

OCT 22 2013

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 ORDER
vs.)	
)	
Eric Birkhead,)	CAUSE NO. A-1973
National Producer #15161787)	
)	
RESPONDENT.)	

This matter came for hearing on the 15th day of October 2013, before Eric Dunning, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Department of Insurance (“Department”) was represented by its attorney, Joel Green. Eric Birkhead (“Respondent”) was not present and was not represented by counsel. The proceedings were tape recorded by Victoria Morehead, 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 11520 Westwood Lane #2, Omaha, Nebraska 68144,

and whose registered home address with the Department is 3305 S 82 Ave, Omaha, Nebraska 68124. (See Ex. 2)

3. On or about March 1, 2013 the Petition and Notice of Hearing were served upon Respondent by mailing the same to him at his registered business address via certified mail and via regular United States mail. On or about March 18, 2013 the correspondence sent via regular U.S. mail was returned to the department as “Not Deliverable as Addressed Unable to Forward”. On or about March 25, 2013 the correspondence sent via certified mail, return receipt requested was returned to the Department, as “Not Deliverable as Addressed Unable to Forward”. (See Ex. 1)

4. On or about March 20, 2013, a copy of the Amended Petition and Notice Hearing in this matter was served upon Respondent by mailing a copy to his registered business address at 11520 Westwood Lane, #2, Omaha, NE 68144 via certified mail, return receipt requested, and via regular U.S. mail and by sending a copy to Respondent’s registered home address at 3305 S. 82 Avenue, Omaha, NE 68124 via regular U.S. mail. On or about April 1, 2013 the correspondence sent to Respondent’s registered business address via certified mail, return receipt requested was returned to the department as “Not Deliverable as Addressed Unable to Forward” On or about April 9, 2013 the correspondence sent to Respondents registered business address via regular U.S. mail was returned to the Department as “Not Deliverable as Addressed Unable to Forward.” (See Ex. 1)

5. On or about April 16, 2013, a copy of the Order Continuing Hearing in this matter was served upon Respondent by mailing a copy to Respondent’s registered home address via certified mail, return receipt requested. On or about April 22, 2013, the Domestic Return Receipt attached to the certified letter mailed to Respondent’s registered home

address was returned to the Department by the United States Postal Service confirming delivery. (See Ex. 1)

6. On or about July 24, 2013, the Department served a copy of the Notice of Hearing in this matter upon Respondent by mailing a copy to Respondent's registered home address via certified mail, return receipt requested. On or about July 29, 2013, the Domestic Return Receipt attached to the certified letter mailed to Respondent's registered home mailing address was returned to the Department by the United States Postal Service confirming delivery. (See Ex. 1)

7. On or about September 9, 2013, the Department served a copy of the Order continuing Hearing in this matter upon Respondent by mailing a copy to Respondent's registered home address via certified mail, return receipt requested. On or about September 11, 2013, the Domestic Return Receipt attached to the certified letter mailed to Respondent's registered mailing address was returned to the Department by the United States Postal Service confirming delivery. (See Ex. 1)

8. On or about March 8, 2011, Cindy Williamson, an Insurance Investigator employed by the Department sent a written letter of inquiry to Respondent asking him to answer certain questions relating to a consumer complaint. The investigatory letter was sent via regular United States mail to Respondent's registered business address at 11520 Westwood Lane #2, Omaha, Nebraska 68144. To date, Respondent has failed to reply to the letter of inquiry. (See Ex. 3)

9. On or about April 4, 2011, Cindy Williamson, an Insurance Investigator employed by the Department sent a second written letter of inquiry to Respondent asking him to respond to previous unanswered questions and notifying Respondent that his

failure to respond within fifteen working days may be construed as an unfair trade practice. The investigatory letter was sent via certified mail, return receipt requested, to Respondent's registered business address at 11520 Westwood Lane #2, Omaha, Nebraska 68144. To date, Respondent has failed to reply to the letter of inquiry. The Department did not provide evidence that the return receipt card was returned to the Department by the United States Postal Service indicating the letter of investigatory inquiry was delivered to Respondent (See Ex. 3)

10. On or about April 26, 2011, Cindy Williamson, an Insurance Investigator employed by the Department sent a sent a third written letter of inquiry to Respondent asking him to respond to previous unanswered questions and notifying Respondent that his failure to respond within fifteen working days may be construed as an unfair trade practice. The investigatory letter was sent via certified mail, return receipt requested, to Respondent's registered business address at 11520 Westwood Lane #2, Omaha, Nebraska 68144. On May 2, 2011, the return receipt card was returned to the Department by the United States Postal Service indicating the letter of investigatory inquiry was delivered to Respondent on April 28, 2011. To date, Respondent has failed to reply to the letter of inquiry. (See Ex. 3)

11. At the Hearing, Department Counsel dismissed allegations 5 a through e of the Petition and Notice of Hearing.

CONCLUSIONS OF LAW

1. The Department has 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. Pursuant to NEB.REV.STAT. §44-1525(11) failure “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,” if committed in violation of Neb. Rev. Stat. § 44-1524, is a violation of the unfair insurance trade practices act.

4. Pursuant to NEB. REV. STAT. §44-4059(1)(b), the Director may suspend, or revoke an insurance producer’s license, or levy an administrative fine for violating any insurance law or violating any rule, regulation, subpoena, or order of the Director of another state’s insurance commissioner or director.

5. Pursuant to NEB. REV. STAT. §44-4059(1)(h), the Director may suspend or revoke an insurance producer’s license, or 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.

6. Respondent violated NEB. REV. STAT. §§ 44-1525(11), 44-4059(1)(b), and 44-4059(1)(h) when he failed to reply to correspondence received from the Department.

DISCUSSION

Respondent did not appear at the hearing and no evidence or testimony was provided on his behalf. The Department produced evidence alleging Respondent failed to reply to correspondence received from an Insurance Investigator employed by the Department twice. The Department did not produce evidence sufficient to support its allegation that Respondent failed to reply to correspondence received from an Insurance Investigator employed by the Department on April 4, 2011 as it did not produce evidence to show that Respondent received the correspondence in the form of a return receipt card returned to the Department by the United States Postal Service. It appears, however, that continued attempts by

Department to obtain information from Respondent to address a consumer complaint have been unavailing as the Respondent failed to reply to correspondence from the Department. In view of repeated attempts to do so by the Department, the Hearing Officer concludes that failure to respond should be addressed by payment of an administrative penalty by the Respondent. Nebraska law provides a range of penalties applicable in this case including revocation or suspension of the insurance producer license, and additionally may impose an administrative penalty of up to \$1000 per violation.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the Respondent shall pay an administrative penalty of one thousand dollars (\$1000.00), representing five hundred dollars (\$500.00) per violation within ninety days after the date the Director of Insurance signs this Order. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department of Insurance to make application for such further orders as may be necessary.

Dated this 22 day of October 2013.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Eric Dunning
HEARING OFFICER
Attorney Number: 20686

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 v. Eric Birkhead, Cause No. A-1973.

Dated this 22 day of October 2013.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Bruce R. Ramge
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 the Respondent by mailing a copy to Eric Birkhead, 3305 S 82 Ave, Omaha, Nebraska 68124, by certified mail, return receipt requested, and by First Class United States Mail on this 23rd day of October 2013.

Victoria D Morehead