

**IN RE:
TRACEY ANN NYE
Docket No. INS 00-3030**

)
)
)
)
)
)
)

**DECISION AND
ORDER**

Procedural History and Facts

Title 18 U.S.Code §1033, in relevant part, prohibits a person from being authorized to participate in the business of insurance if he or she has been convicted of a felony that involves dishonesty or false statement. That statute further allows a person whom has been convicted of a criminal felony involving dishonesty or a breach of trust to participate in the business of insurance if that person has the written consent of an insurance regulatory official. On September 11, 2000, Tracey Ann Nye, a resident of Rome, Maine, applied to the Superintendent of Insurance for written consent. A public hearing with respect to Ms. Nye's application for written consent was held on November 13, 2000. Superintendent of Insurance Alessandro Iuppa designated Thomas M. Record, Senior Staff Attorney as hearing officer. Ms. Nye received notice of and was present at the hearing.

Ms. Nye's application for written consent to engage in the business of insurance indicates that it was prepared in connection with her application for an insurance producer license in the State of Maine and that she is a current employee of the Shiretown Insurance Agency in Farmington. As Ms. Nye has met all qualifications for licensure other than the attainment of the written consent that she now seeks, issuance of a producer's license awaits the results of the current proceeding. It should be noted, however, that the prohibition on participation in the business of insurance contained in federal law is not limited to those occupational tasks for which occupational licensure is necessary, but rather encompasses all employment.

Information provided by Ms. Nye to the Bureau of Insurance indicates that she was found guilty of "breaking, entering and larceny in the nighttime" in violation of 17 M.R.S.A. §2103 by the Kennebec County Superior Court on August 21, 1975. As the maximum penalty available under law for that offense at the time was punishment by imprisonment for not more than 15 years and the crime of breaking, entering, and larceny in the nighttime is a crime involving dishonesty, there is not a question of the applicability of §1033 to Ms. Nye's situation.

Although the currently available public records do not describe the details of Ms. Nye's 1975 case, she acknowledges, as provided in her application for written consent, that she and a boyfriend broke into a camp while smelting and drinking during a snowstorm. The camp door was damaged and pots and pans were stolen. Ms. Nye was 20 years old at the time.

Uncontroverted evidence establishes that Ms. Nye received a 30 day imprisonment sentence, with all but one day suspended and unsupervised probation for a period of one year. She also paid \$450 restitution. Ms. Nye testified that she has had no further arrests or convictions since 1975. No evidence to the contrary has been produced. Bureau of Insurance staff provided information that a criminal background check of Ms. Nye indicated no further incidents.

Ms. Nye testified at hearing that she has had a stable work history since 1975. Most recently, she has been employed at the Shiretown Insurance Agency for four years. Scott Landry, the principal of that agency, provided two letters to the Bureau attesting to his opinion of her trustworthiness. He further provided a positive character reference on behalf of Ms. Nye as sworn testimony at the hearing. Mr. Landry testified that he has entrusted Ms. Nye with full access to his agency and its accounts and has full confidence in her trustworthiness.

Findings

The activity for which Ms. Nye was convicted occurred more than 25 years ago. No evidence was presented that suggests other than that Ms. Nye has been fully rehabilitated since that time. There is no evidence to suggest that her employment at the Shiretown Agency poses any risk or threat to insurance consumers or to insurers. While both the burden of going forward and the burden of persuasion for going forward with an application for written consent for otherwise prohibited persons to engage in insurance activities are on the applicant, Ms Nye has met those burdens, at least as they apply to her employment as an insurance producer or as an agency employee.

Conclusion and Order

Tracey Ann Nye is hereby granted consent by this Office to engage in insurance activities within the meaning of 18 United States Code §1033 to and only to the extent that those activities are those of an insurance producer or those of an employee of an insurance producer. In the event Ms. Nye wishes to engage in other insurance activities a further application for written consent will be required.

Notice of Appeal Rights

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. §236 and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before 40 days after the date appearing below.

November 14, 2000

Thomas M. Record
Senior Staff Attorney
Maine Bureau of Insurance
Designated Hearing Officer