

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

STATE OF NORTH CAROLINA

**BEFORE THE COMMISSIONER
OF INSURANCE**

COUNTY OF WAKE

**IN THE MATTER OF
THE LICENSURE OF
KIMLA ANN ELDERS**

**ORDER AND FINAL AGENCY
DECISION
Docket Number: 1728**

THIS matter was heard on Thursday, June 26, 2014, by the undersigned Hearing Officer, designated by the Commissioner of Insurance (hereinafter "Commissioner") under N.C. Gen. Stat. § 58-2-55, pursuant to a Notice of Hearing that was duly issued and served.

The North Carolina Department of Insurance Agent Services Division (hereinafter, "Agent Services") was represented by Assistant Attorney General M. Denise Stanford.

Petitioner, Kimla Ann Elders, (hereinafter "Petitioner"), was present and testified at the hearing. Petitioner was not represented by counsel.

Agent Services offered into evidence Exhibits 1 through 17. Petitioner stipulated to the admission of the exhibits and said documents were admitted into evidence.

Regina Jaynes, Travis R. Everette, and Bo Marshall testified on behalf of Petitioner.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Notice of Administrative Hearing was properly served on Petitioner on May 21, 2014. The Notice of Administrative Hearing and Affidavit of Service were admitted into evidence as Exhibits 1 and 2.

2. On or about October 22, 2013, Petitioner applied for licensing as a Life and Health agent producer. A copy of the National Insurance Producer Registry Application Information for Petitioner was admitted into evidence as Exhibit 3.

3. On the Application for the Life and Health agent producer license, Petitioner answered "yes" to the background question, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? A copy of the National Insurance Producer Registry Application Information for Petitioner was admitted

into evidence as Exhibit 3.

4. As part of the Application, Petitioner submitted a statement, a final background investigation report, and an explanation to the background investigation report which were admitted into evidence as Exhibits 3A, 3B, and 3C, respectively.

5. Due to her former felony convictions, on February 19, 2014, Petitioner submitted a waiver application and requested the written consent from the Commissioner to engage in the business of insurance pursuant to 18 U.S.C. § 1033(e) (hereinafter "1033 waiver application").

6. A copy of the 1033 waiver application with attachments was admitted into evidence as Exhibit 5, 5A through 5I.

7. Certified copies of Petitioner's criminal records were admitted into evidence as Exhibits 9 through 17.

8. On or about December 2, 1975, Petitioner was convicted in McDowell County of attempting to procure a controlled substance by use of a forged prescription, a felony, File Number 75 CR 4287. A copy of the certified criminal record was admitted into evidence as Exhibit 9B.

9. During 1976, Petitioner pleaded guilty in federal court to the charge of uttering a US Treasury check, a felony. Petitioner admitted to the conviction. A copy of Ms. Elders' response to her felony convictions was admitted into evidence as Exhibit 5B.

10. On or about April 19, 1977, Petitioner was convicted in Gaston County of two counts of felony heroin possession, heroin possession with intent to sell and deliver, and selling and delivering heroin, File Numbers 76 CRS 23349, 76 CRS 23351, 77 CRS 2774, and 77 CRS 2775. A copy of the certified criminal record was admitted into evidence as Exhibit 9A.

11. On or about June 27, 1985, Petitioner was convicted in Gaston County of one count of misdemeanor larceny, File Number 84 CR 031226 and one count of misdemeanor shoplifting by concealment of goods, File Number 84 CR 032555. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

12. On or about September 9, 1985, Petitioner was convicted in Gaston County of one count of shoplifting by concealment of goods, File Number 85 CR 001921. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

13. On or about October 23, 1985, Petitioner was convicted in Spartanburg, South Carolina of the misdemeanor charge of shoplifting. A copy of the certified criminal record was admitted into evidence as Exhibit 10.

14. On or about February 17, 1986, Petitioner was convicted in Gaston County of three counts of misdemeanor larceny, File Numbers 85 CR 029814, 85 CR 032880, and 85 CR 032881 and one count of trespass without a license, File Number 85 CR 030562. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

15. On or about March 19, 1986, Petitioner was convicted in Cabarrus County of two counts of shoplifting by concealment of goods, File Number 85 CR 017038. A copy of the certified criminal record was admitted into evidence as Exhibit 11.

16. On or about May 14, 1987, Petitioner was convicted in Mecklenburg County of one count of felony common law robbery, File Number 86 CR 091140. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

17. On or about June 24, 1987, Petitioner was convicted in Gaston County of misdemeanor shoplifting by concealment of goods, File Number 86 CR 003714. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

18. On or about August 20, 1987, Petitioner was convicted in Cabarrus County of one count of misdemeanor larceny, File Number 87 CR 003293. A copy of the certified criminal record was admitted into evidence as Exhibit 11.

19. On or about January 14, 1988, Petitioner was convicted in Rutherford County of one count of misdemeanor larceny, File Number 87 CR 000822 and one count of misdemeanor simple assault, File Number 87 CR 000824. A copy of the certified criminal record was admitted into evidence as Exhibit 13.

20. On or about June 15, 1988, Petitioner was convicted in Harnett County of one count of misdemeanor larceny, File Number 88 CR 001555. A copy of the certified criminal record was admitted into evidence as Exhibit 14.

21. On or about October 25, 1988, Petitioner was convicted in Mecklenburg County of one count of misdemeanor shoplifting by concealment of goods, File Number 88 CR 074251. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

22. On or about March 30, 1989, Petitioner was convicted in Mecklenburg County of one count of simple assault, File Number 88 CR 081352, one count of second degree trespass, File Number 88 CR 081353, and one count of shoplifting by concealment of goods, File Number 88 CR 093686. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

23. On or about April 12, 1989, petitioner was convicted in Rock Hill, South Carolina of two counts of felony grand larceny. A copy of the certified criminal record was admitted into evidence as Exhibit 15.

24. On or about November 16, 1992, Petitioner was convicted in Mecklenburg County of one count of misdemeanor larceny, File Number 92 CR 047769. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

25. On or about January 22, 1993, Petitioner was convicted in Mecklenburg County of one count of misdemeanor larceny, File Number 92 CR 067351. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

26. On or about July 16, 1993, petitioner was convicted in Rock Hill, South Carolina of three counts of misdemeanor shoplifting. A copy of the certified criminal record was admitted into evidence as Exhibit 15.

27. On or about July 28, 1993, Petitioner was convicted in Mecklenburg County of one count of shoplifting by concealment of goods, File Number 93 CR 035253. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

28. On or about December 13, 1993, Petitioner was convicted in Gaston County of one count of resisting/obstructing a public officer, File Number 93 CR 028264. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

29. On or about December 14, 1993, Petitioner was convicted in Lincoln County of one count of misdemeanor larceny, File Number 93 CR 003924. A copy of the certified criminal record was admitted into evidence as Exhibit 16.

30. On or about December 20, 1993, Petitioner was convicted in Gaston County of one count of misdemeanor unauthorized use of a motor vehicle, File Number 93 CR 024837; three counts of misdemeanor larceny, File Numbers 88 CR 024584, 92 CR 012005, and 92 CR 012006; and one count of second degree trespass, File Number 93 CR 025101. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

31. On or about January 26, 1994, Petitioner was convicted in Cleveland County of one count of misdemeanor larceny and one count of misdemeanor possession of stolen goods, File Number 93 CR 003211. A copy of the certified criminal record was admitted into evidence as Exhibit 17.

32. On or about May 16, 1994, Petitioner was convicted in Mecklenburg County of misdemeanor shoplifting by concealment of goods, File Number 93 CR 071369. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

33. On or about August 15, 1996, Petitioner was convicted in Gaston County of misdemeanor larceny, File Number 96 CR 015412. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

34. On or about August 21, 1996, Petitioner was convicted in Gaston County of misdemeanor possession of drug paraphernalia, File Number 95 CR 017911. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

35. On or about October 31, 1996, Petitioner was convicted in Cleveland County of misdemeanor shoplifting by concealment of goods, File Number 96 CR 006250. A copy of the certified criminal record was admitted into evidence as Exhibit 17.

36. On or about December 16, 1998, Petitioner was convicted in Mecklenburg County of misdemeanor larceny, File Number 98 CR 037908. A copy of the certified criminal record was admitted into evidence as Exhibit 12.

37. On or about August 19, 1999, Petitioner was convicted in Gaston County of misdemeanor resisting a public officer, File Number 99 CR 016507. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

38. On or about August 25, 1999, Petitioner was convicted in Gaston County of one count of resisting a public officer, File Number 98 CR 027531; one count of misdemeanor larceny, File Number 98 CR 027532; the felony of habitual felon, File Number 99 CRS 007177; and one count of felony assault with a deadly weapon on a government official, File Number 99 CRS 026771. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

39. On or about September 10, 1999, Petitioner was convicted in Gaston County of one count of misdemeanor larceny, File Number 99 CR 016440. A copy of the certified criminal record was admitted into evidence as Exhibit 9.

Conclusions of Law

1. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. Petitioner was properly served with the Notice of Administrative Hearing.

3. N.C. Gen. Stat. § 58-33-46(a)(6) authorizes the Commissioner to take disciplinary action against a license holder if the licensee has been convicted of a felony or misdemeanor involving dishonesty, a breach of trust, or moral turpitude.

4. Petitioner's felony convictions of attempting to procure a controlled substance by forging a prescription; uttering a US Treasury check; felony heroin possession, heroin possession with intent to sell and deliver, and selling and delivering heroin; common law robbery; grand larceny; and assault with a deadly weapon on a government official, are felony convictions, in violation of N.C. Gen. Stat. § 58-33-46(a)(6).

5. Petitioner's misdemeanor convictions of larceny, shoplifting by concealment of goods, resisting/obstructing a public officer, misdemeanor unauthorized use of a motor vehicle, and possession of stolen goods are misdemeanor convictions involving dishonesty, a breach of trust, and moral turpitude, in violation of N.C. Gen. Stat. § 58-33-46(a)(6).

6. 18 U.S.C.S. § 1033(e) of the Federal Violent Crime Control and Law Enforcement Act of 1994 prohibits persons who have been convicted of certain felonies from engaging in the business of insurance unless such a person receives written consent from the appropriate chief state insurance regulatory officer, which in North Carolina, is the North Carolina Commissioner of Insurance.

7. The Hearing Officer finds that Petitioner's 1033 waiver application should be denied.

Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's application for a Life and Health agent producer license is hereby denied and Petitioner's 1033 application is denied.

This the 10th day of July, 2014.



Stewart L. Johnson, Hearing Officer
North Carolina Department of Insurance

APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days of receipt, as set forth in the General Statutes of North Carolina.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing ORDER AND FINAL AGENCY DECISION by delivering a copy of the same via certified mail, return receipt requested, in an envelope addressed as follows:

Kimla Ann Elders
301 Shellum Street
Raleigh, N.C. 27610

This the 14th day of July, 2014.



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