

NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
COMMISSIONER OF INSURANCE

IN THE MATTER OF:

THE LICENSURE OF  
ROY LOGAN

ORDER AND  
FINAL AGENCY DECISION

Docket Number: 2110

Applicant.

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**THIS MATTER** was heard on Wednesday, June 7, 2023, by the undersigned Hearing Officer, as designated by the North Carolina Commissioner of Insurance ("Commissioner") under N.C. Gen. Stat. § 58-2-55, pursuant to a Notice of Hearing that was duly served and issued.

The administrative hearing was held in the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General Rebecca E. Lem represented the North Carolina Department of Insurance, Agent Services Division (hereinafter "Petitioner"). Applicant Roy Logan (hereinafter "Applicant") appeared *pro se*.

At the hearing, Joe Wall, a Assistant Deputy Commissioner with the Agent Services Division ("ASD") of the Department testified for the Petitioner.

The Petitioner offered into evidence Petitioner's Exhibits 1 – 7 and subparts, which were admitted into evidence.

The Applicant testified on his own behalf.

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 Applicant pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. §58-2-69(d).

2. Applicant submitted an electronically-signed resident agent license application (hereinafter, "license application") to the Department on March 18, 2022 with lines of authority for Accident and Health or Sickness and Medicare Supplement/Long Term Care.

3. On his license application, Applicant answered "No" to screening question 1a., which asks:

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

You may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license.

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

4. On his license application, Applicant answered "No" 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 also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a 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. A routine screening conducted as part of the license application process revealed that Applicant had the following two prior criminal convictions:

- a. On or about December 6, 2002, Applicant pleaded Guilty to a Class D Felony of Grand Larceny in Kings County (NY) Supreme Court, Case Number 06940-2002.
- b. On or about January 7, 2003, Applicant pleaded guilty to the misdemeanor of Criminal Trespass – 3<sup>rd</sup> Degree in Queens County (NY) Criminal Court, Case Number 93Q028020.

6. Although certified copies of the two criminal convictions were not introduced into evidence at the hearing due to confidentiality concerns, Applicant acknowledged at the hearing the existence of the two criminal convictions.

7. On April 18, 2022, Petitioner notified Applicant that it had received information that Applicant had been convicted of a crime(s), and that Applicant needed to respond within 15 days with the following information:

- A signed explanation as to why you did not disclose the conviction(s) on your original application;
- A detailed written explanation of the circumstances of the charges. Explain exactly what you were doing, when, where, and why. This statement must be signed and notarized; and
- A certified copy of the sentencing order indicating the final disposition of the charges. If unavailable, a certified criminal record check from the jurisdiction(s) where the offenses occurred.

8. Applicant submitted additional documentation as requested, and also submitted an application for a waiver pursuant to 18 U.S.C. § 1033(e)(2). However, as noted below, the application for waiver did not contain all of the required information.

9. The additional documentation submitted in response to the April 18<sup>th</sup> request included two letters dated June 6, 2022. The first letter addressed the 2002 felony conviction for Grand Larceny. According to Applicant, the 2002 felony conviction involved his purchase of a motorcycle that was stolen.

10. Applicant's explanation in this letter, as well as his testimony at the hearing, was that that he was unaware that the motorcycle was stolen. According to Applicant, when he was in his early 30's (in approximately 2002), he was interested in purchasing a motorcycle, and a former co-worker informed him that he knew



someone that was selling a motorcycle. In his June 6<sup>th</sup> letter, Applicant describes the following:

Around August of 2002 a former co-worker who knew I was looking to buy a motorcycle informed me an associate of his was selling a [motorcycle]. The bike upon inspecting it looked in good condition so I purchased it along with all the paperwork. Later that year I was pulled over and at that time informed the bike was actually stolen. Upon further investigation it was discovered that the owner was incarcerated and had left his belongings at his wife's house in the garage. It was her brother who took the bike and sold it to me without permission. Even though this was found out to be what had happened I was still found to be partially at fault. This led to me being charged.

11. The second letter addressed the reason why he failed to disclose the two convictions on his license application. According to Applicant, he "was under the impression [his] record was sealed." At the hearing, Applicant expanded on this by explaining that he had obtained a Certificate of Relief from Disabilities in New York and as a result, based upon information he received at that time, he did not have to disclose these prior convictions. Applicant did not produce a copy of this Certificate of Relief from Disabilities.

12. Applicant also testified that he had applied for previous jobs that required background checks, including security jobs, and that he was never questioned about these convictions following those background checks. Therefore, according to Applicant, he thought these prior convictions were not on his record and that therefore it was acceptable to answer "no" to these questions.

13. Upon questioning, Applicant stated that he now understood that it was incorrect for him to answer "no" on Questions 1a. and 1b.

14. On June 9, 2022, Petitioner denied Applicant's license application for the following stated reasons:

- a. Providing materially incorrect, misleading, incomplete, or materially untrue information in the license application (N.C. Gen. Stat. § 58-33-46(a)(1);
- b. Obtaining or attempting to obtain a license through misrepresentation or fraud (N.C. Gen. Stat. § 58-33-46(a)(3); and

- c. Having been convicted of a felony or a misdemeanor involving dishonest, a breach of trust, or moral turpitude (N.C. Gen. Stat. § 58-33-46(a)(6)).

15. Also included in the June 9<sup>th</sup> denial letter was an explanation of the process by which an individual who is engaged in the business of insurance “who has been convicted of any criminal felony involving dishonesty or a breach of trust” must obtain the written consent of “any regulatory official authorized to regulate the insurer” prior to engaging in the business of insurance. See 18 U.S.C. §§ 1033(e)(1)(A) and (e)(2). This consent is known as a “1033 Waiver”.

16. Applicant timely requested a review of his denial, and such denial review meeting took place on June 28, 2022.

17. In addition, Applicant also attempted to request a 1033 Waiver. There is an undated 1033 Waiver request included in the hearing exhibits (Exhibit 6), that contains character references dated June 22, 2022. These character references included letters from former co-workers and supervisors, and included statements such as these:

- “I have had the absolute pleasure of being Mr. Logan’s supervisor for over 5 years. Through these years I have witnesses Mr. Logan develop and transform into a responsible, dependable, and effective individual with high standards, dedicated work ethic and distinct moral values. . . . At all times, I have found Mr. Logan to be reliable, hardworking, trustworthy, and a diligent individual.”
- “I had the great pleasure of working with Mr. Roy Logan in a supportive housing setting for 5 years. He was always a trusted employee who had access to sensitive document, security codes, as well as unit and building keys. He has always been a reliable employee who rarely if even missed a shift and was a constant team player who would cover shifts at a moments notice.”

18. The 1033 Waiver application requests the following information:

- a. Please list, state, and identify in detail any and all convictions of Applicant as noted above in the Preface, and provide all available documentation concerning said convictions. . . .
- b. Please state by whom Applicant is currently employed and give



the name, telephone number, and address of same. For purposes of this application, "employment" includes having an agency relationship, including those agency relationships where the agent is an independent contractor.

- c. Please state the specific entity or person engaged in the business for whom Applicant will be working, either as an employee, agent, or independent contractor, and the position to be held with such entity or person. Provide the address and telephone number of such person or entity.
- d. Please provide at least five (5) character references relating to Applicant's honesty, trustworthiness, and financial responsibility. Such references may be from Applicant's business associates, employer, minister, parole/probation officer, etc. Family references are discouraged.
- e. Please provide an explanation of why Applicant should be allowed to engage in the business of insurance.

19. At the hearing, Joe Wall testified that Applicant's request was a "partial" 1033 Wavier request because it did not contain all the requested items. Specifically, Mr. Wall testified as follows:

- a. With regard to the first item, concerning the details of the convictions, Applicant submitted this information.
- b. With regard to the second item, concerning by whom Applicant is currently employed, Applicant did not submit this information.
- c. With regard to the third item, concerning the specific entity or person engaged in the business of insurance with whom Applicant will be working, Applicant did not submit this information.
- d. With regard to the fourth item, concerning at least five (5) character references, Applicant had only submitted references from four (4) different individuals, in that there were two (2) letters from the same individual.
- e. With regard to the fifth item, concerning why Applicant should be allowed to engage in the business of insurance, Applicant did not submit this information.

20. Upon further questioning, Mr. Wall stated that he did not have a conversation with Applicant about the need to submit additional information at the denial review or otherwise.

21. On July 12, 2022, Applicant was notified that “[n]otwithstanding the statements made by you in the review and the documents provided, the denial is reasonable. Therefore, Agent Services Division continues to deny your application for the reasons set forth in our letter dated June 9, 2022.” However, the letter did not reference Applicant’s incomplete 1033 Waiver request.

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

### CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner has jurisdiction over the parties and the subject matter pursuant to N. C. Gen. Stat. §§ 58-33-30, 150B-38 and 150-40, as well as 11 N.C.A.C. 01 .0401 *et seq.* and other applicable statutes and regulations.

2. Pursuant to N.C. Gen. Stat. §§ 58-33-30(g) and 58-33-46(a)(1), an applicant may be denied licensure for “[p]roviding materially incorrect, misleading, incomplete, or materially untrue information in the license application.”

3. While Applicant should have reported the 2002 felony conviction and 2003 misdemeanor conviction on his license application, Applicant testified that he mistakenly believed that he was not required to report these prior convictions for two related reasons:

- a. First, because he thought that he had obtained a Certificate of Relief from Disabilities in New York that relieved him of having to disclose these prior convictions; and
- b. Second, that because he had not been questioned about these prior convictions following prior background checks, that these prior convictions were not on his record and therefore he did not have to disclose them.

4. Although Applicant’s failure to report these prior convictions by answering Questions 1a. and 1b. on the license application “No” was “incorrect”, “incomplete”, and “untrue” the Hearing Officer finds that Applicant’s testimony was credible and does not find that these actions justify the denial of his license pursuant



to N.C. Gen. Stat. § 58-33-46(a)(1).

5. Pursuant to N.C. Gen. Stat. §§ 58-33-30(g) and 58-33-46(a)(3), an applicant may be denied licensure for “[o]btaining or attempting to obtain a license through misrepresentation or fraud.”

6. For similar reasons as set forth above, the Hearing Officer does not find that Applicant’s actions amount to “misrepresentation or fraud” that justify the denial of his licensure pursuant to N.C. Gen. Stat. § 58-33-46(a)(3). In addition, the Hearing Officer finds the following facts persuasive:

- a. The date of the crime: these convictions occurred more than 20 years ago;
- b. The circumstances surround the commission of the crime: according to Applicant’s testimony, he had no knowledge that the motorcycle was stolen when he purchased it from another party;
- c. The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed: since the convictions more than 20 years ago, Applicant has a clean record and has been gainfully employed.

7. Pursuant to N.C. Gen. Stat. §§ 58-33-30(g) and 58-33-46(a)(6), an applicant may be denied licensure for “[h]aving been convicted of a felony or a misdemeanor involving dishonesty [or] a breach of trust . . .”

8. However, 18 U.S.C. §§ 1033(e)(1)(A) and (e)(2) provide that any individual who is engaged in the business of insurance “who has been convicted of any criminal felony involving dishonesty or a breach of trust” may engage in the business of insurance if they first obtain the written consent of “any regulatory official authorized to regulate the insurer”.

9. Although 18 U.S.C. § 1033 does not define the terms “dishonesty” or “breach of trust,” there are definitions to these terms in other federal legislation. For instance, in 12 U.S.C. § 1829(g)(2) the Federal Deposit Insurance Corporation defines “dishonesty” as “wrongfully [taking] property belonging to another in violation of any criminal statute.”

10. Applicant was convicted of a Class D Felony of Grand Larceny in New York in 2002. The circumstances surrounding this conviction involved Applicant wrongfully taking property that belonged to another – he purchased stolen property



from someone that did not have authority to sell the property. Although for the reasons set forth above this Hearing Officer has found that the failure to report this crime did not justify the denial of his license, the nature of the crime itself certainly involves the level of "dishonesty" set forth in 18 U.S.C. § 1033(e)(1)(A) and thus Applicant is required to obtain a 1033 Waiver before engaging in the business of insurance.

23. In this case, Applicant attempted to request a 1033 Waiver, but did not submit all the required information. And, although it appears that the 1033 Waiver request was received prior to ASD's July 12<sup>th</sup> letter affirming the denial of Applicant's license application, ASD did not conduct any follow-up with Applicant about the need to submit additional information at the denial review or otherwise. In fact, the July 12<sup>th</sup> letter does not even mention the 1033 Waiver request.


24. The Hearing Officer finds that the failure of ASD to conduct any follow-up with Applicant regarding his 1033 Waiver request was prejudicial, and Applicant should be allowed to resubmit a completed 1033 Waiver request.

### ORDER

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following Order:

1. ASD's denial of Applicant's license application for a Resident Agent License is REVERSED.
2. Applicant shall submit a new 1033 Waiver request within thirty (30) days from the date of this Order that contains all the required information.
3. If Applicant submits a 1033 Waiver request that includes all the required information in a form acceptable to ASD, such 1033 Waiver request shall be APPROVED and Applicant shall be ISSUED a Resident Agent License.

This the 16<sup>th</sup> day of June, 2023.

  
A. John Hoomani  
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 the 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, including explicitly stating what exceptions are taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. The mailing address to be used for service on the Department of Insurance is: A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, N.C. 27699-1201.



**CERTIFICATE OF SERVICE**

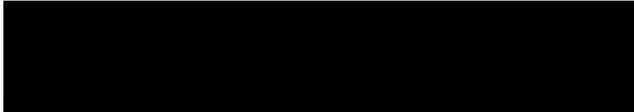
I HEREBY CERTIFY that I have this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. Mail, return receipt requested; via First Class U.S. Mail to the Respondent; and via State Courier to Attorney for Petitioner, addressed as follows:

Roy Logan  
6900 Winding Cedar Trail  
Apt. 107  
Charlotte, NC 28212  
(Respondent)

**Certified Mail Tracking Number: 7020 0640 0000 3185 3946**

*KWP* ~~Anne G. Kirby~~ *Rebecca Lem*  
Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, NC 27699-9001  
(Attorney for Petitioner)

This 16<sup>th</sup> day of June, 2023.

  
Kimberly W. Pearce, NCCP  
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General Counsel's Office  
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