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HEARINGS UNIT
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

JOSEPH P. BURGMAN,

Applicant.

) **Docket No. 15-0035**

) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **AND FINAL ORDER**

TO: Joseph P. Burgman
1642 Mill Drive
Lacey, WA 98503

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Jeff Baughman, Licensing Manager, Consumer Protection Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Marcia Stickler, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

On March 31, 2015, this matter came before me for evidentiary hearing pursuant to the Notice of Hearing, filed March 4, 2015. The Office of the Insurance Commissioner ("OIC") appeared by Marcia Stickler, Attorney at Law, Insurance Enforcement Specialist, Legal Affairs Division. Mr. Burgman appeared pro se.

I have considered the exhibits admitted into evidence (all offered exhibits were admitted by agreement), the testimony of the witnesses – Cheryl Penn, ACP (OIC Licensing Division Compliance Supervisor), Clark Cotner (potential employer/family friend/business associate), and Mr. Burgman – as well as the oral argument of the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On November 12, 2014, Ms. Penn sent an email to Mr. Burgman ("Denial Letter") informing him that his application for a Letter of Written Consent had been denied, based on his 2008 felony convictions for first degree theft. Ms. Penn stated that the convictions included elements of dishonesty and financial misconduct directly correlating with the nature of insurance. OIC Exhibit 6 herein ("Ex. O-6").

2. Mr. Burgman submitted a Demand for Hearing ("Demand"), filed February 11, 2015, stating that the OIC's decision harms his income potential; licensed insurance broker Clark Cotner is ready to affiliate with him; he works daily with the victim of his crimes (his father); he never before or after his crimes committed other crimes or been in trouble; he would be a productive and honest agent; and the convictions resulted from his attempt to cover up losses in a bad investment that had been recommended by his attorney.

3. This adjudicative proceeding was properly convened, and all substantive and procedural requirements under the laws of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW, specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.

4. 18 U.S.C. 1033(e) provides in pertinent part that any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust may engage in or participate in the business of insurance only if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent refers specifically to subsection 1033(e)(2).

5. As the designee of the Commissioner, who is an authorized insurance regulatory official, I have the authority to grant or deny written consent under 18 U.S.C. Section 1033(e).

6. Mr. Burgman bears the burden of persuasion. *See*, Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sections 1033-1034 ("Guidelines"), Ex. O-1.

7. Mr. Burgman's November 5, 2014 Application for written consent ("Application"), Ex. O-2, references his "charging document" and states that he proposes employment as a producer for Colonial Life and Forethought Life insurance companies

8. Mr. Burgman's charging document is the criminal Information in *State v. Burgman*, Thurston Co. Superior Court No. 08-1-00227-0, Ex. O-3, which charged him with 39 counts of felony theft, one count of felony unlawful use of criminal proceeds, and three counts of misdemeanor theft. A March-April 2008 article in *The Insider*, a publication of the Washington Cemetery & Funeral Association, Ex. O-7, which was published before Mr. Burgman's convictions, outlines the allegations, apparently based on the Information, but does not establish the relevant facts.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER

15-0035

Page 2

9. On November 24, 2008, the Washington Board of Funeral Directors and Embalmers ("Board") signed Agreed Findings of Fact, Conclusions of Law and Order, No. 2007-08-2602-00FDE ("Agreed Order"), Ex. O-4. The Agreed Order establishes that on June 24, 2008, a Judgment and Sentence was issued convicting Mr. Burgman of Counts II-V of first degree theft of amounts ranging from \$1,500 to \$2,908, which occurred between March 23, 2001 and November 22, 2005. The Board concluded that Mr. Burgman's offenses constituted unprofessional conduct that included acts of moral turpitude, dishonesty, or corruption relating to his license as a Funeral Director Intern. Mr. Burgman served eight months on work release. *See*, Burgman letter to OIC, Ex. O-5, and hearing testimony.

10. I find, based on the Information, the Judgment and Sentence, Mr. Burgman's written submissions, and his testimony, as well as the elements of the offenses of which Mr. Burgman was convicted, that such offenses were felonies involving dishonesty and/or breaches of trust.

11. No Washington statute or WAC provision establishes standards for consideration of a request to issue a written consent. In exercising its discretion under Section 1033(e), however, the OIC generally considers the factors set forth in the Guidelines, and I believe the OIC's consideration of such factors is reasonable and appropriate.

12. The Guidelines factors include: the nature of the circumstances surrounding, and the seriousness of, the offense(s); the age of applicant at the time of offense(s) and the time since elapsed; whether the applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers; and whether the issuance of written consent is consistent with the public interest.

13. Mr. Cotner is a successful insurance agent and funeral industry owner/consultant and long-time friend and business associate of Mr. Burgman's parents who has known Mr. Burgman for many years. Mr. Cotner testified that he is aware of the offenses, but that Mr. Burgman now has a good attitude, and people deserve a second chance. Mr. Cotner has offered Mr. Burgman a position, which he says is likely to be lucrative if Mr. Burgman is licensed as a producer, subject to the acceptance of Forethought and/or Colonial. Forethought issues "final expense" policies, and Colonial issues pre-tax life and accident policies. Mr. Burgman would not handle premium payments or other moneys for either company.

14. According to Mr. Burgman's testimony, which I accept on this point, since his sentencing he has worked hard and without complaint to support his family and himself, including at jobs selling receipt tape, inoculating chickens, and digging ditches. He now works with his father, who was a victim of his crimes, at his father's funeral home. Mr. Burgman appears to have taken all reasonable steps to put his crimes behind him, although except for Mr. Cotner, Mr. Burgman did not provide evidence of this.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER

15-0035

Page 3

15. Ms. Penn does not make final written consent decisions when applicants disclose felony convictions, but instead presents the results of her review to the OIC Licensing Manager. (In some matters, but apparently not the present matter, the Licensing Manager seeks further review by the Deputy Commissioner.) The Licensing Manager determined that Mr. Burgman's application clearly should be rejected, a determination in which Ms. Penn concurred.

16. I accept Ms. Penn's testimony as to the basis of refusal of written consent: The overriding principle in considering written consent is the protection of the insurance-buying public. Mr. Burgman was convicted of felony offenses in which he took funds from persons with respect to whom he held a position of trust, and he used such funds for unauthorized purposes. Mr. Burgman was at least 31 years old at the time of his felony offenses -- such offenses were not youthful indiscretions. Mr. Burgman betrayed the trust of his family members -- if he stole from his own family, he would be even more likely to steal from strangers. Mr. Cotner's written statements in support of Mr. Burgman, (*see*, March 23, 2015, letter) should be given limited weight because Mr. Cotner did not describe how he knew Mr. Burgman or what Mr. Burgman's duties would be if he became an insurance producer.

17. I generally agree with the comment that Mr. Burgman attributes to his sentencing judge: "You're young enough to make a fresh start." Mr. Burgman does not appear to have any criminal history besides the theft convictions at issue, and chances are good that he will lead a crime-free and productive life in the future.

18. However, Mr. Burgman's request for written consent should be denied. The offenses for which Mr. Burgman was convicted were not isolated, but occurred over a period of more than four years. These were not youthful indiscretions, but serious criminal and moral lapses by a man over 30 years old. Although Mr. Burgman appears to have made a serious effort to reform, no evidence was presented from those in a position to know of his post-sentencing conduct. Given Mr. Burgman's crimes, which involved great dishonesty and/or breaches of trust, he poses an unacceptable risk to consumers, particularly given the potentially vulnerable older adults who are the core targets of Forethought sales efforts. The issuance of written consent is not consistent with the public interest.

ORDER

The OIC's November 12, 2014, denial of Mr. Burgman's Application for a Letter of Written Consent is confirmed. Written consent is denied.

Dated: April 2, 2015



Judge George Finkle (Ret.)
Presiding Officer

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER

15-0035

Page 4

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.

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: Joseph P. Burgman, Mike Kreidler, James T. Odiorne, John F. Hamje, Jeff Baughman, AnnaLisa Gellermann, and Marcia Stickler.

DATED this 2nd day of April 2015.


KELLY A. CAIRNS