

APR 19 2018

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, RECOMMENDED ORDER
PETITIONER,)	AND ORDER
)	
VS.)	CAUSE NO. A-2097
)	
SERGIO ARCHULETA,)	
(NAIC Producer #17499271),)	
)	
)	
RESPONDENT.)	

This matter came on for hearing on April 10, 2018, 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 counsel, Robert Harkins. Sergio Archuleta ("Respondent") was not present and was not represented by counsel. The proceedings were recorded by Brandis Bauer, 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 non-resident insurance producer in the State of Nebraska whose current registered business and home address with the Department is 5555 Yellowstone Avenue, TRLR 54, Chubbuck, ID 83202-2150. (See Ex. 2).

3. On or about February 9, 2018, the Petition and Notice of Hearing was served upon Respondent by mailing the same to his registered business and home address, by certified mail return receipt requested, and via regular U.S. mail. (See Ex. 1).

4. On or about February 27, 2018, an Order Continuing Hearing was served upon Respondent by mailing the same to his registered business and home address, by certified mail return receipt requested, and via regular U.S. mail. (See Ex. 1).

5. On or about March 7, 2018, the Domestic Return Receipt attached to the Order Continuing Hearing mailed to Respondent's business and home address was returned to the Department by United States Postal Service ("USPS"), confirming delivery. (See Ex. 1).

6. On or about March 19, 2018, the Petition and Notice of Hearing that was sent to Respondent's registered business and home address via certified mail was returned to the Department by USPS and marked as "Unclaimed. Unable to Forward." (See Ex. 1).

7. The Petition and Notice of Hearing and the Order Continuing Hearing sent to Respondent's registered business and residence address via regular U.S. mail has not been returned to the Department, nor has the Department received notification that the correspondence was undeliverable. (See Ex.1).

8. On or about August 9, 2017, Respondent's appointment with Allstate Insurance Company (the "Company") was terminated for cause. The Company subsequently informed the Department of the termination. (See Ex.3).

9. On or about October 3, 2017, the Department sent correspondence via electronic mail to, Cindy Flores ("Flores"), a Company employee, requesting further information about Respondent's termination. (See Ex. 3, Attachment 1).

10. On or about October 27, 2017, Flores responded to the Department's inquiry and provided additional documents detailing the termination and included the Company's investigation. On or about June 29, 2017, Respondent spoke with a customer regarding policy changes. On the call, the customer advised Respondent that he wanted to make changes to an existing policy due to a divorce. Specifically, he wanted to remove his ex-wife and add his new girlfriend and her vehicle to his policy. Respondent advised that there would be an increase in the policy premium due to the changes but Respondent would see how he could assist the customer. When binding the policy, Respondent listed the customer as married. During an interview with an HR representative, Respondent acknowledged that he falsely listed the client's marital status for his own financial gain because he was worried the client would not have purchased the policy. (See Ex. 3, Attachment 2).

11. On or about October 27, 2017, Jane Francis ("Francis"), Administrator of the Consumer Affairs Division for the Department, sent a letter to Respondent at his registered business and home address via regular U.S. mail requesting information about his termination. The letter explicitly explained that failure to respond within fifteen days was a violation of Nebraska law. To date a response has not been received to the inquiry. (See Ex. 3, Attachment 3).

12. On or about December 22, 2017, Francis sent another letter to Respondent at his registered business and home address via certified mail, return receipt requested, and requested a response to her previous inquiry. This letter also noted that failure to respond to the inquiry within fifteen days was a violation of Nebraska law. On or about January 30, 2018, the letter was returned to the Department by the USPS marked "Return to Sender-Unclaimed-Unable to Forward." (See Ex. 3, Attachment 4 & 5).

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. §§ 44-1525(10) and 44-1524, making false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker or individual person shall be an unfair trade practice if the act or practice is committed flagrantly and in conscious disregard of the Unfair Trade Practices Act or has been committed with such frequency to indicate a general business practice to engage in that conduct.
4. Pursuant to Neb. Rev. Stat. §§ 44-1525(11) and 44-1524, failure of an insurer, upon receipt of a written inquiry from the department, to respond to such inquiry within fifteen working days shall be an unfair trade practice if the act or practice is committed flagrantly and in conscious disregard of the Unfair Trade Practices Act or has been committed with such frequency to indicate a general business practice to engage in that conduct.
5. 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.
6. 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.

7. Respondent violated Neb. Rev. Stat. §§ 44-1525(10), 44-1525(11), 44-4059(1)(b), and 44-4059(1)(h), as a result of the conduct set forth in paragraphs 8 through 12 of the Findings of Fact.

DISCUSSION

The uncontested evidence shows that Respondent was terminated from his employment as an insurance producer for providing false information on an insurance application for his own personal gain of receiving a commission for the sale of the policy. Respondent admitted this during an interview with his employer. This admission shows he committed this act flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act. After receiving documentation of the termination, the Department attempted to contact Respondent at his address that he registered with the Department on two separate occasions. He failed to respond to those inquiries. Respondent's repeated failure to reply to inquiries from the Department is sufficient to show that his lack of response was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act. Dodging certified mail by refusing to claim it does not relieve Respondent of the duty to respond. By falsifying an insurance application and failing to respond to his regulating entity, Respondent also demonstrated untrustworthiness and incompetence in the business of insurance in violation of Neb. Rev. Stat. §§ 44-4059(1)(h). Revocation of Respondent's non-resident insurance producer license is appropriate in this case.

RECOMMENDED ORDER

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

Dated this 19th day of April, 2018.

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. Sergio Archuleta (NAIC Producer #17499271), Cause No. A-2097.

Dated this 19th day of April, 2018.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Bruce R. Range
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 and home address, 5555 Yellowstone Ave., TRLR 54, Chubbuck, ID 83202-2150, via certified mail, return receipt requested and via regular U.S. mail on this 19 day of April, 2018.

Brandis Bauer