

IN RE:
ANGELA R. GILLIAM
Docket No. INS 08-600

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)
) **DECISION AND**
) **ORDER**
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This proceeding requires consideration of the application of Angela R. Gilliam, a resident of Maine, for written consent to participate in the business of insurance pursuant to Title 18 United States Code §1033. Title 18 U.S.C. §1033, in relevant part, prohibits a person from participating 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 such a felony to participate in the business of insurance if that person has the written consent of an insurance regulatory official. Information provided by Ms. Gilliam to the Bureau of Insurance indicates that on November 16, 2007, she pleaded nolo contendere in the Cumberland County Superior Court to a charge of Class C Perjury in violation of 17-A M.R.S.A. § 451.

A hearing in this matter was held on January 10, 2008. Ms. Gilliam attended, but was not represented by Counsel. Also in attendance was Tammy L. Jawdat, Agency Manager of the Cox Insurance Agency. Notice of hearing in this matter was issued on January 4, 2008. Ms. Gilliam waived her right to fourteen days notice of hearing, and the hearing was scheduled at a time mutually fixed by this office and Ms. Gilliam 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.

Section 1033 waivers of the prohibition on employment which are 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 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.

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. Gilliam.

Information contained in Ms. Gilliam's application for a waiver leaves no question that her conviction was for a felony that involves dishonesty or breach of trust. Ms. Gilliam submitted a copy of the indictment by which she was charged with one count of Class C Perjury. Ms. Gilliam pled nolo contendere to the charge on November 16, 2007. Ms. Gilliam testified that she was the victim of domestic violence and the charge stemmed from her desire to revoke a protection from abuse order for fear of reprisals from her estranged husband. Ms. Gilliam stated that she still does not understand why she was charged, and she pleaded no contest to leave the ordeal behind her.

Ms. Gilliam was sentenced to nine months of imprisonment with all nine months suspended, and two years probation. She also was ordered to pay a fine of \$35.00, due on January 16, 2008.

Ms. Gilliam also acknowledged a misdemeanor conviction on November 16, 2007, for Unsworn Falsification in violation of § 17-A M.R.S.A. § 453(1)(B). Although only felonies involving 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. Gilliam stated that the misdemeanor conviction also stemmed from her attempt to revoke the protection from abuse order.

Ms. Gilliam testified that other than the two convictions cited, she never has been arrested or convicted of a crime at any time in her life. The Criminal History Record dated December 17, 2007, from the Maine State Bureau of Identification and accompanying Ms. Gilliam's application confirms her assertion. In connection with this proceeding, Bureau of Insurance staff contacted other state insurance departments about Ms. Gilliam. No negative information regarding Ms. Gilliam was received in response.

Ms. Jawdat testified that in her proposed employment at the Cox Insurance Agency, Ms. Gilliam would be a Customer Service Representative. Ms. Jawdat explained that Ms. Gilliam would be answering telephones, directing calls, taking premium payments, and performing data entry. Ms. Jawdat would supervise Ms. Gilliam directly. Ms. Gilliam's employment with the Cox Insurance Agency is contingent upon her receiving from this office written consent for employment in the insurance industry as provided for in 18 U.S.C. §1033.

The evidence indicates that the activity for which Ms. Gilliam was convicted was the direct result of her attempt to contend with an abusive husband. No evidence was presented that suggests that Ms. Gilliam otherwise has any criminal history. There is no evidence to suggest that her employment in the business of insurance poses any risk or threat to insurance consumers or to insurers. Accordingly, this office finds that Ms. Gilliam 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 Customer Service Representative at the Cox

Insurance Agency. Due to the recency of her conviction, however, this office grants Ms. Gilliam limited consent subject to conditions noted below.

Order

Pursuant to 18 U.S.C. §1033 (e)(2), Angela R. Gilliam is hereby granted consent to engage in the business of insurance subject to the following limitations and conditions:

- (1) Ms. Gilliam may only engage in the business of insurance as a Customer Service Representative as described in the materials and hearing pertaining to this proceeding, or in substantially similar capacity, at the Cox Insurance Agency.
- (2) In the event that Ms. Gilliam seeks or intends to engage in the business of insurance in any manner other than as described in (1) above, she will seek further consent 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, January 15, 2008.

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.

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.

January 15, 2008

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