



**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: Dereck G. Soderstrom

Docket No.: INS No. 08-037-EP

ORDER ON HEARING

I. ADMINISTRATIVE BACKGROUND.

Mr. Dereck G. Soderstrom ("Petitioner") submitted a non-resident producer license application to the Insurance Department ("Department") on May 16, 2008. In the application the Petitioner stated that he had been previously convicted of a crime. The Petitioner also submitted additional documents with the application for licensure that showed he had been convicted of a felony and several misdemeanors in Texas.

The Department denied his application for licensure on May 27, 2008. The denial of licensure was based upon RSA 402-J:12, I(f) which provides,

I. The commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, or may levy a penalty in accordance with RSA 400-A:15, III or any combination of actions for any one or more of the following causes:

(f) Having been convicted of a felony.

Petitioner was informed in the denial letter of his right to request a hearing to review the denial under RSA 400-A:17. Petitioner filed a written request for a hearing on June 4, 2008. This request for hearing was filed within 30 days after the Petitioner received notice of the denial of licensure as required.

The Petitioner in his June 4, 2008 letter requested that the Hearing be conducted by telephone call as he was in Texas. The Hearing Officer in an e-mail dated July 8, 2008 granted this request. This was sent to Mr. Talley, Staff Advocate for the Department, and then sent to the Petitioner.

A Hearing into this matter was held on July 17, 2008 at the Department at 21 South Fruit Street, Suite 14, Concord, New Hampshire. Petitioner participated by telephone call from Texas.

II. FINDINGS OF FACT.

In 1988, at age 17, the Petitioner took another's automobile without permission for a joy ride. He was given probation. In 1990 he was convicted of selling drugs to an undercover police officer and sentenced to nine (9) years confinement. He was placed on probation after serving one (1) year of the sentence. In 1994 he was convicted of theft of CDs from a store in excess of \$20.00 but less than \$500.00. He was placed on probation for this conviction. In 1997, at age 26, knowing he had violated the requirements of his probation for theft of the CDs and that a warrant was outstanding for him, he was stopped by the police but attempted to evade being arrested by running to his house and locking himself inside. He was apprehended and arrested for evading arrest. His probation was revoked and he served 10 months confinement and then released on probation once again. His probation officer informed him that if he violated any of the terms and conditions of his current probation it would be revoked and he would then serve eight (8) years confinement.

Petitioner was forthcoming about his criminal conviction and did not attempt to hide them in the application process. Petitioner testified that the several convictions were the result of committing crimes while under the influence of either drugs or alcohol. He further testified that he has not used drugs or alcohol since 1997, and has been married for five years and has three-year old and nine-year old daughters. He testified that in 1997 while on probation he disavowed alcohol, attended AA two times a week and since being released from probation, on his own volition and without further counseling, continued to refrain from any use of alcohol and drugs and has not used drugs of alcohol since.

Petitioner has held several jobs since completing probation that gave him access to customer credit information as well as money. He testified he never violated such trust and never considered doing so. He testified he related this to demonstrate his current good character and trustworthiness. He further augmented this contention during his testimony and by letter regarding his employment with ARMS Insurance in which he had a key to the office which was in a house. He holds producer licenses in approximately 33 states so far with only New Hampshire and Indiana denying licensure. He has appealed the Indiana denial as well.

Mr. Ian Zimmerman is a Director of Sales for Travelers Insurance Company and Petitioner's immediate supervisor. He testified that there have been no issues with Petitioner, he has always been up front about his past, he conducts himself in a professional manner, that Petitioner made it through company training while others did not, he is doing very well in his sales capacity, and that the company fully vetted

Petitioner and his past. He further testified that Petitioner had passed a drug test at point of hiring.

Petitioner testified that he is definitely a different person now, has a different outlook on life, is focused on his family and wants to do the best his can in his employment with Travelers.

III. CONCLUSIONS OF LAW.

The Petitioner knowingly waived the right to be present in Concord, NH for the Hearing, that he still desired to participate in the Hearing by telephone call, that he understood that the Hearing was being recorded and consented thereto, and that he was prepared to participate in the scheduled Hearing at that time.

Licensure by a regulatory authority in which the licensee will deal with the public is a matter of significant importance and the licensing decision is not to be taken lightly. Granting a license confers an aura of honesty and trustworthiness upon the recipient of the license by that governmental regulatory authority. The public has a reasonable expectation that a licensed producer, prior to licensure, has undergone an evaluation of his or her character and propensity for honesty and trustworthiness. Hence, the licensing application process includes, among other things, a probing of an applicant's prior criminal activity.

The controlling statute under which the Department denied Petitioner's request for licensure – RSA 402-J:12, I, is discretionary in that having been convicted of a felony(s) is not an absolute bar to being licensed. The statute provides, "The commissioner **may** ... refuse to issue ...an insurance producer's license, ..." for "(f) Having been convicted of a felony." (Emphasis supplied) Thus, an applicant for licensure that has been convicted of a felony(s) must show that irrespective of the conviction(s) that person is now a person of integrity and character worthy of being granted a license. The passage of time since conviction and how the individual has conducted his or her life since then is very relevant to the licensure decision.

Petitioner was convicted of four crimes, one in 1988 at 17 years old, one in 1990, one in 1994 and the last in 1997 at age 26. The convictions were for unauthorized use of an automobile, sale of drugs, theft of CDs valued at more than \$20 but less than \$500 and evading arrest. He testified all were committed while under the influence of alcohol or drugs. None of the convictions involved physical harm to another individual. The last conviction was 11 years ago.

Petitioner is now 37 years old. Since completing probation in 1998 he has held several jobs in which he was entrusted with customer credit information and money. He is married with two daughters. Importantly, he testified that he has not used drugs or alcohol since 1997, and has turned his life around and become a responsible member of society.

During the last 11 years there is no evidence or indication of any regressions to past behavior by Petitioner. The evidence of record supports Petitioner's testimony that he has in fact turned his life around and become a responsible member of society as evidenced by his employment history, marriage and fatherhood and has refrained from the use of alcohol or drugs. The only question remaining is whether or not such facts and testimony of record show that Petitioner is now of sufficient character and trustworthiness to be granted a license and pursue a career in the insurance industry.

The Petitioner was forthcoming in response to questions by the Hearing Officer, did not try in any manner to trivialize or minimize his prior actions, took full responsibility for his actions and has demonstrated that he has become a responsible member of society. His employer supported him during the hearing. For all the above reasons I find that the Petitioner has, over the past 11 years, demonstrated sufficient character and fitness to be licensed in New Hampshire.

ORDER.

THEREFORE, as Hearing Officer, I find that the evidence of record in this Hearing is sufficient to demonstrate that the Petitioner is fit for licensure and it is hereby ORDERED that;

1. The Department's denial of licensure by letter dated May 28, 2008 is hereby REVERSED, and,
2. The Department shall immediately issue the Petitioner the non-resident producer license as requested in his application.

August 28, 2008
Date

Donald L. Belanger
Donald L. Belanger, Hearing Officer