

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

In the Matter of the Insurance Producer  
License Application of Aaron Stolp

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

This matter came before Administrative Law Judge Amy J. Chantry for an evidentiary hearing on July 26, 2013. The hearing record closed at the conclusion of the hearing.

Peter E. Madsen, Assistant Attorney General, appeared on behalf of the Department of Commerce (Department). Aaron Stolp (Applicant) appeared on his own behalf without counsel.

**STATEMENT OF THE ISSUES**

1. Whether the Applicant's license application should be denied because he has been convicted of crimes involving moral turpitude in violation of Minn. Stat. § 60K.43, subd. 1(6)?
2. Whether the Applicant's license application should be denied because he submitted incomplete information to the Commissioner in violation of Minn. Stat. § 60K.43, subd. 1(1)?
3. Whether the Applicant's license application should be denied because he engaged in acts or practices which demonstrate that he is untrustworthy, financially irresponsible, incompetent or otherwise unqualified to act as a resident insurance producer in violation of Minn. Stat. §§ 45.027, subd. 7(a) (4), and 60 K.43, subd. 1(8)?

**SUMMARY OF CONCLUSIONS**

The Administrative Law Judge concludes that the Applicant should be denied an insurance producer's license because his prior convictions for Theft involve crimes of moral turpitude. In addition, the Applicant submitted incomplete information on his application by failing to disclose all of his prior misdemeanor and gross misdemeanor convictions. The Applicant also did not provide copies of the complaints or sentencing orders involving these convictions when requested by the Department. Finally, the Applicant demonstrated untrustworthiness because he was convicted of misdemeanor and gross misdemeanor Theft which directly relates to his licensure as an insurance agent. Therefore, the Administrative Law Judge respectfully recommends that the

Commissioner of the Department of Commerce **AFFIRM** the denial of Aaron Stolp's application for an insurance producer's license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. The Applicant is 24 years old.<sup>1</sup>
2. On April 17, 2008, the Applicant was convicted of misdemeanor Underage Consumption and misdemeanor Loud Party.<sup>2</sup>
3. On April 29, 2009, the Applicant was convicted of misdemeanor Theft for taking \$100 from a store cash register where was employed.<sup>3</sup>
4. On October 27, 2010, the Applicant was convicted of misdemeanor Driving While Intoxicated (DWI) for operating a motor vehicle with an alcohol concentration above .08 within two hours of driving.<sup>4</sup>
5. On August 1, 2011, the Applicant was charged with felony Theft for taking \$1,090.38 from his employer.<sup>5</sup>
6. On January 27, 2012, the Applicant entered a plea of guilty and was convicted of an amended charge of gross misdemeanor Theft.<sup>6</sup>
7. The Applicant was placed on supervised probation until January 27, 2014.<sup>7</sup>
8. On March 14, 2013, the Applicant was convicted of gross misdemeanor DWI for operating a motor vehicle with an alcohol concentration above .08 within two hours of driving.<sup>8</sup>
9. The Applicant was placed on supervised probation until March 14, 2017.<sup>9</sup>
10. On April 19, 2013, the Applicant submitted an application for an insurance producer's license. The application contained the question: "Have you ever been

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<sup>1</sup> Ex. 3.

<sup>2</sup> Testimony of Cheryl Costello; Ex. 8.

<sup>3</sup> Test. of C. Costello; Ex. 3; Ex. 7.

<sup>4</sup> Test. of C. Costello; Ex. 11.

<sup>5</sup> Test. of C. Costello; Ex. 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Test. of C. Costello; Ex. 9.

<sup>9</sup> *Id.*

convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"<sup>10</sup>

11. The application defined "crime" to include a misdemeanor, felony, or a military offense.<sup>11</sup>

12. The Applicant answered that "Yes" he had been convicted of a crime.<sup>12</sup>

13. The application then stated: "You may exclude misdemeanor traffic citations and misdemeanor convictions or pending misdemeanor charges involving driving while under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses."<sup>13</sup>

14. After answering that he had been convicted of a crime, the Applicant was required to provide the Department with a "comment" explaining what crimes he had been convicted of.<sup>14</sup>

15. The Applicant failed to "comment" on the question.<sup>15</sup>

16. In answering that he had been convicted of a crime, the Applicant was also required to provide the Department with:

- a) a written statement explaining the circumstances of each incident;
- b) a certified copy of the charging document; and
- c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.<sup>16</sup>

17. After submitting his application, the Applicant provided a written statement explaining the circumstances surrounding his gross misdemeanor Theft conviction to Cheryl Costello, a senior investigator with the Department.<sup>17</sup>

18. In his written statement, he explained that in the spring of 2011, he worked for a retail store and that he took money from the store and used it to pay bills while in college. As a result, he was charged with gross misdemeanor Theft.<sup>18</sup>

19. The Applicant also provided a reference letter from Brian Bakken, District Director of Legacy Financial Services.<sup>19</sup>

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<sup>10</sup> Test. of C. Costello; Ex. 1.

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

<sup>12</sup> Test. of C. Costello. Test. of Aaron Stolp; Ex. 1.

<sup>13</sup> Test. of C. Costello; Ex. 1.

<sup>14</sup> *Id.*

<sup>15</sup> Test. of C. Costello; Test. of A. Stolp; Ex. 1.

<sup>16</sup> Test. of C. Costello; Ex. 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

20. The Applicant failed to provide copies of the complaint and sentencing order for his gross misdemeanor Theft conviction.

21. On April 29, 2013, the Department advised the Applicant that he was required to submit a copy of the charging document and sentencing order.

22. He also failed to notify the Department of any of his misdemeanor convictions for: Theft, Underage Consumption, Loud Party or his gross misdemeanor conviction for DWI. The Applicant did not provide copies of the charging documents or sentencing orders for any of these convictions.<sup>20</sup>

23. The Applicant was unable to explain at the hearing his reasons for failing to disclose to the Department his misdemeanor convictions for: Theft, Underage Consumption, Loud Party or his gross misdemeanor conviction for DWI.

24. The Applicant is interested in obtaining an insurance producer's license so that he can work as an independent contractor selling insurance with Family Heritage.<sup>21</sup>

25. If granted a license, the Applicant would be supervised by his friend, Justin Ellingson.<sup>22</sup>

26. During the summers of 2005 through 2009, Mr. Ellingson and the Applicant worked together selling Bibles door-to-door.<sup>23</sup>

27. Mr. Ellingson believes that the Applicant has a good heart. He wants to make sure that the Applicant continues down the right road.<sup>24</sup>

28. Mr. Ellingson has not had any real contact with the Applicant for the last three years.<sup>25</sup>

29. Mr. Ellingson understands the Department's concerns in wanting to protect the public.

30. Mr. Ellingson did not have contact with the Applicant in 2009 when he was convicted of misdemeanor Theft or 2011 when he was convicted of gross misdemeanor Theft.<sup>26</sup>

31. The Department indicated its intent to deny the Applicant's license application and the Applicant requested a contested case hearing.

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<sup>19</sup> *Id.*

<sup>20</sup> Test. of C. Costello; Test. of A. Stolp; Ex. 1.

<sup>21</sup> Test. of A. Stolp.

<sup>22</sup> Test. of A. Stolp; Test. of Justin Ellingson.

<sup>23</sup> *Id.*

<sup>24</sup> Test. of J. Ellingson.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

32. On June 21, 2013, the Department issued a Notice and Order for Hearing and Statement of Charges in this matter.

Based on these Findings of Fact, the ALJ makes the following:

### CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. The Applicant received due, proper and timely notice of the charges against him, and of the time and place for the hearing. Therefore, this matter is properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements of rule and law.

4. The burden of proof in this proceeding is on the Applicant to show by a preponderance of the evidence that he should be granted a license in this matter.<sup>27</sup>

5. The Commissioner of Commerce may deny an application for a resident insurance producer's license if the Commissioner finds that it is in the public interest to do so and the applicant has pled guilty or has been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct."<sup>28</sup>

6. Moral turpitude is defined as an act of "baseless, vileness or the depravity in private and social duties which man owes to this fellow man, or to society in general, contrary to accepted and customary rules of right and duty between man and man," and an "[a]ct of behavior that gravely violates moral sentiment or accepted moral standards of the community." In a criminal context, moral turpitude refers to the "quality of a crime involving grave infringement of moral sentiment of the community . . . ."<sup>29</sup>

7. The Applicant's convictions for misdemeanor and gross misdemeanor Theft are crimes involving moral turpitude within the meaning of Minn. Stat. § 60K.43, subd. 1(6).

8. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may level a civil penalty if the

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<sup>27</sup> Minn. R. 1400.7300, subp. 5.

<sup>28</sup> Minn. Stat. § 60K.43, subd. 1(6).

<sup>29</sup> Black's Law Dictionary 96<sup>th</sup> Ed. 1990), at 1008-09. The term is not defined in statutes and rules governing licenses issued by the Department of Commerce. In *In re Application for Discipline of Bunker*, 294 Minn. 47, 199 N.W.2d 628 (Minn. 1972), the Minnesota Supreme Court cited with approval a Wisconsin case (*State v. McCarthy*, 255 Wis. 234, 38 N.W.2d 679 (Wis. 1949)) setting forth similar definitions of "moral turpitude."

applicant or licensee provides incorrect, misleading, incomplete, or materially untrue information in the licensing application.<sup>30</sup>

9. The Applicant violated Minn. Stat. § 60K.43, subd. 1(1), by failing to disclose his prior misdemeanor convictions for Theft, Underage Consumption and Loud Party. The Applicant also failed to disclose his gross misdemeanor DWI conviction. The Applicant failed to provide a copy of the complaint and sentencing orders for these offenses when requested by the Department as part of the license application process.

10. The underlying dishonest conduct on which the Applicant's convictions for misdemeanor and gross misdemeanor Theft are based demonstrate that he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as an insurance producer under Minn. Stat. § 45.027, subd. 7(a)(4), 60K.43, subd. 1(8) and it is in the public interest to deny the Applicant's license application.

11. Minn. Stat. § 45.027, subd. 10, specifies that "Chapter 364 [relating to rehabilitation of those convicted of crimes] does not apply to an applicant for a license . . . where the underlying conduct on which the conviction is based would be grounds for denial of the license."

12. Minn. Stat. § 364.03, subd. 1, states that,

[n]otwithstanding any other provision of law to the contrary, no person shall . . . be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the . . . occupation for which the license is sought.

13. Minn. Stat. § 364.07 specifies that "the provisions of sections of sections 364.01 to 364.10 shall prevail over any other laws and rules which purport to govern the granting, denial, renewal, suspension, or revocation of a license . . . on the grounds of conviction of a crime or crimes."

14. In determining whether a conviction directly relates to the occupation for which the license is sought, Minn. Stat. § 364.03, subd. 2, specifies the licensing authority must consider the following factors:

- (a) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (b) the relationship of the crime or crimes to the purposes of regulating . . . the occupation for which the license is sought;

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<sup>30</sup> Minn. Stat. . §§ 45.027, subd. 7(3); 60K.43, subd. 1(1).

- (c) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the . . . occupation.<sup>31</sup>

15. To the extent Chapter 364 applies, the Applicant's prior misdemeanor and gross misdemeanor convictions for Theft are directly related to the occupation of licensed insurance producer within the meaning of Minn. Stat. § 364.03, subd. 1.

16. While the applicant claims that he is currently trustworthy, denial of the Applicant's resident insurance producer's license application is authorized by law because of his prior convictions.<sup>32</sup>

17. Denial of the Applicant's insurance producer's license application is in the public interest.

18. These Conclusions of Law are reached for the reasons set forth in the attached Memorandum, which is incorporated by reference in these Conclusions.

Based upon these Conclusions of Law, the Administrative Law judge makes the following:

#### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Department's denial of Aaron Stolp's application for a resident insurance producer's license be AFFIRMED.

Dated: August 26, 2013

s/Amy J. Chantry  
AMY J. CHANTRY  
Administrative Law Judge

Reported: Digitally Recorded  
No Transcript Prepared

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<sup>31</sup> Minn. Stat. § 364.03, subd. 2.

<sup>32</sup> Minn. Stat. § 60K.43, subd. 1(6).

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

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 Administrative Law Judge of the date the record closes. 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. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner 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

### Convictions Involving Moral Turpitude

The Department asserts that the Applicant's prior convictions for misdemeanor and gross misdemeanor Theft disqualify him from obtaining a resident insurance producer's license because they involve "moral turpitude." Minn. Stat. § 60K.43, subd. 1(6), specifies that the Commissioner of Commerce may deny an application for a resident insurance producer's license if the Commissioner finds that it is in the public interest to do so and the applicant has "pled guilty . . . or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct."<sup>33</sup>

The Applicant does not dispute that he was convicted of crimes of "moral turpitude." Rather, he maintains that he should be given a second chance to prove that he is now trustworthy by being granted a license. The Applicant wants to work as an independent contractor selling insurance for Family Heritage, with his friend Justin Ellingson. While it is admirable that Mr. Ellingson wants to help the Applicant obtain employment and that he is willing to supervise him to make sure that clients are protected, the risk to the public is still too great. Mr. Ellingson would not be able to

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<sup>33</sup> Minn. Stat. § 60K.43, subd. 1(6).

oversee the Applicant twenty-four hours a day, seven days a week. The Applicant would still have the ability to engage in immoral conduct, especially when working as an independent contractor with access to client funds.

While the Administrative Law Judge found his testimony about wanting to change the course of his life by learning from his mistakes credible, only time will tell if he is able to do this by remaining law abiding. However, this is not a valid basis for the Administrative Law Judge to grant him an insurance producer's license. The risk to the public that the Applicant could once again become engaged in crimes of "moral turpitude" are too great, based on his two prior Theft convictions.

### **Incomplete License Application Information**

Second, the Department asserts that the Applicant provided incomplete information in his license application. The Applicant concedes he failed to disclose his convictions for misdemeanor Theft, Underage Consumption, Loud Party and Gross Misdemeanor DWI. At the hearing, the Applicant did not explain why he failed to disclose these convictions. As a result, the Applicant's failure to disclose his prior convictions violated Minn. Stat. §§ 45.027, subd. 7(a)(3) and 60K.43, subd. 1(1).

The Applicant also failed to provide copies of the charging documents and sentencing orders involving his offenses as requested by the Department. The incomplete information he submitted to the Department in connection with his license application demonstrates a lack of honesty and continued untrustworthiness that makes him presently unfit to perform the duties of an insurance producer. Thus, the Commissioner has grounds to deny the Applicant's application.

### **Untrustworthy, Financially Irresponsible Act**

Finally, the Department asserts that the Applicant is not entitled to a resident insurance producer's license because he engaged in acts or practices that demonstrate he is untrustworthy, financially irresponsible, or otherwise unqualified to act under the license granted by the Commissioner. The Applicant has prior convictions for misdemeanor and gross misdemeanor Theft, which are crimes of dishonesty.

The conduct underlying these two offenses was particularly egregious because they involved a breach of a trust relationship. Both offenses involved monetary thefts from his employer. Moreover, the underlying conduct of these offenses directly relates to the financial integrity and trustworthiness required of an insurance producer. A licensed insurance producer is in a similar position of trust because he or she is advising people on how best to insure matters involving their life, health, property, and home. Moreover, such agents are routinely entrusted with private account information and act in a position of trust. Clients will often mail in their insurance premiums to their agents with the understanding that the agent will ensure that the money is applied to their account premium balance. Clients may also provide their credit or debit card information. As a resident insurance producer's agent, the applicant would have access

to a client's sensitive financial information from checking account numbers to social security numbers. Many insurance producers will obtain a copy of a client's credit history in determining a policy rate.

The Applicant has two Theft offenses on his criminal record. He was in a significant relationship of trust and he opted to breach that trust. There is nothing to indicate that the Applicant would not breach a relationship of trust in the future if the opportunity presented itself. The Applicant is on supervised probation for his gross misdemeanor Theft offense. The Applicant's discharge date is January 27, 2014. Not enough time has passed for the Applicant to be able to demonstrate that he would not engage in future dishonest acts.

Moreover, the Applicant's prior dishonest acts would place insurance clients at risk and would make him more likely to engage in fraudulent, deceptive, or untrustworthy activity while engaged in insurance sales. The Administrative Law Judge is persuaded that the breach of trust inherent in the Applicant's criminal conduct demonstrates that he would not be trustworthy in handling monies appropriately while acting as an insurance producer. As a result, the Administrative Law Judge concludes that the Commissioner has grounds to deny the Applicant's application.

## **Rehabilitation**

Chapter 364 of the Minnesota Statutes declares that "it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship" and notes that the "opportunity to . . . engage in a meaningful and profitable . . . occupation . . . is essential to rehabilitation and the resumption of the responsibilities of citizenship." Chapter 364 generally states that a person cannot be disqualified from pursuing a licensed occupation due to prior conviction of a crime unless the crime directly relates to the occupation for which the license is sought. If the crime is, in fact, directly related to the occupation for which a license is sought, the person cannot be disqualified if he or she can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the occupation. In determining whether a conviction directly relates to the occupation for which the license is sought, Minn. Stat. § 364.03, subd. 2, specifies the licensing authority must consider the following factors:

- (a) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (b) the relationship of the crime or crimes to the purposes of regulating . . . the occupation for which the license is sought;
- (c) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the . . . occupation.<sup>34</sup>

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<sup>34</sup> Minn. Stat. § 364.03, subd. 2.

Neither insurance licenses nor occupations licensed by the Department of Commerce are expressly exempted from Chapter 364.<sup>35</sup> Minn. Stat. § 45.027, subd. 10, states, however, that Chapter 364 does not apply to an applicant where the underlying conduct on which the conviction was based would be grounds for denial of the license. Although this language is somewhat unclear, it appears to reflect legislative intent that an applicant for Commerce Department licensure who has committed a crime that directly relates to the licensed occupation cannot provide evidence of rehabilitation to overcome a disqualification from licensure. As a result, even if the Applicant could meet his burden of showing he has rehabilitated himself he would not be entitled to licensure because his prior Theft convictions directly relate to his role as an insurance producer.

While the Applicant is to be commended for trying to take steps to improve his life, and for paying back the money he took from his two previous employers, the Administrative Law Judge lacks the legal authority to recommend that he be granted a license because he wants to rehabilitate himself. Chapter 364 does not apply to an applicant where the underlying conduct on which the convictions are based would be grounds for denial of the license. The Applicant's prior convictions for Theft directly relate to licensure as an insurance producer. As an insurance producer, the Applicant may be entrusted with a client's money as well as financial information. The Applicant has prior convictions involving crimes of dishonesty.

While the Applicant contends that he would never engage in such misconduct again, the risk to potential clients is too great based on his prior behavior. The crimes of which he is convicted directly relate to the types of activities he would be engaged in as an insurance producer. The underlying dishonest conduct directly relates to the financial integrity and trustworthiness required of an insurance producer. The Applicant would be in a position of trust and he could breach that trust by engaging in fraudulent, deceptive, dishonest, or untrustworthy conduct. As a result, the Administrative Law Judge concludes that Minn. Stat. § 364.03 does not apply in this case, by operation of Minn. Stat. § 45.027, subd. 10.

For all of these reasons, the Applicant has failed to demonstrate by a preponderance of the evidence that he should be granted a license. Therefore, the Administrative Law Judge recommends that the Commissioner affirm the denial of Aaron Stolp's application for a resident insurance producer's license.

### **A. J. C.**

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<sup>35</sup> See Minn. Stat. §§ 364.02, subd. 3 (defining the term "license" to include all licenses issued by the State of Minnesota before a person can engage in any occupation and defining the term "hiring or licensing authority" to mean state agencies or departments), and 364.09 (exempting the licensing process for peace officers, private detectives, school bus drivers, special transportation services, commercial driver training instructors, emergency medical services personnel, physicians, taxicab drivers, juvenile corrections employment, and teachers, and specifying that the Chapter does not apply to law enforcement agencies, fire protection agencies, and school districts).