

**IN RE:  
KATHERINE T. LORD  
Docket No. INS 07-600**

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) **DECISION AND**  
) **ORDER**  
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This proceeding requires consideration of the application of Katherine T. Lord, a resident of Chesterville, 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 Ms. Lord to the Bureau of Insurance indicates that on January 23, 2003, she was found guilty by the Androscoggin County Superior Court of Class C Negotiating a Worthless Instrument in violation of 17-A M.R.S.A. § 708(1), and Theft by Unauthorized Taking or Transfer in violation of 17-A M.R.S.A. § 353(1), which is also a Class C offense.

A hearing in this matter was held on May 3, 2007. Ms. Lord attended, but was not represented by Counsel. Notice of hearing in this matter was issued on April 12, 2007.

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.

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 merits<sup>1</sup> (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.

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 Ms. Lord.

Information contained in Ms. Lord's application for a waiver leaves no question that her convictions were for felonies that involve dishonesty or breach of trust. Ms. Lord has submitted a copy of the indictment pursuant to which she was charged on January 23, 2003, with one count of Class C Theft. Ms. Lord pled guilty to the charge. Ms. Lord further submitted a Criminal History Record from the Maine State Bureau of Identification that states that on January 23, 2003, she was also found guilty of the charge of Class C Negotiating a Worthless Instrument. Ms. Lord testified that at the time of her indictments, she had been hospitalized for depression and placed on numerous prescription medications that impaired her judgment. Ms. Lord maintained that during this period, she wrote insufficient funds checks to several retail vendors. According to the Criminal History Record, both charges relate to activity occurring over a 10-day period in March of 2002.

Ms. Lord was sentenced to two years imprisonment, with two years suspended, and three years probation. She also was ordered to pay restitution. All evidence of record in the current proceeding indicates that Ms. Lord successfully completed all conditions of her sentence and made the requisite restitution.

Ms. Lord also acknowledged, and the Criminal History Record confirms, several misdemeanor convictions in 2001 and 2002 involving dishonesty. Although only felonies involving crimes of dishonesty or breach of trust are relevant for the purposes of 18 U.S.C. § 1033, misdemeanor convictions involving dishonesty bear upon the severity of the felonies and the person's overall fitness to engage in the business of insurance. Ms. Lord indicated that the misdemeanor convictions also stemmed from the use of prescribed medications and the resulting impaired judgment. Ms. Lord indicated that she successfully completed all conditions of her sentences.

There is substantial evidence in the record regarding Ms. Lord's efforts to rehabilitate herself. Following her convictions, she discontinued all of the prescription medications and participated in a court-imposed counseling and rehabilitation program with a licensed social worker for an eight-week period. Ms. Lord testified that she has not taken any such medications since and her depression has not returned. The record also suggests that the stability of Ms. Lord's personal life has improved since her convictions. She notes escaping an abusive husband, gaining custody of her son, and moving to a new and happy marriage with employment for several years.

Ms. Lord presented evidence of a stable employment record over the past several years. She was employed for two years by a company that sold products via television infomercials. More recently, she was employed as a General Manager by a firm in the modular housing industry. In that capacity, she handled sales and deliveries of modular homes, trained staff, and worked with contractors. She also handled cash deposits and other financial matters related to the sale and installation of modular homes. Most recently, Ms. Lord was offered and accepted the position of Marketing Manager at Pinetree Retirement Planning, P.A., ("Pinetree") a licensed insurance

producer business entity. Her duties will include overseeing marketing activity and the activity of sales representatives, the hiring and training of call representatives, and assisting the Human Resource Department with agent compliance issues. Ms. Lord's employment with Pinetree is contingent upon her receiving from this office a waiver of the prohibition of employment in the insurance industry provided for in 18 U.S.C. §1033.

In summary, the record clearly indicates that Ms. Lord has worked hard and successfully over the past several years to transform herself from being depressed and heavily medicated to a productive and increasingly stable member of the community.

Melinda L. Small, President of Pinetree, has indicated by affidavit and a job description for the Marketing Manager position attached thereto that Ms. Lord would engage in the above described and related tasks. Ms. Small attests that in such an employment capacity, Ms. Lord will not be placed in a position in which her activities constitute a threat to insurance consumers or insurers.

Ms. Lord testified that she has been neither arrested nor convicted of any crime since her convictions in 2003. In connection with this proceeding, Bureau of Insurance staff contacted other state insurance departments. No negative information regarding Ms. Lord was received in response. The Criminal History Record dated March 8, 2007, from the Maine State Bureau of Identification and accompanying Ms. Lord's application confirms that there have been no arrests or convictions since January 2003.

Ms. Lord's activities that led to her two felony convictions certainly present significant cause for vigilance regarding her suitability for employment in the insurance industry. There are, however, a number of mitigating factors in her favor. Her application and the record of this proceeding demonstrate a solid employment record in recent years. No evidence has been produced to suggest any further problems of a criminal nature since that time. Her testimony indicates that her issues with depression and prescribed medications have been resolved. Her employment at Pinetree will be in a capacity where she will not have access to either policyholder or company funds.

Under these circumstances, this office finds that Ms. Lord has satisfactorily demonstrated that she is entitled to a waiver of the prohibition of employment in the insurance industry provided for in 18 U.S.C. §1033 to allow her to work as a Marketing Manager at Pinetree. Accordingly, this office grants Ms. Lord a limited waiver subject to conditions noted below.

### **Order**

Pursuant to 18 U.S.C. §1033, (e)(2), Katherine T. Lord of Chesterville, Maine, is hereby granted a waiver to engage in the business of insurance subject to the following limitations and conditions:

1. Ms. Lord may only engage in the business of insurance as an employee of Pinetree Retirement Planning, P.A.,

2. Ms. Lord may be employed at Pinetree Retirement Planning, P.A., in the capacity of Marketing Manager as described in the job description made part of her application. She may be further employed at Pinetree Retirement Planning, P.A., in such other capacity as will not require her to engage in cash processing or allow her to have access to premium collections, and
  
3. In the event that Ms. Lord seeks or intends to engage in the business of insurance in any manner other than as described in (1) and (2), above, she will seek a further waiver from this office or from the insurance regulatory official in the state or territory where she will be employed.

This waiver is effective as of the date of this decision, July 10, 2007.

### **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.

<sup>1</sup> 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.

**July 10, 2007**

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**Pamela Stutch**  
**Attorney**  
**Maine Bureau of Insurance**  
**Designated Hearing Officer**