

OCT 18 2024

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA	)	FINDINGS OF FACT, CONCLUSIONS
DEPARTMENT OF INSURANCE,	)	OF LAW, RECOMMENDED ORDER
	)	AND ORDER
PETITIONER,	)	
	)	
VS.	)	CAUSE NO. A-2406
	)	
JOHN AVITTO,	)	
(NAIC Producer #9103657)	)	
	)	
	)	
	)	
RESPONDENT.	)	

This matter came up for hearing on September 17, 2024, before Megan VanAusdall, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its counsel, Cheryl Wolff. John Avitto (“Respondent”) was not present and was not represented by counsel. The proceedings were recorded by Shelly Storie, 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 currently holds a non-resident insurance producer’s license in the state of Nebraska. Respondent’s registered business, mailing and residential address with the Department is 1347 SW 48<sup>th</sup> Terrace, Deerfield Beach, Florida 33442-8290. Respondent’s registered email address with the Department is [avittohealth@gmail.com](mailto:avittohealth@gmail.com). (See Exhibit 1, Attachment 1)

3. On or about April 10, 2024, Petitioner’s Office, through their employee, the administrator of the Licensing Division, Kevin Schlautman, received a notification of For Cause

Termination of an [insurance producer's] Appointment, naming Respondent, from Chesapeake Life Insurance Company ("Chesapeake Life"). Schlautman subsequently sent on this notice to the Department's Insurance Complaint Division for possible investigation. (See Exhibit 1, Attachment 2)

4. Having received the Notice of Termination of Appointment for Cause from Chesapeake Life, from Schlautman, on or about April 10, 2024, John Marinovich, ("Marinovich"), an employee of the Petitioner's Office, specifically its Insurance Complaint Division, reviewed the notice, finding that Respondent's termination of appointment by Chesapeake Life was effective as of April 1, 2024. (See Exhibit 2, Attachment 1)

5. On or about April 12, 2024, the Department, through an employee of the Insurance Complaints Division contacted the "Investigations/United Healthcare LCRA Shared Services," the entity listed as the compliance contact for Chesapeake Life, by sending a letter on the Department's letterhead, requesting further information regarding the notice of termination of appointment. (See Exhibit 2, Attachment 2)

6. On or about April 22, 2024, the Department received a response to the April 12 inquiry letter, namely a Memorandum from United Healthcare Investigations, naming Respondent as the subject and agent of record. This Memorandum contained substantiated findings for allegations of egregious or fraudulent conduct, clean sheeting, intimidation or high-pressure tactics, prohibited compensation and issues with handling Personal Identifiable Information of consumers. (See Exhibit 2, Attachment 3)

7. During the subsequent investigation, the Department, through its employees, made several requests of Respondent to provide information related to the allegations contained United Healthcare's investigative Memorandum, done on behalf of Chesapeake Life, as follows:

a. On or about April 22, 2024, an inquiry letter was sent to Respondent's only registered address, requesting more information on the Notice of Termination of Appointment. This letter was sent via regular mail. No response was received. (See Exhibit 2, Attachment 4)

b. On or about May 15, 2024, a second inquiry was sent to the same address on file for the Respondent, again requesting information because no response was received for the original inquiry letter. This letter was sent by regular mail, and

included a copy of the previous letter, sent on April 22. (See Exhibit 2, Attachment 5)

c. On or about June 26, 2024, a final inquiry letter was sent to the Respondent, by certified mail, return receipt requested, at Respondent's only registered address. This final inquiry letter included a copy of the first inquiry letter, sent April 22, 2024. (See Exhibit 2, Attachment 6)

d. On or about July 23, 2024, the Department received the return receipt card associated with the letter sent certified mail in June 2024, as well as the letter and its original envelope, marked "RETURN TO SENDER; UNCLAIMED; UNABLE TO FORWARD." (See Exhibit 2, Attachment 7)

8. As of August 20, 2024, the Petitioner's Office has not received any additional communication from Respondent responsive to their previous inquiries. (See Exhibit 2)

9. On or about August 15, 2024, Petitioner's Office, though their counsel, filed a Petition and Notice of Hearing commencing this proceeding.

10. On or about August 15, 2024, Shelly Storie, the paralegal for the Petitioner's Office, sent a copy of the Petition and Notice of hearing in this matter to Respondent, at his registered address, 1347 SW 48<sup>th</sup> Terrace, Deerfield Beach, Florida 33442-8290, via certified mail, return receipt requested, and by regular U.S. mail. (See Exhibit 3)

11. On or about September 11, 2024, upon checking the United States Postal Service tracking website, and using the assigned tracking number from the certified domestic return receipt card, Ms. Storie found the following statement: "YOUR ITEM COULD NOT BE DELIVERED ON SEPTEMBER 6, 2024, AT 10:16 A.M. IN DEERFIELD, FLORIDA 33442. IT WAS HELD FOR THE REQUIRED NUMBER OF DAYS AND IS BEING RETURNED TO THE SENDER." (See Exhibit 3, Attachment 1)

#### 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)(g), the Director may suspend, revoke or refuse to issue or renew an insurance producer's license or may levy an administrative fine against an insurance producer's license if the producer has admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud.

4. Pursuant to Neb. Rev. Stat. § 44-1524 (1), it shall be an unfair trade practice in the business of insurance for any insurer "to commit any act or practice defined in section 44-1525 if the act or practice is committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or any rule or regulation adopted pursuant to the act.

5. Pursuant to Neb. Rev. Stat. § 44-1525 (11), it shall be unfair trade practice in the business of insurance if any insurer if they engage in the "[f]ailing of any insurer, upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days."

6. Respondent violated Neb. Rev. Stat. § 44-4059(1)(g), and Neb. Rev. Stat. § 44-1524(1), by way of Neb. Rev. Stat. § 44-1525(11), as a result of the conduct found in the Findings of Fact and as evidenced by the relevant exhibits received.

#### DISCUSSION

At the hearing, the Department presented sufficient evidence of proper service of notice of these proceedings upon Respondent. The Department served Respondent via certified mail, return receipt requested and regular U.S. mail to the Respondent's registered address. The Department also provided a Domestic Return Receipt for the notice filings, which, along with the tracking information also provided, confirm delivery to the Respondent. Based upon the evidence of record, the Department's service of the petition and notice of hearing upon Respondent at its mailing address was sufficient and jurisdiction over the actions of the Respondent in this matter has been established.

The uncontested evidence shows that Respondent failed to respond to the Department's written contact attempts concerning the Notice of Termination of Appointment from Chesapeake Life, naming Respondent in his capacity as a former employee, and failed to adequately address or explain the allegations of fraudulent behavior while working as an insurance producer, as referenced above.

These actions constitute violations of Neb. Rev. Stat. §§ 44-4059(1)(g), 44-1525(1), and 44-1524(11).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's non-resident insurance producer's license be revoked. 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 orders as may be necessary.

Dated this 11th day of October 2024.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

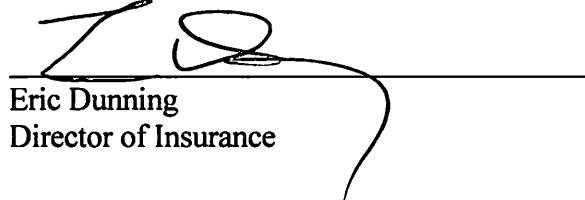
  
Megan VanAusdall  
Megan VanAusdall  
Hearing Officer

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. John Avitto (NAIC Producer #9103657), Cause No. A-2406.

Dated this 18 day of October 2024.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
Eric Dunning  
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, mailing, and residential addresses with the Department, 1347 SW 48<sup>th</sup> Terrace, Deerfield Beach, Florida 33442-8290, via certified mail, return receipt requested and via regular U.S. mail on this 18<sup>th</sup> day of October 2024.

Sheely Storie