

**BEFORE ALLAN L. MCVEY INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA**

In the Matter of:
Kimberly Franklin

Administrative Proceeding Number 25-IC-185289

FINAL ORDER

The undersigned Insurance Commissioner of the State of West Virginia hereby adopts and approves the Hearing Examiner's findings of fact and conclusions of law to the extent that it does not conflict with the reasoning herein.

The Commissioner finds, sua sponte, that Fla. Stat. § 812.155(3)(2002), for which the Petitioner was convicted, included an element of the intent to defraud the lessor:

Whoever, after hiring or leasing any personal property or equipment under an agreement to redeliver the same to the person letting such personal property or equipment or his or her agent at the termination of the period for which it was let, shall, without the consent of such person or persons and *with the intent to defraud*, abandon or willfully refuse to redeliver such personal property or equipment as agreed, shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of \$ 300 or more; in that event the violation constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

However, the Florida Legislature amended Fla. Stat. § 812.155 in 2006 and removed the element of fraudulent intent from the statute. The current version now provides:

Whoever, after hiring or leasing personal property or equipment under an agreement to return the personal property to the person letting the personal property or equipment or his or her agent at the termination of the period for which it was let, shall, without the consent of the person or persons knowingly abandon or refuse to return the personal property or equipment as agreed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the value of the personal property or equipment is of a value of \$300 or more; in that case the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

W. Va. Code R. § 114-2-7 bars individuals that have been convicted of felonies involving breach of trust or dishonesty from engaging in the business of insurance in this state, unless those individuals have obtained a waiver in accordance with 18 U.S.C. § 1033. The Commissioner finds that if Petitioner was convicted under the 2006 or current version of Fla. Stat. § 812.155, her conviction would not involve an element of dishonesty or breach of trust.

While in agreement with the Hearing Examiner and his findings of fact and conclusions of law, the Commissioner finds that the change in the relevant Florida law is a significant factor not considered in the recommended decision.

Accordingly, the Commissioner finds that the Petitioner's felony conviction of Fla. Stat. § 812.155(3) does not involve dishonesty or a breach of trust based on the substantial change in the Florida statute since Petitioner's conviction. The Commissioner further finds that Petitioner is not barred from engaging in the business of insurance in this state on the basis of that conviction.

The Commissioner finds and concludes it necessary to nullify the denial of Petitioner's application for a nonresident producer license and grants Petitioner's application for the license. Consequently, the Commissioner refuses to adopt the Hearing Examiner's recommendation to deny Petitioner's application.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted are preserved.

The Commissioner's final orders are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code § 51-11-4(b)(4). Any person aggrieved by this Order may, **within 30 days of the entry of the judgment being appealed**, file an appeal as set forth in W.Va. Code § 33-2-14 and Rule 5(b) of the West Virginia Rules of Appellate Procedure.

ENTERED this 12th day of January, 2026.



ALLAN L. MCVEY, CPCU, ARM, AAI, AAM, AIS
INSURANCE COMMISSIONER

**BEFORE ALLAN L . MCVEY INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA**

In the Matter of:

Kimberly Franklin,

Administrative Proceeding Number 25-IC-185289

RECOMMENDED DECISION OF THE HEARING EXAMINER

A hearing was held on December 5, 2025, at the Offices of the West Virginia Hearing Commissioner under West Virginia Code § 33-12-24(c). Present at the hearing on behalf of West Virginia Offices of the Insurance Commissioner were Andrew Ryan, Esq and Robert Grishaber, Director of Licensing and Education. Kimberly Franklin (hereinafter “Appellant”) made a pro se appearance via Zoom. Following the hearing, the matter was deemed submitted for recommended decision.

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. The Appellant applied for a nonresident producer license in West Virginia. As part of the application process, the applicant must submit various background information. This information includes the applicant’s address, birth date, social security number, and personal contact information. (Tr. P. 8)

2. One of the questions in the application is whether the applicant has ever been convicted of a felony. If the answer is in the affirmative, the applicant must submit any documentation associated with the conviction. (Tr. P. 8-9)

3. When the Appellant was completing the application for a West Virginia nonresident producer license, she answered that she had been convicted of a felony. In response to that affirmation, the Appellant uploaded a Florida Affidavit For Arrest Warrant, a Florida Court Order, and a Florida Court Order of Probation. (Tr. P. 9-11; Ex. 3, 4, and 5)

4. The Affidavit For Arrest Warrant indicated that the Appellant had entered a rent-to-own contract for a big screen television but failed to make any payments. The Affidavit stated that there were two charges. The first charge was concealment or disposal of property under contract. The second charge was leasing property with the intent to defraud. (Tr. P. 9-10; Ex. 3)

5. The Court Order indicated that the Appellant pled guilty to both counts in the Affidavit. The Appellant was ordered to spend two days in jail, placed on thirty-six months supervised probation and ordered to pay restitution. The terms of the Appellant's probation were listed in the Order of Probation. (Tr. P. 10-12; Ex.4, 5)

6. The Appellant also uploaded the March 23, 2007, Florida Office of Executive Clemency Order. This Order restored all civil rights to the Appellant except for the ability to own a firearm. On October 17, 2022, the Chief Financial Officer for the State of Florida issued a Consent Order allowing the Appellant to obtain a resident insurance producer license in the State of Florida. (Tr. P. 5; Ex. 1)

7. On November 4, 2025, the West Virginia Offices of the Insurance Commissioner issued a denial letter pertaining to the Appellant's application for a nonresident producer license. The basis of this denial was that the Appellant had been convicted of a felony and had not obtained a waiver under 18 U.S.C. § 1033 (hereinafter "1033"). (Tr. P. 7; Ex. 2)

8. Mr. Grishaber testified that 18 U.S.C. 1033 is a federal statute that requires an applicant to obtain a waiver for any crimes involving dishonesty or breach of trust prior to obtaining a insurance producer license. This waiver must be obtained from the applicant's home state. (Tr. P. 7, 13)

9. The Appellant's home state is Florida. The state of Florida has taken the position not to hold 1033 waiver hearings. According to Mr. Grishaber, Florida is the only state that does not process 1033 waivers. He went on to testify that West Virginia law requires a 1033 waiver from an applicant's home state before it can grant a nonresident producer license. (Tr. P. 14)

10. Under West Virginia Code of State Rules, § 114-2-7, when a nonresident applies for a nonresident producer license and had been convicted of a felony involving dishonesty or breach of trust, the only way a nonresident producer license can be granted is with a 1033 waiver. The West Virginia Offices of the Insurance Commissioner does not take into consideration the age of the felony or the facts of the charges. Under West Virginia law, the West Virginia Offices of the Insurance Commissioner have no discretion in granting a nonresident producer license absent a 1033 waiver. (Tr. P. 15-18)

11. In order to obtain a 1033 waiver in West Virginia, the applicant must be a resident of West Virginia and make an application for the waiver. Once the application is received, the applicant appears for a hearing in front of five individuals. Once the hearing is concluded a recommendation is made to the Insurance Commissioner on whether to grant the waiver. (Tr. P. 19)

12. Once the West Virginia Offices of the Insurance Commissioner issued the denial of the Appellant's application for a nonresident producer license, the Appellant appealed the decision and requested a hearing under West Virginia Code § 33-12-24(c). (Tr. P. 4-5)

13. The Appellant possesses a nonresident producer license in the states of Alaska, New Mexico, and Texas. She also holds a resident producer license in her home state of Florida. (Tr. P. 26)

Issue

Whether the decision to deny a nonresident producer license to the Appellant is correct under the law. If not, what is the remedy?

Burden of Proof

The Appellant has the burden of proof to prove, by a preponderance of the evidence, that the denial of a nonresident producer license by the West Virginia Offices of the Insurance Commissioner is incorrect under the insurance laws of the State of West Virginia.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this matter under West Virginia Code § 33-12-24(c).

Analysis

The Appellant was denied a nonresident producer license by the West Virginia Offices of the Insurance Commissioner. The basis of this denial was that the Appellant was convicted of a felony involving fraud and had not obtained a 1033 waiver from her home state of Florida.

The Appellant pleaded guilty to a violation of Florida Statute 812.155(3) on July 18, 2003. The statute states that it is a crime to lease property with the intent to defraud.

The Appellant rehabilitated herself following this conviction and received an Order of Clemency from the State of Florida and was eventually granted a resident producer license in her home state. She has not been charged with any other crime since 2003.

In her application for a nonresident producer license in West Virginia, the Appellant fully disclosed her conviction and the actions she took in her rehabilitation. The Appellant also submitted a recommendation from her current employer. However, there was no 1033 waiver associated with her application.

While she was able to obtain a resident producer license in Florida, that state, for whatever reason, does not conduct 1033 waiver hearings. Under West Virginia law, West Virginia Code of State Rules § 114-2-7, a 1033 waiver must be obtained to be granted a nonresident producer license. In pertinent part the Rule states as follows:

7.1. No person who has been convicted of a felony involving breach of trust or dishonesty or who has been convicted under 18 U.S.C. § 1033 may engage in the business of insurance in this state in any capacity without having first obtained a waiver from the Commissioner or from the insurance regulatory official of the person's home state in accordance with the provisions of 18 U.S.C. § 1033 (e)(2) and this rule.

The Appellant has been convicted of a felony involving dishonesty and, under West Virginia law, cannot engage in the business of insurance without obtaining a 1033 waiver. The fact that Florida does no longer conduct 1033 waivers has no effect on West Virginia law.

The Appellant argues that obtaining clemency from Florida should be sufficient to allow West Virginia to grant her a nonresident producer license. In addition, she argues that the fact that she was able to obtain a nonresident producer license in Alaska, New Mexico and Texas should impact the decision in West Virginia. Finally, the Appellant argues that since Florida no longer

conducts 1033 waiver hearings, she should not be required to have the 1033 waiver to get a West Virginia nonresident producer license.

Each of the arguments made by the Appellant are meritorious but for the fact that West Virginia law is clear, with no exception, that a 1033 waiver must occur before a nonresident producer license is granted.

The Executive Clemency Order provided by the Appellant does indicate that all of her civil rights have been restored but falls short of a full pardon. A pardon, which would have created a situation wherein the crime had never occurred, may be sufficient, but that is not what the Appellant received. Without a full pardon, the 1033 waiver would still be required.

The fact that Alaska, New Mexico, and Texas granted the Appellant a nonresident producer license has no effect on West Virginia law. The fact that other states waived the 1033 requirement does not bind West Virginia.

Finally, the state of Florida has chosen to no longer conduct 1033 hearings is not an issue for the state of West Virginia. Federal and West Virginia law requires the 1033 waiver and the fact that Florida fails to follow federal law does not allow West Virginia to ignore that same law.

The inability of West Virginia to grant the Appellant a nonresident producer license is not the fault of West Virginia but is a direct result of the state of Florida ignoring federal law. There is definitely an injustice here, but not in the part of West Virginia but on the part of the state of Florida and the Appellant is suffering due to that injustice.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commissioner has jurisdiction over this matter by virtue of West Virginia Code Chapter 33-12-24(c).

2. The Complainant has the burden of proof, by a preponderance of the evidence, to prove that the West Virginia Offices of the Insurance Commissioner was incorrect when it denied the Appellant a nonresident producer license.

3. West Virginia Code of State Rules § 114-2-7 requires that any nonresident who has been convicted of a felony involving dishonesty or breach of trust must undergo a 1033 waiver hearing in their home state before that person can be granted a nonresident producer license.

4. The Appellant's home state is Florida. The state of Florida no longer conducts 1033 waiver hearings.

5. Due to the actions by the state of Florida, the Appellant is unable to obtain a 1033 waiver.

6. Without a 1033 waiver from the state of Florida, the West Virginia Offices of the Insurance Commissioner correctly denied the Appellant a nonresident producer license.

RECOMMENDED DECISION

It is the recommendation of the Hearing Examiner that the Appellant failed to prove that the West Virginia Offices of the Insurance Commissioner was incorrect when it denied the Appellant a nonresident producer license. Therefore, the Appellant's appeal should be denied.

Respectfully recommended,



MARK W. CARBONE