

MAY 22 2012

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
PETITIONER,)	RECOMMENDED ORDER
)	AND ORDER
vs.)	
)	
RALPH C. YOUNG, JR.,)	CAUSE NO. A-1941
NAIC NATIONAL PRODUCER # 252367)	
)	
RESPONDENT.)	

This matter came for hearing on the 3rd day of May, 2012, before Joel F. Green, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Department of Insurance (“Department”) was represented by its attorney, Charles A. Hamilton. Ralph C. Young, Jr. (“Respondent”) was not present and was not represented by counsel. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. The Department presented evidence at the hearing and the matter was taken under advisement. The hearing officer hereby 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 whose registered business address with the Department is Central Financial Services, 2101 Camp Brewster Road, Bellevue,

Nebraska 68005-4203, and whose registered home address is 2101 Camp Brewster Road, Bellevue, Nebraska 68005-4203. (See Ex. 2)

3. On or about April 3, 2012, a Petition and Notice of Hearing in this matter was served upon Respondent by mailing the same to his registered business address via certified mail, return receipt requested, and to his registered home address via regular United States mail. (See Ex. 1)

4. On or about April 9, 2012, the domestic return receipt attached to the certified letter containing the Petition and Notice of Hearing was returned to the Department by the United States Postal Service (“USPS”) indicating the Petition and Notice of Hearing was delivered as addressed on April 6, 2012. The letter addressed to Respondent’s registered home address by regular United States mail was not returned to the Department by the USPS nor did the Department receive notice that the letter was undeliverable. (See Ex. 1)

5. Prior to October 15, 2008, Juanita McWilliams (“McWilliams”) and her husband purchased various insurance products from Respondent. (See Ex. 4)

6. On or about October 15, 2008, McWilliams gave Respondent two thousand six hundred fifty dollars (\$2,650) by way of a personal check directing Respondent to establish a trust for herself and her husband. (See Ex. 4, 5)

7. On or about October 15, 2008, Respondent issued a receipt to McWilliams confirming he took possession of the monies given to him by McWilliams that same day. (See Ex. 5)

8. At 1:11 p.m. on October 15, 2008, Respondent endorsed and cashed the personal check provided to him by McWilliams at the branch of Pinnacle Bank located on 132nd and West Dodge Road, Omaha, Nebraska. (See Ex. 5)

9. In the spring of 2011, McWilliams contacted Respondent by telephone requesting him to refund the \$2,650 previously given to him as McWilliams no longer wanted to establish a trust. (See Ex. 4)

10. On or about October 17, 2011, McWilliams contacted Respondent by letter again asking Respondent to return the monies provided to him on October 15, 2008. (See Ex. 4)

11. Respondent failed to refund the monies received from McWilliams when requested to do so, failed to establish a trust for McWilliams and failed to provide communication to McWilliams regarding the establishment of a trust account. (See Ex. 4)

12. On or about December 2, 2011, the Department's Consumer Affairs Division received a complaint from McWilliams alleging Respondent had taken monies for services from her on October 15, 2008, and had neither provided those services nor returned the monies since that date. (See Ex. 3)

13. On or about December 2, 2011, and again on or about January 3, 2012, Scott Zager ("Investigator Zager"), Insurance Investigator for the Department's Consumer Affairs Division, contacted Respondent by letter at his registered business and home address asking him to respond to certain questions relating to McWilliams' consumer complaint. (See Ex. 3)

14. Respondent failed to provide a response to Investigator Zager regarding the consumer complaint filed by McWilliams. (See Ex. 3)

15. Respondent was the subject of an administrative proceeding initiated by the Department entitled State of Nebraska Department of Insurance vs. Ralph Calvin Young, Jr., Cause No. A-1516.

16. Pursuant to the Findings of Fact, Conclusions of Law, Recommended Order and Order issued in Cause No. A-1516, Respondent was found to have violated NEB. REV. STAT. §§

44-4059(1)(b) and 44-1525(11), ordered to pay an administrative fine of seven hundred fifty dollars (\$750) and ordered to attend an insurance producer continuing education class focusing on the Department's role as regulator in the insurance industry.

DISCUSSION

The Department provided evidence of delivery and receipt of the Petition and Notice of Hearing in this matter to Respondent on or about April 6, 2012. Respondent had ample knowledge of the hearing but chose neither to appear personally nor have legal counsel appear on his behalf.

The Unfair Insurance Trade Practices Act provides that it shall be an unfair trade practice in the business of insurance if an insurance producer, upon receipt of written inquiry from the Department, fails to respond to such inquiry within fifteen working days. The evidence submitted by the Department shows Respondent twice failed to respond to Investigator Zager's written inquiries.

Additionally, the Insurance Producer Licensing Act provides that the Director may revoke or suspend a producer's license and/or impose a fine upon a licensee for the following causes: improperly withholding, misappropriating, or converting money received by an insurance producer in the course of business; having admitted or been found to have committed any insurance trade practice or fraud, and; using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Nebraska or elsewhere. In this matter, the Department provided sufficient evidence showing Respondent received \$2,650 from a client for the purpose of establishing a trust fund for that individual and that Respondent failed to follow through on his client's request. The evidence

provided by the Department also shows Respondent refused to refund his client's money when requested to do so and to date has not returned any portion of the \$2,650 to his client.

Having seen no evidence to the contrary, the Department has sufficiently shown Respondent demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of business by improperly withholding or misappropriating funds received by Respondent in the course of business and by failing to respond to the Department's written inquiries in this matter. In light of Respondent's prior administrative proceeding with the Department, the circumstances of this case and the dishonest nature of Respondent's actions, revocation of Respondent's license is proper to ensure Respondent does not transact the business of insurance in the State of Nebraska.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of insurance producers 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. NEB. REV. STAT. § 44-1525(11) provides it shall be an unfair trade practice in the business of insurance for a producer to fail, 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.
4. NEB. REV. STAT. § 44-4059(1)(d) provides the Director may revoke or suspend a producer's license and/or impose a fine upon a licensee for improperly withholding,

misappropriating, or converting any money or property received in the course of doing the insurance business.

5. NEB. REV. STAT. § 44-4059(1)(g) provides the Director may revoke or suspend a producer's license and/or impose a fine upon a licensee for a producer having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud.

6. NEB. REV. STAT. § 44-4059(1)(h) provides the Director may revoke or suspend a producer's license and/or impose a fine upon a licensee for a producer 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's improper withholding, misappropriation and conversion of \$2,650 received from an insurance client in the course of business, is a violation of insurance laws and regulations, specifically NEB. REV. STAT. §§ 44-4065(1)(d) and 44-4065(1)(h).

8. Respondent's failure to respond to written inquiries from the Department within fifteen working days of receipt is an unfair trade practice and a violation of insurance laws and regulations, specifically NEB. REV. STAT. §§ 44-1525(11) and 44-4059(1)(g).

9. Respondent, by his actions, violated NEB. REV. STAT. §§ 44-1525(11), 44-4059(1)(d), 44-4059(1)(g), and 44-4059(1)(h).

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RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's insurance producer license in the State of Nebraska be revoked. The Department will continue to retain jurisdiction over this matter until all provisions of this order have been complied with.

Dated this 22nd day of May, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



JOEL F. GREEN
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 the Department in the matter of State of Nebraska Department of Insurance vs. Ralph C. Young, Jr., Cause No. A-1941.

Dated this 22nd day of May, 2012.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



BRUCE R. RAMGE
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 sending a copy to Respondent's registered business address at Central Financial Services, 2101 Camp Brewster Road, Bellevue, Nebraska 68005-4203, via certified mail, return receipt requested; and a copy to Respondent's registered home address at 2101 Camp Brewster Road, Bellevue, Nebraska 68005, via regular United States mail on this 22nd day of May, 2012.


