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 KELLI B. WATSON	))	ORDER AND FINAL AGENCY DECISION
	)	Docket Number: 1893
Petitioner.	)	
	)	

THIS MATTER was heard on Tuesday, April 24, 2018 by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance ("Commissioner") under N.C. Gen. Stat. § 58-2-55, pursuant to a Notice of Administrative Hearing that was duly issued and served on Petitioner Kelli B. Watson (hereinafter, "Petitioner").

Petitioner, proceeding pro se, testified on her own behalf at the hearing. In addition, Ashley Colie testified on behalf of Petitioner.

Respondent Agent Services Division ("ASD") of the North Carolina Department of Insurance ("NCDOI") was present at the hearing and was represented by Rebecca E. Lem, Assistant Attorney General. NCDOI employee Robert Cunningham, an ASD Licensing Supervisor, testified at the hearing.

ASD offered into evidence Respondent's Exhibits 1 through 8, which were admitted into evidence.

BASED UPON careful consideration of the evidence and arguments presented, and based upon the entire record in the proceeding, the 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 pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. §58-2-69(d).

2. Petitioner applied to the Department for a resident agent license in January 2018 with an electronically signed application after completing the required

pre-licensing education.

3. On the resident agent license application (hereinafter, "license application"), Petitioner answered "yes" to the application question which asked, "Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?" Petitioner included the required documentation regarding this question with her application.

4. Petitioner disclosed, and court documentation confirmed, that Petitioner had the following felony convictions:

a. An August 4, 2008 conviction for Possession with Intent to Manufacture Cocaine in Cumberland County case 07 CRS 053623.

b. Two felony November 8, 2012 convictions for Obtaining Property by False Pretenses in Cumberland County case 11 CRS 065341.

5. Following receipt and review of Petitioner's license application, ASD denied Petitioner's license application by letter dated January 29, 2018. The basis for the denial was N.C. Gen. Stat. § 58-33-46(a)(6) due to Petitioner's three felony convictions and the relative recency of these convictions. Additionally, Petitioner's two convictions for Obtaining Property by False Pretenses are convictions requiring application for and approval of a "1033 waiver" pursuant to 18 U.S. Code § 1033(e)(1) and (2), because these convictions are for a felony involving dishonesty or breach of trust.

6. Petitioner thereafter requested a review of the denial of her license application, and a denial review was scheduled for February 13, 2018.

7. The license denial review meeting took place on February 13, 2018 with Robert Cunningham and Angela Hatchell in attendance on behalf of ASD, as well as Petitioner. Petitioner submitted a completed 1033 waiver application and supporting documents at the denial review meeting, which were introduced as exhibits in the hearing.

8. Following the denial review meeting, ASD upheld its denial of Petitioner's license application.

9. Petitioner timely requested a hearing to appeal the denial of her license application.

Testimony of Ashley Colie

10. Ashley Colie testified on behalf of the Petitioner. Ms. Colie is a resident of Hampstead, N.C. and is the regional vice president at North America Senior Benefits Insurance Company (NASB) where she manages about fifty-five (55) agents. Ms. Colie has been a licensed agent since 2012 and has been in her current position since September 2015.

11. Ms. Colie testified that she has known Petitioner for approximately 4 years. Ms. Colie and her husband purchased cars from Petitioner at the dealership where she worked following Ms. Colie's car accident. Ms. Colie described Petitioner's compassion and kindness while helping Ms. Colie and her husband.

12. Ms. Colie stated that she would like to hire Petitioner as an agent if she is granted her license, citing her compassion and integrity. Ms. Colie recounted her positive experience with Petitioner in purchasing vehicles. Ms. Colie encouraged Petitioner to try to get licensed as an insurance agent after interacting with her at the car dealership.

13. Ms. Colie stated that Petitioner has been upfront and honest about her criminal history. Ms. Colie previously brought Petitioner on a ride-along to see how she interacted with NASB potential clients, most of whom are senior citizens. Ms. Colie stated that Petitioner was compassionate in talking with senior citizens and described her caring nature.

Testimony of Kelli Watson, Petitioner

14. Petitioner is a resident of Wilmington, North Carolina.

15. Petitioner attended two years of college in Santa Barbara, California. In 1990 she met her future husband, and moved to Fayetteville, North Carolina and married him. Petitioner immediately began working at her husband's family business, "Hawley Cycle and Camping," as a corporate secretary. Petitioner had three children during her marriage.

16. Petitioner became licensed by the Department in the area of property and casualty in 1992 under her married name, Kelli Hawley. Hawley Cycle and Camping was primarily in the business of selling recreational vehicles and had several locations. Petitioner utilized her insurance agent license to help customers get insurance on their R.V.'s. Petitioner kept her insurance license until April 2007, when it lapsed for failure to complete continuing education hours while Petitioner was going through a difficult period in her marriage that would lead to divorce. Petitioner never had any administrative disciplinary actions against her insurance

license from 1992 to 2007.

17. In about 2006, Petitioner noticed a negative change in her husband's behavior. Petitioner's husband, Mr. Hawley, began drinking more and spending a lot of time with three of his friends. He began missing work events, he did not spend time with the children, and Petitioner sought marriage counseling for them. In 2007, Petitioner's neighbor informed Petitioner that Mr. Hawley had a drug problem. At the time, her children were about 10, 7, and 6 years of age. When confronted, Mr. Hawley was angry and threatened Petitioner if she were to leave him.

18. In 2007, after Petitioner had confronted Mr. Hawley about his drug use, Petitioner states that she was driving the family vehicle when she was pulled over without apparent reason by police who had drug-sniffing dogs. The police found drugs in the wheel well of the vehicle that Petitioner claims she knew nothing about, and she was arrested and taken to the police station. Petitioner stated she had never used drugs, and only had wine with dinner on occasions.

19. Petitioner stated her husband was at the police station within 10 minutes and hired private legal counsel for her. She received a deferred prosecution and community service, and had to submit to regular drug tests as part of her probation. Petitioner stated she did not understand what a deferred prosecution was, or the nature of the legal proceedings. Petitioner believes that her husband planted the drugs in her vehicle and alerted the police to their presence in retaliation for her confronting him about his own drug and alcohol use.

20. Petitioner's probation was modified in 2008. Petitioner had obtained permission from the court to travel to South Africa with her family, including her husband. Upon Petitioner's return, she had three successive positive drug tests, each two weeks apart. Petitioner stated that she had never knowingly used any illicit drugs. However, Petitioner stated that her daughter told her that her husband was putting something in her coffee. Petitioner left home, and was ordered to go into the Roxie Avenue Center program, an inpatient drug treatment program in Fayetteville, NC.

21. Petitioner stated that following a visit from her husband at the Roxie Avenue Center, Petitioner tested positive for cocaine and a crack pipe was found in her room. Petitioner stated that this was a residential program and she had not left the center, and stated that she did not knowingly use drugs and that she believed her husband had set her up. Thereafter, Petitioner's probation was revoked. She served four days of incarceration before being released.

22. Petitioner thereafter moved away from her husband and entered the Substance Treatment and Recidivism Reduction (STARR) program. She first moved

to the Myrover Reece Home in Fayetteville, NC and then moved into her own home and got into the state's address confidentiality program. Petitioner's 16-year-old daughter went to live with her, while her son stayed with her husband and her oldest child was in college.

23. Petitioner testified that she had filed with the court certain documents regarding alleged domestic violence by her husband against her, but she was unable to produce any such documents to be admitted into evidence. However, Petitioner did provide a card from the state's Address Confidentiality Program, which is a program administered by the N.C. Department of Justice designed to help victims of domestic violence keep abusers from discovering their new address. This card expired in 2016.

24. Petitioner explained her 2012 convictions for Obtaining Property by False Pretenses. She stated that in 2011 she was in the process of contentious Equitable Distribution proceedings with her ex-husband. Petitioner's daughter had some items at a friend's house, and Petitioner contacted the friend's mother to arrange a time to get them. The friend's mother told her to come over and get them as they were in financial straits due to the divorce and wanted to sell the system.

25. Petitioner arrived with her son and retrieved the daughter's property, which was a gaming system. Petitioner was unaware that the friend's mother was engaged to be married to a good friend of Petitioner's ex-husband. Petitioner took the gaming system to a pawn shop. Petitioner was shortly thereafter arrested for stealing Petitioner's daughter's gaming system from the home, along with several other items that Petitioner did not recognize. Petitioner stated that she was provided with a public defender and worked out a plea deal where Petitioner did not receive jail time and was put on probation.

26. Similar to the drug charges, Petitioner stated that she believes her ex-husband was involved somehow in bringing false charges against her. The probation included drug testing. Petitioner stated that her probation was transferred to New Hanover County when she moved, and she completed the probationary period without incident.

27. Petitioner moved to New Hanover County in 2013. She has worked in two different car dealerships since this time.

28. Prior to confronting her husband about his drug and alcohol use in 2007, Petitioner had never been charged with a crime other than a speeding ticket. In addition, once she physically got away from her ex-husband, Petitioner has not had any positive drug tests or any further criminal charges.

29. Petitioner stated that she wants to become an insurance agent because she is a "people person," and because she loves the concrete nature of insurance. She stated that she still gets commissions from renewals on policies she sold when she was licensed. She stated that the car sales business is interesting but that it seemed to be more concerned with money than with people. Petitioner stated that her interaction with Ashley Colie is the reason she decided to try to make the career change and what inspired her to take pre-licensing education.

30. As support for her 1033 waiver application, Petitioner submitted letters of reference from nine different individuals, ranging from co-workers, to bosses, to clients. Each of these individuals attested to Petitioner's honesty, integrity and dependability.

Testimony of Robert Cunningham

31. Robert Cunningham testified on behalf of ASD. Mr. Cunningham is a licensing supervisor with ASD and has been with the Department for approximately 15 years. Previously, he worked in private industry, including many years in the insurance business. Mr. Cunningham's duties include reviewing license applications where the applicant has previous criminal convictions. Mr. Cunningham has been involved with the matter of Petitioner's license application and subsequent denial.

32. Mr. Cunningham stated that Petitioner provided the required information with her license application and later provided a 1033 waiver application and supporting documentation.

33. Mr. Cunningham explained that ASD initially denied Petitioner's license due to her felony convictions and the relative recency of the convictions. Petitioner requested a denial review, and a denial review meeting was held with Mr. Cunningham, Angela Hatchell of ASD, and Petitioner in attendance.

34. During the denial review meeting, Petitioner's explanation of her felony criminal convictions was consistent with the explanation she provided in her written submissions with her license application and 1033 waiver application.

35. Following the denial review meeting, ASD upheld its denial of Petitioner's license application. The reason for the denial is that ASD routinely denied applications where the applicant had felonies that were within the past ten (10) years, and further ASD did not have the authority to grant a 1033 waiver. ASD also declined to recommend that the Commissioner of Insurance grant the 1033 waiver due to the fact that the convictions for Obtaining Property by False Pretenses were within the past ten (10) years. Mr. Cunningham testified, however, that he and Ms. Hatchell found Petitioner's explanations presented at the denial review to be

credible and had hoped at that time that she would be ultimately granted her license following a hearing.

36. Following the license review meeting on January 28, 2018, Mr. Cunningham received a copy of Petitioner's complete certified criminal records from Cumberland County. Mr. Cunningham noted that Petitioner had not previously specifically mentioned the positive drug tests that resulted in her probation being modified and then revoked as was evident from the certified criminal records, and this raised some concerns.

37. Mr. Cunningham stated that former drug use by applicants or misdemeanor drug convictions were not something that ASD would consider when reviewing a license application, however a felony conviction related to trafficking in drugs was a consideration. Mr. Cunningham acknowledged that Petitioner's felony drug conviction did not require a 1033 waiver. Mr. Cunningham stated that Petitioner's Obtaining Property by False Pretenses convictions did require a 1033 waiver.

38. Mr. Cunningham stated that he contacted several of the nine people who provided references to Petitioner in support of her 1033 waiver application. Upon review, these references appear to be from customers and coworkers of Petitioner, and they uniformly offer positive reviews of Petitioner's professionalism and good character. Mr. Cunningham was able to talk to several of the persons providing references and confirmed their authenticity. Mr. Cunningham stated that he has no reason to doubt the authenticity of any of the references provided in the 1033 waiver application.

39. Mr. Cunningham stated that prior to reviewing the certified criminal records showing Petitioner's positive drug tests, he had hoped that Petitioner would ultimately be granted a license and that he believed her explanation as to her previous criminal convictions. Following review of the certified criminal records and hearing Petitioner's testimony, Mr. Cunningham described his position on the matter as neutral, neither recommending nor opposing granting of Petitioner's license application and 1033 waiver application.

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. §§ 58-2-55, 58-33-46, 150B-38 and 150-40, as well as 11 N.C.A.C. 10401 et seq. and other applicable statutes and regulations.

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

3. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(6), the Commissioner may deny issuance of an agent license for conviction of a felony. Petitioner's criminal convictions include one 2008 felony conviction for Possession with Intent to Manufacture Cocaine in Cumberland County case 07 CRS 053623, and two 2012 convictions for Obtaining Property by False Pretenses in Cumberland County case 11 CRS 065341. Further, Petitioner's convictions for Obtaining Property by False Pretenses are convictions that prevent her from being licensed as an insurance agent unless she is granted a 1033 Waiver.

4. It is impossible to determine with certainty the veracity of Petitioner's explanations regarding her criminal convictions being due to the actions of her estranged husband. Petitioner's criminal convictions are felonies of a serious nature, and these convictions are relatively recent (ten years and six years ago). Petitioner has consistently asserted to the Department that she did not in fact commit these crimes and explained that they were due to circumstances involved in an ugly divorce. Review of the certified criminal records reveals that Petitioner pled guilty in all three cases, as is noted in the Plea Statements. Petitioner provided credible evidence as to her difficult marriage and divorce in the form of testimony and her state-issued Address Confidentiality Card.

5. It is likewise impossible to determine with certainty the veracity of Petitioner's explanations regarding her positive drug tests while on probation, when Petitioner claims she never knowingly used drugs. It appears that Petitioner has had no positive drug tests since after 2008, when she was physically away from her ex-husband. This includes a period of time when she was on probation and undergoing regular drug tests pursuant to her 2011 convictions for Obtaining Property by False Pretenses.

6. Weighing in Petitioner's favor, Petitioner previously held an insurance agent license for fifteen (15) years with no administrative actions against her. Petitioner's criminal convictions do not relate in any way to her actions in the course of her business or profession. There is no evidence that Petitioner has had any problems with drug use since 2009, and she appears not to have had any criminal issues since moving away from the town of her former husband. Petitioner also provided several character references from colleagues and customers who all attested to her good moral and professional character. Ms. Colie testified on behalf of the Petitioner that she wanted Petitioner to work for her in the insurance industry and solicited Petitioner as an employee.

7. On balance, the Hearing Officer finds that the balance of evidence is in favor of granting Petitioner's license. In so finding, the Hearing Officer notes that the Petitioner truthfully answered her questions regarding her criminal convictions on her license application. In addition, the Hearing Officer finds that Petitioner's

testimony during the hearing and her explanation of the events that led to her convictions in 2008 and 2012 are compelling. The Hearing Officer notes that the following items weighed heavily in reaching this conclusion:

a. Prior to confronting her husband about his drug and alcohol use in 2007, Petitioner had never been charged with a crime other than a speeding ticket. In addition, once she physically got away from her ex-husband, Petitioner has not had any positive drug tests or any further criminal charges.

b. As support for her 1033 waiver application, Petitioner submitted letters of reference from nine different individuals, ranging from co-workers, to bosses, to clients. Each of these individuals attested to Petitioner's honesty, integrity and dependability.

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

ORDER

It is ordered that Petitioner's application for a waiver pursuant to 18 U.S. Code § 1033 shall be GRANTED. Further, it is ordered that the Agent Services Division denial of Petitioner's application for a resident agent license be REVERSED, and that such license SHALL BE ISSUED to her.

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, NC 27699-1201.

This the 4th day of May, 2018

[redacted]

A. John Hoomani, Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. Mail, return receipt requested, in a first-class postage prepaid envelope, and via State Courier, addressed as follows:

Rebecca E. Lem
Assistant Attorney General
N.C. Department of Justice – Insurance Section
P.O. Box 629
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Attorney for Respondent

Ms. Kelli Watson
326 Monlandil Drive
Wilmington, NC 28403

***Pro Se* Petitioner**

Certified Mail Tracking Number: 70170530000073198715

This the 4th day of May, 2018.

[redacted]
Mary Faulkner