

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:)
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MICHAEL A. ANDERSON)
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Docket No. INS-16-215) DECISION AND ORDER
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Timothy Schott, Deputy Superintendent of Insurance, issues this Decision and Order regarding the above captioned matter.

I. PROCEDURAL HISTORY

In April, 2016, Michael A. Anderson applied for a nonresident insurance producer license with the Maine Bureau of Insurance. In an Order dated June 17, 2016, Superintendent Eric A. Cioppa denied the application. The Order advised Mr. Anderson of his opportunity to request a hearing to appeal the denial. Mr. Anderson did request a hearing. On June 27, 2016, a Notice of Pending Proceeding and Hearing was issued, setting out the legal standards, procedures and issues to be decided at this hearing. A hearing was scheduled for July 14, 2016. On July 13, 2016 the hearing was continued.

On October 3, 2017, Superintendent Cioppa issued a Delegation Order delegating to me the authority to hear and decide this matter. The hearing was rescheduled for October 30, 2017. Due to a major storm in Maine resulting in power outages in large areas of the state, the October 30, 2017 hearing was continued until November 13, 2017. The hearing was held at the offices of the Department of Professional and Financial Regulation in Gardiner, Maine. Mr. Anderson, who is a resident of the State of Washington, appeared via videoconference. Lindsay Laxon, the licensing attorney for the Bureau and Colin Hay, Assistant Attorney General, participated in the hearing on behalf of Bureau staff. Assistant Attorney General Mark Randlett also participated in the hearing, providing assistance to the hearing officer.

Prior to the hearing, nine “Agreed-upon Exhibits” were presented jointly by Mr. Anderson and Bureau staff. These exhibits were admitted into the record. On November 17, 2017, Bureau staff submitted a 37-page document requested during the hearing. This document included records of licensing applications and orders and Mr. Anderson’s current licensing status in other states. This document was also admitted into the record by agreement of the parties.

II. STANDARD OF REVIEW

The Superintendent of Insurance may deny a license application under the conditions set out in 24-A M.R.S. §§ 1417, 1420-K, and 5 M.R.S. §§ 5301-5303. Under 5 M.R.S. 5301(1), the Bureau of Insurance may consider criminal history record information “which ha[s] not been set aside or for which a full and free pardon has not been granted, but the existence of such information shall not operate as an automatic bar to being licensed...or permitted to practice any profession, trade or occupation.”

5 M.R.S. § 5301(2) sets out certain categories of criminal history information which may be considered by a licensing agency in considering a license application. Included in this list are “Convictions for which incarceration for one year or more may be imposed.” 5 M.R.S. § 5301(2)(D). 5 M.R.S. §§ 5303(1) and (2) set time limits on how long a licensing agency may consider a prior criminal conviction. However, there is no time limit “for consideration of an applicant’s or licensee’s conduct which gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action against a licensee.” 5 M.R.S. § 5303(1).

24-A M.R.S. § 1417 permits the Superintendent, after notice and opportunity for hearing, to deny a license application if the Superintendent finds that any of the causes for denial listed in 24-A M.R.S. § 1420-K exist. One of the listed causes for denial is “Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.” 24-A M.R.S. § 1420-K(1)(H).

If the conduct in question is conduct that is properly considered under the sections described above, the licensing agency may deny the application if it determines the applicant “has not been sufficiently rehabilitated to warrant the public trust.” 5 M.R.S. § 5302(1). When contesting a license denial, the applicant bears the burden of proof of sufficient rehabilitation to

warrant the public trust. Id. This matter involves two issues: (A) whether the applicant’s past conduct is proper grounds for the license denial; and, if so, (B) whether the applicant has been sufficiently rehabilitated to warrant the public trust.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. **Is the Applicant’s Past Conduct Grounds for License Denial?**

Mr. Anderson was convicted of a felony offense involving fraud in February 1995 in the United States District Court for the Eastern District of Missouri. He was sentenced to 15 months in prison for this offense. Following his incarceration, he was placed on two years of supervised release. The conviction arose from Mr. Anderson’s employment with The Delta Group (Delta) in Missouri. Mr. Anderson worked for this company from February 1, 1992 until December 31, 1992.

Mr. Anderson was a recruiting sales manager for Delta, and his responsibilities included recruiting, hiring and training agents who would sell “self-funded” health insurance plans, backed by re-insurance to employers. All of the producing agents working for the company were recruited and hired by Mr. Anderson. Although the company was purportedly a Third Party Administrator (TPA) of these self-funded plans, Mr. Anderson discovered that in fact there was no re-insurance backing these plans. Instead, the company collected premiums and payed claims and other expenses directly. According to Mr. Anderson, he realized the fraudulent nature of this scheme in “late summer” of 1992. However, due to his own personal financial difficulties, he decided to continue working at the company for several months, knowing its fraudulent nature. Following an investigation by the Missouri Insurance Department, Mr. Anderson voluntarily surrendered his Missouri insurance license in early 1993.

The Superintendent’s License Denial, Order and Opportunity for Hearing, issued on June 17, 2016, denied Mr. Anderson’s license application due to the felony conviction in 1995 involving fraudulent sales of health insurance. The Superintendent’s denial stated that the conviction was grounds for denial of Mr. Anderson’s application under 24-A M.R.S. § 1420-K(1)(F), for having been convicted of a criminal offense as provided in 5 M.R.S. § 5301(2)(D). The Superintendent also found that Mr. Anderson’s conduct resulting in the conviction involved “using fraudulent, coercive, or dishonest practices, or demonstrating incompetence,

untrustworthiness or financial irresponsibility in the conduct of business,” one of the specified causes for denial under 24-A M.R.S. § 1420-K(1).

The record shows that the conduct resulting in Mr. Anderson’s conviction involved “using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business,” a cause for license denial under 24-A M.R.S. § 1420-K(1)(H). There is therefore no time limit on the Superintendent’s consideration of this conduct, and it was properly considered by the Superintendent in issuing the license denial.

B. Has the Applicant Been Sufficiently Rehabilitated to Warrant the Public Trust?

Mr. Anderson is currently employed at American Independent Marketing (AIM), where he has been employed for 11 years. The company sells Medicare supplement and long term care insurance. The company provides a service called “app fill,” which helps simplify the application process for producers.

In August 2014, The Washington State Insurance Commissioner granted Mr. Anderson a Letter of Written Consent to Engage in the Business of Insurance, pursuant to 18 U.S.C. § 1033(e)(2), known as a “1033 waiver.” A 1033 waiver is a waiver of a federal prohibition against persons convicted of certain felonies from working in the insurance industry. If an applicant’s home state insurance regulator grants this waiver, it allows the applicant to apply for licensure in the applicant’s home and other states. Mr. Anderson obtained his resident producer license in Washington in November 2014.

In the Spring of 2016, Mr. Anderson began applying for licensure in several other states. At the time of the hearing, 20 states had granted his application. The states where he had not been granted a license were California, Oregon, Michigan and Maine. Mr. Anderson withdrew his Oregon application after the Oregon Division of Financial Regulation notified him that he would need to complete a 1033 application. The Michigan Department of Insurance and Financial Services denied Mr. Anderson’s license application on August 26, 2016, based upon his felony conviction. He applied for licensure in California in April of 2016, but he did not provide the follow up information requested by the California Department of Insurance, so his application was denied without prejudice. As of the date of the hearing, it appears that his license may have expired or lapsed in two of the states in which he was licensed. His only

current appointment is with Mutual of Omaha, and he indicates that if licensed in Maine, he would anticipate only working with Mutual of Omaha.

Testifying on Mr. Anderson's behalf was John Hennessey, Mr. Anderson's supervisor and the general manager at AIM. Mr. Hennessey described Mr. Anderson as a "steadfast, loyal, honest employee." Mr. Hennessey also submitted a written statement in support of Mr. Anderson. A letter was submitted by John Wane, president of AIM, which describes Mr. Anderson as "honest, dependable, hardworking and productive." Letters of support were also provided by David Wane, a co-worker at AIM and Mel Moore, a realtor in Washington who has known Mr. Anderson since 2001. Mr. Moore described Mr. Anderson's community involvement, including working at youth sports events.

Mr. Anderson testified that many things have changed in the 25 years since his felony conviction, including his move to Washington. He emphasized his work at AIM and that he had met the requirements placed on him by the federal criminal justice system following his conviction.

Although Mr. Anderson's recent work history with AIM appears to have been successful and problem free, the conduct underlying his felony conviction is deeply concerning. By 1992, when he began his employment with Delta, he was thirty-two years old, and he had several years of experience in several lines of insurance. He started his insurance career as an all lines agent in Phoenix, Arizona, where he worked for approximately three years. He then was a district sales manager, working in Tustin, California, for approximately two and a half years.

His involvement with Delta went beyond the State of Missouri, and he placed ads and recruited agents throughout the Midwest and Southern states. He was not new to the business of insurance, and would be expected to know the gravity of the potential harm that could be done by selling fraudulent health insurance to employers. Instead of immediately ending his involvement in this scheme upon discovering the fraud being committed at the company, he continued to participate in this fraud for several months, putting his own well-being ahead of employers and employees who thought they were purchasing legitimate health insurance coverage.

The Judgment in his federal case listed restitution in the amount of \$2,054,740.50. Although there is little information in the record beyond the restitution amount as to the extent of the consumer harm that resulted from this fraud, as an experienced insurance professional, Mr.

Anderson would have been aware of the devastating consequences that could be expected when a consumer discovered too late that the health insurance he or she had relied upon was fraudulent.

At the hearing, Mr. Anderson pointed to the passage of time since his conviction, the fact that he met all the requirements of his incarceration and subsequent supervised release, and the fact that he has been continuously employed for several years with AIM. Mr. Anderson presented virtually no evidence of what had occurred from the time of his release from incarceration following the 1995 conviction until his employment at AIM began in 2006, a gap of approximately nine years following his release from prison.

He would like to be involved in the sales of Medicare supplement and long term care insurance in Maine, very similar work to his health insurance sales work at Delta, albeit with potentially more vulnerable consumers. However, he has presented very little evidence of rehabilitation beyond his employment with AIM and the passage of time. At the hearing he offered very little in the way of an explanation of how and in what ways he had been rehabilitated. He presented no evidence of his remorse. In his licensing application, he promised that “nothing like this would ever occur again.” However, rather than show remorse or take responsibility for his actions, he also stated “I was something of a victim of elements I couldn’t control.”


Given the seriousness of his prior conduct, he has not made a sufficient showing of his rehabilitation to warrant the public trust. His license application is therefore DENIED.

IV. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S. § 236, 5 M.R.S. § 11001, *et seq.* and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

December 7, 2017


TIMOTHY N. SCHOTT
Deputy Superintendent of Insurance