

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

In the Matter of the Application for a)	
Kansas Nonresident Insurance Producer's)	
License of TUCKER HOWELL)	Docket No. 90767
NPN # 8595470)	

FINAL ORDER

(Pursuant to K.S.A. 40-4906, K.S.A. 40-4909, and K.S.A. 77-501 *et seq.*)

The Presiding Officer called this matter for hearing on March 14, 2022. Tucker Howell (“Applicant”) appeared *pro se* and the Kansas Insurance Department (“Department”) appeared by and through counsel, Kimberley Davenport Megrail, Senior Attorney. Applicant appeared 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 the evidence supports the Department’s denial of Applicant’s application for a Kansas nonresident insurance producer’s license and AFFIRMS the Department’s decision to DENY the application.

Findings of Fact

1. Applicant, a resident of Pennsylvania, submitted an application to the Department for a Kansas nonresident individual insurance producer’s license (“Application”).
2. The Application was denied by letter dated October 25, 2021.
3. Applicant filed a timely request for a hearing.
4. The following relevant facts regarding the denial of the Application were established at a formal hearing by documents introduced into evidence along with testimony by the Department’s Chief of Producer Licensing (“Department’s Witness”).
 - a. The Application was submitted electronically on October 8, 2021.
 - b. Applicant answered “Yes” to Question 1A of the Application which asks:

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

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

d. Applicant provided the Department with sentencing documents and written statements for the following relevant convictions¹ (hereinafter, collectively referred to as “Convictions”):

February 3, 2004, New Hanover County Superior Court (NC), Case No. 03CR063991, Threatening Phone Call (Misdemeanor); Case No. 03CR063992, Threatening Phone Call (Misdemeanor) and Injury to Real Property (Misdemeanor) (Hereinafter “2004 Convictions”).

October 29, 2020, Lancaster County Court of Common Pleas (PA), Case No. CP-36-CR-0002215-2020, Simple Assault (2 Counts) (Misdemeanor) (Hereinafter “2020 Convictions”).

e. The court documents for the Convictions contain the following relevant facts:

i. For the 2004 Convictions, Applicant was charged with two counts of misdemeanor threatening phone call and misdemeanor injury to real property on November 9, 2003. Applicant was found guilty of these charges on February 3, 2004.

¹ On November 28, 2005, the Applicant was charged with Assault on a Female (Misdemeanor) and “Interfere Emerg [sic] Communication” (Misdemeanor). For these charges, Applicant received a “Prayer for Judgment” on January 11, 2006. Applicant received no sentence or probation but was required to pay \$110 in restitution. The Applicant testified a “prayer for judgement” was akin to agreeing to probation, with the result that the charges are ultimately dropped from the offender’s record. Independent research confirms that North Carolina law allows a court to enter a “prayer for judgment continued” (PJC) for certain criminal charges. Under North Carolina’s Fair Sentencing Act, a PJC does not count as a prior conviction. However, under the state’s Structured Sentencing Act, a PJC counts for prior record level. See, *North Carolina Superior Court Judges’ Benchbook* (Dec. 2013), at PJC-4. <https://benchbook.sog.unc.edu/sites/default/files/pdf/Prayer%20for%20Judgment%20Continued.pdf>. The 2005 charges were not considered by the Department in its decision and are not relevant to this matter.

- ii. Applicant was required to pay \$200 in restitution and serve twelve months of supervised probation. He was also required to complete an anger management program.
 - iii. With regard to the 2020 Convictions, Applicant was charged on January 27, 2020, with two counts of misdemeanor simple assault. He pled guilty to those charges on October 29, 2020. He was sentenced to two (2) years of probation.
- f. Applicant answered “No” to Question 2 of the Application which asks:
- Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupation license or registration?
- g. Under Attestation #1 on the Application, the Applicant attests that:
- 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* and may subject me to civil or criminal penalties [emphasis added].
- h. Although the Applicant answered “No” to Question 2, a Consent Order entered into by the Applicant with the Pennsylvania Insurance Department (“PID”) on January 11, 2021 (“Consent Order”), had been provided by the Applicant as background material in connection with nonresident licensing applications submitted to a number of states. Department staff discovered the Consent Order when reviewing documentation in connection with the Application.
- i. The Consent Order constitutes “an administrative proceeding . . . regarding any professional or occupation license or registration” which was required to be disclosed under background question 2.

- j. The Consent Order contained the following relevant facts:
- i. Applicant failed to notify the PID of the 2020 simple assault charges within 30 days, as required by statute.
 - ii. Applicant further failed to notify the PID of additional criminal charges filed against him on March 27, 2020, within 30 days, as required by statute.²
 - iii. Applicant failed to notify the PID of the final disposition of his simple assault charges within 30 days, as required by statute.
 - iv. Applicant was required to pay a penalty of \$500 to the Commonwealth of Pennsylvania.
- k. By letter dated October 25, 2021, the Department notified the Applicant his application was denied pursuant to K.S.A. 40-4909(a)(1) and (6) and K.S.A. 40-4909(b).
- l. The Department's Witness testified the Application was denied due to Applicant's misdemeanor convictions from 2004 and 2020, and due to Applicant falsely answering "No" to Question 2.
- m. The Department's Witness testified the Department utilizes the factors set forth in K.S.A. 40-4909(c)(1) when considering the application of an individual who has been convicted of a misdemeanor or felony. In the Applicant's case, the factors considered in deciding to deny the application were the recency of the 2020 Convictions and seriousness of the conduct underlying the conviction.
- n. The Department's Witness testified that when considering recency of the conduct when misdemeanor convictions are present, the Department prefers for five years to have

² These charges were later dismissed so were not relevant to this proceeding.

passed, without any intervening convictions or charges, since the underlying conduct occurred.

o. The Department's Witness testified the Department has a duty to the public to ensure those licensed are trustworthy and will serve the best interests of the public. The Applicant's failure to disclose the Consent Order indicated a lack of trustworthiness.

p. The Department's Witness testified the Department reviewed the Application as a whole, which included both the serious nature of the conduct underlying the 2004 Convictions and 2020 Convictions, and the Applicant's failure to disclose the Consent Order. The Department did not believe the insurable interests of the public would be served by granting Applicant a license at this time.

5. Applicant's testimony and documents presented as evidence at the hearing provide the following information which has bearing on his license application:

a. Applicant testified the 2004 Convictions involved his ex-wife and occurred during a heated divorce. In his written statement regarding these charges, he indicated that during the divorce, "things got a bit out of control. I was young and stupid. Now, well over 10 years have passed and I have grown up and moved on. The older I get the smarter I get."

b. Applicant testified the 2020 Convictions resulted from an incident which occurred outside a restaurant. Highly summarized, his girlfriend was hit with a car door, a verbal altercation ensued between the driver of the car and his girlfriend, and the Applicant stepped in to protect his girlfriend by preemptively hitting the driver of the car. The Applicant described the situation as follows:

We were outside [of a restaurant] and someone with their car, hit my girlfriend, and then she started going off on the guy. I thought he was gonna hit her, so I jumped in and just took over. I wasn't gonna let anyone hit my girlfriend.

He further explained:

They hit her with [a car door]. And my girlfriend went crazy on the guy and yeah, I jumped in because I don't want a guy hitting my girl. And that's kind of what it boiled down to. Me protecting.

c. When asked if he understood that physically assaulting someone was considered a serious issue, the Applicant responded:

I'm not happy with my decision to [do] what I did either, you know, but in the heat of the moment, I don't really know what I would have done – how I would have stopped myself in that moment.

d. The Applicant testified what he did was a mistake.

e. Applicant remains on probation for the 2020 Convictions. He testified that due in part to the Covid pandemic, he is required to report to a probation officer only two times during his probation term. He believes he has spent between \$2,000 and \$3,000 in court and probation costs.

f. Applicant is currently 41 years old. He was 39 years old when the 2020 Convictions occurred.

g. With regard to the Consent Order, the Applicant testified he was called by a staff member of the PID advising him he had failed to notify the department of the January 2020 charges. After he was convicted, he was called again and advised he had failed to report the convictions. He testified he wasn't aware he needed to report the convictions as the PID already knew about the charges.

h. During questioning by the Department's Counsel, the Applicant denied that he had received a letter from the PID advising him that he needed to report the convictions to them.

i. The Consent Order states that on June 22, 2020, the Applicant was issued a warning letter by the PID which informed him of the requirement to report criminal charges and final disposition of those charges within 30 days.

j. The Applicant testified that because he had been required to pay a \$500 penalty under the Consent Order, he would not forget that he had to report such matters to his resident licensing state in the future.

k. The Applicant testified he read Question 2 wrong on the Application and did not know the Consent Order needed to be disclosed.

l. The Applicant has been a licensed insurance producer in Pennsylvania for eight years.³ However, he indicated he has concentrated on selling insurance in only the past year or two. The Applicant holds nonresident insurance producer licenses in several other states.

6. Following the evidentiary portion of the hearing, Counsel for the Department asked the Presiding Officer to affirm the Department's denial based on K.S.A. 40-4909(a)(1) and (6) and K.S.A. 40-4909(b). Counsel further asked the Presiding Officer to consider the Applicant's failure to disclose the Consent Order, an administrative proceeding, to the Department. Counsel noted the Consent Order specifically stated the Applicant had been sent a letter reminding him of his responsibility to report his convictions to the Pennsylvania department, which was contrary to Applicant's testimony that he had not received such a letter. Counsel asked the Presiding Officer to consider the factors set forth in K.S.A. 40-4909(c)(1) when considering the Convictions. Counsel for the Department asked the Presiding Officer to uphold the Department's decision due to Applicant having recent misdemeanor convictions, a history of similar actions, having a recent

³ He testified he previously held a resident insurance producer license in North Carolina but had allowed it to lapse at some point.

administrative action against his insurance license in Pennsylvania, and that he failed to disclose the Consent Order to the Department.

Applicable Law

7. 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.

8. K.S.A. 40-4906(a) states “Unless denied licensure pursuant to K.S.A. 2021 Supp. 40-4909, and amendments thereto, a nonresident person shall receive a nonresident agent license...” if additional statutory requirements are met. Further, K.S.A. 40-241 states that “[i]f the commissioner of insurance finds that the individual applicant is trustworthy, competent and has [passed the appropriate licensing examination],” the commissioner shall issue a license to the applicant.”

9. Pursuant to K.S.A. 40-4909(a)(1), the Commissioner may deny, suspend, revoke or refuse renewal of a license upon finding that the applicant or license holder has provided incorrect, misleading, incomplete, or untrue information in the license application.

10. Pursuant to K.S.A. 40-4909(a)(6), the Commissioner may deny, suspend, revoke or refuse renewal of a license upon finding that the applicant or license holder has been convicted of a misdemeanor or felony.

11. Pursuant to K.S.A. 40-4909(b), the Commissioner may deny, suspend, revoke or refuse renewal of a license upon finding the interests of the insurer or the insurable interests of the public are not properly served under such license.

12. K.S.A. 40-4909(c)(1) sets forth factors the Commissioner shall consider when considering whether to deny, suspend, revoke, or refuse to renew the application of an individual who has been convicted of a misdemeanor or felony. The factors to be considered are:

- a. Applicant's age at the time of the conduct.
- b. Recency of the conduct.
- c. Reliability of the information concerning the conduct.
- d. Seriousness of the conduct.
- e. Factors underlying the conduct.
- f. Cumulative effect of the conduct or information.
- g. Evidence of rehabilitation.
- h. Applicant's social contributions since the conduct.
- i. Applicant's candor in the application process.
- j. Materiality of any omissions or misrepresentations.

13. There is no guidance provided in statute as to whether one or some of the factors in K.S.A. 40-4909(c)(1) should be given more weight than others.

14. The Commissioner has delegated the duty and obligation to weigh the factors set forth in K.S.A. 40-4909(c)(1) to the Presiding Officer.

Policy Reasons

15. 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 insurable interests of the insurer or the insurable interests of the public are properly served under such license. K.S.A. 40-4909(b). To fulfill this charge, before issuing a nonresident insurance producer's license, the Commissioner should ensure that the applicant has not committed any act or acts which justify the denial, suspension, revocation or nonrenewal of a license, and that the applicant is trustworthy and competent.

Discussion

16. The Presiding Officer notes this matter involves three separate and distinct issues. The first issue is the Applicant's Convictions, the second is the recent Consent Order issued by his resident licensing state, and the third is his failure to disclose in his Application the Consent Order, which constituted an administrative proceeding involving his insurance license.

17. In 2004, Applicant was convicted of three misdemeanors that involved threatening and aggressive behavior. While these convictions are of concern to the Commissioner, they are almost 20 years old. This conduct is not as recent as the 2020 Convictions which the Commissioner considers to be very serious. The Applicant's 2020 Convictions, the recent Consent Order involving his resident license in Pennsylvania, and his failure to disclose that order will be the main points of discussion below regarding the factors set forth in K.S.A. 40-4909(c)(1).

18. The Presiding Officer believes it is appropriate to address each of the factors set forth in K.S.A. 40-4909(c)(1).

a. First: "Applicant's age at the time of the conduct." Applicant was 39 at the time of the 2020 Convictions. He was a mature adult, capable of making prudent decisions and being responsible for his conduct. He was the same age when he entered into the Consent Order. He had been licensed as an insurance producer in Pennsylvania for eight years. He knew or should have known Pennsylvania's laws and regulations requiring insurance producers to report certain actions, such as criminal charges and disposition of those charges, to the PID. He was expressly reminded of these requirements by the PID and evidently did not feel it was important to follow direction given by his licensing regulator. This factor weighs against the Applicant.

b. Second: "Recency of the conduct." The incidents which gave rise to the 2020 Convictions occurred on or about January 27, 2020.⁴ Applicant was sentenced to two years of probation for the 2020 Convictions and remains on probation. Applicant's probation will be completed on or about October 29, 2022. An insufficient period of time has passed since the 2020 Convictions to afford the Commissioner an assurance that Applicant will not

⁴ This information was contained in the Consent Order.

engage in similar conduct again, particularly given the Applicant's testimony that he was uncertain, given the heat of the moment, whether he could have acted differently. The Commissioner is also reluctant to grant a license to an applicant who is on probation for recent convictions involving violent behavior. If the sentencing court believes an offender should be on probation due to the seriousness of the offenses, it would seem imprudent for the Commissioner to determine the offender, notwithstanding the pending probation, should be trusted to engage with potential insurance consumers in Kansas.

The Consent Order was entered into on January 11, 2021. The Applicant failed to disclose it in his Application submitted to the Department nine months later. The recency of both these weighs against the Applicant.

c. Third: "Reliability of the information concerning the conduct." Applicant acknowledged his conduct underlying the 2020 Convictions and the Consent Order. While not disputing the events underlying the Convictions, he gave testimony that was inconsistent with information in the Consent Order. In addition, the Applicant did not disclose the Consent Order in his Application. The Consent Order resulted from Applicant failing to disclose criminal charges or convictions to the PID, despite a warning letter clearly advising him of the requirement to do so. The lack of disclosure on the Application and to the PID, and the testimony that was inconsistent with statements in the Consent Order, cast doubt on the Applicant's credibility and trustworthiness. This factor weighs against the Applicant.

d. Fourth: "Seriousness of the conduct." Both the 2004 Convictions and 2020 Convictions are considered serious by the Commissioner because they demonstrate aggressive and threatening behavior towards others. The act of physically assaulting

another person is egregious no matter the circumstances. With regard to the 2020 incident, the Applicant readily admitted to striking the first blow to protect his girlfriend as he believed she was going to be struck by the person with whom she was having a verbal confrontation.

Further, Applicant's Consent Order with the PID was the result of not disclosing the 2020 criminal charges and convictions, despite clear direction to do so. This demonstrates a level of disrespect toward his primary licensing regulator and a failure to take licensing requirements seriously. In addition, the Applicant's failure to disclose the administrative order against his license is concerning to the Commissioner. It is precisely because of the serious nature of such administrative orders that they are required to be disclosed to other states in which an insurance producer seeks to obtain a license. This factor weighs against the Applicant.

e. Fifth: "Factors underlying the conduct." Applicant's testimony about wanting to protect his girlfriend in the incident that arose after she was struck by a car door, while providing context for the convictions, does not weigh in his Applicant's favor. In fact, it is alarming that he believed it was appropriate to strike the first blow in what was described as involving only a heated verbal altercation prior to the Applicant's physical assault on the car driver. Applicant had convictions in 2004 which involved threatening conduct. Apparently, that conduct was serious enough for the court to require the Applicant to undergo anger management counseling. His conduct in 2020 involved even more aggressive behavior. While the two instances are not close in time, it does demonstrate repeated conduct involving aggressive and threatening conduct by the Applicant.

Details of the Consent Order are set forth above under the discussion of “the seriousness of the conduct” and do not need to be repeated here. Overall, this factor weighs against the Applicant.

f. Sixth: “Cumulative effect of the conduct or information.” The Applicant’s conduct in 2004 consisted of incidents involving threatening or aggressive behavior toward his ex-wife. Applicant remains on probation for his 2020 Convictions. Applicant’s explanation that the 2020 incident occurred in the “heat of the moment” does not excuse the behavior, but rather demonstrates poor judgment and the inability to control his emotions or behavior. The evidence indicates the situation only became physical when then Applicant initiated the physical altercation when he decided it was appropriate to hit another individual to “protect his girlfriend.”

Additionally, Applicant’s failure to report his 2020 misdemeanor charges and subsequent convictions to the PID and his failure to disclose the Consent Order on his Application constitute other acts of poor judgment, demonstrate a disregard of licensing requirements and instructions, and reflect a pattern of dishonest or untrustworthy behavior. This factor weighs against the Applicant.

g. Seventh: “Evidence of rehabilitation.” Applicant did not testify to any steps he has taken to rehabilitate himself, other than to say he is “too old” for fighting now, and that he will not forget the requirements to report charges and convictions to licensing authorities after having to pay the \$500 fine to PID. He advised the Presiding Officer she would have to take his word that these types of situations would not occur again. The recency of the 2020 Convictions and the Consent Order, and that the Applicant remains on probation,

does not provide substantive evidence that the Applicant has been rehabilitated and would not engage in similar conduct again. This factor weighs against the Applicant.

h. Eighth: “Applicant’s social contributions since the conduct.” Applicant is a productive member of society. He has steady employment as a licensed insurance producer in other states. He testified to having over 3,000 insurance clients. He has complied with the requirements of his probation. This factor weighs in Applicant’s favor.

i. Ninth: “Applicant’s candor in the application process.” Applicant disclosed his prior misdemeanor convictions in his application. However, Applicant did not disclose a prior administrative proceeding. Furthermore, the failure to disclose was acknowledged under penalty of perjury. The Commissioner has previously expressed concern when an Applicant has failed to understand the significance of attesting to inaccurate or false information under penalty of perjury. The Applicant also provided testimony which conflicted with facts stated in the Consent Order. Overall, this factor weighs against the Applicant.

j. Tenth: “Materiality of any omissions or misrepresentations.” As stated above, the failure to disclose the Consent Order in the license application was material in that Applicant attested under penalty of perjury that he did not falsify information in the license application. Additionally, the Applicant had notice from the Attestation section of the Application that submitting false information or omitting pertinent or material information on the application may be grounds for denial of a license. The Commissioner considers this misrepresentation to be material. This factor weighs against the Applicant.

Findings of Fact and Conclusions of Law

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

20. 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.

21. The Presiding Officer finds there is sufficient evidence to support the Department's denial of the Application (1) pursuant to K.S.A. 40-4909(a)(1), for providing incorrect, incomplete, or untrue information in the license application, (2) due to the recent administrative action against him in his resident licensing state, and (3) pursuant to K.S.A. 40-4909(a)(6), because the Applicant has had recent misdemeanor convictions. In considering the misdemeanor convictions, the factors listed in K.S.A. 40-4909(c)(1) that are not in the Applicant's favor, and which support the Department's decision are discussed in detail above. These include the age of the Applicant at the time of the conduct in question, the recency of the conduct underlying the 2020 Convictions, the seriousness and nature of the conduct underlying the Convictions, and the lack of evidence of Applicant's rehabilitation. The only factors in the Applicant's favor are his social contributions since the conduct occurred which includes his steady employment as an insurance producer.

Finding and Order

The Presiding Officer finds that the evidence supports the Department's conclusion that the insurable interests of the public are not properly served by granting the Applicant a Kansas nonresident insurance producer license at this time.

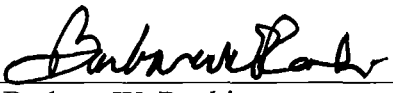
IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the DENIAL of Applicant's application for a Kansas nonresident insurance producer's license is AFFIRMED.

IT IS FURTHER ORDERED THAT, pursuant to K.S.A. 40-4909(j)(1), the Applicant SHALL NOT APPLY for a license until after ONE YEAR from the date of this Order.

IT IS SO ORDERED THIS 13th DAY OF APRIL 2022, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: 
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 13th day of April 2022, addressed to the following:

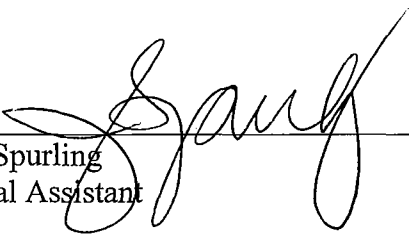
Tucker James Howell

[REDACTED]
Lancaster, PA [REDACTED]
[REDACTED]

Applicant

And hand-delivered to the following:

Kimberley Davenport Megrail
Senior Attorney
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, KS 66604
Counsel for the Kansas Insurance Department



Jill Spurling
Legal Assistant