

MAY 28 2013

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	FINDINGS OF FACT, CONCLUSIONS
DEPARTMENT OF INSURANCE,)	OF LAW, RECOMMENDED ORDER
)	AND ORDER
PETITIONER,)	
)	CAUSE NO. A-1980
VS.)	
)	
CATHERINE BURLEIGH, a/k/a)	
CATHERINE FAUSS)	
National Producer Number 6199551,)	
)	
RESPONDENT.)	

This matter came on for hearing on May 1, 2013, before Matthew W. Holman, 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, Laura L. Arp. Catherine Burleigh, a/k/a Catherine Fauss (“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 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 current registered business and residential address with the Department is 1206 Hayes Ave, Norfolk, NE 68701. (See Ex. 1).

3. On or about April 10, 2013 the Petition and Notice of Hearing were served upon Respondent by mailing the same to her registered business address, by certified mail return receipt requested and regular U.S. mail. As of May 1, 2013, the date of the hearing in this matter, neither letter had been returned to the Department by the United States Postal Service. (See Ex. 2).

4. On or about February 4, 2011, Respondent changed her registered business address with the Department to AAA Nebraska, 1037 Omaha Ave, Norfolk, NE 68701 and changed her name registered with the Department from Catherine Burleigh to Catherine Fauss. (See Ex. 1).

5. On or about November 8, 2012, Respondent ceased working as an employee of AAA Nebraska. (See Ex. 3).

6. Respondent updated her registered business address with the Department from AAA Nebraska, 1037 Omaha Ave, Norfolk, NE 68701, to 1206 Hayes Ave, Norfolk, NE 68701 on April 8, 2013. On this date, Respondent also changed her registered name with the Department to Catherine Burleigh. (See Ex. 1).

7. On or about February 8, 2012, Respondent, as an employee of AAA Nebraska, sold an auto insurance policy to Mr. William Yoor with a six month premium cost of \$178.00. (See Ex. 3).

8. On or about July 3, 2012, AAA Nebraska sent renewal documents to Mr. Yoor quoting the next six month premium of \$242.50. (See Ex. 3).

9. On or about July 12, 2012, Respondent collected \$178.00 from Mr. Yoor representing premium for the next six months of coverage, although the actual premium cost was \$242.50. Respondent did not address the increased premium cost at with Mr. Yoor at this time. (See Ex. 3).

10. On or about October 26, 2012, AAA Nebraska billed Mr. Yoor for approximately \$69.50 representing the difference between the actual premium cost for his policy and the money collected by Respondent on July 12, 2012. (See Ex. 3).

11. On or about November 2, 2012, Mr. Yoor paid approximately \$69.50 to AAA Nebraska. Following payment, Mr. Yoor sent his receipt and other information to Respondent requesting an explanation for the increase in premium cost. (See Ex. 3).

12. Subsequent to November 2, 2012, Respondent refused calls from Mr. Yoor and did not respond to his letter. (See Ex. 3).

13. On or about November 16, 2012, Karen Dyke, Insurance Investigator for the Nebraska Department of Insurance, mailed an inquiry regarding the above conduct to Respondent at Respondent's registered business address of AAA Nebraska, 1037 Omaha Avenue, Norfolk, NE 68701. Ms. Dyke notified Respondent that she is required to respond within fifteen working days. (See Ex. 3).

14. On or about December 12, 2012, Ms. Dyke, mailed a second inquiry regarding the above conduct to Respondent at Respondent's registered business address via certified mail, return receipt requested. That letter contained the same substantive information as the letter of November 16, 2012, and Ms. Dyke again requested that Respondent respond to certain questions and specifically notified Respondent that she is required under Nebraska law to respond within fifteen working days. On or about December 18, 2012, that letter was returned to the Department with the following notation: "Return to Sender, Not Deliverable as Addressed, Unable to Forward." (See Ex. 3).

15. On or about February 1, 2013, Ms. Dyke mailed a third letter, by certified mail, return receipt requested, to Respondent at her registered home address, 1206 Hayes Ave, Norfolk,

NE 68701. That letter contained the same substantive information as the previously sent letters and Ms. Dyke again notified Respondent that Nebraska law requires a response within fifteen working days. On or about March 8, 2013, this inquiry was returned to the Department with the following notation: "Return to Sender, Not Deliverable as Addressed, Unable to Forward." (See Ex. 3).

16. As of April 30, 2013, Petitioner has not received any response to Ms. Dyke's inquiries. (See Ex. 3).

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. § 44-4054(8), licensees must provide notice to the director of a change of legal name or address within thirty days after the change. A failure to provide such timely notice shall result in a fine of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the director, or both.

4. Pursuant to Neb. Rev. Stat. § 44-4059(1)(b), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for violating any insurance law or violating any rule, regulation, subpoena, or order of the director or 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 may 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. 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 Nebraska Unfair Insurance Trade Practices Act.

7. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b) and 44-4054(8) as a result of the conduct set forth in paragraphs 4 through 6 and 13 through 16 of the Findings of Fact.

8. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b) and 44-4059(1)(h) as a result of the conduct set forth in paragraphs 7 through 12 of the Findings of Fact.

9. Respondent violated Neb. Rev. Stat. §§ 44-1525(11) and 44-4059(1)(b) as a result of the conduct set forth in paragraphs 13 through 16 of the Findings of Fact.

DISCUSSION

Evidence provided by the Department indicates that the Respondent’s employment with AAA Nebraska was terminated on November 8, 2012, rendering her registered business address with the Department inaccurate. Respondent failed to update her registered business address within thirty days, as is required by Neb. Rev. Stat. § 44-4054(8). It also appears that Respondent’s currently registered business and home address may be inaccurate, as at least one letter sent to that address has been returned marked “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” Respondent’s failure to update her registered addresses has led to the Department’s inability to investigate matters under its jurisdiction. To date, the inability to communicate with respondent leaves the Department without other opportunity to address consumer complaints.

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 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 that Respondent charged a consumer, William Yoor, the incorrect premium amount for his auto policy renewal on or about July 12, 2012 and failed to respond to Mr. Yoor's subsequent repeated requests for additional information regarding the inaccuracy.

Having seen no evidence to the contrary, the Department has sufficiently shown that Respondent demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business by improperly charging a consumer and failing to answer the consumer's repeated requests for information regarding the inaccurate charge.

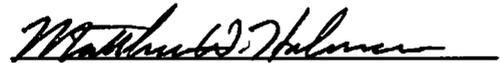
In light of the violations described above, the Hearing Officer hereby recommends that Respondent's insurance producer license be suspended until such time as she updates her registered business and home addresses and responds to Department inquiries. In addition, Respondent shall be required to pay an administrative penalty of \$500.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's Nebraska insurance producer license be placed on suspended status and that Respondent be assessed an administrative penalty of \$500. Such license shall not be reinstated until such time as Respondent updates her registered business and home addresses, provides complete responses to Department of Insurance inquiries, and pays the administrative penalty of \$500. 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 22nd day of May, 2013.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Matthew W. Holman
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 this Department in the matter of State of Nebraska, Department of Insurance vs. Catherine Burleigh, a/k/a Catherine Fauss, National Producer Number 6199551, Cause No. A-1980.

Dated this 28 day of May, 2013.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Bruce R. Range
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 1206 Hayes Ave, Norfolk, NE 68701 by certified mail, return receipt requested and regular U.S. mail on this 28 day of May, 2013.

