STATE OF NORTH DAKOTA

INSURANCE COMMISSIONER

IN THE MATTER OF:	)	**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
Kylee Kingsley	)	
	)	**OAH File No. 20140184**

PROCEDURAL BACKGROUND

Kylee Kingsley ("Mr. Kingsley") submitted an application for a nonresident individual insurance producer license to the North Dakota Insurance Department ("Department") on April 22, 2014. The Department denied Mr. Kingsley's application on May 6, 2014. *See* Exhibit A. On May 27, 2014, the Department received a request dated May 21, 2014, from Mr. Kingsley for a hearing relating to his license denial. *See* Kylee Kingsley's May 21, 2014, letter. On May 28, 2014, the Department requested that an administrative law judge ("ALJ") be assigned to conduct an administrative hearing.

On May 29, 2014, the North Dakota Office of Administrative Hearings designated Administrative Law Judge Wade C. Mann to conduct these proceedings. A prehearing conference was held on June 2, 2014, and at that time a hearing date of June 20, 2014, was agreed upon by the parties. On June 3, 2014, the ALJ served a Notice of Hearing confirming the agreed upon hearing date of June 20, 2014, and the issue on appeal.

The hearing was held as scheduled on June 20, 2014, by telephone conference. The Department appeared through its attorney, Special Assistant Attorney General Johannes Palsgraaf. Special Assistant Attorney General Sara Behrens was in attendance but did not

participate. The Department called Kelvin Zimmer, Director of the Producer Licensing Division as a witness. Mr. Kingsley appeared without counsel. He provided testimony but called no other witnesses. The Department's Exhibits A through I were admitted into the record. Mr. Kingsley did not offer any documentary evidence. The record of the hearing was closed on June 20, 2014.

Having thoroughly considered the record, the undersigned ALJ makes the following recommended Findings of Fact, Conclusions of Law and Recommended Order for consideration of the Insurance Commissioner.

FINDINGS OF FACT

1. Mr. Kingsley applied for a nonresident individual insurance producer license in North Dakota on April 22, 2014. Exhibit A. On his application he answered yes in response to questions asking whether he had ever been convicted of a misdemeanor or a felony. Exhibit B.

2. Mr. Kingsley was convicted of the offense of Receiving Stolen Property in the State of Ohio on October 18, 1993. Exhibit C. At the time Mr. Kingsley was convicted, the offense of Receiving Stolen Property was a felony of the fourth degree in Ohio. Exhibit E.

3. In addressing the felony conviction for his application, Mr. Kingsley explained that he had a friend who would steal car stereos and needed someone to help him sell the stolen stereos. Mr. Kingsley stated that he helped his friend sell the stolen car stereos. Exhibit D.

4. In conjunction with his application, Mr. Kingsley submitted a statement relating to his May 5, 2002, conviction for reckless operation of a motor vehicle. Exhibit G. As part of his explanation he stated that "I fought this tooth and nail but lost my case in a backwards Podunk, good ole boy court." *Id.* Kelvin Zimmer, Director of the Producer Licensing Division for the Department ("Mr. Zimmer") testified that this statement demonstrated a lack of respect for the system and showed that Mr. Kingsley was not taking accountability for his actions.

Because of the perceived lack of respect for the system shown in the statement, the Department questioned whether Mr. Kingsley would respect the regulatory bodies and their rules in North Dakota.

5. Mr. Kingsley was arrested for assault on June 26, 2003, in the State of Ohio. Exhibit H. Mr. Kingsley submitted a statement of explanation with respect to this arrest as well and stated that the judge "threw out that charge on the condition that I completed an anger management class. I did and the case was closed with NO conviction." *Id.* Based upon his interpretation of the court documents relating to the arrest, Mr. Zimmer, on behalf of the Department, took exception to the statement of explanation provided by Mr. Kingsley with respect to why the arrest did not ultimately result in a conviction. The court records reflect that Mr. Kingsley was required to make a restitution payment and because of that the Department suggests that Mr. Kingsley's statement regarding the arrest and ultimate disposition was not entirely truthful or accurate.

6. Mr. Kingsley was arrested for assault on October 3, 2005, in the State of Ohio. Exhibit I. Mr. Kingsley again submitted a statement of explanation with respect to this arrest and stated that "[w]e appeared in court and the judge threw out the charges almost immediately. The case was dismissed and no conviction was rendered." *Id.* Mr. Zimmer, likewise took exception to this statement of explanation provided by Mr. Kingsley as well based on his interpretation of the court records relating to the incident that the Department obtained. The court records reflect that the victim of the assault requested that the charges be dismissed and Mr. Kingsley was required to pay court costs. *Id.* Again, the Department suggests that Mr. Kingsley's statement regarding the arrest and ultimate disposition was not entirely truthful or accurate when viewed in light of the court records.

7. Despite his past arrests and criminal convictions, Mr. Kingsley has been granted consent in the State of Ohio to participate in the business of insurance. Exhibit F. Mr. Kingsley sought written consent pursuant to 18 U.S.C. § 1033 from the State of Ohio Department of Insurance to participate in the business of insurance, notwithstanding his felony conviction of Receiving Stolen Property. *Id.* The State of Ohio granted Mr. Kingsley consent to participate in the business of insurance. *Id.* The waiver and consent to participate from the State of Ohio do not give Mr. Kingsley the right to participate in the business of insurance in the State of North Dakota.

8. Mr. Kingsley asserts that he has taken responsibility for his past actions. He claims to be rehabilitated and deserving of a nonresident individual insurance producer license. In his words, the eighteen year old boy who was convicted of the felony didn't deserve the license, but the 39 year old man does.

CONCLUSIONS OF LAW

1. A license to practice as an insurance producer in North Dakota is subject to the control and regulation of the state under the provisions of N.D.C.C. chapter 26.1-26 and any rules adopted by the Department pursuant to that chapter.

2. The Commissioner is statutorily responsible to license and regulate individual insurance producers under N.D.C.C. chapter 26.1-26 and may only issue a license if the statutory requirements set forth in this chapter are satisfied.

3. The primary purpose of the Department's licensing of insurance producers is to protect the public from incompetence and lack of integrity by ensuring that individuals and entities that sell, solicit, or negotiate insurance have met the requirements to do those activities.

The Department's role is to ensure consumer protection. *See* testimony of Kelvin Zimmer, Director, Producer Licensing Division.

4. In addition to the licensing requirements set forth in N.D.C.C. chapter 26.1-26, N.D.C.C. § 26.1-02.1-02.1(3)(a) provides that "[a] person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance." The business of insurance is defined as "the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or who are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf." N.D.C.C. § 26.1-02.1-01(1). By submitting an application for a nonresident individual insurance producer license, Mr. Kingsley is seeking to participate in the business of insurance in the State of North Dakota.

5. It is undisputed that in 1993, Mr. Kingsley was convicted of the offense of Receiving Stolen Property in the State of Ohio, a felony of the fourth degree. While N.D.C.C. chapter 26.1-02.1 doesn't provide an exclusive list of felonies that involve "dishonesty or a breach of trust," there is little doubt that the felony offense of Receiving Stolen Property falls within that classification. Mr. Kingsley has not contested the Department's position with respect to his felony offense and by his own admission, Mr. Kingsley was helping his friend sell stolen car stereos. In accordance with the express provisions of N.D.C.C. § 26.1-02.1-02.1(3)(a), Mr. Kingsley is precluded by North Dakota law from participating in the business of insurance.

6. The Department also denied Mr. Kingsley's application based on N.D.C.C. § 26.1-26-15 and N.D.C.C. § 26.1-26-42(5). However, the fact that Mr. Kingsley was convicted of a felony involving dishonesty or breach of trust, essentially renders the denial of his application based on N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(5) moot. N.D.C.C. § 26.1-26-15 requires that

an applicant for an insurance producer license "must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation." N.D.C.C. § 26.1-26-42(5) authorizes the Commissioner to refuse to issue an insurance producer license to any applicant if "[t]he applicant or licensee has been convicted of a felony or convicted of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to serve the public as an insurance producer, insurance consultant, or surplus lines insurance producer, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1." The Department offered testimony and submitted evidence to support denial of the application based on these statutory provisions and Mr. Kingsley offered testimony contending that he was sufficiently rehabilitated and now has the requisite competence and good character sufficient to permit the issuance of the license. N.D.C.C. § 26.1-26-15 permits a subjective analysis of an applicant's character and N.D.C.C. § 26.1-26-42(5) allows the Department to consider whether an applicant has been sufficiently rehabilitated after conviction before denying a license. However, N.D.C.C. § 26.1-02.1-02.1(3)(a) affords no such subjective analysis on the part of the Department. Without exception, this section precludes a person convicted of a felony involving dishonesty or breach of trust from participating in the business of insurance. There is no allowance for any mitigating factors or consideration of whether the applicant has been rehabilitated. Mr. Kingsley's entire testimony and argument at the hearing centered on the fact that in his opinion, he has taken responsibility for his past actions and is rehabilitated. He feels that it is inappropriate to base a denial of his application on a felony offense committed twenty-one years ago when he was an 18 year old kid. Unfortunately for Mr. Kingsley, even if the

Department were so inclined, N.D.C.C. § 26.1-02.1-02.1(3)(a) does not permit any such consideration.

7. As an applicant for a North Dakota nonresident individual insurance producer license, Mr. Kingsley has the burden of proof to show, by the greater weight of the evidence, that he meets the statutory requirements for licensure. *See Layon v. North Dakota State Bar Bd.,* 458 N.W.2d 501 (N.D. 1990). Mr. Kingsley failed in his burden to show that he meets the statutory requirements for licensure. The Department and Mr. Kingsley disagree on whether Mr. Kingsley has satisfied the character and reputation requirements relevant to N.D.C.C. § 26.1-26-15 and whether he has been sufficiently rehabilitated as described in N.D.C.C. § 26.1-26-42(5). However, as previously noted, these considerations are moot due to the fact that Mr. Kingsley was convicted of a felony involving dishonesty or breach of trust and is therefore prohibited from participating in the business of insurance in North Dakota in accordance with N.D.C.C. § 26.1-02.1-02.1(3)(a).

RECOMMENDED ORDER

The evidence of record has been considered and appraised. The facts, as established by the greater weight of the evidence, establish grounds for denying Kylee Kingsley's application for a North Dakota nonresident individual insurance producer license under applicable law.

The Administrative Law Judge recommends that Kylee Kingsley's application for a North Dakota nonresident individual insurance producer license be denied

Dated at Bismarck, North Dakota, this 8th day of July 2014.

State of North Dakota
Insurance Commissioner

By: _____

Wade C. Mann
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street, Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200