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Department of Insurance
State of Idaho

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE
STATE OF IDAHO**

In the Matter of :

KEITH JOHNSON

Nonresident Producer License No. 567877.

Docket No. 18-3340-17

FINAL ORDER

This matter came before the Director of the Idaho Department of Insurance (“Director”) as presiding officer upon hearing held on September 26, 2017 (the “Hearing”), of the matters at issue in the Verified Complaint and Notice of Right to Hearing (the “Complaint”). The Idaho Department of Insurance (“Department”) appeared through its attorney of record, David M. Farney, Deputy Attorney General, and Keith Johnson appeared in person, *pro se*. The Department sought revocation of Mr. Johnson’s existing nonresident producer license based on a recent notification in RIRS¹ that the State of Florida had permanently barred Mr. Johnson from obtaining a producer license for failing to report five prior felony convictions dating back to 1979. At the hearing, Mr. Johnson provided compelling testimony and corroborated that testimony with

¹ RIRS means Regulatory Information Retrieval System which is the database created and maintained by the National Association of Insurance Commissioners to track licensing issues, among other information.

supplemental documentation, mitigating the Department's charges regarding the nondisclosure of his prior convictions. After reviewing the pleadings on record and considering the testimony and evidence presented at hearing, and the parties' subsequent submittals, the Director finds that sufficient evidence exists to mitigate the Department's charges. This Final Order, therefore, denies the penalties requested in the Department's Complaint. Mr. Johnson shall be allowed to retain his nonresident license **with no further action**.

FACTUAL FINDINGS AND PROCEDURE

1. On or about June 7, 2017, the Department received a regulatory alert notice through RIRS, indicating that the State of Florida denied Mr. Johnson's application for a nonresident producer license and permanently barred him from obtaining a producer license in the future.

2. The Florida action stemmed from a failure to disclose five (5) prior felony convictions in the State of California that occurred in 1979. On March 23, 1979, in the Superior Court of California, County of San Bernardino, Mr. Johnson was found guilty of robbery and grand theft. On October 9, 1979, Mr. Johnson was convicted of three counts of forgery.

3. Because none of these convictions were included on his application for nonresident licensure, but were later discovered through a background check, the State of Florida denied Mr. Johnson's application and entered its notice of action in RIRS.

4. Upon notification of Florida's regulatory action, the Department reviewed Mr. Johnson's nonresident license through the State of Idaho.

5. Mr. Johnson is a resident of Colorado. He has a resident producer license from the State of Colorado and nonresident licenses from approximately 30 other states. To date, Florida is the only state that has taken regulatory action based on his past felonies.

6. Mr. Johnson works for Progressive Insurance (“Progressive”) as a producer selling auto insurance through the company’s call center. He has done this for approximately the past two years and is the company’s top producer.

7. It is Progressive’s policy to submit all state licensing applications for its employees, which it did in Mr. Johnson’s case. A designated licensing representative takes the application information from the employee, conducts a criminal background check, fills out a state application on-line and submits it to a given state.

8. On April 3, 2016, Progressive, on behalf of Mr. Johnson, submitted an application to the Department seeking a nonresident producer license to authorize him to sell property and casualty insurance in Idaho. The application was submitted by the company’s licensing representative, Lori Sperling. The Department issued Nonresident Producer License No. 567877 to Mr. Johnson on April 4, 2016.

9. After the State of Florida entered its regulatory alert through RIRS, the Department re-examined Mr. Johnson’s application filings with Idaho and discovered that Mr. Johnson’s prior felonies were not identified on Idaho’s application.

10. On June 30, 2017, the Department filed and served Mr. Johnson with a Verified Complaint and Notice of Right to Hearing. Mr. Johnson requested a hearing, which was initially set for September 6, 2017. Subsequently, the parties stipulated to reset the hearing to September 26, 2017, to accommodate Mr. Johnson’s desire to appear before the Director in person.

11. At the hearing, Mr. Johnson did not dispute that he had committed felonies as a teenager or that the felonies were not disclosed. However, Mr. Johnson did dispute that the nondisclosure evidenced a present intent to deceive.

12. Mr. Johnson testified that he had disclosed his prior felonies to his employer during

the application process. He stated that Progressive ran its own background check in support of his licensing application and none of the felonies from 1979 were revealed.

13. Because none of the felonies were identified through the background check, Progressive advised Mr. Johnson that “[w]e were going to leave it alone.”

14. Mr. Johnson testified that, in response to Florida’s inquiries, he had incurred over \$700 in expenses attempting to obtain records from the California courts regarding his convictions and was informed that no records were retained dating back to 1979. He also attempted to obtain records from the probationary authorities regarding his completion of probation and was informed that no records were retained back to 1981.

15. Mr. Johnson testified that he was 19 when he was convicted of the felonies. At hearing, Mr. Johnson disclosed that he is currently 60 years old.

16. Mr. Johnson testified that the robbery involved an amount of \$200 that he stole from a cashier after the cashier was distracted by his girlfriend. Further, he testified that the forgeries were of three checks that he received from his girlfriend’s mother who agreed not to report the checks as stolen until he had cashed them. He testified that he received \$350 in total from the checks and that his girlfriend’s mother received \$30 per check from the proceeds.

17. Mr. Johnson testified that, in the almost four decades that have passed since his convictions, he has had no other issues. He stated that he has had only three jobs, with his position with Progressive being the third job, all of which are sales positions and all of which have required him to handle large amounts of money for other people.

18. Mr. Johnson supplemented the record with documents from Progressive that revealed that Mr. Johnson had disclosed the past felonies to Progressive. Additionally, Mr. Johnson submitted a copy of Progressive’s background check that indeed did not reveal Mr.

Johnson's prior felony history. Lastly, Mr. Johnson submitted supporting documentation including an email chain between himself and Scott Carly, Senior Licensing Specialist, corroborating that Progressive was aware of the felonies but elected not to disclose them based on the age of the convictions and the background check that did not reveal an existing record of the prior convictions.

ANALYSIS

The failure to disclose prior convictions on an application is a serious violation of Idaho's Insurance Code. Based on the evidence available prior to the hearing, the Department acted accordingly in bringing this action against Mr. Johnson. The Department has proven its case that Mr. Johnson's prior convictions were not disclosed and such nondisclosures, without credible mitigating reasons, are violations of the Idaho Insurance Code. Notwithstanding, the facts in this matter, as revealed through the testimony presented at hearing and the supplemental documentation submitted after the hearing, credibly mitigate the violations.

At hearing, Mr. Johnson took full responsibility for his past and did not dispute that the convictions occurred or that they had not been disclosed or that the Department acted appropriately in filing a complaint against him for failing to disclose. Instead, Mr. Johnson disputed that the failure to disclose was a result of dishonesty on his part.

Mr. Johnson presented persuasive and credible evidence that he was forthright in disclosing his convictions to Progressive. He corroborated his testimony with documentation from Progressive wherein Progressive admitted that it was aware of the convictions but made the decision not to disclose. The evidence revealed that Progressive elected not to disclose because the convictions are almost four decades old and they were not revealed through Progressive's background check. Although this logic is neither condoned nor excused, it is attributable to

Progressive's actions not to Mr. Johnson's. That is not to say that such a defense will be successful in any other case.

Notwithstanding, it is persuasive that the convictions at issue in this matter are almost four decades old. More compelling, however, is the fact that Mr. Johnson has worked in the insurance industry during that time without any further incident. Taken as a whole, Mr. Johnson has successfully mitigated the Department's allegations.

NOW THEREFORE, IT IS SO ORDERED that the Department's request for penalties for the nondisclosure of Mr. Johnson's felony convictions dating back to 1979, as stated in the Complaint, is denied.

IT IS FURTHER ORDERED that Mr. Johnson shall retain Nonresident Producer License No. 567877 with no further action taken in this matter.

DATED this 20 day of November, 2017.

STATE OF IDAHO
DEPARTMENT OF INSURANCE


DEAN L. CAMERON
Director

NOTIFICATION OF RIGHTS

This Order constitutes 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 Director 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 may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located. An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order; or (b) an order denying a 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 a petition for judicial review does not itself stay the effectiveness or enforcement of the order under appeal.

NOTICE REGARDING REPORTABLE PROCEEDINGS

The foregoing is considered a reportable administrative proceeding. As such, it is a public record and is public information that may be disclosed to other states and reported to companies as to which the Respondent is actively appointed. This information will be reported to the National Association of Insurance Commissioners (NAIC) and will appear in the online searchable database of the Idaho Department of Insurance. The Respondent should be aware that this proceeding must be disclosed on any insurance license application and must be reported to any and all states in which the Respondent holds an insurance license.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2017, I caused a true and correct copy of the foregoing FINAL ORDER to be served upon the following by the designated means:

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- first class mail
- certified mail
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Pamela Murray