

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Notary Commission Application of Alicia Eaton	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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This matter comes before Administrative Law Judge Beverly Jones Heydinger pursuant to an Order Denying License Application, Notice of and Order for Hearing, and Statement of Charges dated September 30, 2008. A hearing was held before Judge Heydinger on November 13, 2008 and the hearing record closed on that date.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). Alicia Eaton (Applicant) appeared on her own behalf.

**STATEMENT OF ISSUE**

Did the Applicant demonstrate, by a preponderance of the evidence, that she is trustworthy and that the Department's action in denying her application for a notary commission is not in the public interest?<sup>1</sup>

The Administrative Law Judge recommends that the Department's action denying Alicia Eaton's application be reversed.

Based on all the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. This contested case proceeding was initiated after the Applicant's appeal of the Department's denial of her application for a notary commission. The denial was based on the Department's finding that the Applicant demonstrated that she is "untrustworthy" pursuant to Minn. Stat. § 45.027, subd. 7 (a) (4).<sup>2</sup>

<sup>1</sup> Minn. Stat. § 45.027, subd. 7 (2008).

<sup>2</sup> Order Denying License Application, Notice of and Order for Hearing, and Statement of Charges, page 2 (September 30, 2008).

2. Applicant submitted a Notary Commission Application dated June 30, 2008.<sup>3</sup>

3. Applicant disclosed her history of criminal convictions on the application form and in an accompanying three-page typewritten explanation.<sup>4</sup>

4. Applicant has a history of three misdemeanor convictions. In 1996, she pled guilty to a misdemeanor for unlawfully obtaining welfare assistance (welfare fraud). In 1996, she was convicted of misdemeanor assault following a dispute with her then-husband. In 2004, she was convicted of obstructing the legal process after an incident where police insisted that she move her car when she was not properly dressed to go outside.<sup>5</sup>

5. The Department determined that Applicant's explanations of her offenses evidenced a lack of rehabilitation because she blamed others for her conduct. Because honesty is a basic qualification for a notary and the Department determined that Applicant's failure to accept responsibility for welfare fraud reflected a lack of honesty, it denied her application.<sup>6</sup>

6. The welfare fraud charge was based on an allegation that Applicant had failed to report income she was earning while she was receiving public assistance. This was at a time when Applicant was moving from Hennepin to Dakota County and involved multiple case workers in the two counties. Applicant states that she did fully report all relevant information.<sup>7</sup>

7. Applicant pled guilty to the welfare fraud charge based on what she now believes was bad advice from a public defender. At the time, she was young and did not clearly understand the consequences of a guilty plea.<sup>8</sup>

8. Following her guilty plea in the welfare fraud case, Applicant paid restitution over a period of months. Meanwhile, she did her own research and discovered that the welfare fraud charge was based on inaccurate information and that the county agency owed her money.<sup>9</sup>

9. Applicant returned to court with the information she had discovered. As a result, she received a letter on October 2, 1998, which stated that Hennepin County had "recalculated the AFDC overpayments" with which she had been charged and that "the amount that you owe is less than what we originally charged you with."

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<sup>3</sup> Hearing Exhibit (Ex.) 1.

<sup>4</sup> Ex.1 at page 2; and Ex. 2.

<sup>5</sup> Testimony of Bruce Duncan (Duncan Test.); Testimony of Alicia Eaton (Eaton Test.), Ex. 2 and 3.

There are some discrepancies in the testimony and exhibits about the dates of the welfare fraud and the assault incident. It appears from the Bureau of Criminal Apprehension printout (Ex. 3) that both of those convictions were in 1996.

<sup>6</sup> Duncan Test.

<sup>7</sup> Ex. 2.

<sup>8</sup> Eaton Test.

<sup>9</sup> Eaton Test., Ex. 2.

Further, the county's notice stated that it had "created a new AFDC claim . . . for this new overpayment amount and have cancelled the two original AFDC claims . . . . We have asked accounting to credit the recoupments collected on these two old claims."<sup>10</sup>

10. In addition to this notice, Hennepin County returned \$249.00 to Applicant.<sup>11</sup>

11. Applicant was told by the county that there were questions about the accuracy of the welfare fraud charges against her.<sup>12</sup>

12. Applicant has considered going back to have her record expunged in this matter, but, given the other demands of her life, including raising children and educating herself, she has not had a chance to pursue that process, nor did she understand that failure to do so would affect her application.<sup>13</sup>

13. Applicant's misdemeanor assault charge arose out of a difficult domestic situation when she was attempting to serve divorce papers on her former husband. Her ex-husband attempted to dissuade the county attorney from pursuing the charges, but the county attorney insisted.<sup>14</sup>

14. The obstruction of legal process charge occurred in 2004 after an intoxicated woman visiting a neighbor's home came to Applicant's door late at night, demanding that she move her car. Applicant was not dressed and her young children were sleeping upstairs. She was not inclined to move her car, which had been parked in front of her house before the stranger's car was parked next to hers. Applicant called the police, hoping for their help in resolving the situation. To the Applicant's surprise, the police ordered Applicant to move her car. She said that she needed to put on some clothes and shoes first. After dressing, Applicant began to move her car to the garage. She had reached the back alley near her garage when the police car came into the back alley with lights and sirens on, arrested Applicant and had her car towed. She was taken to jail that night.<sup>15</sup>

15. Applicant was convicted of the misdemeanor "obstruction of legal process" charge based on her initial refusal to move her car.<sup>16</sup>

16. Applicant presented character references written in 2008 by Cora Long, the Director of Seed Academy in Minneapolis. Ms. Long states that Applicant has been affiliated with Seed Academy for about ten years as a secretary and a teacher or

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<sup>10</sup> Ex. 15.

<sup>11</sup> *Id.*

<sup>12</sup> Eaton Test.

<sup>13</sup> *Id.*

<sup>14</sup> Ex. 2, Eaton Test.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

instructor. Applicant is known for her dedication, efficiency, professional demeanor, reliability and commitment through difficult times.<sup>17</sup>

17. Applicant also presented a reference from Terry Romero, a program specialist with Chrysalis in Minneapolis. The reference was written in 2007, after Applicant worked as an intern in the Legal Assistance for Women program at Chrysalis. Ms. Romero describes Applicant as “an asset” to the program, helpful and patient with clients and upbeat with a positive attitude. Ms. Romero also mentions Applicant’s dedication.<sup>18</sup>

18. Also in 2007, Mary Biermaier, Director of Victim/Witness Services in the Ramsey County Attorney’s office, wrote a letter of recommendation for Applicant. Applicant was an intern in that office in the spring of 2007. Ms. Biermaier describes Applicant as someone who was “eager and enthusiastic” and who exhibited “dedication and tenacity.” Ms. Biermaier also stated that Applicant was “well-organized, worked well as part of a team, and was pleasant and courteous.”<sup>19</sup>

19. In addition to these recommendations, Applicants presented recommendations written on her behalf in 1999 by Kay Mitchell, Clerk of the Board of Hennepin County Commissioners; in 1995 by Senator Florian Chmielewski, Chair of the Minnesota Senate Transportation and Public Transit Committee; and Senate Major Leader Roger Moe and Minority Leader Dean Johnson. These letters praise Applicant’s conscientiousness, professionalism, hard work, skills, cheerfulness and good communication skills.<sup>20</sup>

20. The Minnesota Department of Education issued Applicant a short call substitute teaching license on October 15, 2008.<sup>21</sup>

21. Applicant earned her Bachelor of Arts degree from Hamline University in May of 2008, with majors in Legal Studies and Criminal Justice and a Paralegal Certification.<sup>22</sup>

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.011, 45.027 and 359.12 (2008).

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<sup>17</sup> Exs. 4 and 5.

<sup>18</sup> Ex. 6.

<sup>19</sup> Ex. 7.

<sup>20</sup> Exs. 8, 9, 10.

<sup>21</sup> Ex. 11.

<sup>22</sup> Ex. 13.

2. The Order Denying License Application, Notice of and Order for Hearing, and Statement of Charges are proper in all respects and the Department has complied with all substantive and procedural requirements of law and rule.<sup>23</sup>

3. The Commissioner of Commerce may deny an application for a notary commission if the Commissioner finds that such a denial is in the public interest and that the applicant “has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant . . . is untrustworthy.”<sup>24</sup>

4. The burden of proof in this matter is on the Applicant to prove by a preponderance of the evidence that her application for a notary commission should be granted.<sup>25</sup>

5. Applicant has demonstrated by a preponderance of the evidence that she is trustworthy, truthful and qualified to hold a notary public commission.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

**RECOMMENDATION**

The decision by the Department to deny Applicant’s application for a notary public commission be REVERSED.

Dated: December 8, 2008

s/Beverly Jones Heydinger

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Digitally recorded  
A-bhj-111308  
No transcript prepared

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<sup>23</sup> Technically, the Order should have been titled an Order Denying Application for Notary Commission. The Administrative Law Judge assumes that this was a clerical error on the part of the Department. In addition, there was no evidence or testimony regarding the timeliness of Applicant’s appeal of the denial of a notary commission. The Administrative Law Judge assumes, because the Department did not claim otherwise, that Applicant did submit a timely appeal.

<sup>24</sup> Minn. Stat. § 45.027, subd. 7(a).

<sup>25</sup> Minn. R. 1400.7300, subp. 5.

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Deputy Commissioner Kevin Murphy, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

## **MEMORANDUM**

Based on Applicant's history of misdemeanors and her explanations of the circumstances surrounding the misdemeanors, the Department determined that Applicant is not honest or trustworthy. Applicant has been open and honest throughout the application process, acknowledging and discussing her history. In each instance where Applicant has explained the circumstances of her criminal convictions, she has made credible claims that she was not entirely responsible for the situations in which she found herself.

The most serious of the three crimes, for purposes of considering her application for a notary commission, is the welfare fraud conviction. Fraud would clearly reflect on Applicant's honesty. The Department relied entirely on the bare fact of Applicant's guilty plea to unlawfully obtaining public assistance and gave no credence to her written explanation of the circumstances of that plea. Applicant's testimony and exhibits strongly support her expanded account. She testified, credibly, that she pled guilty to the misdemeanor out of fear and ignorance rather than guilt. Applicant's testimony that she actually reported her employment, and that apparent miscommunication among multiple caseworkers in two counties led Hennepin County to conclude otherwise, was not challenged by the Department. Hennepin County indisputably returned money to Applicant. There was no testimony regarding whether the money returned to the Applicant represented the entire disputed amount, or just a portion of it. Thus, it is unclear whether the county continued to take the position that Applicant had been

overpaid to some extent. In any event, the notion that errors rather than dishonesty led to Applicant's troubles is well-supported by Applicant's testimony and exhibits.

Similarly, Applicant's explanations of the details of her convictions for the assault involving her ex-husband and her "obstruction of legal process" were credible and did not reflect negatively on her honesty or trustworthiness. Applicant has found herself in difficult situations at times, and has not always responded to those situations in a manner that achieved good results. But neither of these circumstances reflects a person lacking in honesty or trustworthiness.

Applicant presented a significant number of glowing character references. The person described in the various recommendations is not a person who is deceitful or untrustworthy. In a number of sensitive settings – a school, an organization dealing with abused and vulnerable women, a county attorney's office, and the Minnesota Senate – Applicant has impressed her supervisors. A dishonest person might be able to pull the wool over one supervisor's eyes. It is unlikely that so many people, over a ten-year period, would be fooled by Applicant. Applicant persuasively demonstrated that she has earned the trust of many people over the years, and the Department offered nothing to counter that evidence.

The Commissioner has determined, in the past, that a history of criminal activity in a person's past does not necessarily determine who that person is now, for purposes of applying section 45.027, subd. 7(a)(4). In one instance, an applicant with a history of criminal sexual conduct received a real estate sales license. In that case, the Commissioner adopted the Administrative Law Judge's determination, based on the applicant's behavior since the criminal incident, that the applicant was no longer untrustworthy. The potential for harm in that case was far more serious than it is here.<sup>26</sup>

Applicant has worked against the odds to build a life that is rewarding and meaningful to her. She has won the respect of numerous people on her journey. While she has made mistakes, those mistakes do not reflect a lack of honesty or qualification to be commissioned as a notary public. For these reasons, the Administrative Law Judge recommends that the Department's denial be reversed.

**B. J. H.**

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<sup>26</sup> See *In the Matter of the Real Estate Salesperson License Application of Scott August Minks*, OAH Docket No. 2-1005-17409-2, Agency No. 2603667 (November 1, 2006 OAH decision; March 1, 2007 Commerce decision).