

**IN RE:
LISSET MELENDEZ
Docket No. INS 12-600**

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) **DECISION AND**
) **ORDER**
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This proceeding requires consideration of the application of Lisset Melendez, a resident of Portland, Maine, for consent to participate in the business of insurance pursuant to 18 United States Code §1033. Title 18 U.S. Code §1033, in relevant part, prohibits a person from being authorized to participate in the business of insurance if he or she has been convicted of a felony that involves dishonesty or breach of trust. That statute further allows a person who has been convicted of a criminal felony involving dishonesty or a breach of trust to participate in the business of insurance if that person has the written consent of an insurance regulatory official. Information provided by Ms. Melendez to the Bureau of Insurance indicates that on October 14, 2010, she pled guilty in Cumberland County Superior Court to a charge of Criminal Restraint by Parent in violation of 17-A M.R.S.A. § 303(1)(A). It is a Class C offense.

A hearing in this matter was held on May 31, 2012. Ms. Melendez attended, but was not represented by Counsel. Notice of hearing in this matter was issued on May 25, 2012. Ms. Melendez waived her right to fourteen days notice of hearing, and the hearing was scheduled at a time mutually fixed by this office and Ms. Melendez as permitted by 24-A M.R.S.A. §230(2).

Title 18 U.S.C. §1033 was enacted as part of the omnibus anti-crime bill titled the “Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322, H.R. 3355). Section 1033 contains no provision that expressly establishes a standard of review for insurance regulatory officials to apply in considering applications for waiver of the prohibition. Congress appears to have left that subject to the discretion of the state officials.

Section 1033 waivers of prohibition on employment issued by any state insurance regulatory official allow individuals to be employed in any United States jurisdiction. Accordingly, state insurance commissioners acting through the National Association of Insurance Commissioners (“NAIC”) in March 1998 adopted Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994. These guidelines, which were adopted after extensive deliberations and opportunity for public input, recommend the states utilize uniform §1033 application procedures and suggest many practical guidelines for investigation and consideration of any waiver applications received. Not surprisingly, these guidelines are rooted in notions of public protection. The NAIC guidelines state that the following should be considered on a review of the merits (parentheticals added):

1. (whether or not) the applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers or the insurer; and

2. (whether or not) the issuance of written consent to the applicant is consistent with the public interest, Federal and State law and any applicable court orders.

The NAIC guidelines appear to be an appropriate standard to be utilized in this instance. The burden of proof that the standard has been met is on Ms. Melendez.

Information contained in Ms. Melendez's application for consent indicates that her conviction was for a felony involving dishonesty or breach of trust. Ms. Melendez has submitted a copy of the superseding indictment pursuant to which she was charged on August 5, 2010, with one count of Criminal Restraint by Parent in violation of 17-A M.R.S.A. § 303(1)(A). Ms. Melendez pled guilty to the charge. Ms. Melendez testified that she removed her minor daughter from the State of Maine without the consent of the child's father in violation of a 2005 court imposed shared custody agreement. Ms. Melendez stated that she removed her daughter to take her to a recommended child abuse clinic in Missouri because she was unable to obtain satisfactory investigation of suspected child abuse from agencies in Maine.

Ms. Melendez was sentenced to 3 years imprisonment, with all but 50 days suspended, two years of probation, and a \$25 fine. All evidence of record in the current proceeding indicates that Ms. Melendez successfully completed all conditions of her sentence to date. Ms. Melendez's probation is due to expire on October 5, 2012.

Ms. Melendez testified that she did not realize until her arrest that she had broken the law and only removed her daughter from Maine out of sincere concern for her daughter's welfare. I find Ms. Melendez's testimony credible.

There is substantial evidence in the record regarding Ms. Melendez's character. She presented eleven character references from a variety of persons she knows, including her supervisor at her current employer, Dr. Newton's Naturals. Each reference letter acknowledges her criminal conviction but presents Ms. Melendez as intelligent, honest, dedicated, conscientious, and professional.

Ms. Melendez has already taken and passed her insurance producer examination for life and health authorities. If Ms. Melendez is granted consent, she will be a licensed insurance agent with American Income Life, Matt Wolfanger Agency. Her duties will consist of explaining group benefit programs, making individual appointments to assess prospective client needs and selling life or health insurance products. Ms. Melendez will be a captive agent with the company and will be eventually involved in training new representatives. Ms. Melendez's employment with the Matt Wolfanger Agency is contingent upon her receiving from this office written consent to participate in the business of insurance as provided for in 18 U.S.C. §1033.

Ms. Melendez testified that she has been neither arrested nor convicted of any crime since her conviction in 2010. In connection with this proceeding, Bureau of Insurance staff contacted other state insurance departments. No negative information regarding Ms. Melendez was received in response. No evidence has been produced to suggest further problems of a criminal nature. There is further no evidence to suggest that her employment in the business of

insurance poses any risk or threat to insurance consumers or to insurers. Accordingly, this office finds that Ms. Melendez has satisfactorily demonstrated that she is entitled to full written consent to work in the insurance industry as provided for in 18 U.S.C. §1033, effective as of the date of this order.

Order

Pursuant to 18 U.S.C. §1033(e)(2), Lisset Melendez of Portland, Maine, is hereby granted written consent to engage in the business of insurance. This consent is effective as of the date of this decision, June 5, 2012.

Notice of Appeal Rights

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided in 24-A M.R.S.A. §236 and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before 40 days after the date appearing below.

June 5, 2012

**Pamela Stutch
Attorney
Maine Bureau of Insurance
Designated Hearing Officer**