

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
3RD FLOOR, SUITE 300
COLUMBUS, OHIO 43215

In the Matter of:	:	JUDITH L. FRENCH
REQUEST FOR MODIFICATION OF	:	Superintendent/Director
THE REVOCATION OF THE	:	
INSURANCE AGENT LICENSE OF	:	
TINA YARISH	:	
NPN: 1801522	:	

FINAL ORDER

After considering the Hearing Officer's written Report and Recommendation and the transcript of testimony and evidence, and in accordance with Ohio Revised Code ("R.C.") 119.09 and 3905.15, the Ohio Department of Insurance ("Department"), by and through its Superintendent, confirms and approves the Hearing Officer's findings of fact, conclusions of law, and recommendation to grant Tina Yarish's ("Yarish") request for the modification of the revocation of her insurance agent license dated April 21, 2016.

Yarish was previously licensed by the Department as a resident insurance agent in the State of Ohio. Yarish's license was revoked in a Department Order dated December 2, 2016 ("2016 Final Order").

On December 7, 2021, Yarish requested a modification of the 2016 Final Order. A hearing was held on January 26, 2022, and the modification was denied in a Final Order dated May 12, 2022 ("2022 Final Order"). Yarish appealed the 2022 Final Order to the Fairfield County Court of Common Pleas.

On November 28, 2022, the Fairfield County Court of Common Pleas issued an Opinion and Entry vacating the 2022 Final Order and remanding the case to the Department for further proceedings. On December 14, 2022, Yarish requested a modification in accordance with that Entry and a hearing was held on January 30, 2023. Yarish appeared at the hearing and was represented by Attorney Brandon Smith. The Department was represented by Assistant Attorney General Christie Limbert.

In accordance with R.C. 3905.15(B), in order for the Superintendent to consider modifying the revocation of Yarish's insurance license, Yarish must prove, by a preponderance of the evidence, each of the following:

- (1) At least five years have elapsed since the date of the administrative action;
- (2) She is of good business repute and is suitable to be an insurance agent;
- (3) She has made restitution for all pecuniary losses suffered by any person as a result of the conduct that gave rise to the administrative action;
- (4) She has not been convicted of any felony or any misdemeanor described in R.C. 3905.14(B)(7), unless the conviction was the subject of a previous administrative action by the Superintendent;

- (5) The circumstances surrounding his previous violation are such that it is unlikely she would commit such offense in the future; and that
- (6) Her character has been rehabilitated.

If the Superintendent finds that Yarish proved each of the six requirements, the Superintendent then has the discretion to modify the administrative action.

Yarish provided testimonial and documentary evidence as to each of the elements she is required to prove pursuant to R.C. 3905.15. The Hearing Officer concluded that Yarish proved, by a preponderance of the evidence, the six requirements set forth in R.C. 3905.15(B), allowing the Superintendent to consider modifying the prior administrative action.

The Superintendent confirms and approves the Hearing Officer's findings of fact, conclusions of law, and recommendation to modify Yarish's prior revocation of her insurance license contained in the attached Report and Recommendation, which is incorporated into this Final Order by reference.

NOW, THEREFORE, IT IS ORDERED:

For the reasons stated above, the recommendation of the Hearing Officer to grant Yarish's request to modify the December 2, 2016, administrative action is approved. Yarish's modification request is GRANTED, and the December 2, 2016, revocation of Yarish's license will be modified to allow Yarish to apply for an insurance agent license in the State of Ohio.

This Final Order is effective immediately and is entered into the Journal of the Ohio Department of Insurance.

Signed this 3rd day of May, 2023, in Columbus, Ohio.



JUDITH L. FRENCH
Superintendent/Director

NOTICE OF APPELLATE RIGHTS

This Order may be appealed by filing a Notice of Appeal with the Ohio Department of Insurance ("Department"), Attn: Hearing Program Administrator, 50 West Town St., Suite 300, Columbus, Ohio 43215, setting forth the order appealed from and stating that the Department's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal may, but need not, set forth the specific grounds of the appeal beyond the statement that the Department's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal shall also be filed by the party desiring the appeal with the appropriate court of common pleas. Such Notices of Appeal shall be filed within fifteen (15) days after the mailing of the Department's Order as provided in R.C. 119.12. In filing a Notice of Appeal with the Department or court, the notice that is filed may be either the original notice or a copy of the original notice.

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 W. TOWN STREET, THIRD FLOOR – SUITE 300
COLUMBUS, OHIO 43215

IN RE:
SUITABILITY OF TINA YARISH
NPN: 1801522

LYNNETTE DINKLER
HEARING OFFICER

CASE NO: LGL-201604-080

Appearances:

Tina Yarish, Respondent

Brandon Smith
Graff & McGovern
604 Est Rich Street
Columbus, OH 43215

On behalf of the Respondent

Attorney General of Ohio
By: Christine Limbert, Esq.
Senior Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

On behalf of the Ohio Department of Insurance.

Also present: Joshua Monroe, Staff Attorney and ODI Representative; Cheryl Jeffrey, Hearing Administrator for the Ohio Department of Insurance

REPORT AND RECOMMENDATION

STATEMENT OF THE MATTER

After the revocation of Tina Yarish's insurance agent license stemming from her federal misdemeanor conviction for Willful Failure to File a Return, Supply Information or Pay Tax pursuant to R.C. 3905.14(B), Yarish requested a modification hearing pursuant to R.C. 3905.15(A). On May 12, 2022, a Final Order of the Ohio Department of Insurance denied Yarish's requested modification. Yarish appealed to the Fairfield County Court of Common Pleas, Case No. 2022 CV 00270. On appeal, the Fairfield County Court of Common Pleas through its Opinion and Entry vacated the Department's May 12, 2022 Final Order and issued a remand order for further proceedings, including a de novo hearing. *Yarish v. Ohio Dep't of Ins.*, Fairfield C.P. No. 2022 CV 00270 (Nov. 28, 2022).

A hearing de novo upon remand in compliance with the November 28, 2022, Fairfield County Court of Common Pleas Opinion and Entry was conducted in this matter on January 30, 2023 at 9:30 a.m. The administrative evidentiary de novo hearing was held remotely with videoconferencing starting at 9:33 a.m. and concluding at 11:02 a.m.

Ms. Tina Yarish proceeded through her legal representative Mr. Brandon Smith. Ms. Christine Limbert presented the case on behalf of the Ohio Department of Insurance (“Department”).

Before the hearing, Yarish was served with a hearing notice. The parties stipulated on the record to jurisdiction and proper notice of hearing, to admissibility of State Exhibits 1 through 4, and admissibility of Respondent’s Exhibit A. (Tr. 6:9-25; 7, 49:8-13; 49:17-25, 54). State’s Exhibits 1 through 4 and Respondent’s Exhibit A were identified and admitted into the record (Exhibit 1 Jurisdictional Documents, Exhibit 2 Ohio Department of Insurance Order, Exhibit 3 Ohio Department of Insurance Individual Profile, Reporting of Charge, and United States District Court Documents, Exhibit 4 Consent Orders. (Tr. 7, 54)

After being sworn by the Court Reporter (Tr. 7:16-19), Yarish, by and through her legal representative, gave a brief opening statement. The State then gave its opening statement. (Tr. 7:23-26 – 9:1-17; Tr. 9:18-25). Yarish presented her case followed by the Department presenting its case. Yarish, through her legal counsel, and then the Department, provided closing arguments (Tr. 50:11-25 – 56:1-8), after which this Hearing Officer closed the record (Tr. 56:20 – 57:8-9).

FINDINGS OF FACT

1. On December 17, 2015, Yarish plead guilty to and was convicted of Willful Failure to File a Return, Supply Information or Pay Tax, a federal misdemeanor.
2. Yarish served a year in federal prison for this federal crime.
3. As part of the settlement agreement reached in the federal criminal tax matter, Yarish and her husband immediately paid \$252,000 to the Department of Justice to satisfy the balances due on the federal tax and restitution liabilities, in addition to paying then outstanding taxes owed to Fairfield County Auditor, and an outstanding balance on a U.S. Bank mortgage. Yarish and her husband took out a second mortgage on their home to raise funds to pay outstanding federal income tax liabilities for tax years 2009-2011 and 2013-2015, as well as restitution judgment for income tax years 2003-2005 and 2007-2001. (Respondent Exhibit A)
4. Yarish has paid all federal taxes, restitution and court costs associated with the federal prosecution. No fines were imposed. (Tr. 21:5-25 – 23:1-21; Tr. 41:16-21 – 42:1-6; Resp. Ex. A)
5. As a result of this conviction, pursuant to R.C. 3905.14(B), Yarish’s insurance agent license was revoked.

6. The record indicates Yarish was unresponsive to Department notices related to the revocation process. (State's Exhibit 2) Yarish credibly testified she had no knowledge of the Department's revocation proceedings related to her license because she was serving her prison term and, therefore, did not receive the notice letters. While she did have an attorney on the matter, he had left the firm on record, and never received the Department's letters either. (Tr. 19:12-25 – 20:1-14)
7. Obtaining her insurance license in 1986, Yarish opened Benefit Solutions and Consulting Services in 2000 after having her first baby because she wanted increased income potential and additional work/family flexibility. She felt confident in doing so because leading up to this, she worked closely with independent agents and brokers and felt she was doing the lion's share of the work for little compensation. (Tr. 13:2-10; Tr. 14:6-23)
8. In fact, she experienced great success as an independent agent. She credibly testified she was fortunate to land a contract with United Mine Workers of America providing off-the-job disability policies to many, roughly 500-550, union workers. (Tr. 14:24-25 – 15:1-14)
9. This Hearing Officer makes a finding of fact based upon the entire record that Yarish was not inexperienced in the field of insurance before launching her own business, she was inexperienced in how to responsibly run a business from the financial side. That inexperience resulted in financial chaos when family demands and her own medical health concerns placed additional pressures on her, on top of recently having her first child.
10. Before opening Benefit Solutions and Consulting Services, Yarish attended some college after graduating high school in 1981 and worked for Nationwide Insurance setting up appointments and phone solicitation. She obtained her insurance agent license in 1986. (Tr. Tr. 10:11-25 - 11:18-19, 12:1-8)
11. While she spent a year and a half marketing medical products for Western Ohio Health Care, she spent the next eleven years working for Commercial Life Insurance Company, later bought out by UNUM Provident, and was very successful, winning numerous awards. (Tr. 12:19-25 – 13:1). Yarish left UNUM Provident to start Benefit Solutions and Consulting Services in 2000. (Tr. 13:2-10; Tr. 14:6-23)
12. Yarish sold Benefit Solutions in 2011 but remained on staff to assist with a smooth ownership transition, after which she worked about one year for Kemper before being indicted. (Tr. 13:11-24)
13. Yarish employed her sister and niece in addition to using independent contractors. Delays in commission payments strained management of cashflow and she would pay others before paying herself. (Tr. 17:1-16). For proper context, it should be noted these financial strains were occurring during the Great Recession began in December 2007 and said to end in June 2009, the longest recession since World War II. This does not excuse the non-payment of taxes before that time, but it does explain delays in commission payments.

14. Also, during this timeframe, Yarish was caring for her ill, elderly parents, paying their mortgage, dealing with her own health concerns and taking care of her household. In 2012, while she was taking care of people's needs, the financial side of things spiraled out of control. (Tr. 17:17-25 – 18:1-5)
15. Yarish owed both State and Federal taxes. Yarish placed priority on payment of state of Ohio taxes, realizing non-payment would jeopardize her privilege to hold an insurance license. She paid the state taxes first. She did not realize the effect of that until she was standing before the Federal Court Judge who stated to her: "[T]his is federal government." (Tr. 18:6-14) And, she was indicted. (Tr. 18:15-25)
16. Regarding the Ohio taxes, Yarish testified, upon cross examination, that she currently owes \$21,000 and is in a payment plan that is automatically withdrawn from her bank account every two weeks. (Tr. 42:9-20; 45:14-23).
17. Yarish testified, upon examination from the Hearing Officer, that the State taxes owed are for 2009 and 2015 and are related to her insurance business. (Tr. 46:7-15) The federal taxes owed, and for which she was convicted, were from 2003 through 2015, excluding 2006. (Tr. 46:21-25 – 47:1-14; 58:5-9)
18. Yarish described her criminal prosecution as turning her world upside down, but she knew she owed the money, accepted responsibility, and worked through it. (Tr. 15:15-25 – 16:1-9) She never realized she was going to be indicted for a willful failure to pay. (Tr. 16:10-21)
19. Yarish self-surrendered on February 3, 2016 and spent the remainder of 2016 in prison. (Tr. 19:1-11) Yarish was released on December 27, 2016, went to a halfway house for a few days, and was then on probation for a year. Yarish did all that was asked of her, complied with probation restrictions, and was successfully released from probation. (Tr. 20:15-25 – 21:1-4)
20. Yarish gained employment at CVS following her release from prison. She was forthright in her interview providing full disclosure of the federal indictment. She also underwent an extensive background check. She was happy she was hired and remained with CVS for a year, as a sales associate, stocking shelves and coolers, and cleaning restrooms. (Tr. 24:2-23; 40:2-6) Issues with one of her children required her full-time attention and that was the reason she left employment with CVS. Yarish stated she would love to be back in the insurance industry as that's where her heart is. (Tr. 24:24-25 – 25:1-9). She has attempted to gain employment since leaving CVS at various points in time but has had difficulty because of the conviction. She has not been employed since 2019, is enjoying watching her grandson, but intends to return to work and seeks to do so in the insurance industry as a licensed agent. (Tr. 25:10 - 26:22; 40:7-16)
21. Yarish testified she has maintained many business and client friendship relationships throughout the years. Many of her former contacts have kept in touch and have the utmost respect for her despite her imprisonment. Over objection, the Hearing Officer allowed Yarish to testify that several business contacts have stated they are ready to hire her or to do business with her when she returns to the insurance industry. (Tr. 27:1-25 – 28:1-6, 28:19-25 – 29:1-3)

22. Yarish testified her criminal conviction was not related to the insurance industry. (Tr. 29:4-12) She openly admitted she had prior issues with the Department; an administrative action regarding a premium, which she paid with the matter being dismissed (Tr. 29:13-23); and a tampering with evidence issue over a car title, which led to a misdemeanor charge. Yarish accepted responsibility and paid the fines. (Tr. 29:24-25 – 30:1-21) Upon cross examination, Yarish testified the 2015 conviction was a misdemeanor related to a BMV title. The action was brought against her because she was the agent of record. (Tr. 43:11-25 – 44:1-18). Neither of these issues caused this Hearing Officer to conclude Yarish conducted insurance related business in a manner to harm an insured or the insurance industry.
23. Yarish testified the Department's revocation of her insurance license was based solely on the federal conviction, which is true. Regarding the timing of Yarish's report of the federal tax prosecution to the Department, Yarish thought she was to notify the Department of her conviction after she was sentenced, which was December 17, 2015. Yarish notified the Department on or about January 2-3, 2016. Yarish understands the Department's regulation that it was to be notified upon the start of the prosecution. (Tr. 30:22-25 – 31:1-22)
24. Yarish testified her personal circumstances have changed, as has she. She has lost both her parents, and with that the financial strain of supporting them. The business was sold. She has undergone intense therapy (both group and individual) to address her feelings of shame, guilt, and lack of self-worth that she experienced. (Tr. 32:3-25)
25. Yarish testified she has grown on a personal level. She routinely chairs a support group, Nar-Anon, for individuals suffering with any type of emotional issues. Her life has changed for the better as she is more aware of the laws and wants to do right in society. She has a story to tell and wants to help others. (Tr. 33:1-17) She is medically doing well. Her family is good. She credibly testified that she realized she could have wallowed as a victim, but instead she pulled up her bootstraps and persevered. She volunteers at a local homeless shelter and tries to help others where she can by buying someone a coffee or a sandwich when she can to show she cares if she can afford to do so. (Tr. 33:18-25 – 34:1-22)
26. Yarish testified she has had no other convictions. (Tr. 34:23-25 – 35:1-6)
27. Yarish stated she will never be put in this position again as it nearly ruined her family and herself. (Tr. 35:7-18) She admitted the events giving rise to her conviction demonstrated that she failed to appreciate the consequences of her actions and that she paid dearly for that through the loss of her license, the prison term she served, and the damage the situation caused her family to suffer. (Tr. 35:19-25 – 36:1-12)
28. Yarish stated her character has been rehabilitated through therapy, community service, those in the profession who continue to support her by providing her hope and strength. (Tr. 37:1-7) She stood before a federal court judge and accepted responsibility for her crime and served her prison sentence. She has grown as a person and would like to return to the insurance industry again to help people and make a positive difference in people's lives. (Tr. 37:18-25 – 38:1-9)

29. Yarish testified that what she loved about the insurance industry work was serving the needs of others, earning a customer's trust which she believed she is skilled at by actively listening to each customer. Her testimony made clear that she sold insurance products based upon the customer's needs, not a commission. (Tr. 13:23-25 – 14:1-5)
30. Yarish credibly testified that she has done the hard work to rehabilitate herself and that she is worthy of a second chance. It appeared by a preponderance of the evidence to this Hearing Officer that Yarish now understands that all aspects of a business must be well run and that one can only give to help others within one's means.
31. Yarish, through her legal counsel, argued in closing that Yarish has proven all six requisite elements: five years has elapsed, she is of good business repute, she is suitable to be an insurance agent, she has made restitution, she has no further convictions, and she has made changes in her circumstances. (Tr. 50:11-25 – 54:1-4)
32. The Department, in closing, first agreed five years has lapsed, Yarish has demonstrated proof of payment of restitution, and that there have been no further convictions to the State's knowledge. The other elements, the Department argues, are colored by the snowballing of federal tax debt from 2000-2015 and that restitution was not paid until seven years after the conviction in 2022; that Yarish has prior insurance department actions and that fines are still being paid. Ultimately, the Department defers to the Hearing Officer as to whether all elements have been satisfied but asks that the Hearing Officer to review the record. (Tr. 54:7-25 – 56:1-8)
33. The record was closed at the conclusion of the Hearing. (Tr. 56:20 – 57:8-9)

CONCLUSIONS OF LAW

34. Section 3905.15(A)(3) of the Revised Code places the burden of proof on Yarish to prove she is entitled to modification of the earlier revocation Order related to the federal misdemeanor conviction. Section 3905.15(B) of the Revised Code indicates that surrender for cause may be modified at the discretion of the Superintendent if the Superintendent finds all the conditions set forth in Section 3905.15(B)(1)(2)(3)(4)(5) & (6) of the Revised Code have been proven by a preponderance of the evidence. The above findings of fact support the following conclusions of law.
35. Yarish proved by a preponderance of the evidence and the Department stipulates that at least five years have elapsed since the earlier Order of Revocation as required by Revised Code Section 3905.15(B)(1).
36. Yarish proved by a preponderance of the evidence that she is of good business repute and suitable to be an insurance agent as required by Revised Code Section 3905.15(B)(2).

37. Yarish proved by a preponderance of the evidence that she has made restitution for all pecuniary losses suffered by any person as a result of the conduct that gave rise to the Order of Revocation as required by Revised Code Section 3905.15(B)(3).
38. Yarish proved by a preponderance of the evidence and the Department stipulates that she has not been convicted of any felony or of any misdemeanor described in division (B)(7) of Revised Code Section 3905.14 as required by Revised Code Section 3905.15(B)(4).
39. Yarish proved by a preponderance of the evidence that the circumstances surrounding the previous violation are such that it is unlikely she will commit such offense in the future as required by Revised Code Section 3905.15(B)(5).
40. Yarish proved by a preponderance of the evidence that her character has been rehabilitated as required by Revised Code Section 3905.15(B)(2).
41. As the record reflects, Yarish proved all six elements under Section 3905.15(B).

RECOMMENDATION

In order for the Superintendent to grant Yarish's application for modification of the earlier revocation Order she must find that Yarish proved all the conditions of O.R.C. §3905.15(B) by a preponderance of the evidence. Yarish proved all six conditions contained in Revised Code Section 3905.15(B) as set forth in Paragraphs 32-39 of the Conclusions of Law. The Hearing Officer recommends that Yarish's request for a modification of the Department's earlier revocation Order be granted.

Respondent may within ten days of receipt of this copy of the Report and Recommendation (R&R) file with the Ohio Department of Insurance written objections to the R&R, which will be considered by the Department before approving, modifying, or disapproving the Recommendation.



Lynnette Dinkler, Hearing Officer