

FEB 25 2022

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
VS.)	ORDER
)	
MARDY GOULD)	CAUSE NO. A-2268
(NAIC National Producer #19425499),)	
)	
RESPONDENT.)	

This matter came on for hearing on January 19, 2022, before Laura L. Arp, 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, Michael W. Anderson. Respondent Mardy Gould was not present and was not represented by an attorney. The proceedings were recorded by Shelly Storie, a licensed Notary Public. Exhibits 1 through 3 were received, and the matter was taken under advisement. As a result of the hearing and evidence, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident insurance producer. Respondent’s registered mailing address with the Department is 1033 Larkspur Loop, Jacksonville, Florida, 32259. (E2).
2. The Department of Insurance is the duly designated agency of the State of Nebraska empowered to exercise jurisdiction and control over the licensing of insurance agents in Nebraska pursuant to Neb. Rev. Stat. § 44-101.01 and § 44-4047 et seq. Said jurisdiction and control have been present at all times material hereto.

3. Respondent, or someone acting on behalf of Respondent, signed a certified mail delivery card on December 8, 2021, giving Respondent a copy of the Petition in this matter and notice of the January 19, 2022 hearing. (E3, Attachment 3). Respondent did not appear at the hearing.

4. "GROW with MKG LLC" sponsored and paid for an advertisement on Facebook, starting April 14, 2021, stating in part, "Governor Ricketts has recently approved NEW self-employed health insurance programs, designed specifically for Nebraska business owners." The sponsored advertisement includes an image of Governor Ricketts signing an official document:



(E1, Attachment 1).

5. Certified mail from the Department of Insurance's Consumer Affairs Administrator, Barbara Peterson, was sent to "Grow with MKG LLC" at 1033 Larkspur Loop, St. Johns, FL, 32259. In that letter, Administrator Peterson asked Respondent to provide: a list of all telemarketers, brokers, enrollment centers, and any other entities involved in the marketing of this "Self-Employed Health Insurance" plan; provide the company name and NAIC number of any insurer underwriting coverage associated with the advertisement; provide evidence that Governor Ricketts approved the plan; and provide evidence that Governor Ricketts gave approval to use his photo in advertising the plan. Respondent Mardy Gould signed for this certified mail on May 4, 2021. (E1, Attachment 3).

6. Respondent Mardy Gould's connection to "Grow with MKG LLC" is established by Respondent signing for mail addressed to "Grow with MKG LLC" at the same address Respondent used as his mailing address for his Nebraska Insurance Producer's License.

7. After Respondent signed for the certified letter to "Grow with MKG LLC," Barbara Peterson, Administrator of the Department of Insurance's Consumer Affairs Division, sent a letter to Mardy Gould at 1033 Larkspur Loop, St. Johns, FL, 32259, the same address where Respondent had signed for the "Grow with MKG LLC" letter on May 21, 2021. That certified letter was mailed on June 3, 2021. (E1, Attachment 4).

8. Administrator Peterson's June 3, 2021 certified letter was returned with a note that the forwarding time had expired, returned to sender, with a new address for Mardy Gould of "PO Box 600915, Saint Johns, FL, 32260-0915." (E1, Attachment 5).

9. Certified mail to Mardy Gould at the newly discovered PO Box address stated above was returned not signed. (E1, Attachment 6).

10. The Department of Insurance has never received any form of response from Respondent, and still does not know which, if any, telemarketers, brokers, enrollment centers, insurers, or other entities are involved with the Facebook advertising reproduced above. (E1).

DISCUSSION

Revocation of Respondent's insurance producer license is the appropriate penalty for the violations outlined above. First, social networking sites have significantly multiplied marketers' opportunities to make misrepresentations and deceive others.¹ Second, implying government sponsorship or approval for an online financial transaction indicates clear intent to deceive, justifying a significant penalty.² Respondent sought to lend credence to his solicitation for insurance sales by invoking the image of a government official. Respondent also failed to respond to the Department's inquiry. For these reasons, Respondent should lose his license to sell, solicit, or negotiate insurance in Nebraska.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance 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), the Director of Insurance has authority to suspend, revoke or refuse to issue or renew an insurance producer's license or levy an administrative fine if the insurance producer: . . . (b) violates any insurance law, rule, or regulation, . . . (g) is found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud; or (h) uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

¹ See *Web of Deception: Misinformation on the Internet*, Anne P. Mintz ed., 2002 (discussing how the Internet has *allowed intentionally* misleading information to flourish and mentioning the implications these misrepresentations have had on things like privacy, online purchases, business decisions and more).

² See, e.g., *In re: Flagship Financial Group, LLC*, File No. 2015-CFPB-0006 (Feb. 12, 2015) (\$225,000 civil monetary penalty for mortgage lender and broker that disseminated advertisements designed to look like a government notice and implied that the Federal Housing Administration was responsible for the advertisement).

4. Pursuant to Neb. Rev. Stat. § 44-1525(2) and § 44-1524, if committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act, or committed with such frequency as to indicate a general business practice to engage in that type of conduct, it is a violation of the Unfair Insurance Trade Practices Act to “place before the public,” “directly or indirectly,” “an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance . . . which is untrue, deceptive, or misleading.”

5. The government-sponsored or government-endorsed product described in Respondent’s Facebook advertisement did not exist. Respondent’s actions constitute a violation of the Unfair Insurance Trade Practices Act, Neb. Rev. Stat. § 44-1525(2) in that they were a willful misrepresentation with intent to deceive the insurance-buying public. This misrepresentation, which Respondent paid Facebook to broadcast to reach as many Nebraskans as possible, is sufficient on its own to warrant revocation of Respondent’s insurance license.

6. Pursuant to Neb. Rev. Stat. § 44-1525(11) and § 44-1524, if committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or committed with such frequency as to indicate a general business practice to engage in that type of conduct, it is a violation of the Unfair Insurance Trade Practices Act to fail to respond to a written inquiry from the Department of Insurance or request additional time within fifteen working days.

7. Respondent signed for the written inquiry directed to “Grow with MKG, LLC” which contained a list of questions for him to answer. Respondent was warned in that letter that failure to timely respond is a violation of the Unfair Insurance Trade Practices Act. Therefore, Respondent’s failure to respond was in conscious disregard of Neb. Rev. Stat. § 44-1525(11) and constitutes a violation of the Unfair Insurance Trade Practices Act.

8. Respondent’s conduct, as set forth in the Findings of Fact above, violated § 44-4059(1)(b), (g), and (h).

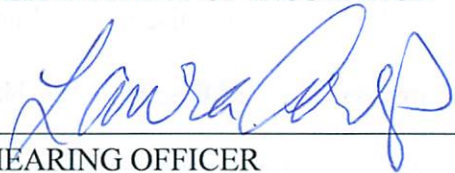
6. Revocation of Respondent's insurance producer license is warranted based on his violations of Neb. Rev. Stat. § 44-4059(1)(b), (g), and (h).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's Nebraska insurance producer's license be revoked.

Dated this 25th day of February, 2022.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



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 final Order of this Department in the matter of the State of Nebraska Department of Insurance v. Mardy Gould.

Dated this 25th day of February, 2022.

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 Respondent by mailing a copy to his mailing address of record, 1033 Larkspur Loop, Jacksonville, Florida, 32259.

Sherry Stone
2/25/22