

IN RE:
DANIEL DELCOURT
Docket No. INS 04-300

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) **DECISION AND**
) **ORDER**
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This proceeding requires consideration of the application of Daniel Delcourt, a resident of Auburn, Maine, for a waiver to participate in the business of insurance pursuant to 18 United States Code §1033. 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 breach of trust. That statute further allows a person who 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. Information provided by Mr. Delcourt to the Bureau of Insurance indicates that he was found guilty of ten counts of Class B Burglary, four counts of Class B Theft and three counts of Class C Theft in Androscoggin Superior Court in 1992. Mr. Delcourt's application for written consent to engage in the business of insurance indicates that he is a current employee of Bishop Adjustment Service, Inc. of Lewiston, Maine.

Mr. Delcourt testified he had been working for Bishop Adjustment Services as an appraiser since early 2001, first on a part-time and later on a full-time basis.¹ In connection with his application for an insurance adjuster's license, Mr. Delcourt disclosed his criminal history to Bureau of Insurance staff. He was advised by the Bureau staff of the prohibition on employment within the insurance industry provided for by Section 1033 and his need for a waiver. Mr. Delcourt then notified James Bishop, the principal of Bishop Adjustment, of his criminal background and his need for a waiver. Mr. Delcourt has been suspended from employment pending determination of this office in this proceeding. Mr. Bishop testified that, although he was "annoyed" to learn of Mr. Delcourt's criminal history, Mr. Delcourt has been a good worker. Mr. Bishop testified that Mr. Delcourt would be able to return to work should he be granted a waiver. Mr. Bishop testified that he had not inquired as to whether or not Mr. Delcourt had a criminal history at the time of hiring him.

A hearing in this matter was held on March 5, 2004. Mr. Delcourt attended, but was not represented by Counsel. Notice of hearing in this matter was issued on February 26, 2004. Fourteen days notice of hearing was waived by Mr. Delcourt and the hearing scheduled at a time mutually fixed by this office and Mr. Delcourt as permitted by 24-A M.R.S.A. §230(2).

Title 18 U.S.C. §1033 was enacted as part of the omnibus anti-crime bill titled the "Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322, H.R. 3355). Section 1033 contains no provision that expressly establishes a standard of review for insurance regulatory officials to apply in considering applications for waiver of the prohibition. Congress appears to have left that subject to the discretion of the state officials. Although several state laws address questions of standards for review of applicants for occupational and professional

licenses and for consideration of the presumed rehabilitation of criminals who apply for occupational and professional licenses that may provide useful analogies, none of those statutes are controlling in this case. Although Mr. Delcourt is seeking an adjuster's license, this hearing is not for the purpose of determining whether or not the license should be issued. He is seeking relief from a federal law that otherwise defines him to be totally and permanently disqualified from employment in the insurance industry in any capacity. The purpose of the hearing is to determine whether that relief should be granted.

Section 1033 waivers of prohibition on employment issued by any state insurance regulatory official allow individuals to be employed in any United States jurisdiction. Accordingly, state insurance commissioners acting through the National Association of Insurance Commissioners (NAIC) in March 1998 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 merits² (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.

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. Delcourt.

Information contained in Mr. Delcourt's application for a waiver leaves no question whatsoever that his conviction was for a felony that involves dishonesty or breach of trust. He has submitted copies of the grand jury indictment pursuant to which he was charged on December 18, 1991, with 10 counts of Class B burglary, 4 counts of Class C Theft and 3 counts of Class C Theft. Mr. Delcourt pled guilty and was found guilty of all charges. According to the indictment, these charges all relate to a series of home break-ins and thefts that occurred in Poland, Minot, Sabattus and Auburn, Maine during a 6 day period in September 1990.

Mr. Delcourt was sentenced in Superior Court, Androscoggin County, to five years imprisonment on each count, all concurrent, with all but one year suspended. Mr. Delcourt was also sentenced to four years probation following his imprisonment. He was also ordered to pay restitution of \$54,000 at the rate of \$100 per month. Evidence of record in the current proceeding

indicates that Mr. Delcourt served a one year sentence in the Maine Correctional Center in South Windham. Mr. Delcourt was released from probation on August 24, 1999 and was relieved of the obligation to make any further restitution upon making of a final payment in September, 1999. He had paid a total of \$11,930 in restitution.

In both his current application for an insurance adjuster's license and in testimony provided to a Hearing Officer in 1995 in connection with his application for an emergency medical technician's license, Mr. Delcourt attributed his criminal behavior to getting involved with the "wrong crowd" when he was 20 years old and his life was adrift. He has expressed remorse for his past behavior on several occasions of record. His application notes that he has "come to understand and regret the decisions I made at that time in my life". He now has a wife and two children.

Mr. Delcourt's employment history since his release from prison indicates an employment record in a variety of construction, carpentry and general laborer roles until his employment with Bishop Adjustment.

Additionally, Mr. Delcourt worked for a time as an emergency medical technician (EMT) with Lisbon Emergency Services. Although not controlling, his experience in securing an EMT license bears consideration in this matter. Mr. Delcourt was originally denied an EMT license due to his criminal history and an October 1994 review of the denial by the EMT board resulted in the original denial being upheld by a vote of 9-2. Mr. Delcourt appealed this denial to the Commissioner of the Department of Public Safety who caused a de novo fair hearing to be held in February 1995. James D. Bivins, Esq. was designated as the Fair Hearings Officer. Mr. Bivins Report and Recommendation to Public Safety Commissioner Skolfield provides an account of how EMT Board member Stephen Hayes testified that the Board's decision to deny Mr. Delcourt's EMT license application was due to his serious criminal record of felony convictions which at that time were of relatively recent origin. According to the Bivins Report, he also testified that "because EMTs enter peoples' homes to provide medical care, and are generally strangers to people in need, that a lot of faith and trust is placed in the EMTs by the public." Several witnesses on Mr. Delcourt's behalf presented substantial testimony regarding Mr. Delcourt's outstanding service to Lisbon Emergency Services. In considering the evidence before him, Attorney Bivins acknowledged the legitimacy of the concerns raised by the EMT Board, but noted that Mr. Delcourt appeared sincere and capable and was comfortable with his efforts to rehabilitate himself. Mr. Bivins noted that, although he would normally recommend licensure be denied until the successful completion of probation, that would be ludicrous in the instance as Mr. Delcourt had 27 years of restitution payments remaining at that time. He found that Mr. Delcourt had met his burden of proof in establishing that he was sufficiently rehabilitated to warrant the public trust and recommended licensure to Commissioner Skolfield on a probationary basis until such time as he is formally released from his probation on the criminal cases.

In contrast to the 1996 hearing before Attorney Bivins, no character witnesses, other than Mr. Bishop, testified on behalf of Mr. Delcourt in this proceeding. Twelve years have now passed since his convictions however, and there is no evidence of any further criminal conduct or other wrongdoing.

In light of the totality of these circumstances, I find that Mr. Delcourt has satisfactorily demonstrated that he is entitled to a waiver of the prohibition of employment in the insurance industry provided for in 18 U.S.C. §1033 to allow him to engage in the business of insurance.

Order

Pursuant to 18 U.S.C. §1033, (e)(2), Daniel A. Delcourt, 32 Flanders St., Auburn, Maine is hereby granted a waiver to engage in the business of insurance.

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 may be appealed 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.

March 11, 2004

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

1 Mr. Delcourt's written statement of Employment History notes his employment with Bishop Adjustment as beginning in Feb. 2002.

2 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.