

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

JUL 11 2005

FILED

IN RE: THE MATTER OF RICHARD A.) CAUSE NO.: I-62
BROOKS AND BROOKS & ASSOCIATES,)
LTD.)
)
) SUMMARY ORDER TO
) CEASE AND DESIST
) AND NOTICE OF RIGHTS
)

The Department of Insurance (herein the "Department"), by and through its Director, L. Tim Wagner, hereby orders Richard A. Brooks and Brooks & Associates, Ltd., (collectively "Brooks"), to immediately CEASE AND DESIST from any and all solicitation effected by or on behalf of Richard A. Brooks, Brooks & Associates, Ltd., for any insurer, authorized or unauthorized to engage in the business of insurance in the State of Nebraska, from any and all acts deemed to constitute the transaction of an insurance business in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-2002* (Reissue 2004). Specifically, pursuant to *Neb. Rev. Stat. §44-2003 (2)* (Reissue 2004), the Director orders Brooks to immediately CEASE AND DESIST solicitation efforts to Nebraska businesses or businesses traveling into Nebraska to conduct business in Nebraska and providing Certificates of Insurance signed by "Richard A. Brooks" for purposes of activities involving Nebraska businesses or residents. NOTICE IS HEREBY GIVEN:

1. That the Director of Insurance is charged with enforcement of the insurance laws of the State of Nebraska. See *Neb. Rev. Stat. §44-101 et seq.*, including the unauthorized activities of insurers;

2. That *Neb. Rev. Stat. §44-2002(2)* defines an insurer to include all corporations, associations, partnerships, and individuals engaged as principals in the business of insurance;

3. That *Neb. Rev. Stat. §44-303* provides that an insurer must obtain a certificate of authority before transacting the business of insurance in the State of Nebraska;

4. That the Unauthorized Insurers Act, *Neb. Rev. Stat. §44-2001 et seq.*, provides that “[i]t shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (2) of this section, without a certificate of authority from the director.” Subsection (2) provides that “[a]ny of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer shall constitute the transaction of an insurance business in this state . . .

- (a) The making of or proposing to make, as an insurer, an insurance contract;
- (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not mere incidental to any other legitimate business or activity of the guarantor or surety;
- (c) The taking or receiving of any application for insurance;
- (d) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;
- (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
- (f) Directly or indirectly acting as an agent for other otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contract, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with

respect to subjects of insurance resident, located, or to be performed in this state. This subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

- (g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or
- (h) The transacting or proposing to transact any insurance business in substance equivalent to any of the provisions of subdivisions (a) through (g) of this subsection in a manner designed to evade the provisions of the statutes”;

5. That Brooks is not licensed as an insurer or insurance agency in the State of Nebraska;

6. That following a review into this matter, the Department of Insurance has reasonable cause to believe that Brooks is engaged in the business of transacting insurance in the state without a license, in particular, is violating and has violated *Neb. Rev. Stat. §44-2002 (a) through (h)* in that Brooks is soliciting, conducting and transacting the business of commercial general liability insurance in the State of Nebraska by soliciting or offering commercial general liability insurance coverage to Nebraska businesses as additional insureds on fraudulent certificates of insurance.

7. On or about May 6, 2005 and June 1, 2005, the Department wrote to Brooks requesting specific information regarding its licensing status and commercial general liability insurance certificates of insurance issued to Nebraska businesses or out of state entities doing business in Nebraska. Pursuant to *Neb. Rev. Stat. §44-1525 (11)*, Brooks had fifteen working days in which to respond to the Department’s letter and failed to do so.

8. That the aforementioned facts constitute violations of the Unauthorized Insurers Act which fall within the purview of the Department's authority to exercise its powers to protect Nebraska residents.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that Brooks immediately CEASE AND DESIST from further solicitation efforts in the State of Nebraska, and immediately CEASE AND DESIST from transacting the business of insurance in the State of Nebraska.

A hearing on this matter may be requested in writing within ten (10) business days after received of this Order. Such hearing will be held in accordance with the Administrative Procedure Act.

Dated this 11th day of July, 2005.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
DIRECTOR OF INSURANCE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Summary Order to Cease and Desist is served upon Richard A. Brooks, Brooks & Associates, Ltd., 1338 Park Avenue, River Forest, IL 60305, by mailing a copy by certified mail, return receipt requested, on this 13th day of July 2005.

