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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

| | | |
|-------------------|---|--------------------------------|
| In the Matter of: |) | No. 10-0232 |
| |) | |
| ANTHONY C. SIMS, |) | FINDINGS OF FACTS, CONCLUSIONS |
| |) | OF LAW AND FINAL ORDER ON |
| License Applicant |) | HEARING |
| _____ |) | |

TO: Anthony C. Sims
11075 200th Street SE
Kent, WA 98031

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Esq. Deputy Commissioner, Legal Affairs
Andrea L. Philhower, Esq., Staff Attorney, Legal Affairs
John F. Hamje, Deputy Commissioner, Consumer Protection
Jeff Baughman, Licensing & Education Program Manager, Consumer Protection
Office of the Insurance Commissioner
PO Box 40255
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Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Office of Insurance Commissioner for the state of Washington commencing at 10:30 a.m., on January 31, 2011. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Andrea L. Philhower, Esq., Staff Attorney in its Legal Affairs Division. Anthony C. Sims appeared pro se.



NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's November 18, 2010 denial of Anthony C. Sims' application for a Washington resident insurance producer's license, should be confirmed, set aside or modified. Said denial of application denies Mr. Sims an insurance producer's license based upon RCW 48.17.530(1)(f) and (h), asserting that Mr. Sims was convicted of two felonies in 2001. Mr. Sims requested this hearing to contest the denial, and requested a waiver under 18 USC Sec. 1033 relative to his current criminal record, asserting that the crimes for which he was convicted were many years ago, are unrelated to his role as an insurance producer, and that his conduct in the 10 years since these felony convictions has been exemplary.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; and Title 34 RCW.

2. Anthony C. Sims (Sims) is an approximately 35 year old individual who was born in Seattle, Washington and is a resident of Kent, Washington. [Ex. 1, application for insurance producer's license.]

3. On November 15, 2010, Sims applied to the Insurance Commissioner (OIC) for an insurance producer's license to act as an insurance agent in Washington State. [Testimony of Jeff Baughman, OIC's Licensing and Education Program Manager; Testimony of Sims; Ex. 1.] In response to the question "Have you ever been convicted of a crime ...?" Sims responded "Yes." Sims fully disclosed the felonies for which he had been convicted and provided the OIC with copies of the judgment and commitment order from those criminal charges. [Testimony of Sims; Testimony of Baughman; Ex. 1, Sims' Application for Insurance Producer's License.] Sims also furnished the OIC with a completed Application for Waiver under 18 USC Sec. 1033. [Testimony of Sims; Ex. 1, Application for Waiver.] On November 18, 2010, the OIC, through OIC Licensing & Education Program Manager Jeff Baughman, denied Sims' Application for an Insurance Producer's License and Application or Waiver based on the existence of the two felony convictions. [Testimony of Baughman; Ex. 1.] [While this is apparently not a basis of the OIC's denial and therefore is not included in the reference to "the felonies" herein, Sims was also convicted of the felony of harassment stemming from an incident that occurred on October 25, 1998. There is no evidence that Sims has been convicted of any other crimes either before or since these three crimes.]

4. Sims has been convicted of the subject two felonies, both related to the same incident

which occurred on May 25, 2001: the first was Possession with Intent to Distribute Over 50 grams of Cocaine Base and the second was Felon in Possession of a Firearm. [Testimony of Sims; Testimony of Baughman; Ex. 1.] Sims admits that at that time he had been selling cocaine for approximately one year. He states, and there is no evidence to the contrary, that although the guns were not his, he was found in constructive possession of the firearms because of his residence in the apartment where they were found.

5. As penalty for his convictions for the subject two felonies, Sims served approximately six years in prison. [Testimony of Sims; Ex. 1.] After his release from prison approximately one and a half years ago, Sims has successfully completed probation since that time, and he remains on probation until February 8, 2015 as part of his sentence. [Ex. 1, statement of probation officer.] There is substantial evidence, and it is here found, that Sims was very proactive in his rehabilitation beginning on his arrest date, through his years in prison and since he was released from prison to the current time. He has indeed done what appears to be everything possible from his arrest date to the current time to change his life. In prison, as soon as possible he enrolled in voluntary education programs at the prison, completed over 30 educational courses provided in the prison's education department, earned his GED (high school equivalency) degree; learned Spanish, and volunteered in the education department for two years as a teacher's assistant helping others earn their GED degree and teaching English As A Second Language. While in prison, Sims also learned two trades: he held one of the most prestigious jobs at the facility working side by side with civilian government employees where he was held to a higher standard than the other inmates. Most significantly, he learned the trade of drafting and eventually drafted designs for office and other furniture made by the inmates to sell to government institutions. [Testimony of Sims; Ex. 1, prison record.]

6. Since his release from prison in 2009, Sims successfully resided temporarily in a half way house, moving after a short time to independent living either with his family or alone. He has continued to reside independently, has successfully completed probation up until this time, is currently in good standing with his probation officer and has had no further offenses. [Ex. 1, statement of probation officer, statements of various other individuals having knowledge of Sims' activities from the date of his arrest to the current time.] Further, shortly after his release from prison, Sims secured employment as a sales representative at South Tacoma Auto in Lakewood, Washington. He worked in that position for two years (until recently when he began working toward obtaining the subject Washington insurance producer's license) where the Sales Manager and Sims' supervisor for these two years reports: *Mr. Sims was an outstanding employee and great asset to the automotive group exemplifying professionalism in all aspects of his duties and handled customer relation issues in a courteous and tactful manner. After dealing with all kinds of employees in the past ten years, I can truly say that Mr. Sims past is definitely his past. It definitely shouldn't have any negative reflection to any future employment opportunities. Anthony handled very large sums of money, ... and was in charge of some expensive luxury imports. At ... no time have we ever had a problem nor issue with his involvement.* [Ex. 1, Statement of Tommy Bryant, Sales Manager of South Tacoma Auto Sales.]

7. During his employment with South Tacoma Auto Sales, Sims met insurance producer

FINDINGS OF FACTS, CONCLUSIONS OF LAW
AND FINAL ORDER ON HEARING

Anthony C. Sims, Docket No. 10-0232 - Page 4

Christopher Karmell, who operates Karmell Insurance Agency, a Farmers Insurance Agent in Lakewood, Washington. Through Mr. Karmell, Sims has become interested in the insurance business, and Mr. Karmell wishes to hire Sims to work in his agency. [Testimony of Christopher Karmell.] Toward that end, before his application to the OIC, Sims went through the application process at Farmers Insurance Company of Washington (Farmers). At that time, he was forthcoming about his prior offenses. Farmers ran a nationwide background check and concluded that his criminal history would not bar him from practicing insurance in Washington. They researched what types of crimes might make one ineligible to receive licensing in Washington but concluded these were perhaps not ones which would prevent him from receiving a producer's license in Washington. Farmers was willing to allow Sims to work in one of its Farmers agencies, although Farmers would not allow him to operate his own Farmers agency at this time. [Testimony of Sims.] Farmers' regional director instructed Sims to move forward with the educational phase of obtaining a Washington insurance producer's license. Sims successfully passed his Washington insurance producer's exam. [Testimony of Sims; Testimony of Karmell; Ex. 1, Application for Insurance Producer's License.]

8. If Sims were granted an insurance producer's license in Washington, he would promptly be hired by Christopher Karmell to work on behalf of Christopher Karmell in the Karmell Insurance Agency. [Testimony of Karmell.] Further, upon questioning by the undersigned at hearing concerning the availability of errors and omissions insurance for convicted felons in Sims' situation, Mr. Karmell offered to and did provide information concerning the availability of errors and omissions insurance coverage for Sims. Mr. Karmell advised that he was advised by Cal Insurance (the underwriter for Farmers Insurance agents) that as long as Sims is working on Mr. Karmell's behalf, which he would be at least at the outset of his insurance career, he is covered by Mr. Karmell's errors and omissions insurance even with the underwriter knowing that Sims is a convicted felon; if, however, Sims decided to work on his own behalf he would need his own errors and omissions coverage, the availability of which Mr. Karmell did not pursue. [Ex. 5, letter dated February 3, 2011 from Karmell to OIC.]

9. The OIC may refuse to issue an insurance producer's license if the applicant has been convicted of a felony or if the applicant has used dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere. The OIC is very correct in asserting that Sims' past crimes of Possession with Intent to Distribute Over 50 grams of Cocaine Base and Felon in Possession of a Firearm are relevant to the issue of whether Sims has used dishonest practices, demonstrated incompetence, and/or is untrustworthy as contemplated by this statute, the fact that these crimes occurred as long ago as 2001, and occurred when Sims was approximately 25 years of age, coupled with the fact that Sims has clearly led an exemplary life since his 2001 arrest, lead to a finding herein that it is reasonable that the OIC's denial of an insurance producer's license to Anthony C. Sims should be set aside. It is reasonable that the OIC grant Anthony C. Sims a Washington insurance producer's license at this time. It is further reasonable that the OIC grant Anthony C. Sims a waiver under 18 USC Sec. 1033.

10. Jeff Baughman, OIC Licensing & Education Program Manager, appeared as a witness on

behalf of the OIC. Mr. Baughman presented his testimony in a clear, detailed and credible manner.

11. Anthony C. Sims appeared as a witness on his own behalf. Mr. Sims presented his testimony in a clear, detailed and credible manner.

12. Christopher Karmell appeared as a witness on behalf of Mr. Sims. Mr. Karmell presented his testimony in a clear, detailed and credible manner.

CONCLUSIONS OF LAW

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; and Title 34 RCW.

2. RCW 48.17.530(1)(f) provides that the OIC may refuse to issue an insurance producer's license if the applicant has been convicted of a felony. RCW 48.17.530(1)(h) provides that the OIC may refuse to issue an insurance producer's license to an applicant who has used dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere. This statute by its terms is permissive and is not mandatory. Based upon the above Findings of Facts concerning Anthony C. Sims, and particularly the fact that his convictions were ten and more years ago and that he has clearly led an exemplary life since the date of his arrest in 2001, it is hereby concluded that it is reasonable that Sims should be granted a Washington insurance producer's license at this time.

3. Based upon the above Findings of Facts and Conclusions of Law, it is reasonable to conclude that the OIC's Denial of License, denying the insurance producer's license of Anthony C. Sims, should be set aside and that Mr. Sims should be issued an insurance producer's license at this time.

4. Based upon the above Findings of Facts and Conclusions of Law, it is reasonable to conclude that the OIC's denial of Anthony C. Sims' application for an 18 USC 1033 waiver should be set aside, and that at this time Mr. Sims should be granted an 18 USC 1033 waiver as applied for.

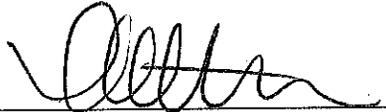
ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Insurance Commissioner's Denial of License, No. 10-0232, to the effect that the Washington insurance producer's license of Anthony C. Sims is denied, is hereby set aside, and Anthony C. Sims shall be granted a Washington insurance producer's license forthwith.

IT IS FURTHER ORDERED that the Insurance Commissioner's denial of Anthony C. Sims' application for an 18 USC Sec. 1033 waiver is hereby set aside, and Anthony C. Sims shall be granted an 18 USC 1033(e)(2) waiver, giving him "written consent to engage in the business of insurance or participate in the business pursuant to 18 USC Sec. 1033(e)(2)" as stated therein.

This Order is entered at Tumwater, Washington, this 8th day of March, 2011, pursuant to RCW 34.05, Title 48 RCW and regulations applicable thereto.



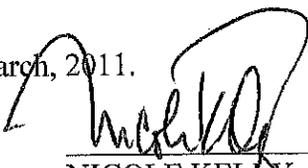
PATRICIA D. PETERSEN
PRESIDING OFFICER

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Anthony C. Sims, Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Andrea L. Philhower, Esq., John Hamje, and Jeff Baughman.

DATED this 9th day of March, 2011.



NICOLE KELLY