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IN RE:
KATHERINE T. LORD
Docket No. INS 13-600
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DECISION AND
ORDER

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 convicted by the Androscoggin County Superior Court of 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). Both were Class C offenses.

By Order dated July 10, 2007, acting as designated hearing officer of the Maine Superintendent of Insurance, I granted limited consent to Ms. Lord to participate in the business of insurance pursuant to 18 United States Code § 1033. The Order limited Ms. Lord's participation in the business of insurance to the position of marketing manager at Pinetree Retirement Planning, P.A., ("Pinetree") as described in the job description made a part of her waiver application. The Order further permitted Ms. Lord to be employed at Pinetree in such other capacity as would not require her to engage in cash processing or allow her access to premium collections.

By Revised Order issued on October 29, 2007, I granted Ms. Lord a second limited waiver, this time to work as an insurance producer under the supervision of Pinetree. The Order stated that should Ms. Lord seek employment in the business of insurance in any manner other than as described therein, she would seek a further waiver from the Maine Bureau of Insurance or from the insurance regulatory official in the state or territory where she is employed, if not Maine at that time.

By application received by the Bureau on December 17, 2013, Ms. Lord petitioned to have written consent to participate in the business of insurance pursuant to 18 United States Code § 1033 because she was no longer affiliated with Pinetree. A

hearing in this matter was held on January 7, 2014. Ms. Lord attended, but was not represented by Counsel. Notice of Hearing in this matter was issued on December 24, 2013. Also in attendance were Bureau staff members Dyan M. Dyttmer, Esq. and Tracy Cunningham.

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.

A Section 1033 waiver issued by any state insurance regulatory official allows 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. 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. In the prior proceeding, Ms. Lord testified at length as to the circumstances surrounding her convictions and the efforts she has made to rehabilitate herself. In the prior proceeding, I found Ms. Lord’s testimony credible and the evidence in support of her statements convincing. There is nothing in the record of this present proceeding that supports changing that determination.

Ms. Cunningham testified as to the procedural history of this matter, outlining the two prior Orders and Ms. Lord’s producer licensing history. Ms. Cunningham noted that Ms. Lord had let her producer license lapse but had passed the licensing exam again and

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

that during the review of her producer license application, it was determined that Ms. Lord would need a Section 1033 waiver in order to obtain re-licensure.

Ms. Lord testified that she has been neither arrested nor convicted of any crime since her convictions in 2003. The Criminal History Record dated December 13, 2013, 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 further testified that she left Pinetree due to the birth of her children and that she left on good terms. She stated that she is proposing to work for Investment Executives as an insurance producer should she be issued the Section 1033 waiver. She stated that she continues to enjoy a stable life.

During the hearing, I incorporated into this record the administrative record from the previous proceedings in 2007. I further admitted into evidence Ms. Lord's current Section 1033 application, her producer application, her resume, the two prior Orders, the Notice of Hearing for the current proceeding, and a screen print from the Bureau of Insurance detailing Ms. Lord's producer license history. I held the record held open until the close of business on January 17, 2014, for Ms. Lord to submit an affidavit from an officer or director of Investment Executives. The Bureau received the affidavit of Craig M. Dickson, owner of Investment Executives, by e-mail on January 7, 2014 following the conclusion of the hearing. Ms. Lord's Section 1033 application is now complete.

In light of the information submitted and utilizing the standards contained in the aforementioned NAIC guidelines, I find that Ms. Lord has satisfactorily demonstrated that she is entitled to a full waiver of the prohibition of employment in the insurance industry provided for in 18 U.S.C. §1033. There are no limitations imposed.

Order

Pursuant to 18 U.S.C. §1033 (e)(2), Katherine T. Lord is hereby granted written consent to engage in the business of insurance. The consent is effective as of the date of this decision, January 16, 2014.

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.

January 16, 2014

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