

AUG 31 2021

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-2266
)	
MACHIA KIRKENDALL,)	
(NAIC Producer #18606451),)	
)	
RESPONDENT.)	

This matter came on for hearing on August 11, 2021, before Thomas C. Green II, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) appeared through its counsel, Michael W. Anderson. Machia Kirkendall (“Respondent”) did not appear and was not represented by counsel. The proceedings were recorded by Shelly Storie, a licensed Notary Public. The Department offered Exhibits 1 through 3 at the hearing, which were received without objection. The Respondent did not offer any exhibits. After the conclusion of evidence, 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. Respondent’s registered mailing address with the Department is 2716 Towle Street, Falls City, Nebraska 68355. (Ex. 2).
3. On or about June 21, 2021, a Petition and Notice of Hearing were served upon Respondent by mailing the same to her registered mailing address, by certified mail, return receipt requested, and via regular U.S. mail. (Ex. 3).
4. On June 30, 2021, the Domestic Return Receipt (“Receipt”) attached to the Petition and Notice of Hearing mailed to Respondent’s registered address was returned to the Department by

the United States Postal Service (“USPS”) evidencing delivery on June 25, 2021. The Receipt bears the signature of the Respondent (Ex.3, Attachment 1).

5. On or about February 26, 2021, the Department was notified that Respondent’s appointment with State Farm was terminated “for a suspected violation of Nebraska Rev. Stat. (*sic*) Section 44-4059(1)(h): ‘Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere’” (Ex. 1, Attachment 1).

6. During an investigation conducted by State Farm, the Respondent admitted that she would intentionally enter inaccurate data on auto insurance applications in order to arrive at lower rates on “maybe one out of every five quotes.” She further admitted, in the same interview, to utilizing the following tactics to arrive at a lower premium for prospects: (a) changing prospects’ previous bodily injury coverage limits; (b) entering false information when listing a prospects’ duration of prior insurance coverage; and (c) using incorrect vehicle acquisition dates so that it appeared as though the prospects owned a vehicle for a greater period of time. (Ex. 1, Attachment 2).

7. Respondent admitted to the Department that she used incorrect vehicle purchase dates and failed to verify vehicle purchase dates when she requested automobile insurance quotes at State Farm. (Ex. 1, Attachment 3).

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)(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.

4. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(h) as a result of the conduct set forth in paragraphs 5 through 7 of the Findings of Fact.

DISCUSSION

The uncontested evidence shows that Respondent obtained quotes for insurance in which the information supplied to obtain such quotes was knowingly and intentionally false. Specifically, the Respondent replaced the data and information provided by prospects with other data and information that she created for the sole purpose of arriving at lower rates on automobile insurance quotes. By deliberately replacing existing data about duration of automobile ownership, prior bodily injury coverages and the periods of time that prospects had their prior insurance policies, the Respondent was able to artificially reduce the premiums charged for the prospects' automobile insurance. Respondent's actions, which are at best classified as dishonest, run afoul of Nebraska law. Perhaps most importantly, the Respondent's actions were committed flagrantly and in conscious disregard of Nebraska law.

Based on the serious nature of the evidence presented, a fine in the amount of Twenty-five Hundred Dollars (\$2,500.00) is appropriate in this case.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent be fined in an amount equal to Twenty-five Hundred Dollars (\$2,500.00), with payment of such fine due to the Department of Insurance within ninety (90) days of the date that an Order is entered in this action. 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 31st day of August, 2021.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE




Thomas C. Green II, #21001
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. Machia Kirkendall (NAIC Producer #18606451), Cause No. A-2266.

Dated this 31st day of August, 2021.

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 were provided to the Respondent at the Respondent's registered business and home address, 2716 Towle Street, Falls City, Nebraska 68355, via regular U.S. mail on this 31st day of August, 2021.

