



**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**

ORDER ON HEARING

In The Matter of:
James C. Smith

Docket No.
Ins No: 08-015-EP

I. ADMINISTRATIVE BACKGROUND.

1. On Tuesday, April 15, 2008 at 10 am a Hearing was held at the New Hampshire Insurance Department, ("Department") pursuant to an Order to Show Cause and Notice of Hearing dated March 26, 2008, signed by Commissioner Roger Sevigny. This was sent to Mr. James C. Smith, ("Petitioner") by certified mail return receipt requested. Mr. John Talley appeared for the Department as Staff Advocate.
2. The Hearing was held pursuant to New Hampshire Revised Statutes Annotated ("RSA") 400-A: 14, 400-A: 18, RSA 541-A: 30 et seq., and New Hampshire Code of Administrative Rules Part Ins. 200.
3. The Petitioner submitted a non-resident insurance producer license application to the Department on January 25, 2008. In the application the Petitioner stated that he had previously been convicted of four (4) felonies in Oregon. The Department denied Petitioner's request for a non-resident producer's license by letter dated February 12, 2008. Petitioner filed a written request for a hearing on the denial of licensure on February 26, 2008. The Hearing was held on April 15, 2008.
4. Petitioner was given the opportunity to appeal the Department's denial of licensure. The Department's denial was based upon RSA 402-J: 12, I, (f) which states that licensure can be denied on the following ground:

(f) Having been convicted of a felony.

5. The Hearing was conducted by telephone conference call between the Staff Advocate and Hearing Officer in the Department's offices in Concord, New Hampshire and Petitioner at his home in Oregon.

6. During the Hearing the Petitioner was asked to provide pictures of his tattoos that he was trying to remove or cover up. He assented to this request and did so. Petitioner was also asked to set up a conference call with Ms. Judith Cloo, his supervisor at Nationwide Sales Solutions, to obtain her testimony as to, among other things, Petitioner's appearance, work ethic, cooperation, interaction with others and prospects for his future with the company.

7. The Hearing was suspended on April 15, 2008 to obtain the testimony of his supervisor Ms. Cloo. The Hearing was reconvened on May 2, 2008 at 2:00 pm at which time Ms. Cloo testified on behalf of Petitioner.

II. FINDINGS OF FACT.

1. Petitioner was informed that he has a right to appear in person or by representative here at the Department. Petitioner waived this right. Petitioner was asked if he wanted a continuance given his assertion that his wife just signed for the Department's letter containing the Order to Show Cause and Notice of Hearing on April 14, 2008 that is one day before the Hearing took place. Petitioner stated that he was ready to proceed and that he waived a request for a continuance. Petitioner was informed that the Hearing is being recorded. Petitioner stated he understood it was being recorded. The Hearing was conducted by telephone conference call between the Department and the Petitioner at his home in Portland, Oregon. Petitioner consented to this arrangement. Petitioner was asked and he confirmed that he was alone at his home and that no one else was in the room with him.

2. The incident leading up to Petitioner's conviction for several felonies was on October 20, 1995. According to Petitioner's statement of events on this day the following transpired. Four young men were engaged in an argument with the Petitioner and his friend. This was an incident of several gang members (4) in an argument with another gang (Petitioner and his friend). As things escalated, Petitioner's friend pulled a gun and shots were fired. His friend shot two of the other gang members. Petitioner testified that although he had a gun he did not fire a shot in this incident. He testified that this incident is commonly referred to as "gang banging." Petitioner was 19 years old at the time and a gang member.

3. Petitioner testified that he pled to the attempted murder charge since testifying against another gang member, his co-defendant, was not a viable option. Petitioner also testified that he pled No Contest to the Attempted Murder charge because he could not prove he did not commit the crime without "pointing the finger" at another gang member who was still at large at the time. He further testified that he made this decision at the urging of his family and his attorney. On February 9, 1996 he pled to several felonies as follows:

Attempted Murder With a Firearm	No Contest
Unlawful Use of a Weapon	Guilty
Possession of a Firearm in a Public Building	Guilty
Attempted Assault in the First Degree with a Firearm	Guilty

He was sentenced to 7 ½ years for all charges. He testified that he obtained an early release from confinement after his successful qualification for and completion of a Boot Camp program called Summit. Since his release from confinement he testified that the only incidents he has had with the police is one ticket for speeding and one for a tail light out.

4. Since his release he has held several sales jobs. He testified he left each employment as there was no real room for advancement. He began employment with Nationwide Sales Solutions an agency arm within the Nationwide Insurance Companies. He testified that prior to even completing an employment application with the company he fully informed the company of his prior criminal background. Regardless of that, he was told to submit an application for employment and was hired. This was approximately September 2007. After training, on or about March 2008, he began selling insurance over the phone and sold 22 policies in two weeks. He has increased his salary by working a differential shift for the agency.

5. Petitioner testified that he has left the gang environment and is now married and has two children. He further testified that he has taken steps to either remove his gang tattoos or have them covered over or altered. The removal process is costly at approximately \$1,000 per removal so he has engaged in the process of having them covered over/altered to try and make them unrecognizable as a gang sign.

6. Petitioner testified that he holds a resident producer license in Oregon and non-resident producer licenses in approximately 34-35 other states. As of the hearing date only Kansas and New Hampshire had refused to issue him a license. He is appealing the Kansas decision to deny licensure just as he has done with New Hampshire's denial of licensure.

7. His supervisor, Ms. Cloo, of Nationwide Sales Solutions testified on his behalf. Her testimony can be summarized as extremely positive, supportive and enthusiastic of Petitioner. In particular she testified that she has had a close working relationship with him and has gotten to know him personally, over several months, within a business setting. He has always been cooperative and has brought new ideas with him and shares these freely. He always evidences a positive attitude and is a valuable team member and contributor. During his training with the company he readily brought up his background and did not attempt to hide it from anyone. She relates that he is the best in the particular class group to which he belongs. He is always on time and maintains a neat and professional appearance. He is outselling his peers and she is impressed with his insurance counseling skills as well. Based upon her interaction with him over many months, she also testified that she never would have suspected his background was what

it was but for him being up front with the facts and circumstances of his life. She testified that given his demonstrated skills and training these should lead him on a management path within the company.

8. Petitioner testified that he hit a ceiling with his other jobs and that advancement was really not available. He testified he finds work in the insurance industry rewarding and interesting. He likes being currently judged by his actions and not his prior circumstances. He states he is serious and passionate about his insurance career and that he cannot keep starting over and that working in this industry is indeed his chosen career field. Before employment with the company he researched the company and this is where he wants to work.

III. 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 the person requesting licensure has been convicted of several felonies. Granting a producer license confers an aura of trustworthiness, professionalism and competency upon the recipient of a 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.

2. The controlling statute under which the Department denied Petitioner's request for licensure, RSA 402-J: 12, I, is discretionary in that a felony conviction(s) is not an absolute bar to being licensed. The statute provides, in pertinent part, "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 whose application has been denied due to a felony conviction(s) must sufficiently demonstrate that irrespective of the conviction(s) the applicant is nevertheless a person of integrity and character worthy of being granted a license.

3. The Petitioner timely requested the Hearing to appeal the decision of the Department to deny him a non-resident producers license. He was properly served with notice of the Hearing and was afforded the opportunity to present testimony and evidence to contest the decision of the Department in denying him licensure. He waived his right to be present here at the Department in Concord, New Hampshire or for a continuance to the Hearing given the lateness in signing for and picking up the Order to Show Cause and Notice of Hearing. He chose to participate in the Hearing by telephone conference call and understood that the Hearing was being recorded.

4. The Petitioner's testimony is the first step in determining his fitness to be licensed. However, testimony supported by corroborating evidence and/or other testimony is very relevant and especially helpful in determining that prior actions, upon which licensure

was denied, are relegated to a particular point in time, place and circumstances past and that current circumstances and life style have changed all evidencing that the individual is now a productive member of society and thus licensure should be granted.

5. Petitioner's testimony about turning his life around and finding an occupation he is committed to was persuasive but it became even more so when supported by the fact that he had/is taking steps to erase and/or alter his gang tattoos. Petitioner presented photographs to show that he had and is taking these steps to distance himself from the circumstances leading up to his several convictions 12 years ago. It is further noted that the gang tattoos are not placed so as to be visible to the public while wearing normal clothing commensurate with his current employment. The Petitioner is in a process of altering/removing these same tattoos, which supports his testimony by demonstrable evidence that his life and circumstances are changed from those existing 12 years ago and that he is motivated to succeed in the insurance industry.

6. Petitioner further testified that in seeking his current employment he was up front with the company about his past record even before he filled out an employment application. Nevertheless, the company hired him and trained him in the insurance business. He further related that during his several months of training he never tried to hide his past from others. He is currently married with two children. While licensed in his home state of Oregon, he is also licensed in 34 or 35 other states. Licensure in other states is not controlling upon licensure in New Hampshire but it is indicative of a positive character and life style change made by the Petitioner. These are all indicators of taking responsibility for past actions and moving along his life in a positive and productive way and away from past circumstances that caused his convictions in the first place.

7. Ms. Cloo's testimony was extremely supportive, positive and enthusiastic, and is based on several months of personal observation and contact with the Petitioner while employed by Nationwide Sales Solutions. According to her testimony related hereinbefore, Petitioner is, among other things, a valuable member of the company, has a positive attitude and work ethic, is professional, and interacts extremely well with others. She testified that given his demonstrated skills, positive attitude and work ethic, he should be able to pursue a management career path should he so desire. In summary, Ms. Cloo's testimony clearly supports and corroborates Petitioner's testimony that he has changed his life, the past was relegated to circumstances existing in 1995 and will not be repeated, and, as he testified, he is serious and passionate about his career and his family.

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 a producer license and it is hereby ORDERED that,

1. The Department's denial of licensure by letter dated February 12, 2008 is hereby REVERSED and,

2. The Department shall immediately issue Petitioner the non-resident license as requested in his application.

June 26, 2008
Date

Donald L. Belanger
Donald L. Belanger, Hearing Officer