



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Philip J. Korkosz

Docket No.: Ins. No. 09-056-EP

ORDER ON HEARING

I. ADMINISTRATIVE BACKGROUND.

Mr. Philip J. Korkosz ("Petitioner") applied to the New Hampshire Insurance Department ("Department") for a Life and Accident & Health insurance producer's license on August 12, 2009. The application, at Background Question 2, asked if he or any business in which he was an owner, partner, officer or director had been subject to any administrative proceeding regarding any professional or occupational license. He answered truthfully in the affirmative. Background Question 4 asked if he been notified of any delinquent tax obligation that is not the subject of a repayment agreement. Again, Petitioner answered truthfully in the affirmative. The Department asked the Petitioner for additional information regarding his affirmative answers to Background Questions 2 and 4 and the Petitioner responded by letter dated August 12, 2009 which was acknowledged by the Department on August 13, 2009. The Department requested further information regarding the Maine, New Hampshire and Vermont Real Estate Boards administrative decisions in its August 13, 2009 letter to the Petitioner. Petitioner complied with this request and provided additional documentation.

On August 24, 2009 the Department sent Petitioner a letter informing him that his application for licensure was denied pursuant to RSA 402-J:12, I, (h). The main basis for this denial were the Findings and Order of the Maine Real Estate Board dated March 13, 2007 as well as the decision of the New Hampshire Real Estate Board.. This letter was sent Certified Mail Return Receipt Requested and was signed for by the Petitioner on August 26, 2009. The Petitioner requested a hearing on his licensure denial on September 9, 2009. This was within the allotted 30 days from receipt of the letter denying his application for licensure. The Notice of Hearing, dated September 29, 2009, again informed the Petitioner, among other things, that the request for a license was denied pursuant to RSA 402-J:12, I, (h) due to the actions of the Maine and New Hampshire Real Estate Boards, that a hearing was scheduled for October, 6, 2009 at the Department offices, and that the Petitioner has the burden of proof at the hearing by a

preponderance of the evidence. The Notice of Hearing was signed by the Insurance Commissioner, Mr. Roger Sevigny.

Petitioner requested that the hearing time be changed from 10:00am to 10:30am by email dated 10-2-09. This request was granted by email dated 10-2-09. The Hearing was held on October 6, 2009 at the Department offices, 21 South Fruit Street, Suite 14, Concord, New Hampshire.

II. FINDINGS OF FACT.

The documentary and testimonial evidence of record establishes the following pertinent facts which form the basis for this Order On Hearing.

1. The Petitioner requested a license for Life and Accident & Health insurance. This request was denied by the Department and the Petitioner requested a hearing on this denial. The denial was based on the Maine, New Hampshire and Vermont Real Estate Boards administrative actions revoking Petitioner's real estate appraisers licenses.

2. The Maine Real Estate Board conducted an administrative hearing into Petitioner's appraisal of several Maine properties which culminated in its revocation of Petitioner's real estate appraisers license. The New Hampshire and Vermont Real Estate Boards revoked Petitioner's real estate appraisers licenses based upon the Maine Real Estate Board's findings and order.

3. The Maine Real Estate Board conducted its hearing on February 13, 2007 and issued its Order on March 13, 2007 revoking Petitioner's appraisers license. The Maine Real Estate Board in its Order at Section III, STATUTES AND RULES/CONCLUSIONS OF LAW identified 13 violations of state statutes and administrative rules.

III. CONCLUSIONS OF LAW.

RSA 402-J:12, I, (h) provides that:

"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:

...

(h)...demonstrating incompetence, untrustworthiness...in the conduct of business in this state or elsewhere."

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 upon the recipient an aura of, among other things, honesty and trustworthiness by that governmental authority. The public has a more than

reasonable expectation that a licensed producer, prior to licensure, has undergone an evaluation by the agency issuing the license of his or her character and propensity for, among other things, competency, honesty and trustworthiness as evidenced by past and present actions. Hence, the licensing application includes, among other things, a probing of an applicant's prior history with any administrative agency that grants a professional or occupational license.

A persons propensity for honesty and trustworthiness are some of the determinations that need to be made in the decision making process of deciding whether to grant an insurance license to an individual regardless of the line(s) of business for which licensure is requested. The initial inquiry into whether or not an individual possesses these qualities is the completion of the application for licensure. Various questions contained therein provide insight into the applicant's background and prior history to include, among other things, administrative boards who have granted a professional or occupational license. Petitioner answered truthfully to questions 2 and 4 of the Background Questions section of the application when he answered, – he had been involved in an administrative proceeding regarding a professional or occupational license, and, he had been notified about a delinquent tax obligation. The evidence of record establishes that the denial of licensure was primarily based on the affirmative answer to question 2.

Petitioner's prior involvement in an administrative proceeding as reported on his application for licensure was the Real Estate Board actions of Maine, New Hampshire and Vermont. Of particular significance were the findings of the Maine Department of Professional and Financial Regulation, Office of Licensing & Registration ("Maine Board") as this hearing resulted in a lengthy list of specifically described statutory and rule violations. The evidence of record establishes that the New Hampshire and Vermont Real Estate Boards also revoked Petitioner's real estate appraiser's license but as a result of the findings and order of the Maine Board. All three (3) actions form the basis for the Departments decision to deny Petitioner an insurance producers license.

I FIND that the findings and Orders of the Maine, New Hampshire and Vermont Real Estate Boards are not subject to review in this Hearing. It is not within the jurisdiction of this Hearing to re-litigate either the subject matter of those hearings or the procedural processes under which they were conducted as these would be issues for appeal through the administrative process as governed by the applicable state laws and rules in each jurisdiction.

The evidence of record establishes that the Maine Board in its decision and Order considered the testimony of witnesses and the introduction of evidence. The Maine Board's Order at Section III, STATUTES AND RULES/CONCLUSIONS OF LAW identified 13 specific violations of state statutes and administrative rules. I FIND that the nature of each violation listed is relevant to the Department's decision making process when determining whether or not Petitioner should be granted a producer's license in this state.

The Petitioner has the burden of proof, by a preponderance of the evidence, to demonstrate that the decision of the Department in refusing to issue him a producer's license should be reversed. Ins 204.05, (a), (c), (e). Towards that end, Petitioner presented testimony from four (4) witnesses as well as his own testimony. All testimony was directed towards Petitioner's good character, competency and trustworthiness. In summary, the witnesses based their testimony on observations and interaction with the Petitioner over a significant number of years down to a single appraisal transaction involving one of the witnesses and the Petitioner. Three (3) of the four (4) witnesses gave testimony, in part, directly relating to Petitioner's conduct in performing property appraisals. All four (4) witnesses testified that based on their interaction with and observations of Petitioner that he was of good character.

The Maine Board Order at Section III, STATUTES AND RULES/CONCLUSIONS OF LAW lists and describes various findings detailing the exact nature of Petitioner's non compliance with several statutes and rules. These findings report unprofessional conduct including but not limited to findings of dishonesty, misrepresentation, negligence, fraud, and, lack of due diligence, impartially, and objectivity in the preparing appraisals upon which others will loan money. The purpose of the appraisals prepared by the Petitioner were to establish the value of property for the purpose of making a loan. The Petitioner's function was to appraise the property, after being given an order to do so, rather than by soliciting a property owner to either buy or refinance a property. The party most affected by Petitioner's actions or lack thereof as found by the Maine Board would be the entity lending the money for the mortgaged property rather than the property owner. It was within this context that the various violations of statutes and rules were found to occur. This is almost completely the reverse of what happens in the solicitation and sale of insurance by a producer since in the insurance context there is more often than not a direct solicitation of business from the individual who will rely upon the representations of the insurance producer when making the decision to buy or not by insurance, and, it will be the individual insurance consumer who will be harmed if the solicitation and product offered for sale is not presented honestly or is not appropriate for that person. This reliance is grounded upon the propensity of the producer for being honest and competent in the presentation and sale of an insurance product and this is what the licensing process tries to determine prior to licensure.

There is really little difference in the requirements for appraisal and insurance licensure in that both require, among other things, honesty, competency and trustworthiness. Both have ethical standards of conduct as well. The practical difference is that with insurance licensure these traits or lack thereof will have direct impact upon the decision making process of the insurance consumer. Thus, the findings of the Maine Board, in particular, have relevance to the decision of the Department to deny Petitioner's producers license since these findings go to the very heart of the licensing determination.

As a licensed producer Petitioner would in all probability conduct the sale of insurance in the consumer's home or office in a one on one situation. A producer's impact upon the consumer is then direct, immediate and not subject to oversight at the

point of sale. Thus, beforehand, the producer must be found by the licensing authority to be honest and trustworthy so that the solicitation and sale of insurance products be for the benefit of the consumer – the product being suitable to the needs of the consumer, and not solely or almost exclusively for the monetary benefit of the producer. The findings of the Maine Board are thus troubling in that they find that in the context of several appraisals they were done, in part, just for the monetary benefit of the Petitioner to the exclusions of all others. This mind set has no place in the solicitation and sale of insurance products especially when the consumer will have to place great faith in the producer's honesty and trustworthiness that the product being offered for sale is suitable to that consumer and is not being offered merely to complete a sale. I FIND that the testimony of Petitioner and his witnesses, while both favorable and commendable, does not establish by a preponderance of the evidence that the Department's decision to refuse licensure should be reversed.

Petitioner entered into the record Exhibit A1, Proposed Findings of Fact & Rulings of Law. It was admitted for the sole purpose of requesting the Hearing Officer to review and rule on same. It was not admitted into the record as establishing any facts contained therein. There is only one (1) finding of fact that will be addressed and that is, "1. That it was not appropriate for the NH Insurance Department to solely rely on the Maine and New Hampshire real estate appraiser cases." I FIND that the Maine and New Hampshire Real Estate Board findings and orders relate directly to the Petitioner's character and fitness for insurance licensure, as explained hereinbefore, and it was entirely appropriate for the Department to rely upon those Board findings and orders in deciding to deny the Petitioner a producer license. I do not rule on Petitioner's other proposed findings of fact and ruling of law because there is no jurisdiction to do so as they would be an attempt to re-litigate within this Hearing the administrative process, subject matter and findings of another administrative board in Maine and New Hampshire.

ORDER.

Therefore, as Hearing Officer, I find that Petitioner did not, by a preponderance of the evidence of record, establish that the decision of the Department to deny him a producers license should be reversed. The decision of the Department to deny Petitioner a producers license is affirmed.

December 24, 2009

Date

Donald L. Belanger

Donald L. Belanger, Hearing Officer