

FILED
JAN 14 2016 
Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of the Application for Written
Consent to Engage in the Business of
Insurance Pursuant to 18 U.S.C. 1033 and
1034 of:

A. RUSSELL ROBISON,

Applicant.

Docket No. 18-3093-15

**MEMORANDUM DECISION
and FINAL ORDER**

Upon due notice to the parties hereto, the above-entitled matter having come before the Director of the Idaho Department of Insurance (hereinafter "Director") for hearing on November 12, 2015, in Conference Room A of the state offices of the Idaho Department of Insurance (hereinafter "Department"), located at 700 West State Street, 3rd Floor, Boise, Idaho; the Applicant, A. Russell Robison (hereinafter "Robison"), appearing in person along with his witnesses; the Department appearing through its counsel, Deputy Attorney General Richard B. Burleigh, along with the Department's witnesses; the parties having been granted an additional ten (10) days or no later than Monday, November 23, 2015, to submit additional evidence for consideration; and upon due deliberation of the testimony and evidence submitted by the parties,

and in consideration of the premises, the Director does hereby makes his findings and conclusions and enters this Memorandum Decision and Final Order.

I. MEMORANDUM DECISION

A. Course of Proceedings.

On or about September 1, 2015, Robison submitted an Application for Written Consent to Engage in the Business of Insurance (hereinafter “Application”). *See*, Department Exhibit 1. After its review, in a letter dated September 30, 2015, to Robison signed by Georgia Siehl, Bureau Chief for Company Activities, the Department denied Robison’s Application. *See, Denial of Application for Written Consent to Engage in the Business of Insurance in Idaho, pursuant to 18 U.S.C. § 1033(e)(2)*, DOI Docket No. 18-3093-15. Thereafter, by letter dated October 5, 2015, and received by the Department on October 9, 2015, Robison filed an Appeal and Request for Hearing on the denial of his Application. *See, Appeal and Request for Hearing*, DOI Docket No. 18-3093-15.

On October 16, 2015, the Director issued a Notice of Hearing to the parties, setting the matter for November 12, 2015, at 9:30 a.m. at the Department’s offices in Boise, Idaho. On November 2, 2015, the Director issued an order relating to the disclosure of the parties’ proposed exhibits and witnesses.

On November 12, 2015, the hearing was held, oral testimony was received, and evidence was presented. Robison’s Exhibits A and B were admitted into evidence. Tr., p. 25, ll. 16-25 and p. 36, ll. 11-16. The Department’s Exhibits 1 and 4 were admitted into evidence. Tr., p. 57, l. 15 and p. 65, l. 24.

On November 23, 2015, Robison timely submitted additional documentary evidence in the form of (1) a letter addressed to the Director, and (2) a copy of Robison’s 2014 Idaho tax return.

As of the date of this Memorandum Decision, the Director has not received an objection from the Department to either submittal from Robison. Therefore the additional documentary evidence identified above will be admitted and identified respectively as Robison's Exhibits C and D. The record is now closed and the controversy in question is ready for decision.

B. The Law.

"The business of insurance is one affected by the public interest, requiring all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives, and all concerned in insurance transactions, rests the duty of preserving the integrity of insurance." Section 41-113(2), Idaho Code.

Title 41, chapter 10, Idaho Code, "governs the qualifications and procedures for licensing of insurance producers." Section 41-1001(1), Idaho Code. A producer is a "person required to be licensed under the laws of [the state of Idaho] to sell, solicit or negotiate insurance." Section 41-1003(8), Idaho Code. A license is a "document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document." Section 41-1003(3), Idaho Code. An insurance producer shall "not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless that person is licensed as a producer for that line of authority in accordance with [title 41, chapter 10, Idaho Code]." Section 41-1004(1), Idaho Code.

State licensing requirements notwithstanding, federal law provides that a person "who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under [18 U.S.C. § 1033], and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both." 18 U.S.C.

§ 1033(e)(1)(A). However, “[a] person [who has been convicted of any criminal felony involving dishonesty or breach of trust] may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection [18 U.S.C. § 1033(e)(2)].” 18 U.S.C. § 1033(e)(2). Such consent of the insurance regulatory official is required before the person may apply for an insurance producer’s license under title 41, chapter 10, Idaho Code.

In the state of Idaho, the Director of the Idaho Department of Insurance is the “insurance regulatory official” within the meaning of 18 U.S.C. § 1033(e)(2). The Director is charged with enforcement of the provisions of the Idaho Insurance Code, title 41, Idaho Code, “and shall execute the duties imposed upon him by [title 41 ... and] shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of [title 41].” Section 41-210(1) and (2), Idaho Code.

Section 18 U.S.C. § 1033(e)(2) does not provide a standard upon which a written consent may be granted. However, the Director’s judgment in this matter is guided by Idaho law, and the Director’s decision will be upheld where it is not, among other things, “arbitrary, capricious, or an abuse of discretion.” Section 67-5279(2)(e), Idaho Code.

An agency’s decision “is capricious if it was done without a rational basis.” An agency’s decision “is arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles.” *A&B Irr. Dist. v. Idaho Dept. of Water Resources*, 153 Idaho 500, 512, 264 P.3d 225, 237 (2012). Where the director has discretion, as in the instant matter, there is no abuse of discretion if the director acted within his bounds of discretion, consistently within legal standards, and the decision was based on reason. *State Ins. Fund v. Jarolimek*, 139 Idaho 137, 139, 75 P.3d 191, 193 (2003).

C. The Question.

The question in controversy is whether the Director of the Idaho Department of Insurance should grant Robison written consent to engage in the business of insurance or participate in such business in the state of Idaho under 18 U.S.C. § 1033, which consent would then allow Robison to make application for an insurance producer's license under Idaho law.

D. Discussion.

On November 12, 2015, Robison testified at hearing on several points relating to his Application, including but not limited to his taking responsibility, his reformation and punishment, his passion for the insurance industry, prior precedence, and his hope for a second chance.

At hearing, Robison admitted to violating federal law. Specifically, on May 13, 2013, Robison pleaded guilty in the United States District Court for the District of Idaho to violating 26 U.S.C. § 7206(1), namely Making and Subscribing a False Tax Return. *See*, Department's Exhibit 1, p. 317. Robison also admitted at hearing in this matter, and in plea documents in the criminal matter, that he knew that rebating was illegal under the Idaho Insurance Code, namely section 41-1314, Idaho Code. *See*, Department's Exhibit 1, pp. 274-275. Robison has acknowledged the crime and has admitted to it in several forums.

Judgment was entered against Robison on October 24, 2013, with imprisonment in a federal correctional facility for four months, supervised release for a period of one year after discharge from prison, a fine in the amount of \$10,000, and restitution in the amount of \$270,631.00. *See*, Department's Exhibit 1, pp. 317-321. Upon his release from prison, it is notable that Robison paid the fine and the restitution in full. *See*, Tr., p. 29, ll. 1-6.

Robison claims that he has been reformed. At several points in the record, Robison notes that the reformation process began in October 2010 when a federal warrant was served on his

family at the family home and business locations. Robison also provided evidence of support from family and friends. His testimony at hearing reflects his passion for the insurance industry, wherein he stated that nothing “will sway [him] from being passionate about this [insurance] industry.” Tr. p. 35, l. 12.

The hearing record and admitted exhibits reflect Robison’s pleas for forgiveness, including pleas to former clients and family as well as to the Department. While it is commendable to reestablish lost relationships with family and business associates and the community at large, whether to forgive Robison is not a function of the Director nor is it a measure in this case whether to grant Robison’s Application.

Robison has pleaded for a “second chance” and has provided the Director with examples of previous Department cases involving 1033 applications for written consent. Robison stated to the Director at hearing, “I hope that you will consider my 1033 application in a similar fashion in which you have with others whom have had a felony conviction and were granted consent.” Tr. p. 42, ll. 16-19. Robison attached a number of previous Department decisions to his Application to support his position. *See*, Department’s Exhibit 1, pp. 325-365. The Director reviewed each case cited by Robison. None of the cases involved a 1033 application. Further, the cases cited by Robison did not involve a violation of the law within the definition of 18 U.S.C. § 1033 requiring permission from the Director to engage in insurance in the state of Idaho. The cases cited are not substantially similar to the instant case in application of the facts or law and therefore have no binding value.

In addition, the Director has reviewed other Department cases involving 1033 applications that were granted or denied. The disparity between the facts of the cases cited by Robison, and other Department 1033 application cases on file, “and the application of law of the State of Idaho,

preserve the legal principle that the review of cases, findings and conclusions, and the issue of [whether to grant consent under 18 U.S.C. § 1033 to engage in the practice of insurance in the state of Idaho] is a matter of discretion on the part of the Director within the purview of Title 41, Idaho Code.” *In re: Edward E. Cain*, DOI Docket No. 18-2404-07 at p. 12 (*affirmed on appeal, Edward E. Cain v. Idaho Department of Insurance*, Ada County Case No. CV OC 08 20810 (June 10, 2009)(D. Duff McKee, D.J.).

Reaching a decision regarding Robison’s Application is not a responsibility to be taken lightly, and the Director is mindful of his duty to protect the public interest and to preserve the integrity of insurance. *See*, section 41-113(2), Idaho Code.

The burden to apply for and obtain written consent of the Director is on Robison. *See*, 18 U.S.C. § 1033(e)(2). Robison has a right to a hearing at which to present testimony and evidence. Such a hearing was held on November 12, 2015, and Robison was further granted an additional ten days to present documentary evidence.

The exhibits and oral testimony presented at hearing and produced thereafter by Robison evidence both the support of Robison’s family and Robison’s passion for the insurance business. However, the evidence presented fails to overcome the seriousness of the crime for which Robison was responsible, a crime which related directly to his past conduct in the business of insurance.

Robison stated he takes full responsibility for his actions; yet at hearing Robison still blamed others, including his father, for his crime and for his punishment. Further, according to Robison, the Department is suspect for asking about 2009 tax forms signed by him in October of 2010, and is merely attempting to justify denial of his Application and “crucify” him for making what he terms an “error.” *See*, Robison’s Exhibit C. It appears from the record that Robison

understands the gravity of the punishment, but he misses the importance or respect for the rule of law.

The Director is convinced that Robison has not been fully rehabilitated. Further, the Director does not believe the grant of Robison's Application is consistent with the public interest as provided under 18 U.S.C. § 1033 or with the policies and statutes set forth in title 41, Idaho Code.

Therefore, based on the foregoing, the record, the Director enters the following Final Order.

II. FINAL ORDER

Upon review of the record, the oral testimony at hearing, the exhibits admitted at hearing and thereafter, and the law, and in consideration of the premises:

IT IS HEREBY ORDERED that A. RUSSELL ROBISON's Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. § 1033 is **DENIED**.

DATED this 14 day of January, 2016.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

NOTIFICATION OF RIGHTS

This is a final order of the Director. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
- iv. The real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

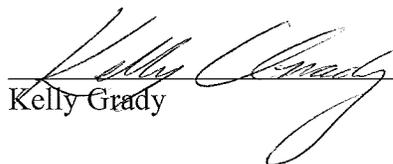
I HEREBY CERTIFY that on this 14 day of January, 2016, I caused a true and correct copy of the foregoing **MEMORANDUM DECISION and FINAL ORDER** to be served upon the following by the designated means:

A. Russell Robison
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- first class mail
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- hand delivery
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