

AUG 27 2012

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
PETITIONER,)	RECOMMENDED ORDER
)	AND ORDER
vs.)	
)	
BUTLER BENEFIT SERVICE, INC.)	CAUSE NO. C-1957
)	
RESPONDENT.)	

This matter came for hearing on the 18th day of July, 2012, before Charles A. Hamilton, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Department of Insurance (“Department”) was represented by its attorney, Matthew Holman. Butler Benefit Service, Inc. (“Respondent”) was not represented by any officer of the company and was not represented by counsel. The proceedings were recorded by Tracy Gruhn, a licensed Notary Public. The Department presented evidence at the hearing and the matter was taken under advisement. The hearing officer hereby makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing third party administrators.

2. Respondent is a licensed third party administrator organized and existing under the laws of the State of Iowa, whose registered mailing address with the Department is P.O. Box 3310, Davenport, IA 52808. Respondent is authorized under a certificate of authority to engage in the business of insurance in Nebraska as a third party administrator. (See Ex. 2)

3. As a third party administrator, the Respondent shall file an annual report for the preceding calendar year with the Department on or before March 1 of each year or within such extension of time as the Department for good cause may grant, pursuant to Neb. Rev. Stat. § 44-5814 (Reissue 2010).

4. On or about June 14, 2012, a Petition and Notice of Hearing in this matter was served upon the Respondent by mailing the same to the registered mailing address of the Respondent via certified mail, return receipt requested. (See Ex. 1)

5. On or about June 21, 2012, the Domestic Return Receipt card attached to the certified letter mentioned in paragraph 4 of these findings was returned to the Department, indicating the letter had been delivered on June 19, 2012 to Michael J. Brall at the registered mailing address. (See Ex. 1)

6. On or about March 2, 2012, Jason McCartney, in his official capacity as the Administrator of the Licensing Division, sent a letter to the Respondent at the Respondent's registered mailing address indicating the Department had not received the Respondent's annual report for 2011 that had been due on March 1, 2012. The letter also indicated potential penalties and fines if the Respondent did not file the annual report. (See Ex. 2)

7. On or about March 29, 2012, Jason McCartney sent a copy of the March 2, 2012 letter to the Respondent, this time by certified mail, return receipt requested. (See Ex. 2)

8. On or about April 4, 2012, Jason McCartney spoke with Don Wendel, a representative of the Respondent, and Mr. Wendel indicated he would send the Respondent's 2011 annual report to the Department. (See Ex. 3)

9. On or about April 29, 2012, Mr. McCartney left a telephone message for Mr. Wendel regarding the annual report. (See Ex. 3)

10. The Respondent failed to file the required annual report for 2011 or request and receive an extension for good cause by the Department by March 1, 2012. (See Ex. 3)

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing and control of third party administrators engaged in the business of insurance in the State of Nebraska pursuant to Neb. Rev. Stats. §§ 44-101.01 and 44-5801 ET SEQ.

2. The Department has personal jurisdiction over Respondent.

3. Neb. Rev. Stat. § 44-5814(1) (Reissue 2010) states that “Each third-party administrator shall file an annual report for the preceding calendar year on or before March 1, of every year or within such extension of time therefor as the director for good cause may grant.”

4. Neb. Rev. Stat. § 44-5814(4)(c) (Reissue 2010) states that “For good and sufficient cause shown, the director may grant a reasonable extension of time not to exceed thirty days within which the annual report may be filed as required under this section without the forfeiture required under subdivision (4)(b)(i) of this section and without any suspension authorized under subdivision (4)(b)(ii) of this section.”

5. Respondent’s failure to file the annual report for 2011 with the Department or request an extension for good and sufficient cause shown by March 1, 2012 is a violation of Neb. Rev. Stat. § 44-5814(1).

6. Neb. Rev. Stat. § 44-5814(4)(b)(i) (Reissue 2010) states that a third-party administrator that has not complied with Neb. Rev. Stat. 44-5814(1) “shall forfeit

fifty dollars for each day thereafter such failure continues and the third-party administrator continues to transact any business of insurance;”.

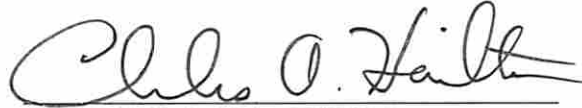
7. Neb. Rev. Stat § 44-5814(4)(b)(ii) (Reissue 2010) states that if a third-party administrator has not complied with Neb. Rev. Stat. 44-5814(1), the Director may “suspend the certificate of authority of the third-party administrator until it has complied with the requirements of this section, any rules and regulations adopted and promulgated under this section, and any orders issued under this section.”

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent’s certificate of authority as a third-party administrator be suspended until such time as the Respondent provides the 2011 annual report as required by Neb. Rev. Stat. § 44-5814(1) (Reissue 2010), and that prior to any reinstatement of such certificate of authority, Respondent provide to the Department information detailing the number of days after March 1, 2012 the Respondent continued to transact the business of insurance in the State of Nebraska and also prior to any such reinstatement, pay a forfeiture of fifty dollars per day for the total number of days as determined by the Department that the Respondent continued to transact such business. The Department will continue to retain jurisdiction over this matter until all provisions of this order have been complied with.

Dated this 24th day of August, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



CHARLES A. HAMILTON
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of the Department in the matter of State of Nebraska Department of Insurance vs. Butler Benefit Service, Inc., Cause No. C-1957.

Dated this 27th day of August, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



BRUCE R. RAMGE
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon Respondent at the Respondent's registered mailing address of P.O. Box 3310, Davenport, IA 52808, by certified mail, return receipt requested, and regular U.S. mail on this 27th day of August, 2012.

