

MAY 25 2022

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, RECOMMENDED ORDER AND
PETITIONER,)	ORDER
)	
VS.)	CAUSE NO. A-2282
)	
SHEMAIAH DAVIS,)	
(NAIC Producer #18693494),)	
)	
RESPONDENT.)	

This matter came on for hearing on April 19, 2022, before Megan VanAusdall, 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. Shemaiah Davis ("Respondent") appeared but was not represented by counsel. The proceedings were recorded by Shelly Storie, a licensed Notary Public. The Department offered Exhibits 1 through 14 at the hearing, which were received without objection, 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. Respondent's registered residence business and home addresses with the Department are, respectively, 7616 S 173rd Street, Omaha, Nebraska, 68136-1146 and 9850 Nicholas Street, Suite 200, Omaha, Nebraska, 68114-2186. (Ex 1).

3. On or about December 13, 2021, the Petition and Notice of Hearing were served upon Respondent by mailing the same to his registered address at 9850 Nicholas Street, Suite 200,

Omaha, Nebraska, 68114-2186 by certified mail, return receipt requested, and via regular U.S. mail. (Ex. 2, attachment 2).

4. On or about December 21, 2021, the Domestic Return 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. (Ex. 2, Attachment 1).

5. On or about February 18, 2022, the Motion to Continue, Order granting Motion of Continuance and a copy of an already-enacted Consent Order (in Cause No. A-2231) were served upon Respondent by mailing the same to his registered address at 9850 Nicholas Street, Suite 200, Omaha, Nebraska, 68114-2186 by certified mail, return receipt requested, and via regular U.S. mail. (Ex. 2, attachment 4).

6. On or about February 25, 2022, the Domestic Return 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. (Ex. 2, Attachment 3).

7. On or about March 29, 2021, the Department received a complaint concerning Respondent (Ex. 4).

8. Due to this complaint, Respondent was sent a request from the Department for a written statement, as well as certain documents pertaining to the complaint. This request was sent to the email address on file for the Respondent, on or about May 19, 2021. (Ex. 5).

9. On or about June 2, 2021, the Department received Respondent's answer, from which several items were missing, to wit:

- a. Agency NPN license number missing.
- b. Explanation of how Respondent originally encountered the complainants was incomplete.
- c. Policy numbers issued regarding the complainants were missing.

d. Copies of the applications for the four policies issued were requested, and

Respondent did not include the Medicaid applications in his response.

e. Copies of solicitation materials provided to the complainants were requested and missing from the response. (Ex. 6).

10. A follow-up inquiry was sent by Department staff on June 23, 2021, to the email address on file for the Respondent. (Ex. 7).

11. On July 14, 2021, outside of the 15-day response time, Respondent provided a response, from which the following was missing/incomplete (Ex. 8):

a. Copies of solicitation materials provided to the complainants were not provided, for which Respondent stated that his office throws away Medicare Advantage and Hospital Indemnity plan materials.

b. A copy of the 2020 enrollment guide Respondent left with the complainants was not provided, again with Respondent stating that his office throws them away.

c. A copy of the Medicare Advantage application for complainants was missing, with the Respondent stating that they were unavailable to him.

d. Respondent was also asked to provide the date and time he met with the complainants, to which Respondent did not provide the time he met with them.

12. A second follow-up inquiry was sent to Respondent on August 27, 2021, by email. (Ex. 9).

13. On September 23, 2021, outside of the 15-day response time, Respondent provided a response, from which the following was missing/incomplete:

a. Respondent was asked if he disclosed that his purpose in speaking with the complainant by phone and in person was to sell insurance, to which Respondent did not provide a yes or no answer.

b. Respondent was asked on what date he met with the complainants to finalize the policies and did not provide a response.

c. Respondent was asked to provide his full client file for the complainants, which was not included in the response. (Ex. 10).

14. A third follow-up inquiry was sent to Respondent on September 23, 2021 by email. (Ex. 11).

15. Respondent failed to respond to this request in its entirety.

16. The Department sent a final request for a response to Respondent on October 15, 2021, by certified mail. (Ex. 12).

17. On October 28, 2021, Respondent provided a response, from which the following was missing/incomplete:

a. Respondent was asked to provide names and/or contact information of person(s) at the Department of Insurance ("DOI") that approved the script that Respondent stated he used with the complainants, which Respondent stated had been approved by the DOI. Respondent provided neither in his response.

b. Respondent was also asked to provide written approval from the DOI concerning his script, which was not provided.

c. Respondent was again asked to provide the full client file for the complainants, which was not provided in his response.

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 or revoke an insurance producer's license, or may levy an administrative fine for having 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 an unfair trade practice in the business of insurance if the insurer demonstrates 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), 44-1524(1) and 44-1525(11), as a result of the conduct set forth in paragraphs 7 through 17 of the Findings of Fact.

DISCUSSION

The Department presented sufficient evidence to show Respondent received proper notice of these proceedings.

The uncontested evidence conclusively shows Respondent failed to respond to multiple requests from the Department for documents and a statement concerning the consumer complaint filed against him, despite the showing that Respondent received the aforementioned request.

Based on the evidence presented, the repeated nature of the offense, and considering the totality of the circumstances involved, a suspension of Respondent's 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 resident insurance producer license be suspended for a period of six months, after which the Respondent may re-apply for licensure. 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 17th day of May, 2022.

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. Shemaiah Davis (NAIC Producer #18693494), Cause No. 2282.

Dated this 25 day of May, 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 the Respondent by mailing a copy to Respondent's registered business and home address, 7616 S 173rd Street, Omaha, Nebraska, 68136-1146 and 9850 Nicholas Street, Suite 200, Omaha, Nebraska, 68114-2186, via regular U.S. mail, and by electronic mail to sdavis@americanseniorbenefits.com and davisshemaiah@yahoo.com on this 25th day of May, 2022.

