

IN RE:) **AMENDED**
JEFFREY T. WINTLE) **DECISION AND**
Docket No. INS 01-1) **ORDER**
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)

This proceeding requires consideration of the application of Jeffrey T. Wintle, a resident of Westbrook, Maine, for a waiver to participate in the business of insurance pursuant to 18 United States Code §1033. 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. Wintle to the Bureau of Insurance indicates that he was found guilty of "Knowing and Willful Embezzlement and Misapplication of Moneys, Funds and Credits Belonging to a Bank by an Officer or Employee of the Bank with intent to injure or Defraud the Bank" in violation of 18 United States Code §656 by the United States District Court, District of Maine, on February 24, 1993. Mr. Wintle's application for written consent to engage in the business of insurance and evidence received at hearing indicates that it he is a current employee of Anthem Health Plan of Maine in South Portland, Maine, but his employment status is under suspension without pay pending the results of this proceeding.

A hearing in this matter was held on January 4, 2001. Mr. Wintle attended and was represented by Counsel. Notice of hearing in this matter was issued on January 3, 2001. Fourteen days notice of hearing was waived by Mr. Wintle and the hearing scheduled at a time mutually fixed by this office and Mr. Wintle as permitted by 24-A M.R.S.A. §230(2).

A Decision and Order in this proceeding was initially issued on January 9, 2001. Upon appropriate subsequent motion by Counsel for Mr. Wintle, two specific minor amendments were made to that Decision. Those amendments (a) clarify paragraph (1) of the Order and (b) remove an unnecessary reference to certain information that might otherwise be subject to a claim of confidentiality. It is the intent of this Amended Decision and Order that the limited and conditional waiver granted herein shall be effective as of January 9, 2001.

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. Mr. Wintle is not seeking an occupational license or permit of any kind. He is seeking relief from a federal law that otherwise defines him as totally and permanently disqualified from employment in the insurance industry in any capacity.

1 See, for example, 5 M.R.S.A. §§5302 and 5303 and 24-A M.R.S.A. §§1417, 1425 and 1426.

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.

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.

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 standard focuses on public protection, it does 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. Wintle.

Information contained in Mr. Wintle's application for a waiver leaves no question whatsoever that his conviction was for a felony that involves dishonesty or breach of trust. Mr. Wintle has submitted a certified copy of the federal information pursuant to which he was charged in November, 1992. In summary form, that information indicates that in 1988 and 1989, Mr. Wintle was employed as a Branch Manager of a Maine National Bank branch in North Windham, Maine. During that time, he created two fictitious identities, "Thomas A. Kimball" and "B. & J. Rentals", opened checking accounts which he controlled at the Bank in the name of those false and fictitious identities, caused false and fictitious loans to be applied for in the names of the false and fictitious identities, approved the false and fictitious loan applications, caused the proceeds of the loans to be deposited into the checking accounts and withdrew sums from those accounts by means of counter checks payable to cash. Mr. Wintle waived indictment, pled guilty to the charges contained in the information and does not contest any of the allegations in the information at this time. In his supplemental statement to his application for waiver, Mr. Wintle represents that his engagement crime was because he was " ... in need of funds with which to acquire materials to complete the construction of a small camp that I was building."

Mr. Wintle was sentenced by U.S. District Judge D. Brock Hornby on February 24, 1993 to two years probation, five months community confinement and required to pay restitution to the Federal Deposit Insurance Corporation.³ All evidence of record in the current proceeding indicates that Mr. Wintle successfully completed all conditions of his sentence. Restitution was made by Mr. Wintle to FDIC. A February 28, 1995 letter from his federal probation officer indicates his successful completion of probation on February 24, 1995.

³ Maine National Bank had been placed in receivership between the time of Mr. Wintle's criminal conduct in 1988 and 1989 and the time of his conviction in 1993. As a result, FDIC was the party entitled to restitution.

The evidence on the record suggests that Mr. Wintle has had an outstanding employment record in recent years. While he was terminated by Maine National Bank in 1989 following the bank's discovery of his fraudulent embezzlement of funds, he was hired as a customer service representative first by LL Bean's and in 1990 by Blue Cross and Blue Shield of Maine (BCBSME). He was still employed by BCBSME in 1992 when the criminal charges discussed above were filed against him. He notified his supervisor of the charges and BCBSME, knowing of his criminal conduct, allowed him to continue employment on a work release basis during his community confinement and later during his probationary period.

Mr. Wintle has remained employed by Maine's Blue Cross and Blue Shield plan continuously since 1990. In June 2000, however, BCBSME converted from a nonprofit hospital and medical service plan to a stock insurer and sold its assets to Anthem Health Plans of Maine, Inc. (Anthem). Mr. Wintle therefore became an employee of Anthem at that time along with the other employees of the company. Shortly after purchasing the plan, Anthem conducted a survey, that, among other things, asked employees whether they had any prior criminal convictions. Mr. Wintle forthrightly disclosed his conviction to Anthem. Upon learning of the conviction, Anthem suspended Mr. Wintle from employment. Mr. Wintle testified that until his suspension from employment, he was unaware of his obligation to seek a §1033 waiver to remain employed by Anthem.

Mr. Wintle's duties at Anthem have changed significantly since his hiring in 1990. He is no longer a customer service representative. At the time of his suspension, his position title was "Business Analyst II". At the time of his suspension Mr. Wintle was assigned to the "ACES project", a project to convert the claims processing and benefits computer systems at Anthem to a system that integrates with platforms used by other Anthem East companies. In that capacity, he tests and analyzes the various claims and benefit computer systems. Rodney Redstone, Mr. Wintle's supervisor at the time of his suspension, testified that Mr. Wintle's participation was very important to that project due to his ten years of working knowledge of how the claims and benefits systems worked and were supposed to work. If granted a waiver to return to work, Mr. Wintle expects to be working on the ACES Project for approximately the next two years.

Mr. Wintle testified that he does not have security clearance at Anthem to either actual company accounts or to actual claims and benefits records. James T. Parker, Vice President and General Manager of Anthem, submitted an affidavit that states if Mr. Wintle is allowed to return to work,

he " ... will not be placed in a position in which his activities will constitute a risk or threat to insurance consumers or Anthem Health Plans of Maine."

Mr. Wintle submitted four letters of reference from other present or former BCBSME/Anthem employees. Three of these references are from former supervisors, all of whom essentially refer to his dependable, diligent, and responsible work record during his time with the company.

Mr. Wintle testified that he has been neither arrested nor convicted of any crime since his bank embezzlement conviction. His application represents and no other evidence contradicts that his only other prior arrest was for trespassing in connection with his involvement in an antiwar protest rally in the 1960's. He was not convicted of any offense in connection with that arrest. In connection with this proceeding, Bureau of Insurance staff contacted other state insurance departments and FDIC and obtained a criminal history record information check from the Maine State Police. None of these entities provided any negative information with respect to Mr. Wintle.

Mr. Wintle's application for a §1033 waiver also contains information relating to his financial condition. He obtained a discharge from bankruptcy on March 7, 1991. His application also contains an uncertified credit report prepared by True Credit.com. The date of record for the report is November 11, 2000. This report shows that Mr. Wintle has a number of outstanding revolving credit (credit card) accounts with respect to which Mr. Wintle is making timely payments, however, payments are minimal compared to a relatively large outstanding balance.

Mr. Wintle's bank embezzlement conviction less than 7 years ago for conduct that occurred only 10 to 12 years ago certainly presents significant cause for concern regarding his suitability for ongoing employment in the insurance industry, or, for that matter, in other aspects of the financial services industry. The substantial credit card balances with only minimal payments also suggest potential issues with debt management, although combined family income is substantial as opposed to the balances. There are, however, a number of other mitigating factors in his favor. His application and the record of this proceeding consistently demonstrate a solid employment record during the past 10 years. He successfully completed nearly 5 years ago all terms of his sentence for the bank embezzlement conviction and no evidence has been produced to suggest any further problems of a criminal nature since that time. He forthrightly disclosed his arrest and conviction to his employer, both at the time it occurred in 1992 and when surveyed by Anthem in 2000. His employment at Anthem is in a capacity wherein he does not have access to either policyholder records or financial records of the company and the General Manager of Anthem has attested that he will remain in a position where he will not constitute a threat or risk to either insurance consumers or Anthem.

Under these circumstances, this office finds that Mr. Wintle 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 return to work, at least in his present capacity at Anthem. Accordingly, this office is granting Mr. Wintle a limited waiver.

Order

Pursuant to 18 U.S.C. §1033, (e)(2), Jeffrey T. Wintle, 73 Lamb St., Westbrook, Maine is hereby granted a waiver to engage in the business of insurance subject to the following limitations and conditions:

1. Mr. Wintle may only engage in the business of insurance only as an employee of Anthem Health Plans of Maine and companies owned or controlled by, or under common control with Anthem Health Plans of Maine,
2. Mr. Wintle may be employed at Anthem in the capacity of the information technology position that he was employed in at the time of his suspension from employment in November, 2000, including his activities on the ACES Project. He may be further employed at Anthem in such other capacity as will not require or allow him to have access to either Anthem's financial books and records or individual customer account information on more than a "read only" basis, and
3. In the event that Mr. Wintle seeks or intends to engage in the business of insurance in any manner other than as described in (1) and (2), above, he will seek a further waiver from this office or from the insurance regulatory official in the state or territory where he will be employed.

This waiver is effective as of January 9, 2001.

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.

May 11, 2001

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