

APR 16 2021

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

IN THE MATTER OF THE DENIAL OF)	
APPLICATION FOR LICENSE FOR)	FINDINGS OF FACT, CONCLUSIONS
MICHELLE WITT MOORE)	OF LAW, RECOMMENDED ORDER
)	AND ORDER
)	
)	CAUSE NO. A-2253
)	

This matter came on for hearing on March 30, 2021, before Thomas C. Green II, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its counsel, Michael Anderson. Michelle Witt Moore (“Applicant”) appeared and was represented by counsel, Jeffrey Stoehr. The proceedings were recorded by Shelly Storie, a licensed Notary Public. The Department and Applicant presented evidence at the hearing and the matter was taken under advisement. The hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
2. On or about January 10, 2013, in the United States District Court, District of South Dakota, Central Division, Case number 3:12CR30086-1, Applicant pled guilty to the felonies of wire fraud and theft from a gaming establishment on Indian lands and was sentenced to six months of probation and ordered to pay restitution of \$10,000. The Applicant complied with and satisfied the sentencing requirements. (Ex. 1, testimony of Applicant)

3. On or about February 11, 2021, the Applicant applied for a Nebraska resident producer's license. Applicant properly disclosed her criminal convictions on her application. (Ex. 1)

4. On or about February 24, 2021, the Department denied Applicant's application for licensure due to Applicant's criminal convictions, as provided by Neb. Rev. Stat. §44-4059(1)(f). (Ex. 1)

5. On or about March 10, 2021, Applicant submitted a timely request for appeal. (Ex. 1)

6. Applicant testified at the administrative hearing, explaining the circumstances of her criminal convictions. Applicant testified that she had become romantically involved with an individual that: (a) was employed by the same employer; and (b) held an influential position within the Native American tribe which was involved in the management of Applicant's employer. Eventually, the relationship turned south, with the Applicant ending up as a victim of physical abuse from her partner. While in the throes of the abusive relationship, Applicant testified that she was intimidated or otherwise coerced by her abusive partner into taking funds from her employer. The criminal charges were not brought by the employer until after Applicant had both left her job with that employer and terminated her relationship with her abusive partner. The Applicant further testified that she did not have sufficient funds to employ an attorney to contest the charges and instead decided to plead guilty just to bring the matter to a close, a decision which she has regretted ever since. (Testimony of Applicant)

7. Since the criminal judgment was entered, the Applicant has been successfully employed and has received promotions from her current employer. Correspondence from Applicant's employer, which was accepted into evidence without objection from the Department, illustrates that the Applicant started as a salesperson and secretary, but has since been promoted to the head of

compliance and office manager, where the Applicant has money handling responsibilities including, but not limited to, payroll preparation, remittance of payroll tax withholdings to the responsible governmental entities and transferring money between corporate entities. Applicant's current employer knew of Applicant's criminal convictions at the time of hiring and has not had any issues involving the Applicant's integrity during the entire term of her employment. (Testimony of Applicant; Ex 7)

8. Applicant has taken classes through Mid-Plains Community College since her convictions, earning an Associate in Applied Sciences Degree in May, 2019. Applicant testified that she is continuing to take classes and expects to earn her Bachelor's Degree by the end of this year. (Ex 6; Testimony of Applicant)

9. Applicant is active in her local community, volunteering with the Future Farmers of America (FFA) and at her children's schools as well as coaching the local youth swim team. (Testimony of Applicant; Ex. 7)

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance producers in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 to 40-4069.

2. The Department has personal jurisdiction over Respondent.

3. Pursuant to Neb. Rev. Stat. §§44-4059(1)(f), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license for the conviction of a felony.

4. If the director does not renew or denies an application for a license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason

for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days and shall be held pursuant to the Administrative Procedure Act, pursuant to Neb. Rev. Stat. §40-4059(2).

DISCUSSION

Applicant's criminal convictions constitute a sufficient statutory basis to deny her application as a Nebraska resident insurance producer. However, such denial is discretionary, not mandatory. The purpose of the license denial hearing is to determine the reasonableness of the denial. In the context of a proper denial, the hearing gives an applicant the opportunity, and the burden, to explain underlying circumstances and show why a license should be granted. The Applicant has successfully met this burden.

The evidence established Applicant's criminal conduct arose out of actions undertaken while she was involved in an abusive relationship. Since that time, Applicant has satisfied the court required sentencing requirements and has been continuously employed. Applicant has been employed with her current employer since 2015, advancing from an initial position as secretary/salesperson to her current position as office manager and head of compliance. In that current employment position, Applicant is responsible for handling financial matters including payroll, remitting payroll taxes to the appropriate governmental entities and conducting monetary transfers between different operating entities. Applicant has conducted such responsibilities without incident and has received substantial praise from her employer. Applicant has also completed the classes necessary to earn an Associate's

degree and testified that she is continuing to work toward a Bachelor's degree. She is also actively involved in the community and working to raise two school aged children. It is apparent that she is remorseful for her earlier actions and is truly attempting to better herself. Finally, Department counsel has recommended approval of Applicant's request for licensure.

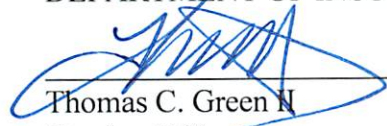
In short, the weight of the evidence presented favors overturning the Department's initial denial.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law made herein, it is recommended that the initial decision to deny Applicant's licensure request be REVERSED, and that Applicant's request for licensure as a resident insurance producer be approved upon Applicant's completion of a §1033 waiver request.

Dated this 16th day of April, 2021.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Thomas C. Green II
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

this Department in the matter of the Denial of Application for License for Michelle Witt Moore, Cause No. A-2253.

Dated this 16 day of April, 2021.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Bruce R. Ramage
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 the Applicant by mailing a copy to her at 633 N Macomb Street, Valentine, NE 69201, via regular U.S. mail on this ____ day of April, 2021.
