



**THE STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14  
CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny  
Commissioner

Alexander K. Feldvebel  
Deputy Commissioner

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

**In Re: Elizabeth W. Kelley**

**Docket No.: INS No. 08-028-EP**

**ORDER ON HEARING**

**I ADMININSTATIVE BACKGROUND.**

1. An Order to Show Cause and Notice of Hearing was sent to Elizabeth W. Kelley ("Respondent") to give her the opportunity to show cause why her producer license should not be revoked pursuant to Revised Statutes Annotated ("RSA") 402-J:12 I. The Hearing was held on June 4, 2008 at the offices of the New Hampshire Insurance Department ("Department") in Concord, New Hampshire.
2. The Respondent entered a plea of guilty to the charge of Theft by Unauthorized Taking on April 8, 2008.
3. The Hearing was held pursuant to RSA 541-A: 30 et seq., and New Hampshire Code of Administrative Rules Part Ins. 200.
4. The Department's grounds for suspension, revocation of licensure or administrative penalty was based upon RSA 402-J: 12, I, (f) and (h) which state that a license can be suspended, revoked or an administrative penalty imposed on a producer upon the following grounds:
  - (f) Having been convicted of a felony.
  - (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

**II. FINDINGS OF FACT.**

1. Respondent testified, and it was confirmed by the Staff Advocate for the Department, that the Order to Show Cause and Notice of Hearing was initially sent to an incorrect

## II. CONCLUSIONS OF LAW.

1. Licensure by a regulatory authority in which the licensee will deal with the public is a matter of significance importance and the licensing decision is never to be taken lightly. Indeed, this responsibility is even more important when a person requests that a license not be suspended or revoked or an administrative penalty imposed after being convicted of a felony and a felony grounded in trustworthiness and honesty. Allowing a person to continue to be licensed after a felony conviction confers an aura of trustworthiness, professionalism and competency upon the recipient of that license by that governmental regulatory authority. The public has more than a reasonable expectation that a licensed producer has undergone a thorough evaluation of his or her background and character and that he or she is thus considered fit to serve the insurance public in the capacity of a licensed producer or to continue to serve in that capacity.

2. The controlling statute under which the Department issued the Order to Show Cause is RSA 402-J: 12, I, (f) and (h) which is discretionary in that a felony conviction is not an absolute bar to continued licensure. The statute provides, in pertinent part, "The commissioner **may** ... place on probation, suspend or revoke ...an insurance producer's license, or may levy a penalty..." for, "(f) Having been convicted of a felony" or "(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere." (emphasis supplied) The Department sought revocation, suspension or the assessment of an administrative fine because of Respondent's conviction. (Departments Exhibits B and C) Thus, the licensed producer who has been convicted of a felony must then sufficiently demonstrate that irrespective of the conviction the applicant is nevertheless a person of integrity and character worthy of being allowed to continue in a licensed status.

3. During the time in which money was taken from IW of CNH the Respondent was working at an insurance agency. The monies taken were not taken from the agency or the insurance buying public but rather from an organization of which the Respondent was Treasurer. While theft of money from any source can never be tolerated it is noted that neither the agency nor the insurance consuming public was affected. It is also noted that the evidence of record establishes several mitigating factors as follows: (1) The Respondent cooperated with the authorities and did not attempt to hide her actions, (2) She readily admitted her guilt (Respondent Exhibit #1), (3) She contacted the Department to inquire about what her apprehension would mean regarding her license, (4) She called the Department to inform that the Order to Show Cause was sent to the wrong location and then came to the Department to pick up the Order to Show Cause, (5) She is remorseful for her actions, and, (6) The IW of CNH spoke on her behalf at her trial resulting in her sentence to 10 days confinement and restitution of the monies taken from IW of CNH.

4. Conversely, the evidence of record also shows that even after paying back \$600 on May 23, 2007 – the first of only two repayments, Respondent nevertheless continued to unlawfully write checks to herself by again doing so in June and July 2007 each time for

address but she called the Department to tell them of the incorrect address. Instead of having the Order to Show Cause resent she came into the Department and picked it up.

2. Respondent at various times from August 2006 through July 2007 wrote checks to herself from the account of the Insurance Women of Central New Hampshire ("IW of CNH") of which she was Treasurer. She was Treasurer of this organization from 1993 through 1995 and again from 2003 through 2007. She testified that she was apprehended rather than telling IW of CNH of her actions. She related that upon being apprehended she felt relief. Beginning on August 7, 2006 Respondent at various times thereafter wrote checks to herself from the account of the IW of CNH of which she was the Treasurer. At the time her apprehension in October 2007 she had written checks to herself in the amount of \$3,185.

3. Respondent testified that she fully cooperated with the Sheriff's Department as it investigated the theft, readily admitted to her taking the money and contacted the Department to inquire as to what this situation would mean in terms of her producers license. It is also noted that when the Order to Show Cause and Notice of Hearing was sent to the wrong address she contacted the Department and came in and picked up the Order.

4. The Return From Superior Court showed a sentence of 12 months in the House of Corrections with all by 10 days suspended. She further related that during the trial the President of IW of CNH spoke to the trial judge on her behalf arguing that the IW of CNH did not feel any incarceration was necessary. She testified that this was significant in the Judge imposing a sentence of 12 months in the House of Corrections with all by 10 days suspended. This is supported by Respondent's Exhibit #3. She testified that she actually only spent 5 days in the House of Corrections.

5. Respondent testified that she started in the insurance business in 1989. She also testified that she only had herself to blame for what she did, accepts full responsibility for her actions and is very remorseful. She further testified that when the money was taken she was under a tremendous amount of stress from a personal situation she was in at the time and that the monies she took were paid to this other person and it was her belief that had she not done so then physical harm could result. She testified that she has lost her apartment, car, job and family as a result of her apprehension and conviction.

6. Respondent repaid IW of CNH \$600 on May 22, 2007 some 10 months after taking the first monies. She again wrote checks to herself from the IW of CNH account for \$100 in June and July 2007. She repaid the IW of CNH \$100 on September 11, 2007 as she had the extra money on hand at the time.

\$100. Respondent also made a repayment of \$100 on September 11, 2007 before she was apprehended for the theft of funds because she had extra funds available. She also testified that upon being caught for her unlawful activity she felt relief. She testified that her actions were driven in part by being in a stressful personal relationship with another. The evidence shows that but for being caught unlawfully withdrawing checks from IW of CNH in October 2007 she would have continued to do so as she testified that she was apprehended rather than on her own telling IW of CNH of her actions.

**ORDER.**

Therefore, as Hearing Officer, considering all the evidence of record in this Hearing, I find that Respondent's actions resulting in a conviction of Theft by Unauthorized Taking evidenced untrustworthiness and breach of trust and that it is hereby ORDERED that

Respondent's producers license is hereby suspended for a period of 120 days to commence on the date this Order is signed.

**ADDENDUM.**

During the Hearing the Respondent was made aware of the requirements of US Title 18 section 1033 regarding engaging in the insurance business after conviction of a felony involving dishonesty or a breach of trust. Respondent testified she understood this section of the US Code and that due to her conviction she would need to seek a waiver under the code to again work in the insurance business.

July 29, 2008  
Date

Donald L. Belanger  
Donald L. Belanger, Hearing Officer