

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE: )  
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Martin Shirman )  
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Docket No. INS-18-218 ) DECISION AND ORDER  
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I. PROCEDURAL HISTORY

On July 30, 2018, Martin Shirman applied for a non-resident insurance producer license with the Maine Bureau of Insurance (the Bureau). In an Order dated September 4, 2018, Superintendent of Insurance Eric A. Cioppa denied Mr. Shirman’s application. Mr. Shirman timely requested a hearing in this matter, and on September 10, 2018, Superintendent Cioppa delegated to me the duties and functions of presiding officer in this matter with final decision-making authority.

A Notice of Hearing was issued on September 13, 2018, setting out the legal standards, procedures and issues to be decided at the hearing. The hearing was held at the offices of the Department of Professional and Financial Regulation in Gardiner, Maine, on September 28, 2018. Lindsay Laxon, the licensing attorney for the Bureau, and Thomas Sturtevant, Assistant Attorney General, participated in the hearing on behalf of Bureau staff. Mr. Shirman, who is a resident of the State of Pennsylvania, appeared via videoconference.

Prior to the hearing, Bureau staff submitted 10 exhibits, consisting primarily of information contained in Mr. Shirman’s application for licensure. The exhibits were entered into the record without objection. At the hearing, additional information was requested from Bureau staff and from Mr. Shirman regarding Mr. Shirman’s licensure status in other states. Bureau staff subsequently submitted 37 pages of licensing information regarding Mr. Shirman from the National Association of Insurance Commissioners (NAIC). Mr. Shirman also submitted

information showing his licensure in the states of South Carolina, Pennsylvania and Maryland. These additional documents have been entered into the record.

The Superintendent's Order denying Mr. Shirman's license application cited four reasons for the denial: (1) The conduct giving rise to Mr. Shirman's 2012 felony conviction for Bank Fraud and Aiding and Abetting in the United States District Court for the Eastern District of Pennsylvania; (2) The revocation of Mr. Shirman's Pennsylvania producer license and that of his agency, Martin Shirman Agency, LLC, in December 2012; (3) Mr. Shirman's use of fraudulent, coercive or dishonest practices, or demonstration of incompetence, untrustworthiness or financial irresponsibility in the conduct of business related to the 2012 license revocations; and (4) Mr. Shirman's failure to disclose the 2012 Pennsylvania administrative action in his Maine application for licensure. The standard for reviewing the denial based on conduct leading to a criminal conviction is similar to, but slightly different from, the standard for reviewing the other three reasons for denial cited by the Superintendent, as will be explained below.

## II. STANDARD OF REVIEW

### **Denial due to applicant's conduct which gave rise to a criminal conviction**

The Superintendent of Insurance may deny a license application under the conditions set out in 24-A M.R.S. §§ 1417, 1420-K(1)(F), and 5 M.R.S. §§ 5301-5303. Under 5 M.R.S. § 5301(1), the Superintendent may consider criminal history record information "which ha[s] not been set aside or for which a full and free pardon has not been granted, but the existence of such information shall not operate as an automatic bar to being licensed...or permitted to practice any profession, trade or occupation."

5 M.R.S. § 5301(2) sets out certain categories of criminal history information which may be considered by a licensing agency in considering a license application. Included in this list are "Convictions for which incarceration for one year or more may be imposed." 5 M.R.S. § 5301(2)(D). 5 M.R.S. §§ 5303(1) and (2) set time limits on how long a licensing agency may consider a prior criminal conviction. However, there is no time limit "for consideration of an applicant's or licensee's conduct which gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action against a licensee." 5 M.R.S. § 5303(1).

If the conduct in question is conduct that is properly considered under the sections described above, the licensing agency may deny the application if it determines the applicant “has not been sufficiently rehabilitated to warrant the public trust.” 5 M.R.S. § 5302(1). When contesting a license denial, the applicant bears the burden of proof of sufficient rehabilitation to warrant the public trust. Id.

**Denial for reasons other than the conduct giving rise to the criminal record**

In addition to a license denial based upon conduct which gives rise to a criminal conviction, 24-A M.R.S. § 1417 permits the Superintendent, after notice and opportunity for hearing, to deny a license application if the Superintendent finds that any of the additional reasons for denial listed in 24-A M.R.S. § 1420-K (those other than 24-A M.R.S. § 1420-K(1)(F)) exist. One of the additional listed reasons for denial is “Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.” 24-A M.R.S. § 1420-K(1)(H).

The Superintendent may also refuse to issue a license for “Providing incorrect, misleading, incomplete or materially untrue information in the license application” and for “Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state...” 24-A M.R.S. § 1420-K(1)(A)(B).

When the basis for license denial is one of these reasons, the issue on appeal is the reasonableness of the Superintendent’s action in denying the application. 24-A M.R.S. § 1420-K(2).

**III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**The applicant’s conduct is sufficient grounds for license denial**

On November 5, 2012, Mr. Shirman pled guilty to one count of Bank Fraud and Aiding and Abetting in the United States District Court for the Eastern District of Pennsylvania. The offense to which he pled guilty is a federal felony offense for which a sentence of more than one year may be imposed. The conviction was the result of Mr. Shirman knowingly depositing into his insurance agency business account a counterfeit check in the amount of \$24,410, on or about August 30, 2010. On August 31, 2010, Mr. Shirman transferred \$24,101 from his business bank

account into his personal bank account. On August 31 and September 1, 2010, prior to the bank becoming aware that the check was counterfeit, Mr. Shirman made five separate withdrawals, each of under \$10,000, at various bank branch locations around the Philadelphia area.

On August 15, 2013, Mr. Shirman was sentenced in federal court to three years of probation and was ordered to pay \$24,409.99 in restitution. The restitution was ordered to be paid in monthly installments of \$50. Mr. Shirman successfully completed probation, and his probation was terminated early, in February 2015. He continues to pay \$50 per month restitution. At the hearing, he stated that he still owes approximately \$10,000 in restitution, jointly and severally with his co-defendant.

On December 5, 2012, the Pennsylvania Insurance Commissioner issued a Consent Order which revoked Mr. Shirman's producer license and revoked his agency's license. The revocation was based upon the felony conviction and additional grounds of submitting applications for insurance to an insurer which contained inaccurate, false and misleading credit scoring information. The submission of the false information in these applications improperly placed policyholders in better rating tiers resulting in more favorable rates than they were entitled to receive. Although at the hearing Mr. Shirman described the false and misleading applications finding in the Consent Order as a misunderstanding, there is no other evidence in the record to support his explanation, and he admitted to the allegations in the Consent Order.

Mr. Shirman applied to the Pennsylvania Insurance Department (Pennsylvania Department) for a new license in January 2013. This application was denied, in part due to Mr. Shirman's failure to first obtain a "1033 waiver," which is a waiver granted by a state insurance authority allowing a person otherwise disqualified due to a felony conviction to work in the insurance industry. Mr. Shirman appealed this denial. As a resolution of his appeal, the Pennsylvania Department entered into a Settlement Agreement with Mr. Shirman on November 15, 2016, in which Mr. Shirman agreed to dismiss his appeal of the denial. The Pennsylvania Department agreed to review Mr. Shirman's application on June 5, 2018, and prior to that date, Mr. Shirman was to also submit an application for Written Consent to Engage in the Business of Insurance under 18 U.S.C. §§ 1033 and 1034. The Pennsylvania Department agreed to issue a producer license without consideration of his criminal conviction or the prior 2012 Consent Order.

On June 12, 2018, the Pennsylvania Department issued a Consent Order granting a conditional 1033 waiver. The conditions include that he continue to pay restitution for the felony conviction and that he comply with all Pennsylvania insurance laws and regulations. On June 14, 2018, the Pennsylvania Department granted a producer license to Mr. Shirman.

In Mr. Shirman's Maine application, he properly disclosed his felony conviction. However, Mr. Shirman answered "No," in response to the question "Have you ever been named or involved as a party in an administrative proceeding...regarding any professional or occupational license or registration? 'Involved' means having a license censured, suspended, revoked, cancelled, terminated..."

In Mr. Shirman's application he also listed his employment as "unemployed" from January 2008 to July 2018. He testified at the hearing that since his conviction he has worked part-time delivering pizzas. He is currently employed selling trucking insurance.

Mr. Shirman explained at the hearing that the felony conviction was "something that I needed to have happen to me to kind of wake me up." He stated that it was a "one time" incident. When asked what his explanation was for the offense, he stated, "I was making good money then, and I believe it was - actually I don't believe, I know that it was - just greed on my part."

He also stated that he believes he committed the offense due to obsessive compulsive disorder, but that he has received psychological help since then. He wishes to obtain his Maine non-resident producer license to allow him to sell trucking insurance in Maine. He showed remorse for the offense, stating "I'm very ashamed of my criminal record. I truly regret it. And, if there was anything I can do to get it removed or fix it I would, but, unfortunately, being a federal conviction, I can't...I'm very ashamed of myself."

At the time of the hearing, in addition to obtaining his license in Pennsylvania, he had obtained producer licenses in Maryland and South Carolina. He stated that he had pending applications in Ohio and New Jersey. He withdrew his application in the state of Delaware after he was asked to undergo an FBI background check.

Mr. Shirman's conduct of depositing the fraudulent check into his insurance business account and then withdrawing the money over the next two days at several different bank locations was conduct that involved "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of

business in this state or elsewhere.” 24-A M.R.S. § 1420-K(1)(F). Because the conduct which led to this conviction is otherwise a ground for disciplinary action against a licensee in Maine, the time limits on consideration of this conduct under 5 M.R.S. § 5303(1)(2) do not apply. There are no time limits on the consideration of the remaining three grounds for denial, and the record establishes that all four grounds for denial of the license application cited by the Superintendent were proper grounds for denial.

The next question is whether Mr. Shirman has shown that he has been sufficiently rehabilitated to warrant the public trust in regards to the conduct leading to the criminal conviction and whether the Superintendent acted reasonably in denying his license application for the remaining three reasons.

**The applicant has not shown that he has been sufficiently rehabilitated to warrant the public trust**

Regarding the conduct giving rise to the felony offense, Mr. Shirman expressed remorse. He also appears to have taken some positive steps in his life toward rehabilitation, including his employment and receiving psychological care. However, his discharge from federal probation was less than four years ago. The nature of the acts, involving use of his insurance agency business account to facilitate the fraudulent check deposit and transfer of money to his personal bank account are very disturbing and directly related to his trustworthiness in the insurance business. He was granted a 1033 waiver by the Pennsylvania Department, but on a conditional basis. Based upon the record, he has not shown that he has been sufficiently rehabilitated to warrant the public trust.

**The Superintendent acted reasonably in denying the license application**

The record shows that rather than the 2010 fraudulent check incident being a “one-time” event, Mr. Shirman continued his untrustworthy conduct in his insurance business in 2011 and 2012. Between August 2011 and March 2012, on at least five applications, he submitted false credit score information to an insurer to obtain more favorable rates for clients. This is conduct involving “[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.” 24-A M.R.S. § 1420-K(1)(H).

In addition to the submission of the false applications, the 2012 revocation of his license by the State of Pennsylvania is grounds for denial of his Maine producer application pursuant to 24-A M.R.S. § 1420-K(1)(I). His failure to disclose the Pennsylvania revocation is an additional ground for denial under 24-A M.R.S. § 1420-K(1)(A).

Each of the reasons cited by the Superintendent in his denial is serious enough to justify the license denial. Considered together, they are even more concerning. None of these incidents is so far in the past as to be unimportant. They all relate directly to his competence and trustworthiness in the insurance business. Although the Pennsylvania Department granted Mr. Shirman a 1033 waiver, it is a conditional waiver.

Regarding the conduct which led to his felony conviction, Mr. Shirman has failed to show he has been sufficiently rehabilitated to warrant the public trust under 5 M.R.S. § 5302(1). Likewise, under, 24-A M.R.S. § 1420-K(2), the record shows that the Superintendent acted reasonably in denying the license application based upon Mr. Shirman's submission of false applications for insurance, his prior revocation in Pennsylvania and his failure to disclose the prior Pennsylvania administrative action. The Superintendent's Order of September 4, 2018 denying Mr. Shirman's license application is hereby AFFIRMED.

#### IV. 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 by 24-A M.R.S. § 236, 5 M.R.S. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the proceeding 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 within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

October 25, 2018

  
TIMOTHY N. SCHOTT  
Deputy Superintendent of Insurance