

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 68, 69
CRANSTON, RHODE ISLAND 02920**

<u>IN THE MATTER OF:</u>	:	
	:	
CHRISTOPHER MASELLI,	:	DBR No. 14IN002
	:	
<u>RESPONDENT</u>	:	

DECISION AND ORDER

Hearing Officer: Neena Sinha Savage, Esq.
Hearing Held: May 20, 2014
Appearances:
For the Department: Elizabeth Kelleher Dwyer, Esq.
For the Respondent: Peter Petrarca, Esq.

I. INTRODUCTION

On September 6, 2013, the Department of Business Regulation (“Department”) received a Short Form Application for Written Consent to hold an insurance producer license under 18 U.S.C. § 1033 (“1033 Application”) from Christopher Maselli (“Respondent”). On November 20, 2013, the Department received an application for an insurance producer license from the Respondent (“License Application”). (See Department’s Exhibit # 5.) The Insurance Division of the Department declined to grant permission based on the 1033 Application and denied the License Application on January 17, 2014 and processed the License Application as a written

request for a hearing based on conversations with Respondent's counsel. See Respondent's Exhibit 9.

On January 28, 2014, the Director of the Department ("Department") issued a Notice of Hearing and Appointment of Hearing Officer ("Notice") to "determine the reasonableness of the denial of an insurance producer license by the Insurance Division pursuant to R.I. Gen. Laws § 27-2.4-14." It is the position of the Insurance Division of the Department that the Respondent's License Application should be denied pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(6) and (8) because he has been convicted of a felony and he has engaged in conduct demonstrating "fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility" and that he should be barred from the business of insurance due to the nature of the conviction pursuant to 18 U.S.C. § 1033.

The felony conviction at issue in this matter is Respondent's February 10, 2011 guilty plea to eight counts of bank fraud occurring between June 2007 and March 2009 in violation of 18 U.S.C. § 1344. See Department's Exhibits # 2 and # 3 (the Judgment and the Information).

A pre-hearing conference was held on February 13, 2014 in which the parties set a sixty (60) day discovery schedule and a hearing on this matter was held on May 20, 2014.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 27-2.1-14, 42-14-1 *et seq.*, and 42-35-1 *et seq.*

III. ISSUES

The issue in this matter is whether Respondent's License Application should be denied pursuant to R.I. Gen. Laws § 27-2.4-14(a)(6) and (8) and whether Respondent's 1033 Application should be denied pursuant to 18 U.S.C 1033.

IV. MATERIAL FACTS AND TESTIMONY

At the hearing, the Department submitted the Respondent's statement regarding his Application for Insurance Producer's License which provides that he "was charged with eight counts of Bank Fraud in violation of 18 USC 1344." Department's Exhibit # 1. "The counts involved misrepresenting my income on loan applications to Federally Insured Banks to refinance and purchase real estate and one automobile in the State of Rhode Island." Id. The Respondent admitted to pleading guilty and receiving a sentence of twenty seven (27) months to serve and three (3) years of probation. Id. Respondent notes that no restitution was ordered. The letter also provides that the Respondent "voluntarily suspended" his law license on December 16, 2010 and is eligible to seek reinstatement in December of 2015. Id.

At the hearing, the Respondent testified that prior to his conviction he was an attorney in Rhode Island and held a Rhode Island real estate broker's license (which he allowed to expire). He initially engaged in the general practice of law (personal injury, bankruptcy, civil litigation) and then focused, for the last five (5) or six (6) years of his licensed activity, on mostly residential real estate law. The Respondent acted as a residential closing attorney which involved purchase and refinancing of mostly residential mortgages and was also an agent for three (3) or four (4) different Title insurance companies. The Respondent held escrow accounts with large sums of money without any complaints or disciplinary action. The Respondent was skilled in conducting real estate transactions based on his focused practice on residential real estate law and in disbursing funds pursuant to residential real estate closings in his role as escrow agent.

The Respondent testified that he was applying for financing and refinancing on several properties. For the applications, he gave unsigned tax return forms with false information

(different than those submitted to the IRS). He stated that on some of the applications the mortgage broker inputted asset information incorrectly and he signed it without correcting it.

The Respondent noted that the banks had the ability to check his income.

According to the Department's Exhibit 3 (Criminal Information from the U.S. District Court for the District of Rhode Island), Respondent applied for a series of loans beginning in 2007, mostly mortgage loans, from several federally insured banks. Respondent lied about his income, assets, and produced fabricated documentation, including false tax returns and bank statements to support the false information on the loan applications. In all except one loan, the banks relied on the false statements in approving him for the loans.

In June 2007, Respondent obtained two residential mortgages (totaling \$200,000) on property located at 65 Pinehill Avenue in Johnston, Rhode Island, by submitting false information concerning the identity of the borrower and the borrower's assets and income. The Respondent represented in these applications that his wife's grandmother was the purchaser when she was actually the straw borrower and the true purchasers were Respondent and his wife. Respondent represented in the loan applications that his wife's grandmother intended to occupy the residence at Pinehill Avenue as her primary residence, when at the time Respondent and his wife intended to demolish the property and construct a new home for himself and his family. (See Department's Exhibit 3).

Thereafter, Respondent obtained the following loans: i) in December 2007 a residential mortgage for \$283,000 for 32 Goldenview Drive, in Johnston, Rhode Island; ii) from April-May 2008 a residential mortgage for \$157,781 for 58 Peckham Drive in North Providence, Rhode Island; iii) in August 2008, a residential mortgage for 58 Peckham Avenue in North Providence, Rhode Island for \$160,000; iv) in August-September 2008 a residential mortgage for 131 Winsor

Avenue in Johnston, Rhode Island in the amount of \$448,467; v) in October 2008, an automobile loan for \$23,518.50; and, vi) in November 2008 a home improvement loan in the amount of \$25,000.

Respondent states that he owned the Peckham Avenue, Goldenvue Avenue and Winsor Avenue properties at the same time (although the Goldenvue property was eventually sold, Peckham Avenue retained as an investment, and he lived at Winsor Avenue). He testified that he had always been on time with his payments and in 2008 interests rates had gone down and he was taking advantage of a refinance on those properties based on a “streamlined” FHA loan application process that allows borrowers to refinance their mortgages without submitting additional documentation. He testified that he authorized his accountant and loan broker to submit the financial documentation and loan applications. He said that his accountant submitted unsigned tax returns. However, he noted that the accountant and loan broker were not indicted and he knows that they cooperated with the prosecution.

Respondent testified several times that it was his accountant and broker that provided the information on the loans to the banks. On cross-examination, Counsel for the Department pointed out that on the two Domestic Bank loans (the auto loan and the home improvement loan in 2008), Respondent and his wife filled out the loan application. Respondent said that he was still relying on his accountant (because his accountant gave him the tax return) and when asked to state the discrepancy regarding the income stated on the Domestic Bank loan applications and his actual income, he could not recall his actual income or the discrepancy between the false income reported in the loan applications and his actual income.

The Respondent testified that he was prepared to go to trial and contest the charges; however, the FBI threatened to indict his wife if he did not plea to all counts and the family could not take that risk.

The Respondent still finds it “unbelievable” that the FBI was at his doorstep and testified that he felt targeted by the FBI as an elected official. Respondent feels that he had a strong defense regarding the falsification of assets on the loan applications.

Gregory Ayrassian, principal and 50% owner of Capital City Insurance Agency testified on the Respondent’s behalf. He testified that he met the Respondent a year ago and has offered him employment generating leads, gathering information, and generating quotations. The Department asked Mr. Ayrassian questions regarding whether Capital City Insurance Agency’s errors and omissions policy (which covers all 1099 employees/insurance producers) asks about employees’ criminal convictions. Mr. Ayrassian said he did not know.

Respondent submitted a letter from his probation officer stating that the Respondent “has fully complied with all his supervised release conditions and is presently supervised as a “low-activity” case. Respondent’s Exhibit # 1.

Respondent submitted letter from Raymond Arruda, a financial advisor at Ameriprise Financial Services, Inc. Respondent’s Exhibit #2. The letter states that the author knew the Respondent for over twenty years. Id. The letter opines that the Respondent “paid an unduly burdensome penalty for those mistakes and the entire experience has made him a better person today.” Id.

Respondent submitted a letter from John Petrarca, the President of Providence Auto Body stating that the Respondent was an employee at Providence Auto Body for the last two years as a customer service representative. Respondent’s Exhibit # 3. The letter indicates that the

Respondent “handles the intake of claims, deals with insurance companies and with any customer relation issues.” Id. “He is always promptly at work considerate, intelligent, and honest.” Id.

The Respondent questioned Joseph Torti III, Deputy Director and Superintendent of Insurance and Banking Divisions of the Department. Mr. Torti testified that when he reviews insurance producer applicants with felony criminal convictions related to financial crimes, he considers the number of years that have passed, whether it was a youthful indiscretion, specifically what type of crime it is, and whether the individual is a threat to the public. He reviews these applications with Insurance Division Associate Directors Paula Palozzi, Jack Broccoli, and Elizabeth Kelleher Dwyer, Esq. Mr. Torti testified that ultimately, after going through the criteria outlined below in his testimony, the issue is whether the applicant is a threat to the public interest. He testified that he followed this process with the Respondent and with the other applicants/licensees discussed herein.

Counsel for Respondent then asked Mr. Torti to distinguish other recommendations for granting licenses under R.I. Gen. Laws § 27-2.4-14 as well as consent to engage in the business of insurance under 18 U.S.C 1033 which prohibits individuals with a felony conviction involving dishonesty or breach of trust from wilfully engaging in or participating in the business of insurance without written consent from the Commissioner of Insurance. The individuals discussed at hearing were all applicants with criminal convictions who had submitted license applications and requests for consent to engage in the business of insurance under 18 USC 1033. Mr. Torti testified that individual “C”¹ was granted an insurance adjuster license (pursuant to an application seeking consent under 18 U.S.C 1033 and a separate license application) despite

¹ The undersigned Hearing Officer is using initials for the applicant/licensees discussed at hearing in order to protect their privacy while facilitating the submission of Respondent’s evidence in support of his position.

having larceny on her record. She was 17 years old when the crime occurred in 1999 (14 years before the application), there was a statement from her employer that she would not be a threat to the public.

The second person discussed, individual "P," was granted a license despite having a record for obtaining money by false pretenses. Mr. P's conviction had occurred in 1996, 15 years before the application, and Mr. P was relatively young when the crime had been committed and he was determined not to pose a threat to the public interest.

With respect to the third person discussed, Mr. "D", Mr. Torti testified that individual D was granted a license after being convicted of with 100 counts of manslaughter and an outstanding fine for not having workers compensation insurance. Mr. Torti said that upon consideration of all of the facts, individual D's insurance producer application was granted even though the criminal conviction and fine were subject to review under R.I. Gen. Laws § 27-2.4-14(a)(8) and 18 U.S.C. 1033. Mr. Torti said that after considering individual D's application and the facts at issue, he felt that he did not pose a threat to the public.

On cross-examination, Mr. Torti testified that with respect to the Respondent's License Application and 1033 Application, the crimes at issue are exactly the types of crimes that 18 U.S.C 1033 is intended to target, the conviction is relatively recent, and that Respondent is still on probation. Additionally, he clarified that individual C was a minor at the time of her conviction and individual P's conviction also occurred when he was young and fifteen years prior to the application. With respect to individual D, Mr. Torti said that the actual criminal conviction was for 100 counts of manslaughter, which is not a financial crime in the business of insurance covered under 18 U.S.C. 1033.

He further testified that he has had no issues with the individuals that he approved (C, P, and D) since he licensed them. Additionally, Mr. Torti said that he has never approved an applicant that has been convicted of bank fraud within 4 years of the application. He further testified on cross-examination that the Department has moved to revoke licenses for criminal conduct and/or conviction of four different licensees who had engaged in financial wrong-doing.

V. DISCUSSION

The statutory basis for the Department's request for denial of the License Application is R.I. Gen. Laws §§ 27-2.4-14(a) (6) and (8) which state:

§ 27-2.4-14 Licenses – Denial – Nonrenewal – Suspension or revocation. – (a) The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy an administrative penalty in accordance with § 42-14-16 or any combination of actions, for any one or more of the following causes:

...

(6) Having been convicted of a felony;

...

(8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place;

Further, 18 U.S.C. 1033 bars individuals who have "been convicted of any criminal felony involving dishonesty or a breach of trust," from engaging in or participating in the business of insurance without the written consent of the Insurance Commissioner. Therefore, any insurance license applicant must get Departmental approval under the state and federal statutes.

The Department has developed a fact-finding framework for determining whether persons with criminal conviction histories should be permitted in the business of insurance in Rhode Island. *In the Matter of Alina Ciman*, DBR No. 06-I-0206 (June 5, 2007). The criteria adopted are those set forth *In the Matter of William J. Stanton*: the (1) "nature and circumstances

of the misconduct,” (2) “subsequent conduct and reformation,” (3) “present character,” and (4) “present qualifications.” DBR No. 98-L-0035 (December 15, 1997).

A. Nature and Circumstances of Applicant’s Misconduct

Under “nature and circumstances,” the Department considers “(i) when the misconduct took place; (ii) whether the misconduct was a misdemeanor or a felony; (iii) the type of sentence imposed; (iv) the age of the applicant at the time of the misconduct; (v) the reason(s) given by the applicant for committing the misconduct and the applicant’s acknowledgment of responsibility for the crime(s); and (vi) whether the misconduct relates to the license for which the applicant has applied.” *Stanton, id.*

Mr. Torti’s testimony confirmed the Department’s process for making licensing determinations in other cases as well as the instant case. That Departmental process involves asking applicants to explain the facts and circumstances of the conviction and review all aggravating and mitigating factors and assess whether the applicant is a threat to the public.

In this case, the conviction was a felony and the Respondent was sentenced to twenty-seven (27) months imprisonment, three (3) years of probation, and \$800 in criminal monetary penalties. Respondent’s conduct involves serious criminal wrong-doing, demonstrating dishonesty, a breach of trust, and use of fraudulent means to benefit him. This conduct resulting in this conviction occurred while he was actively practicing as a residential real estate closing attorney who, by his own testimony, handled a large volume of residential loan transactions involving large sums of money.

The crime relates to the type of license applied for. 18 U.S.C. § 1344 punishes “whoever knowingly executes, or attempts to execute, a scheme or artifice (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property

owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises.” A crime relates to an insurance producer license when it relates to “the handling of money and being responsible for funds.” *Ciman, id.* At 8. In contrast, an insurance producer license was granted when the crime was unrelated to handling money such as manslaughter in the case of individual D.

The misconduct took place on eight occasions: June 2007, December 2007, May 2008, August 2008, September 2008, October 2008, November 2008, and March 2009. The latest incident of bank fraud occurred four (4) years prior to the date of the application and five (5) years prior to the date of this decision. The Respondent was thirty-six (36) when the crime was committed.

This case is distinguishable from the cases that Mr. Torti described as being the kinds of cases in which applications are granted to felons, namely youthful indiscretions or crimes in the distant past. Mr. Torti testified that he has never granted an application when the felony took place within four years of the applications. For example, individual C was 17 years old when the crime occurred and it was 14 years before the application. Individual P’s crime occurred 15 years before the application.

This case is also distinguishable from those cases in which a conditional or probationary insurance producer license has been granted by a Hearing Officer. For example, in *Ciman, id.*, the Respondent was twenty (20) years old when she was charged and the Hearing Officer found that “her youth and inexperience undoubtedly played a role in how she handled herself.” Moreover, *In the Matter of Lynn Holston*, the felonies were committed fifteen (15) years prior to the decision. DBR No. 09-I-0179 at 9 (April 30, 2010).

Respondent was a skilled attorney experienced in residential real estate law and manipulated the nuances of the loan application process to benefit himself and used family members to further his scheme. For all of the reasons stated herein, the nature and circumstances related to Respondent's criminal conviction weigh in favor of denying the License Application and the 1033 Application.

B. Subsequent Conduct and Reformation/Present Character

Under "subsequent conduct and reformation" and "present character," the Department considers "(i) whether the applicant has completed his/her criminal sentence or administrative sanction; (ii) whether the applicant has acknowledged his/her wrongdoing and expressed contriteness or remorse and the facts which support such acknowledgement; (iii) whether the applicant has settled his/her financial and/or other obligations arising from the misconduct and taken responsibility for his/her misconduct; and (iv) whether the applicant has favorable recommendations from people (other than family members) aware of his/her past misconduct attesting to his/her current good character." *Stanton, id.*

The Respondent has favorable recommendations from Gregory Ayrassian of Capital City Insurance, Raymond Arruda of Ameriprise, and John Petrarca of Providence Auto Body. However, the Respondent has not completed his sentence – he still has two years of probation remaining. His probation officer wrote that the Respondent has fully complied with the conditions of the supervised release and is a low activity case. The Respondent acknowledges responsibility for the crime. However, he does not appear to grasp the seriousness of the crime when he buttresses his acknowledgment with the testimony that the bank could have verified his income and thereby discovering the falsity of the information submitted (which he blames on his accountant and loan broker). This is in contrast to the situation where a conditional license was

issued in *Holston*, id., because in that case the Respondent “had great remorse for his actions.” Respondent also minimized his role in the loan applications by attributing responsibility to his accountant and loan broker for submitting the financial information to the banks. Respondent does this even though he submitted two loan applications to Domestic Bank on his own without the involvement of the loan broker or applicant. Respondent does not show remorse; rather, he views himself and his family as victims of aggressive prosecution due to his status as an elected official.

Respondent is still on probation and has failed to demonstrate full acceptance of responsibility for his actions and sufficient reformation of character and remorse to warrant licensure under the second prong of the Stanton criteria.

C. Present Qualifications

Under “present qualifications,” the Department considers “whether the applicant is currently employed in the industry by another licensee; (ii) whether a current licensee has expressed a willingness to sponsor the applicant; and (iii) whether the applicant is willing to accept a probationary or temporary license.” *Stanton*, id. The applicant is not currently employed in this industry, but has a sponsor willing to provide employment to the Respondent as an insurance producer. The Respondent did not state whether he is willing to accept a probationary or temporary license; although he did mention that the Department does issue conditional licenses. The recommendations, job offer and the fact that no restitution was ordered are favorable factors for Respondent, but not enough to overcome the seriousness of the criminal conviction and the testimony and evidence presented.

The seriousness of the criminal conviction related to a financial crime, involving dishonesty and a breach of trust, in which Respondent had direct responsibility along with his

failure to demonstrate sufficient remorse, reformation of character, and acceptance of full responsibility for the crimes committed are all factors that support the denial of the License Application pursuant to R.I. Gen. Laws § 27-2.4-14(a)(6) and (8) and denial of the 1033 Application pursuant to 18 U.S.C. 1033. .

VI. FINDINGS OF FACT

1. On September 6, 2013, pursuant to 18 U.S.C 1033, the Respondent submitted a 1033 Application to the Insurance Division of the Department requesting consent to engage in the business of insurance.
2. On November 20, 2013, the Respondent submitted a License Application seeking to be licensed as an insurance producer pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.*
3. On January 17, 2014, the Insurance Division declined to grant permission based on the 1033 Application and denied the License Application.
4. On January 28, 2014, the Director of the Department issued a Notice appointing the undersigned and providing notice of a hearing.
5. It is the position of the Department that Respondent's License Application should be denied pursuant to R.I. Gen. Laws § 27-2.4-14(a)(6) and (8) and that his 1033 Application should be denied due to the nature of the conviction pursuant to 18 U.S.C. 1033.
6. On May 20, 2014 a full evidentiary hearing on this matter was held.
7. On February 10, 2011, Respondent pled guilty to and convicted of eight (8) felony counts of bank fraud occurring between June 2007 and March 2009 in

violation of 18 U.S.C. § 1344. *See* Department's Exhibits # 2 and # 3 (the Judgment and the Information).

8. Respondent's criminal conviction is conduct that substantiates "using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility."
9. Respondent's felony conviction relates to conduct that involving dishonesty or a breach of trust.
10. All other facts stated in Sections IV and V are fully incorporated herein as findings of fact.

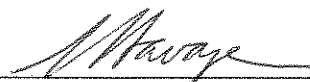
VII. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 27-2.4-1 *et seq.*, 42-14-1, *et seq.*, and 42-35-1, *et seq.*
2. The Department has established that Respondent's License Application should be denied pursuant to R.I. Gen. Laws § 27-2.4-14(a)(6) and (8) because Respondent has been convicted of a felony and his conduct as reflected in the conviction indicates that Respondent was "[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state[.]"
3. The Department has established that Respondent's 1033 Application should be denied pursuant to 18 U.S.C. 1033 because his felony criminal conviction involved dishonesty or a breach of trust.

VIII. RECOMMENDATION

THEREFORE, the Hearing Officer recommends that the Director order that Respondent's License Application and 1033 Application be denied:

DATED: 7/29/14



Neena Sinha Savage, Esq.
Hearing Officer

ORDER


I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 29 July 2014



Paul McGreevy
Director

ENTERED as Administrative Order No. 14-44 on the 29th day of July 2014.

NOTICE OF APPELLATE RIGHTS

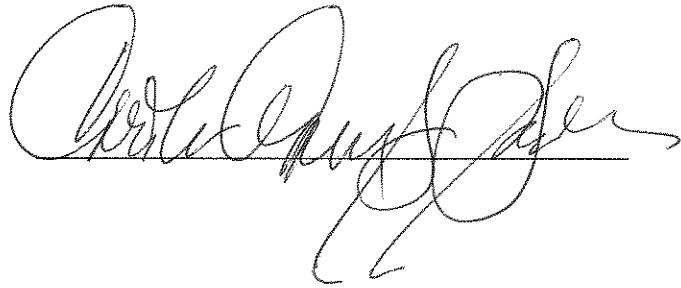
THIS DECISION AND ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 29th day of July 2014, a true copy of this Decision and Order was sent by first class mail, postage prepaid to:

Peter Petrarca, Esq.
Petrarca & Petrarca
330 Silver Spring Street
Providence, RI 02904
Peter330350@gmail.com

And by electronic mail to the following parties at the Department of Business Regulation:
Elizabeth Kelleher Dwyer and Joseph Torti.

A handwritten signature in black ink, appearing to read "Joseph Torti", written over a horizontal line. The signature is cursive and stylized.