

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Application for a)
Kansas Resident Insurance Agent's)
License of Gregory Alan Buss) **Docket No. 85248**
NPN #6106281)

FINAL ORDER

(Pursuant to K.S.A. 40-2,125, 40-4905, 40-4909 and K.S.A. 77-501 et seq.)

The Presiding Officer called this matter for hearing on December 14, 2020. Gregory Alan Buss (“Applicant”) appeared *pro se* and the Kansas Insurance Department (the “Department”) appeared by and through counsel, Nicole Turner, Staff Attorney. Applicant did not dispute the facts alleged by the Department nor the applicable law but appeared in order to present mitigating evidence for consideration by the Presiding Officer.

Having reviewed Applicant’s application and having considered the testimony, evidence and arguments of the parties, the Commissioner finds that the evidence supports the Department’s denial of Applicant’s application for a Kansas resident agent license and affirms the staff decision.

Findings of Fact

1. Applicant, a resident of Wichita, Kansas, applied for a Kansas resident individual insurance agent license on August 13, 2020. The Department received Applicant’s Waiver Agreement and FBI Privacy Act Statement (“Waiver Form”) on September 10, 2020.
2. The application was denied by a letter dated October 6, 2020. The denial was updated and amended by a letter dated November 10, 2020.
3. Applicant filed a timely request for a hearing.

4. The following relevant facts regarding the denial of Applicant's application were established by documents introduced into evidence and testimony by the Department's Director of Producer Licensing ("Director") at the formal hearing.

a. Background question 1a under item 38 of the application asks:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?

b. Applicant answered "yes" to question 1a under item 38.

c. For each conviction, the application requires copies of charging and sentencing documents and a written statement regarding the circumstances of the incident.

d. As part of the application process an applicant must be fingerprinted for purposes of a background check. The Waiver Form, which must accompany an applicant's fingerprint card when submitted to the Department, requires an applicant to indicate whether he or she has been convicted of a crime, and if so, to describe the crime(s), dates and locations of the crime(s), and the name of the convicting court for any convictions. The fingerprint waiver form then states:

Under penalty of perjury, I hereby declare that I am the person described below, and understand that any falsification of this statement constitutes a severity level 9, nonperson felony [under K.S.A. 21-5903.] [Emphasis added.]

e. On his Waiver Form, the Applicant noted a debt adjusting misdemeanor conviction in Sedgwick County District Court. Applicant provided a copy of the charging and sentencing documents and a written statement with the application for the following conviction:

Sedgwick County District Court, Case No. 11CR634, Debt adjusting (Misdemeanor). (Hereinafter, the “2011 Conviction.”)

f. The Department notified Applicant by letter dated September 16, 2020, that his application was not complete.

g. On September 18, 2020, the Department received documentation from the Applicant regarding the following additional conviction:

Wichita Municipal Court, Case No. 97C053742, Disorderly Conduct (Misdemeanor). (Hereinafter, the “1997 Conviction.”)

h. At that time, Applicant also submitted a written statement about the circumstances which led to the 1997 Conviction.

i. By letter dated October 6, 2020, the Applicant was notified that his application was denied pursuant to K.S.A. 40-4909(a).

j. At the hearing, the Director testified that as part of the online application, a pop-up notification appears before the applicant proceeds to background questions. It states, in part:

Please review the background question tab carefully and thoroughly. **An incorrect or inaccurate response to a background question may result in delay in your application and/or ultimately a denial of license.** Please note that the FBI/KBI background check used by the Kansas Insurance Department may reveal misdemeanor and felony convictions that may not appear on other background checks. This includes those which may have been expunged or for which a diversion was received.” [Emphasis added.]

.....

If you have any questions, please contact the Producer Licensing Division . . . before submitting the application.

k. At the end of the application, an Applicant signs the Applicant’s Certification and Attestation which states, in part:

The Applicant must read the following very carefully:

I hereby certify that, *under penalty of perjury*, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license [Emphasis added.]

l. The Director testified the Department looks at the charging documents to determine the nature and recency of the conduct when determining whether to deny an application due to misdemeanor convictions. With regard to the 2011 Conviction, the Director noted Applicant's age (49) at the time of the conviction, and the concern that the conduct underlying the conviction was financial in nature and indicated dishonesty in the conduct of business matters. With regard to the 1997 Conviction the concern was not focused upon the conduct, but instead upon the Applicant's failure to disclose the conviction on his Waiver Form and provide documents regarding the conviction until notified by the Department that his application was incomplete. It was determined that the insurable interests of the public would not be served by granting a license due to the nature of the 2011 Conviction and failure to disclose, on the Waiver Form, the 1997 Conviction.

m. By letter dated November 10, 2020, Department licensing staff amended the October 6, 2020, denial letter to include Applicant's failure to disclose his involvement in an administrative proceeding with the Kansas Real Estate Commission.

n. The Director testified that after the October 6, 2020, denial letter was sent, the Department became aware of the Applicant's involvement in an administrative proceeding with the Kansas Real Estate Commission ("Commission") which should have been disclosed on the application. A Summary Proceedings Order issued by the Commission against the Applicant on May 24, 2011, was admitted into evidence. Highly summarized, the Order (hereinafter, the "Real Estate License Action") placed the Applicant's real estate

license on inactive status for failure to timely notify the Commission of the 2011 felony charges filed against him, indicated reinstatement of his license was contingent upon the resolution of the felony charges, and imposed a \$1,000 fine.

o. Background question 2 under item 38 of the application asks, in relevant part:

Have you ever been named or involved as a party in an administrative proceeding . . . regarding any professional or occupational license or registration?

“Involved” means having a license censured, suspended, revoked, canceled, [or] terminated **‘Involved’ also means being named as a party to an administrative [] proceeding, which is related to a professional or occupational license, or registration. . . .**”

If you answer yes, you must attach to this application the following as described in the Attachments section below:

- a) a written statement identifying the type of license and explaining the circumstances of each incident,
- b) a copy of the Notice of Hearing or other document that states the charges and allegations, and
- c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

p. Applicant answered “no” to question 2 under item 38.

q. The Department issued an “Amended Letter Decision on Application for Resident Insurance Agent’s License” on November 10, 2020, to include Applicant’s failure to disclose the Real Estate License Action as a basis for denial of his application.

r. The Director testified that the Applicant’s failure to disclose the Real Estate License Action was considered an additional act of dishonesty and lack of candor which supported the denial of an insurance agent license.

11. At the hearing, the Applicant did not dispute any facts presented by the Department, but rather testified to provide additional background about the events which resulted in his convictions, and the situation involving his real estate license. Applicant’s testimony and

documents presented as evidence provide the following relevant information which has bearing on his license application:

1997 Conviction:

a. Regarding the 1997 Conviction, Applicant indicated that he knew he “had something on his record” from about that time but was unsure of the charge until after he received his court records. However, he did remember the incident itself. It involved a dispute over picking up his two children from his ex-wife’s home. The ex-wife claimed the Applicant had pushed her, which resulted in an original charge of Battery. He pled guilty to a reduced charge of disorderly conduct. Applicant was sentenced to undergo counseling and pay a \$500 fine.

b. The Applicant admitted that he pled no contest to the 1997 Conviction and knew there was “some charge” on his record. However, he suggested that his failure to disclose it on the Waiver Form was because he was uncertain what the actual charge was.

c. The Applicant requested records to submit with his application from the City of Wichita on or about August 6, 2020. They were mailed to him on August 27, 2020. The Applicant signed the fingerprint Waiver Form on September 10, 2020,¹ on which he disclosed only the 2011 Conviction. The Applicant admitted on cross-examination that he completed the Waiver Form after the certified court documents disclosing the disorderly conduct charge were sent to him by the City of Wichita so he should have known about the 1997 Conviction and could have disclosed it.

d. On cross-examination, Applicant stated that he was not certain whether he disclosed the 1997 Conviction to the insurance company for which he is currently working.

¹ There was some testimony that this was the second Waiver Form he completed and sent to the Department, but that evidence is not material to this decision.

Applicant later testified that he may have provided the 1997 Conviction documents to his company but failed to timely provide them to the Department.

2011 Conviction

e. In March 2011, Applicant was charged in the District Court of Sedgwick County, Kansas, with sixteen felony counts, including securities fraud and violations of unfair trade and consumer protection statutes. Three other persons were also charged under the indictment with various counts involving the same alleged criminal conduct. On November 14, 2011, Applicant pled no contest to one charge of Debt Adjusting, a Class-B non-person misdemeanor. All other counts against the Applicant were dismissed. Applicant was sentenced to ten days in jail, twelve months of probation, and was ordered to pay \$25,000 in restitution. Applicant testified that he completed probation but is still paying restitution. Applicant stated that his probation order only requires that he make payments but does not specify the amount or how often. Applicant stated that he has paid “about \$200” over the ensuing nine years.

f. Applicant’s written statement regarding the 2011 Conviction explained that he was involved with a company which attempted to find financing for businesses following the 2008 financial crisis. Applicant stated his role was to keep clients informed. After the charges were filed against him, the Applicant severed his relationship with the company, hired an attorney, and followed his attorney’s advice to plea to the one misdemeanor charge. He indicated at the time it seemed the least expensive alternative and he needed to move on with his life to support his family.

g. During the hearing, Applicant testified that he worked for Lion Share Capital, LLC (“Lion Share”) from 2008 to 2011. Prior to that time, he worked as a commercial real-

estate broker and had established Gregory Buss Real Estate, Inc. Through his commercial real estate business, he became acquainted with Jeffrey Williams, Lion Share's General Manager. He was recruited by Williams in 2008 to handle day-to-day operations for the company. At some point he was designated as the firm's "COO" [presumably Chief Operating Officer]. Applicant testified that he had only two roles with the company: he helped secure their office space and would speak to company clients and relay information for Mr. Williams.

h. Applicant described Mr. Williams as a manipulator and testified that at some point he began to suspect that he was not getting accurate information from Mr. Williams. Because of his concerns, he spoke to attorneys for the company's clients, and/or an attorney that represented Lion Share.² He stated that he did not learn any information from these inquiries to give him reason to believe that Lion Share was involved in anything illegal. Applicant stated that he continued "playing along," with the activities of Williams (despite his concerns about some of Williams' conduct) and Lion Share, because he thought that what they were doing could help businesses during that difficult financial time.

i. Applicant testified that the company was working with "senior settlements"³ to back their clients' ventures, and to use as collateral for their clients' loans. Applicant testified at some point he learned the Kansas Securities Commission ("KSC") was investigating the company for allegedly operating as an unlicensed securities broker. An investigator with the KSC advised the Applicant that Williams had been convicted of a felony in Illinois. Applicant testified that he personally was not involved in selling securities and did not believe the activities of the company were wrong.

² Applicant's testimony was conflicting and unclear as to what attorneys he consulted.

³ At one time they were identified by the Applicant as viatical settlements.

j. Applicant initially testified that he did not work with the KSC to provide evidence against Lion Share. However, he later indicated he met with the investigator a couple of times after that initial conversation. During cross-examination, Applicant acknowledged that he was deposed after he was indicted. Applicant stated that he was interviewed with a court reporter present and he was represented by an attorney.

k. When asked about his plea of no contest and the reduction from sixteen felony charges to the one misdemeanor conviction, Applicant said he believed that the prosecutors agreed to the plea bargain because “they knew he wasn’t guilty” of the charges. His understanding was that Mr. Williams was the real target of the prosecution. Applicant stated that he was uncertain of the outcome for the other defendants in the case. However, he later learned that a state or federal agency had seized the company’s equipment.

l. Upon further questioning, the Applicant stated he was suspicious about the activities of Lion Share at the time the KSC investigator told him about Williams’ felony conviction. He continued, on his own, to make inquiries as to whether the company’s actions were wrong. He severed ties with Lion Share when he was arrested March 1, 2011. In hindsight, he admits he should have left when the KSC investigator began questioning him about Williams and Lion Share’s activities. The Applicant characterized himself as being too naïve and trusting of people when involved with Lion Share.

Real Estate Commission Order:

m. By letter dated May 24, 2011, the Kansas Real Estate Commission proposed to place Applicant’s broker license on inactive status and provided Applicant with a copy of a Summary Proceedings Order. The summary order was being issued due to Applicant’s felony charges. A fine of \$1,000 was also assessed against Applicant for failure to timely

report the felony charges brought against Applicant. The summary order became a final agency action when the Applicant did not request a hearing on that order.

n. During the hearing on this matter, Applicant first indicated he reported the felony charges to the Real Estate Commission after they sent him the letter and proposed summary order. Applicant did not challenge the summary order at that time as his efforts and attention were directed toward defending himself against the felony charges. He knew about the fine imposed in the order but did not pay it. He assumed his license was forfeited because he had not paid the fine and/or had not taken action to renew or reinstate his license. Applicant contradicted himself later when he testified that he had never received a copy of the summary order because it had been sent to his Lion Share business address. However, he later acknowledged a copy was also sent to his residential address so he must have received it. After further questioning by the Department's counsel, he acknowledged that he should have marked "yes" to question 2 under item 38.

o. Applicant testified that he is currently employed at an insurance company as a customer care agent. Applicant stated that his wife is working for the same insurance company. Applicant stated that prior to working for the insurance company, he owned and managed a restaurant in Wichita, Kansas. The restaurant closed in 2019.

p. The Applicant submitted several letters from friends, neighbors, church acquaintances, work acquaintances, and his current employer attesting to his good character, his work ethic, and his professionalism. Applicant has had full custody of his two children since his marriage to his first wife ended. He has been married to his second wife for twenty-two years and has been a stepfather to three other children. He presented

evidence that their children, now adults, have successful careers. He is understandably proud of their upbringing and success as adults.

12. Counsel for the Department asked the Presiding Officer to consider the factors established by the Kansas Supreme Court in its decision for *In re Gates*, 273 Kan. 1025 (2002). She further asked the Presiding Officer to uphold the Department's decision by giving weight to Applicant's age at the time of the conduct that led to his 2011 Conviction, the nature and recency of the conduct underlying the 2011 Conviction, and the Applicant's failure to disclose his 1997 Conviction and the Real Estate License Action during the admission process.

13. The Applicant asked the Presiding Officer to consider that he had successfully operated a restaurant for several years after the 2011 Conviction, that he has tried to correct his past mistakes in order to provide for his family, that he and his wife cared for a son during his treatment for and recovery from leukemia, and that his wife, until recently was, for five years, the primary caregiver for her elderly mother. He believes getting his insurance agent license will enable him to work toward a better future for he and his wife.

Applicable Law

14. Pursuant to K.S.A. 77-526(a), the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head, as provided in K.S.A. 77-547, is empowered to render a Final Order.

15. Before approving an application for a Kansas resident insurance agent's license, the Commissioner has the statutory obligation to "determine that the applicant . . . has not committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 40-4909, and amendments thereto." K.S.A. 40-4905.

16. Pursuant to K.S.A. 40-4909(a), the Commission may deny, suspend, revoke or refuse renewal of the license of a person who has:

- a. Provided incorrect, misleading, incomplete or untrue information in the license application. K.S.A. 40-4909(a)(1).
- b. Been convicted of a misdemeanor or felony. K.S.A. 40-4909(a)(6).
- c. Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. K.S.A. 40-4909(a)(8).

17. The Kansas Supreme Court has not had occasion to discuss the factors the Commissioner should consider when exercising his or her discretion under K.S.A. 40-4909(a)(6). However, the Court has reviewed the Real Estate Commission's denial of an application for a real estate license. *In re Gates*, 273 Kan. 1025 (2002). The court noted that the rules adopted by the Kansas Supreme Court for the admission of attorneys are akin to the determination of whether a real estate license application should be denied. The factors to be considered are:

1. The applicant's age at the time of the conduct.
2. The recency of the conduct.
3. The reliability of the information concerning the conduct.
4. The seriousness of the conduct.
5. The factors underlying the conduct.
6. The cumulative effect of the conduct or information.
7. Evidence of rehabilitation.
8. The applicant's social contributions since the conduct.
9. Candor in the admissions process.
10. Materiality of any omissions or misrepresentations.

18. The Commissioner considers the direction given in *Gates* on the exercise of discretion in determining whether a real estate license should be granted or denied, to be applicable in the consideration of granting insurance agent licenses.

Policy Reasons

19. Before issuing an insurance agent license, the Commissioner must determine that the applicant is qualified and has not committed any act that would be grounds for denial, suspension, or revocation. K.S.A. 40-4905(b). Further, the Commissioner is charged with licensing, or continuing to license, persons or entities to sell, solicit, or negotiate insurance in the state of Kansas only if the interests of the insurer or the insurable interests of the public are properly served under such license. K.S.A. 40-4909(b).

Discussion

20. The Presiding Officer believes it is necessary to address each of the *Gates* factors.

21. At the outset, the Presiding Officer notes that this matter involves separate and distinct issues. One issue is the Applicant's two misdemeanor convictions and the Real Estate License Action, and the second is his failure to disclose the 1997 Conviction and the 2011 Real Estate License Action. Each of these issues will be addressed in the discussion of the *Gates* factors, below.

a. First: "the applicant's age at the time of the conduct." The Applicant was 49 years old when he pled no contest to the 2011 debt adjusting charge and 35 years old when he pled guilty to the 1997 disorderly conduct charge. The applicant was 59 years old when he submitted his application and Waiver Form. He was an adult capable of making prudent decisions and being responsible for his conduct at each of these points in time.

b. Second: "the recency of the conduct." The 1997 Conviction occurred over twenty-three years ago. The underlying conduct is not recent and has not been repeated. If the Applicant had only this conviction *and had disclosed it to the Department as required*, it would not be a concern for the Department. It is the recency of the failure to disclose this

conviction and the Real Estate License Action, which occurred when the application was submitted, which is problematic for the Commissioner, which will be discussed in more detail later in this order.

Applicant's involvement with Lion Share that gave rise to the 2011 Conviction occurred from about April 2008 until he was arrested March 1, 2011. While his conviction occurred nine years ago, it cannot be overlooked that the Applicant has paid only a small fraction of the restitution ordered. His failure to make even modest payments toward restitution is ongoing and can be considered recent in nature.

c. Third: "the reliability of the information concerning the conduct." As discussed previously, the Applicant gave conflicting testimony about what he knew or understood about the 1997 Conviction and Real Estate License Action at the time he failed to disclose them to the Department in connection with his application. Regarding the 2011 Conviction, the Applicant provided inconsistent information regarding his conduct which led to that conviction. Applicant testified that he was not involved in selling securities and only relayed information to Lion Share clients regarding the status of their financing. The Applicant testified that despite his suspicions about the company's activities, including conversations he had with a KSC investigator about Mr. Williams' past felony conviction and the company's current activities, he did not leave until he was served with the felony indictment. The inconsistent information provided by the Applicant raises questions about his credibility and weighs against him.

d. Fourth: "the seriousness of the conduct." The conduct underlying the 1997 Conviction is not considered relevant under this factor. However, the Applicant's conduct underlying the 2011 Conviction is very serious in nature. While he was initially charged

with 16 felony charges relating to securities fraud and violations of various loan broker statutes, it must be acknowledged that the Applicant ultimately plead guilty to only one misdemeanor count of debt adjusting. The Applicant indicated it was because the prosecutor knew "he wasn't guilty." However, again, the Applicant provided conflicting information about whether the plea arrangement resulted from the Applicant's agreement to testify against others named in the indictment. Initially he stated it wasn't, but on cross-examination agreed that he was deposed in the matter. In addition, he was ordered to pay \$25,000 in restitution, sentenced to jail for ten days and placed on probation for one year. These are consequences which contradict the Applicant's assertion that he was not involved in furthering bad acts committed by the company, and that the prosecutor knew "he wasn't guilty." The debt adjusting misdemeanor conviction indicates involvement in fraudulent or dishonest practices, and untrustworthiness in the conduct of business. In addition, it is a concern that the Applicant has made virtually no effort to make payments toward his court-ordered restitution. While Applicant claimed this was due to his finances being tied up with running his restaurant business, failure to even make regular nominal payments toward the restitution amount is considered serious.

The failure to disclose the 1997 Conviction and the Real Estate License Action is considered extremely serious by the Commissioner. Applicant testimony as to why these weren't disclosed was inconsistent and lacks credibility. Furthermore, Applicant certified under penalty of perjury that the information disclosed in his Application and on the Waiver Form was not false. In fact, the information provided to the Department was false and incomplete. The Commissioner has concerns that an applicant who does not understand

the seriousness of attesting to information under penalty of perjury may not understand the need to be accurate and truthful in completing insurance applications for consumers.

e. Fifth: “the factors underlying the conduct.” Information regarding the failure to disclose the 1997 Conviction and the Real Estate Licensing Action have been previously discussed and need not be repeated here.

The factors underling the 2011 Conviction is of more concern to the Commissioner. Applicant repeatedly denied culpability for any actions of Lion Share or participation in any illegal activity. However, he knew the KSC was investigating Lion Share and that Mr. Williams was previously convicted of a felony in Illinois. He was concerned enough that he spoke to various attorneys to assuage his concerns. Despite these warning signs, he continued to work with the company. He portrayed himself as a naïve victim, who wasn't responsible for the potentially illegal actions of the company because he “only” relayed information to clients. However, his involvement furthered the company's activities. The Applicant himself testified he believed Williams wanted him involved because of the Applicant's business connections in Wichita. This underlying conduct, and his present assertions that he wasn't really involved in or culpable for Lion Share's illegal actions, weigh against the Applicant. It seems likely that this underlying conduct is the reason why the prosecutor did not simply dismiss all sixteen charges against him without any repercussions or restitution requirements. The jail time, probation and restitution ordered supports a conclusion that his involvement was considered serious by prosecutors.

f. Sixth: “the cumulative effect of the conduct or information.” The circumstances surrounding Applicant's 2011 Conviction, as well as Applicant's failure to disclose his

1997 Conviction and the Real Estate Licensing Action display a pattern of untrustworthy or dishonest behavior in professional settings. This weighs against the Applicant.

g. Seventh: “evidence of rehabilitation.” Applicant’s 2011 Conviction occurred nine years ago. However, he has paid very little toward the court-ordered restitution. This weighs against the Applicant. Additionally, Applicant’s failure to accurately disclose his 1997 Conviction and Real Estate Licensing Action support the Commissioners concern that the Applicant continues to engage in behavior that indicates dishonesty or untrustworthiness.

h. Eighth: “the applicant’s social contributions since the conduct.” As evidence of the type of person he is and his efforts to overcome the 2011 Conviction, the Applicant testified that he successfully ran a restaurant for eight years in Wichita and provided for his family through that business enterprise. Letters submitted on his behalf indicate respect for him in his business and personal undertakings. The Applicant and his wife raised five successful adult children. They have taken care of family members during illnesses. Applicant and his family are involved in various leukemia non-profit organizations. This weighs in favor of the Applicant.

i. Ninth: “candor in the admissions process.” While Applicant disclosed the 2011 Conviction on his application, he did not disclose the 1997 Conviction (on the Waiver Form) or the Real Estate License Action (in the application). The application form contains instructions that an applicant should contact the Department if they have any question about what must be disclosed in connection with an application. Additionally, Applicant provided inconsistent testimony during the hearing regarding his recollection about the 1997 Conviction, regarding his involvement in Lion Share, regarding the circumstances

surrounding his 2011 Conviction, and what he was aware of with regard to the Real Estate License Action.

j. Tenth: “materiality of any omissions or misrepresentations.” The Applicant failed to disclose the 1997 Conviction on the Waiver Form and failed to disclose the Real Estate License Action on his application. These omissions are material in that he attested under penalty of perjury that he had not falsified information on these documents related to Applicant’s application for an insurance license. As previously discussed, failure to give proper attention in completion of the application has a direct bearing, in the opinion of the Commissioner, on whether an applicant can or will exercise the necessary care in completing applications for insurance clients, which could result in harm to such clients.

Findings of Fact and Conclusions of Law

22. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

23. The Assistant Commissioner of Insurance, as the Presiding Officer, is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.

24. The *Gates* factors are to be considered to determine whether factors unfavorable to an applicant are outweighed by the factors that are favorable to an applicant. There is no guidance given as to whether one or some factors should be given more weight than others. There is no support for the proposition that one single factor can or should outweigh all others. The Commissioner has determined the *Gates* factors should be utilized in exercising such discretion and has delegated the duty and obligation to weigh those factors to the Presiding Officer.

25. Factors that are not in the Applicant's favor and which support the Department's decision include the nature of the 2011 Conviction, Applicant's failure to disclose the 1997 Conviction, failure to disclose his involvement in a Real Estate License Action, his inconsistent testimony during the hearing, his failure to pay any meaningful amount toward the restitution ordered in connection with his 2011 Conviction, his failure to acknowledge any wrong conduct on his part which ultimately led to the 2011 Conviction, and that the 2011 Conviction involved conduct which could be considered untrustworthy and financial in nature.

26. Factors in the Applicant's favor include that the 2011 Conviction occurred nine years ago and that the original sixteen felony counts were reduced to one misdemeanor charge. Other factors in the Applicant's favor include that he provided the requested documentation when notified by the Department that his application was incomplete, that the Applicant appeared truthful about the circumstances surrounding his 1997 Conviction during the hearing, that the Applicant seems to have worked hard to rehabilitate his business and personal reputation after the 2011 Conviction, that he enjoys the respect of friends, neighbors, and work acquaintances, that despite his legal troubles he ran a successful restaurant business for eight years, that he and his wife have successful adult children, that he is seeking to begin a professional career to provide a solid financial future for he and his wife, and that they are involved in organizations supporting victims of leukemia.

Finding and Order

The Presiding Officer finds the *Gates* factors in Applicant's favor do not outweigh those that are not in his favor. In weighing all the factors, the Commissioner finds that the insurable interests of the public would be adversely affected by the issuance of a license to the Applicant.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT:

- 1. Denial of Applicant's application for a Kansas resident insurance agent's is AFFIRMED.**

**IT IS SO ORDERED THIS 14th DAY OF JANUARY 2021, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**



VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: Barbara W. Rankin
Barbara W. Rankin
Assistant Commissioner
Presiding Officer

NOTICE

Pursuant to K.S.A. 77-601 *et seq.*, Applicant is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). In the event Applicant files a petition for judicial review pursuant to K.S.A. 77-613(e), the Agency Officer to be served on behalf of the Kansas Insurance Department is:

Justin L. McFarland, General Counsel
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, KS 66604

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the above-and foregoing Final Order upon Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 14th day of January 2021, addressed to the following:

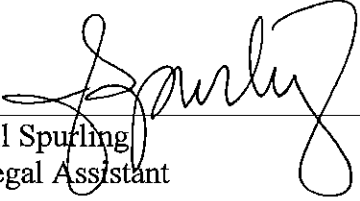
Gregory Alan Buss

[REDACTED]
Wichita, KS [REDACTED]
[REDACTED]

Applicant

and hand-delivered to the following:

Nicole Turner
Staff Attorney
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, KS 66604



Jill Spurling
Legal Assistant