

FEB 25 2016

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE,

PETITIONER,

VS.

SCOTT P. SCHMER
(NAIC Producer #8306749),

RESPONDENT.

) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER) CAUSE NO. A-2028
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This matter came on for hearing on February 24, 2016, before Krystle Ledvina Garcia, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Matthew Holman. Scott P. Schmer ("Respondent") was not present and was not represented by counsel. The proceedings were recorded by Brandis Courser, a licensed Notary Public. The Department presented evidence at the hearing and the matter was taken under advisement. The hearing officer 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 insurance producers.

2. Respondent is a licensed resident insurance producer in the State of Nebraska whose current registered business address with the Department is 103 N. Saunders Ave., Sutton, NE 68979 and whose registered home address with the Department is 901 S. Saunders Ave., Sutton, NE 68979. Respondent's registered business phone number with the Department is (402) 773-5202 (See Ex. 2, Attachment 1).

3. On or about December 30, 2015, Brandis Courser (“Courser”), Paralegal for the Department attempted to contact Respondent at his registered business phone number which is a State Farm Insurance Office. A secretary told Courser that Respondent’s last known address was 542 E. 2nd Street, Superior, NE 68978 (See Ex. 1).

4. On or about January 19, 2016, the Petition and Notice of Hearing were served upon Respondent by mailing the same to his registered business address and last known address, via certified mail return receipt requested, and to his registered home address and last known address via regular U.S. mail. (See Ex. 1).

5. On or about January 28, 2016, the Domestic Return Receipt attached to the certified letter mailed to Respondent’s last known address was returned to the Department by United States Postal Service (“USPS”), confirming delivery. The correspondence sent to Respondent’s last known address via regular U.S. mail has not been returned to the Department, nor has the Department received notification that the letter was undeliverable. (See Ex. 1, Attachment 1).

6. On or about February 3, 2016, the Petition and Notice of Hearing mailed to Respondent’s registered business address was returned to the Department by the USPS as “Return to Sender. Not Deliverable as Addressed. Unable to Forward” (See Ex. 1, Attachment 2).

7. On or about February 9, 2016, the Petition and Notice of Hearing mailed to Respondent’s registered home address was returned to the Department by the USPS as “Return to Sender. Not Deliverable as Addressed. Unable to Forward” (See Ex. 1, Attachment 3).

8. On or about November 12, 2015, Scott Zager (“Zager”), Insurance Claims Investigator for the Department, sent a letter to Respondent at his registered business address via regular U.S. mail. On or about November 23, 2015, the letter was returned to the Department by the

USPS marked “Return to Sender-Not Deliverable as Addressed-Unable to Forward” (See Ex. 3, Attachment 1).

9. On or about November 23, 2015, Zager sent a letter to Respondent at his registered home address via regular U.S. mail. On or about December 16, 2015, the letter was returned to the Department by the USPS marked “Return to Sender-Not Deliverable as Addressed-Unable to Forward” (See Ex. 3, Attachment 2).

10. To date, Respondent has failed to update his registered business address and registered home address with the Department (See Ex. 2).

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance producers in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 et seq.

2. The Department has personal jurisdiction over Respondent.

3. Pursuant to Neb. Rev. Stat. § 44-4059(1)(b), the director may suspend or revoke an insurance producer’s license, or may levy an administrative fine for violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state’s insurance commissioner or director.

4. Pursuant to Neb. Rev. Stat. § 44-4059(1)(h), the director may suspend or revoke an insurance producer’s license, or may levy an administrative fine for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

5. Pursuant to Neb. Rev. Stat. § 44-4054(8), the director may suspend an insurance producer's license or may levy an administrative fine for failing to inform the director of a change of address within thirty days after the change.

6. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), and 44-4054(8) as a result of the conduct set forth in paragraphs 8 through 10 of the Findings of Fact.

DISCUSSION

The uncontested evidence shows that the Department attempted to contact Respondent via U.S. mail at the addresses registered with the licensing division on November 12, 2015 and November 23, 2015. These letters were returned to the Department because Respondent no longer worked or lived at the registered addresses. The Department was unable to make contact as Respondent failed to provide the Department with his updated addresses as required by Neb. Rev. Stat. § 44-4054(8). Respondent's failure to affirmatively notify the Department of his address changes, has left the Department unable to timely and completely address consumer complaints. By failing to update his address, Respondent also demonstrated untrustworthiness and incompetence in the business of insurance and violated Neb. Rev. Stat. §§ 44-4059(1)(b) and 44-4059(1)(h).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent pay an administrative fine in the amount of five hundred dollars (\$500) within thirty days from the date the Director adopts this order and that Respondent's resident insurance producer license be suspended until he updates his business and home addresses with the Licensing Division and pays the administrative fine. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling Respondent or the Department of Insurance to make application for such further orders as may be necessary.

Dated this 24 day of February, 2016.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Krystle Ledvina Garcia
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 this Department in the matter of State of Nebraska, Department of Insurance vs. Scott P. Schmer (NAIC Producer #8306749), Cause No. A-2028.

Dated this 25 day of February, 2016.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Bruce R. Rame
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 the Respondent by mailing a copy to Respondent's registered business address at 103 N. Saunders Ave., Sutton, NE 68979 and last known address at 542 E. 2nd Street, Superior, NE 68978 via certified mail, return receipt requested and registered home address at 901 S. Saunders Ave., Sutton, NE 68979 and last known address at 542 E. 2nd Street, Superior, NE 68978 via regular U.S. mail on this 25 day of February, 2016.


Brandon Couser