

1. The Notice of Administrative Hearing was properly served on Applicant, and perfected by certified mail, delivered to Applicant on September 2, 2023, as shown by the Affidavit of Service. *See* Pet'r Ex. 2.

2. Agent Services is a division of the North Carolina Department of Insurance ("NCDOI"), which is a state agency responsible, in accordance with Chapter 58 of the North Carolina General Statutes, for enforcement of insurance laws and regulating and licensing insurance producers.

3. Applicant seeks licensure as a resident insurance producer with lines of authority in Accident & Health or Sickness and Life ("License"). Applicant submitted an electronically-signed application on June 9, 2023. *See* Pet'r Ex. 3.

4. On the license application, Applicant answered "Yes" to screening question 1B, which asks:

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?

You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in juvenile court.

If you have a felony conviction involving dishonesty or breach of trust, have you applied for written consent to engage in the business of insurance in your home state as required by 18 USC 1033?

If so, was consent granted? (Attach a copy of 1033 consent approved by home state.)

5. On June 13, 2023, Applicant uploaded documents to the National Insurance Producer Registry's (NIPR) attachment warehouse detailing a felony conviction and providing a written statement. The documents provided the following criminal conviction: On April 8, 2003, Applicant was convicted of Felony Robbery with a Gun or Deadly Weapon in Hillsborough County, FL in Case Number 0013606. *See* Pet'r's Ex. 4 and 5.

6. Carissa Ransome is a Licensing Analyst for Agent Services. Ms. Ransome testified that this matter was assigned to her due to the felony conviction disclosed in Applicant's license application.

7. On June 26, 2023, Petitioner denied Applicant's license application citing N.C. Gen. Stat. § 58-33-46(a)(6): "having been convicted of a felony or a misdemeanor involving dishonesty, a breach of trust or moral turpitude". *See* Pet'r Ex. 6A.

8. Ms. Ransome testified that, based on the fiduciary duties resident insurance producer licensees hold, an applicant's past criminal conviction for crimes of dishonesty is relevant to Petitioner to determine an applicant's trustworthiness with sensitive consumer information including bank accounts, social security numbers and pertinent health information.

9. In addition, federal law prohibits “[a]ny individual who has been convicted of any criminal felony involving dishonesty or a breach of trust” from engaging in the business of insurance, 18 U.S.C. § 1033(e)(1)(A)(1), unless the individual has obtained “the written consent of any insurance regulatory official authorized to regulate the insurer” *Id.* § 1033(e)(2).

10. Petitioner is an insurance regulatory official authorized to regulate the insurer within the meaning of 18 U.S.C. § 1033(e)(2). Petitioner refers to the written consent provided for in the federal statute as a “1033 Waiver”.

11. Ms. Ransome testified that during the license application process, additional documents are required for individuals who have been convicted of any criminal felony involving dishonesty or a breach of trust in order to determine whether Petitioner should grant a 1033 Waiver to the applicant.

12. After the June 26, 2023, denial of his application and his subsequent request for a denial review, a denial review was scheduled for July 12, 2023. The denial review took place in person with the Applicant, Ms. Ransome and her supervisor, Joe Wall, in attendance. Applicant provided Petitioner with the following documents:

- A 1033 Waiver application;
- Documents listing previous employers; and
- Two reference letters which were not signed.

13. Immediately following the denial review, Petitioner requested additional documents within ten business days for Applicant’s 1033 Waiver to be considered. *See* Pet’r Exs. 6D and 7. These additional documents included the following:

- Two signed character references related to your honesty, trustworthiness, and financial responsibility.
- An explanation of why Applicant should be allowed to engage in the business of insurance.

14. On July 13, 2023, Applicant timely submitted all requested additional documents and Petitioner acknowledged receipt of these documents, making his 1033 Waiver application complete. *See* Pet’r Exs. 6E and 8.

15. Applicant’s written explanation and testimony at the hearing detailed that on August 11, 2000, at age 20, he was involved in the robbery of a convenience store with three friends. Applicant testified that he was intoxicated and was in possession of a firearm, which was discharged during the commission of the crime; however, no one was severely injured. He was arrested shortly thereafter, plead

guilty and was sentenced to 20 consecutive years in prison. Applicant completed the full sentence and was released without supervision or parole on March 2, 2021. According to Applicant, this was his first criminal conviction. *See Pet'r Ex. 4.*

16. On July 17, 2023, Petitioner upheld the initial denial of Applicant's license application. Petitioner's denial letter cited N.C.G.S. § 58-33-30 indicating that Applicant did not "meet certain criteria to demonstrate honest practices and trustworthiness." Additionally, the denial letter indicated that Petitioner considered Applicant's statements and the "additional materials submitted" but the 1033 Waiver was not mentioned. *See Pet'r Ex. 6F.*

17. Ms. Ransome testified that she considers several factors set out in N.C. Gen. Stat. § 93B 8.1(b1), which is routinely used when processing license applications involving criminal convictions. One mitigating factor Petitioner emphasized was that Applicant's conviction occurred more than 20 years ago. However, ASD noted that the conviction was serious and violent in nature. *See Pet'r Ex. 9.*

18. Ms. Ransome testified that Agent Services' decision to uphold the denial of Applicant's license application was based to the limited amount of time Applicant had been released from custody before seeking licensure. Petitioner was not satisfied that sufficient time had passed for Applicant to establish a substantial pattern of law-abiding behavior since his release on March 2, 2021.

19. Petitioner presented evidence that Applicant's 1033 Waiver application included a reference from Brian Brutus, a licensed resident insurance producer with Global Life, whose current license is in good standing with Agent Services.

20. Applicant further testified that he currently has a conditional offer of employment with Global Life, pending his licensure approval. Mr. Brutus's reference included statements such as:

- "As one of his direct supervisors, Charles comes off as a man who wants to leave his past as a youth to become a man who society can be proud to emulate. Charles has demonstrated an impressive determination and knack for detail. If you combine the attributes with his work ethic, Charles will be successful in any business venture he tackles...this is why I endorse Charles waiver so I can have him work alongside my team and I." *See Pet'r Ex. 8.*

21. Desmond Welch, Applicant's character witness, testified that he has known Applicant for twenty years and could attest to his character. Additionally, Mr. Welch's reference stated:

- "Charles has learned from his mistakes and his growth and professionalism is unquestioned... All he needs is an opportunity on his upward trajectory and he will become a role model for many...Charles

is ready for his new career, he was diligent with his studies and passed this exam on the first attempt, he has a company that is willing and eager to sponsor him into the insurance profession.” See Pet’r Ex. 8.

22. Despite the mitigating evidence presented supporting Applicant’s 1033 Waiver, Agent Services did not process Applicant’s 1033 Waiver application. Ms. Ransome explained that typically Agent Services makes a recommendation of whether a 1033 Waiver should be granted and, upon recommendation for granting the waiver, waiver requests then go before the Commissioner for consideration and approval. In this case, Agent Services has not yet made a recommendation about Applicant’s 1033 Waiver application, and Applicant’s license application was denied for failing to meet the necessary statutory criteria pursuant to N.C. Gen. Stat. § 58-30-30(g).

22. Upon further questioning, Ms. Ransome stated that Agent Services did not feel comfortable making a decision on Applicant’s 1033 Waiver Application and requested the decision be made by the Hearing Officer.

23. Applicant timely appealed the license denial pursuant to N.C. Gen. Stat. § 58-33-30(g).

CONCLUSIONS OF LAW

1. The issue of license application denial is properly before the Commissioner, and the Commissioner has jurisdiction over the parties.

2. Applicant was properly served with the Notice of Administrative Hearing in this matter.

3. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(6), “[t]he Commissioner may place on probation, suspend, revoke, or refuse to renew any license” when the licensee has “been convicted of a felony or a misdemeanor involving dishonesty, a breach of trust or moral turpitude.” Pursuant to N.C. Gen. Stat. § 58-33-30(g), an initial application for licensure may be denied “for any reason for which a license may be suspended or revoked or not renewed under G.S. 58-33-46.”

4. Applicant was convicted of Robbery with a Gun or Deadly Weapon, a felony on April 8, 2003. Under Florida Statute 812.13(1), the criminal offense of “robbery” is defined as the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault or putting in fear.

5. Pursuant to 18 U.S.C. § 1033(e)(2), any individual who has been convicted of any criminal felony involved dishonesty or a breach of trust may not engage in the business of insurance affecting interstate commerce unless “such person has the written consent of any insurance regulatory official authorized to regulate the insurer...”

6. Whereas 18 U.S.C. § 1033 does not specifically define “dishonesty” or “breach of trust”, these terms are defined elsewhere in federal law. According to The Federal Deposit Insurance Corporation, 12 U.S.C 1829(g)(2), the term “criminal offense involving dishonesty means an offense under which an individual, directly or indirectly... wrongly takes property belonging to another in violation of a criminal statute.”

7. Applicant’s Robbery with a Gun or Deadly Weapon conviction is a criminal felony conviction that involves dishonesty and provides sufficient grounds for denial as provided by N.C. Gen. Stat. § 58-33-46(a)(6).

8. Applicant’s criminal conviction requires written consent to engage in the business of insurance affecting interstate commerce, also known as a 1033 Waiver.

9. While Applicant timely submitted a completed 1033 Waiver application on July 13, 2023, pursuant to 18 U.S.C. § 1033(e)(2); Applicant never received notice of the status of his 1033 Waiver application from Agent Services. In fact, Agent Services’ denial letter to Applicant on July 17, 2023 did not mention his 1033 Waiver request. Evidence presented at the hearing shows that Petitioner failed to process Applicant’s 1033 Waiver application because “Agent Services did not feel comfortable making a decision.” Thus, Petitioner failed to make a recommendation with respect to the 1033 Waiver application.

10. By not processing Applicant’s 1033 Waiver application, Petitioner has missed a crucial step in bringing this issue to an administrative hearing as there is no contested issue for the Hearing Officer to decide in this regard.

11. The issue of whether or not the 1033 Waiver application should be approved is not properly before the Commissioner. Petitioner must first make a determination with respect to the granting or denial of Applicant’s 1033 Waiver application. This step cannot be skipped, nor can Petitioner choose to take no position on the matter and request that the decision be made by the Hearing Officer.

12. N.C. Gen. Stat. § 58-33-30(g) is a North Carolina insurance law that specifies that the Commissioner “shall refuse to issue a license” to applicants that have “not fully met the requirements for licensing” and that the application may be

denied for “any reason for which a license may be suspended or revoked or not renewed under G.S. 58-33-46.”

13. Because Agent Services denied Applicant’s licensure application on the basis of his criminal conviction for a crime involving dishonesty, and since Applicant has not received a 1033 Waiver, the Hearing Officer finds reasonable grounds to uphold the denial pursuant to N.C. Gen. Stat. § 58-33-30(g).

14. Based on the evidence received and the applicable law, the undersigned Hearing Officer finds that Agent Services’ failure to process Applicant’s 1033 Waiver request is unduly prejudicial. Therefore, the Hearing Officer enters the following:

ORDER


BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is ORDERED:

1. Petitioner’s denial of Applicant’s license application pursuant to N.C. Gen. Stat. §§ 58-33-30(g) and 58-33-46(a)(6) is UPHELD at this time, due to Applicant not fully meeting the requirements for licensure under 18 U.S.C. § 1033(e)(1).

2. Petitioner shall process Applicant’s 1033 Waiver for consideration to determine if written consent to engage in the business of insurance should be granted.

3. If Agent Services recommends Applicant’s 1033 Waiver request for consideration and written consent is approved, then Applicant will have fully met the requirements for licensure, and Petitioner shall issue Applicant a resident insurance producer license.

This 27th day of October, 2023.


Alisha S. Benjamin
Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with 11 NCAC 01 .0413 and N.C. Gen. Stat. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The mailing address to be used for service on the Department of Insurance is: A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **ORDER AND FINAL DECISION** by mailing a copy of the same via certified U.S. mail, return receipt requested; via first class U.S. mail to the licensee at the address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

CHARLES LEVINS, JR.
2410 Old Steine Rd.
Apt. 812
Charlotte, NC 28269
(Respondent)

Certified Mail Tracking Number: 70222410000096625383

Rebecca E. Lem
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This the 27th day of October, 2023.



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