing as an embalmer without a license; in 1998 and 2002 Applicant

was convicted of driving under the influence; in 2001 Applicant was sent a letter of concern about accepting payment for a grave monument in September 1998 and failing to place the monument as of December 2000; that in 2005 Applicant was censured and ordered to pay a civil penalty of \$2500 for unprofessional conduct in failing to promptly surrender the custody of two deceased human bodies upon request of the infant twins' parents and failure to report two misdemeanor convictions (the 1998 and 2002 DUIs); that Applicant attended inpatient substance abuse treatment from September 7, 2014 to October 7, 2014 and was diagnosed at that time with alcohol use disorder severe and cannabis use disorder mild; that Applicant did not report the October 15, 2015 conviction to DHHS within the mandatory time period; and that when Applicant completed a Funeral Director and Embalmer Renewal form on January 24, 2016, in response to the question, "Were you convicted of a misdemeanor or felony in any state/jurisdiction between 2-1-2014 and 2-1-2016?" Applicant checked the box next to "No." Prior DHHS actions were also included in the record. (E6, Attachment 3).

10. At the hearing, Applicant testified that he has been sober since September 5, 2014. Applicant further testified that he has an insurance sales job waiting for him if he obtains this license. Applicant would be selling health and life insurance, mostly at his office but possibly including visits to customers.

#### DISCUSSION

Applicant has a long history of alcohol abuse, but all evidence offered at the hearing indicates Applicant has been sober for over two years. This period of sobriety, his alcohol dependency treatment, his attendance at community support meetings, and his having a sponsor are all court ordered as part of the October 15, 2015 Sentencing Order. Applicant has completed one year of his three-year term of probation, and his sobriety for at least the next two years appears likely given the amount of supervision ordered by the court. Additionally, Applicant has secured a job selling insurance.

The problem with granting a license at this time is that Applicant did not disclose the repeated administrative actions at DHHS, nor did he disclose the prior Department action against his insurance license. Respondent argues that he did not intend to deceive the Department, but intent to deceive is not the standard. The application asks if the applicant has “ever been named or involved as a party in an administrative proceeding, . . . regarding any professional or occupational license or registration.” Applicant was named as a party in numerous administrative proceedings regarding professional or occupational licenses – both his insurance license and his DHHS license to practice funeral directing and embalming – but Applicant answered “No” to that question. Applicant’s conduct that formed the basis for those administrative actions included ignoring requests from the licensing agencies.

If Applicant continues to address the alcohol addiction to which he attributes his past behavior, Applicant has the option to reapply for an insurance producer’s license. Evidence that Applicant complied with all terms of probation set forth in the October 15, 2015 Sentencing Order, along with full disclosure of past criminal and administrative actions, would likely assist the Department in deciding whether Applicant has the character and attention to detail required to hold an insurance license. This mention of the option to reapply should not be interpreted as an opinion as to whether Applicant should or should not be issued a license in the future.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction and control 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. Pursuant to Neb. Rev. Stat. § 44-4059(1), the Director of Insurance has authority to refuse to issue an insurance producer’s license if the applicant: . . . (a) provides incorrect, misleading, incomplete, or materially untrue information in the insurance application, . . . or (f) has been convicted of a felony or a Class I, II, or III misdemeanor. Applicant’s conduct as set forth in the Findings of

Fact violated § 44-4059(1)(a) and (f) and warrants refusal to issue Applicant an insurance producer's license.

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 Department will retain jurisdiction over this matter.

Dated this 23 day of November, 2016.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
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 final Order of this Department in the matter of the denial of application for license for Rodney A. Rozanek II, Cause No. A-2049.

Dated this 23 day of November, 2016.

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 by mailing a copy to him at 6956 N. 88<sup>th</sup> Street, Omaha, NE 68122, by certified mail, return receipt requested, on this 23 day of November, 2016.

  
\_\_\_\_\_