

**STATE OF NORTH DAKOTA**

**INSURANCE DEPARTMENT**

APPEAL OF:

Thomas Scott Indergaard

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**RECOMMENDED ORDER  
GRANTING  
SUMMARY JUDGMENT  
  
OAH File No. 20200265**

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On June 29, 2020, the North Dakota Insurance Department (Department) notified Thomas Scott Indergaard (Indergaard) that his application for a resident individual producer license was denied. On July 24, 2020, the Department received from Indergaard a written request for a hearing.

On July 30, 2020, the Office of Administrative Hearings (OAH) received a request from the Department for the appointment of an Administrative Law Judge to preside in this matter. OAH designated Administrative Law Judge Hope L. Hogan (ALJ) to conduct a hearing and issue recommended findings of fact, conclusions of law, and order.

A hearing was scheduled for August 24, 2020. On August 20, 2020, Indergaard requested the hearing be continued to allow him additional time to seek legal advice. The Department did not object to the continuance, but requested the hearing be indefinitely continued to allow the Department time to file a motion for summary judgment. On August 21, 2020, Indergaard waived the 30-day dispositional deadline in writing by email. On August 25, 2020, the ALJ issued an Order for Indefinite Continuance which continued the hearing indefinitely and requested that the Department file a status update with the ALJ on or before October 16, 2020 if a summary judgment motion was not filed prior to that date.

On September 21, 2020, the Department filed a Notice of Motion and Motion for Summary Judgment along with supporting documents. On September 22, 2020, the ALJ issued a letter setting a deadline of October 23, 2020 for Indergaard to file a reply and a deadline of November 6, 2020 for the Department to file a response. Indergaard did not file a reply to the motion for summary judgment.

### **RECOMMENDED FINDINGS OF FACT**

1. On February 10, 2020, Indergaard filed with the Department an application for an individual insurance producer license. An insurance producer is a “person that sells, solicits and negotiates insurance to the public.” Arnold Aff., ¶ 2. An insurance producer is also known as an insurance agent. The Department is responsible for licensing insurance producers. The purpose of licensing insurance producers “is to protect the public from incompetence and lack of integrity by ensuring that individuals and entities that sell, solicit, or negotiate insurance have met the requirements to do those activities.” *Id.* at ¶ 5.

2. The application for an insurance producer license asks if the applicant has ever been convicted of a “misdemeanor, had a judgment withheld or deferred, or [is] currently charged with committing a misdemeanor.” Add. 1, p. 3. On Indergaard’s application, he answered this question by checking “yes.” The application also asks if the applicant has ever “been convicted of a felony, had a judgment withheld or deferred, or [is] currently charged with committing a felony.” *Id.* On Indergaard’s application, he answered this question by checking “yes.” If an applicant answers yes to either of these questions, the application requests that a written statement explaining the circumstance of each incident, a copy of the charging document, and a copy of the official resolution or judgment document be provided to the Department.

3. The Department processed Indergaard's application pursuant to its routine process. Arnold Aff. ¶ 9. A search of court records revealed that Indergaard was convicted of felony theft in 2017 (Add. 7), misdemeanor disorderly conduct in 2018 (Add. 8), and misdemeanor A disorderly conduct and misdemeanor B harassment-repeated telephone calls in 2019 (Add. 9).

4. Indergaard filed a written explanation for each conviction. Regarding the 2017 conviction for felony assault, Indergaard indicated that he worked at Walmart and "would give away items to people who wouldn't or didn't pay" and that he worked with "police to get as many of the items back as possible." Add. 4. Indergaard also indicated he paid a fine of \$3,500 and was on unsupervised probation for 27 months which ended on March 26, 2020. *Id.* Regarding the 2018 conviction for misdemeanor disorderly conduct, Indergaard indicated that he had "a rough breakup" and "didn't handle it well and took her card and took \$1,500 out of her account." Add. 5. He also indicated he paid \$1,750.91 in fines and was on unsupervised probation for 12 months with his probation ending on February 26, 2019. *Id.* Regarding the 2019 conviction, Indergaard indicated he violated a no contact order by repeated phone calls to his ex. Add. 6. He also indicated he did not pay a fine but was placed on unsupervised probation for 11 months and that ended on March 26, 2020. *Id.*

5. The Department sent Indergaard a letter dated July 27, 2020, informing him that his application was denied. Add. 2. As authority for the denial, the Department cited N.D.C.C. §§ 26-1-26-15 and 26.1-26-42(5). *Id.* On July 27, 2020, John Arnold (Arnold), Deputy Insurance Commissioner, and legal counsel spoke with Indergaard over the telephone to explain the formal administrative hearing process and additional authority for denial of his license. Arnold Aff., ¶ 10. Following the telephone call, Arnold followed up with an email to Indergaard

citing N.D.C.C. § 26.1-02.1-02.1(3)(a) as additional authority for denial of his application. Add. 3.

6. According to Arnold, Indergaard’s application was denied under N.D.C.C. § 26.1-02.1-02.1(3)(a) because Indergaard was convicted of felony theft which occurred while he was an employee; under N.D.C.C. § 26.1-26-42(5) due to his three misdemeanor convictions; and under N.D.C.C. § 26.1-26-15 because the Department found Indergaard was not trustworthy or of good personal reputation due to the criminal convictions and because the misdemeanor offenses were committed while he was on probation. Arnold Aff., ¶¶14, 16. Arnold indicated the Department found the criminal convictions to “have a direct bearing on an insurance producer’s ability to serve the public.” *Id.* at ¶15. Because insurance providers are entrusted with the public’s money, the Department found Indergaard “poses a possible threat to consumers and may impair public confidence in the insurance industry.” *Id.* Since the convictions occurred within the last five years and the misdemeanor offenses were committed while Indergaard was on probation, the Department did not find Indergaard to be “sufficiently rehabilitated.” *Id.*

7. On July 24, 2020, Indergaard filed a written request for hearing. In his request, Indergaard states that the theft crime occurred in 2014 and was not charged until 2017. Indergaard states he has worked in professional jobs the last six years despite his criminal record. And is currently employed as a car salesman. He also mentions that he sees a behavioral therapist every three weeks. Indergaard describes the struggles he previously had obtaining his insurance license.

8. Indergaard did not file a reply to the Department’s summary judgment motion.

**RECOMMENDED CONCLUSIONS OF LAW**

9. The Supreme Court has described summary judgment as:

Summary judgment is a procedural device under N.D.R.Civ.P. 56(c) for promptly resolving a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. The party seeking summary judgment must demonstrate there are no genuine issues of material fact and the case is appropriate for judgment as a matter of law. In deciding whether the district court appropriately granted summary judgment, we view the evidence in the light most favorable to the opposing party, giving that party the benefit of all favorable inferences which can reasonably be drawn from the record. A party opposing a motion for summary judgment cannot simply rely on the pleadings or on unsupported conclusory allegations. Rather, a party opposing a summary judgment motion must present competent admissible evidence by affidavit or other comparable means that raises an issue of material fact and must, if appropriate, draw the court's attention to relevant evidence in the record raising an issue of material fact. When reasonable persons can reach only one conclusion from the evidence, a question of fact may become a matter of law for the court to decide.

*Brock v. Price*, 2019 ND 240, ¶ 10 [citation omitted].

10. There is no dispute of fact in this case and summary judgment is appropriate.

11. The Department cited to three statutory sections as authority for denying

Indergaard's application. First, N.D.C.C. § 26-1-26-42(5) states:

The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

....

5. The applicant or licensee has been convicted of a felony or convicted of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to serve the public as an insurance producer, insurance consultant, or surplus lines insurance producer, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

“Offense” is defined as conduct for which a term of imprisonment or a fine is authorized by statute after conviction.” N.D.C.C. § 12-1-01-04(19). Specifically, the Department found that Indergaard's convictions had a bearing on his ability to serve the public because he would be entrusted with money. The Department also found that because the offenses occurred in the last

five years and the misdemeanor offenses occurred while he was on probation, Indergaard was not sufficiently rehabilitated. Indergaard was convicted of crimes qualify as “convictions” because they carry a penalty of imprisonment or fine. Under the statute, the Commissioner is granted discretion in determining whether a conviction affects a person’s ability to be an insurance producer and whether the person has been sufficiently rehabilitated. The Department’s rationale is reasonable and should not be set aside.

12. Secondly, N.D.C.C. § 26.1-26-15 states:

An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. If the commissioner does not deem an applicant to be competent, trustworthy, financially responsible, of good personal reputation, or of good business reputation, the commissioner may deny the application for licensure.

The Department found that Indergaard’s criminal convictions demonstrated that he is not trustworthy or of good personal reputation. The Department also pointed to the fact that Indergaard committed criminal acts while he was on probation. Under the statute, the Commissioner is granted discretion in making these determinations. The Department’s rationale is reasonable and should not be set aside.

13. Finally, N.D.C.C. § 26.1-02.1-02.1(3)(a) states:

A person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance. The commissioner shall deny an application for license under chapter 26.1-26, or shall revoke or shall refuse to renew a license issued under chapter 26.1-26, if the commissioner finds the applicant or licensee has been convicted of a felony involving dishonesty or breach of trust.

“Breach of trust” is defined as:

"Breach of trust" means any criminal act or an element of a criminal act by a person, including an act that constitutes or involves misuse, misapplication, or misappropriation of the following:

- a. Anything of value held as a fiduciary, in which "fiduciary" includes a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director, or public service; or
- b. Anything of value of any public, private, or charitable organization.

N.D.C.C. § 23.1-02.1-01(1). "Dishonesty is defined as:

"Dishonesty" means a criminal act, including an offense constituting or involving perjury, bribery, arson, knowingly receiving or possession of stolen property, forgery or falsification of documents, counterfeiting, knowingly issuing a bad check, false or misleading oral or written statements, false pretenses, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations, or the failure to disclose material facts.

The Department found that Indergaard's felony conviction for theft involved dishonesty or breach of trust. By definition, theft is a crime of "dishonesty" and Indergaard indicated that the felony theft offense occurred while he was an employee of Walmart which satisfies the definition of "breach of trust." Under the statute, the Commissioner has no discretion and must deny an application when an applicant has a felony conviction for a crime involving breach of trust or dishonesty. The Department's determination that felony theft is a crime of dishonesty or breach of trust is reasonable.

14. The Department's decision to deny Indergaard's application for a resident individual producer license was proper. Therefore, the undersigned ALJ recommends the Motion for Summary Judgment be GRANTED.

Dated at Bismarck, North Dakota, this 3 day of November 2020.

State of North Dakota  
Insurance Department

By: Hope L Hogan

Hope L Hogan  
Administrative Law Judge  
Office of Administrative Hearings  
2911 North 14<sup>th</sup> Street – Suite 303  
Bismarck, North Dakota 58503  
Telephone: (701) 328-3200

**STATE OF NORTH DAKOTA**

**INSURANCE DEPARTMENT**

APPEAL OF:

Thomas Scott Indergaard

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**ORDER GRANTING  
SUMMARY JUDGMENT**

**OAH File No. 20200265**

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The evidence of record has been considered and appraised. The administrative law judge's recommended order granting summary judgement is adopted. The Department's decision to deny Thomas Scott Indergaard's application for a resident individual producer license is affirmed.

Dated at Bismarck, North Dakota this \_\_\_\_ day of \_\_\_\_\_, 2020.

State of North Dakota  
Insurance Department

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Jon Godfread  
Insurance Commissioner



STATE OF NORTH DAKOTA

INSURANCE DEPARTMENT

APPEAL OF:

Thomas Scott Indergaard

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CERTIFICATE OF SERVICE

OAH File No. 20200265

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The undersigned certifies that the original **RECOMMENDED ORDER GRANTING SUMMARY JUDGEMENT** and the original proposed final **ORDER** were mailed, inside mail, at the State Capitol on the 3 day of November 2020, to:

Johannes Palsgraaf  
Special Assistant Attorney General  
N.D. Insurance Department  
600 East Boulevard Avenue, Dept. 401  
Bismarck, ND 58505

and that a true and correct copy of the above documents were mailed, regular mail, on the 3 day of November 2020, to:

Thomas Scott Indergaard  
4949 16<sup>th</sup> Avenue South, Apt. 227  
Fargo, ND 58103

OFFICE OF ADMINISTRATIVE HEARINGS  
Hope L Hogan, Administrative Law Judge

  
\_\_\_\_\_  
Louise Wetzel

STATE OF NORTH DAKOTA

INSURANCE DEPARTMENT

In the Matter of

Thomas Indergaard,

Respondent.

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Order

OAH File No. 2020065  
Case No. AG-20-815

The evidence of record has been considered and appraised. IT IS ORDERED that the Recommended Findings of Fact and Conclusions of Law of the Administrative Law Judge are adopted as the North Dakota Insurance Commissioner's Findings of Fact and Conclusions of Law in this matter. IT IS FURTHER ORDERED that the Recommended Order of the Administrative Law Judge is adopted as the North Dakota Insurance Commissioner's final Order in this matter. The denial of Thomas Scott Indergaard's application for a resident individual producer license is affirmed.

DATED at Bismarck, North Dakota, this 6<sup>th</sup> day of November, 2020.

  
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Jon Godfread  
Commissioner  
N.D. Insurance Department  
600 East Boulevard Avenue, Dept. 401  
Bismarck, ND 58505  
(701) 328-2440