

adopted Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994. These guidelines, which were adopted after extensive deliberations and opportunity for public input, recommend the states utilize uniform §1033 application procedures and suggest many practical guidelines for investigation and consideration of any waiver applications received. Not surprisingly, these guidelines are rooted in notions of public protection. The NAIC guidelines state that the following should be considered on a review of the merits¹ (parentheticals added):

(a) (whether or not) the applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers or the insurer; and

(b) (whether or not) the issuance of written consent to the applicant is consistent with the public interest, Federal and State law and any applicable court orders.

¹ Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994, National Association of Insurance Commissioner, March, 1998, pp. 12-13.

This standard is analogous to, but somewhat different, than either the "sufficiently rehabilitated to warrant the public trust" standard of 5 M.R.S.A. §5302 or the "dishonest, untrustworthy or source of injury or loss to the public" standard found in 24-A M.R.S.A. §1417. The former focuses on the individual. While the latter standards focus on public protection, they do so in the context of providing a standard for suspension or revocation of an existing insurance license, thus requiring consideration of past evidence, not future conduct. The NAIC guidelines appear to be an appropriate standard to be utilized in this instance. The burden of proof that the standard has been met is on Mr. Gauthier.

According to the record of this proceeding, Mr. Gauthier's 1981 burglary and theft convictions stem from an incident occurring in Randolph, Maine in which Mr. Gauthier and several companions entered a residence where no one was home without the knowledge or consent of the owner and drank Old Milwaukee beer from the refrigerator in the house. When police subsequently arrived, members of the group were found to be in possession of other personal property from the residence. The record indicates that Mr. Gauthier completed all terms of his criminal sentence without incident. Mr. Gauthier acknowledges having had an alcohol abuse problem in the past. Mr. Gauthier also expresses a significant amount of remorse for his past conduct which he attributes to his drinking problem. He has participated in Alcoholics Anonymous since 1985 and asserts in his application that he has not drunk alcohol since that time. A positive letter of reference from Arthur F. Jones, LSW, a retired alcohol and drug counselor and Mr. Gauthier's sponsor in Alcoholics Anonymous has been provided.

Several letters from past and prospective business associates in the insurance industry have also been provided in support of his application for a waiver.

No record of receipt of any consumer complaints against Mr. Gauthier or of any prior disciplinary action taken with respect to his previous insurance producer's license by the Bureau appears on the record of this proceeding. Mr. Gauthier has been licensed with the Office of Securities of the Maine Bureau of Banking since January 26, 2000 and has represented Investors

Capital Corporation. He has passed the NASD Series 6 and 7 examinations and the NASAA Series 63 examination.

Although Mr. Gauthier did disclose during his testimony that he had been convicted for Operating under the Influence in the 1970's, no record of any arrests or criminal convictions subsequent to the 1981 burglary and theft convictions have been placed on the record of this proceeding.

Findings

The activity for which Mr. Gauthier was convicted occurred more than 20 years ago. Evidence of successful rehabilitation was presented, including his successful completion of sentence, his participation in Alcoholics Anonymous and his successful career in the financial services industry in the late 1980's and early 1990's. No contradictory evidence was presented. There is no evidence to suggest that his employment as an insurance producer poses any risk or threat to insurance consumers or to insurers. While both the burden of going forward and the burden of persuasion with respect to an application for written consent for otherwise prohibited persons to engage in insurance activities are on the applicant, Mr. Gauthier has met those burdens.

Conclusion and Order

Robert M. Gauthier is granted consent by this Office to engage in insurance activities within the meaning of 18 United States Code §1033 as of April 9, 2002.

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.

April 9, 2002

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