

JUN 12 2013

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

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|----------------------------------|---|---------------------|
| STATE OF NEBRASKA |) | |
| DEPARTMENT OF INSURANCE, |) | |
| |) | |
| PETITIONER, |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| vs. |) | RECOMMENDED ORDER |
| |) | AND ORDER |
| |) | |
| JUSTIN MCKINNON, |) | CAUSE NO. A-1981 |
| NAIC National Producer #16606473 |) | |
| |) | |
| RESPONDENT. |) | |

This matter came for hearing on the 15th day of May, 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. Justin McKinnon (“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, the record was ordered left open for two weeks from the date of the hearing to allow the Department and Respondent to submit any further evidence, 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 non-resident insurance producer whose registered business address with the Department is 445 State Street, Fremont, Michigan 49412 and whose registered home address is 2344 N. Maple Island Road, Hesperia, Michigan 49421. (See Ex. 2)

3. On or about April 19, 2013, 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 by regular U.S. mail. On or about April 29, 2013, the domestic return receipt card attached to the certified letter sent to Respondent's registered business address was returned to the Department by the United States Postal Service ("USPS") marked as "Return to Sender, Reused, Unable to Forward". (See Ex. 1)

4. On or about May 2, 2013, a Petition and Notice of Hearing in this matter was served upon Respondent by mailing the same to his registered home address via certified mail, return receipt requested. On or about May 10, 2013, the Domestic Return Receipt was returned to the Department of Insurance confirming delivery of the letter on May 6, 2013. (See Ex. 1)

5. On or about May 29, 2013, the Department, through its attorney Joel Green, filed a Motion to Introduce Evidence in this matter; the motion introduced and offered certified records from the State of Michigan 14th Judicial Circuit Muskegon County Court into the record as Exhibit 3. The Motion to Introduce Evidence and the Department's proposed Exhibit 3 are hereby made part of the official record.

6. On or about October 25, 2012, Respondent was arrested in Muskegon County, Michigan, and charged with 2nd Degree Home Invasion, a felony in the State of Michigan. On or around November 19, 2012, Respondent appeared before the State of Michigan Muskegon County Circuit Court and waived arraignment of the felony criminal charge of Home Invasion in

the 2nd Degree. On January 15, 2013, Respondent pled guilty to 2nd Degree Home Invasion. (See Ex. 3)

7. Respondent did not notify the Department of his arraignment on November 19, 2012, within thirty days after the arraignment. (See Ex. 2)

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. § 44-4065(3) (Reissue 2010) states that “[w]ithin thirty days of arraignment or date of waiver of arraignment, if waived, an insurance producer shall report to the director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal document.”

4. Respondent’s failure to notify the Department of criminal prosecution taken against him within thirty days of arraignment is a violation of NEB. REV. STAT. § 44-4065(3).

5. NEB. REV. STAT. § 44-4059(1)(e) (Reissue 2010) provides that the Director may revoke or suspend a producer’s license and/or impose a fine upon the licensee for “[h]aving been convicted of a felony or a Class I, II, or III misdemeanor.”

6. NEB. REV. STAT. § 44-4059(1)(b) (Reissue 2010) states that the Director may revoke or suspend a producer’s license and/or impose a fine upon a licensee for “[v]iolating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state’s insurance commissioner or director.”

7. Respondent's violation of NEB. REV. STAT. §§ 44-4065(3) constitutes a violation of NEB. REV. STAT. § 44-4059(1)(b).

DISCUSSION

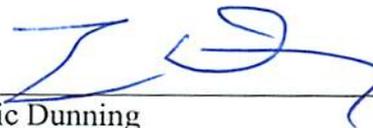
Respondent's failure to advise the Department of his arraignment in the matter described in Paragraph 7 of the Findings of Fact deprives the Department of the ability to investigate matters directly relating to the oversight of licensed insurance producers, a duty delegated to the Department by the Nebraska Legislature. Failure to report such matters to the Department thus directly impedes the duty of the Department to safeguard the interests of the consumers of this State. Because of this, revocation of licensure is warranted.

RECOMMENDED ORDER

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

Dated this 6th day of June 2013.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Eric Dunning
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. Justin McKinnon, Cause No. A-1981.

Dated this 12 day of June 2013.

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 at 445 State Street, Fremont, MI 49412 by certified mail, return receipts requested, and upon Respondent at 2344 N. maple Island Road, Hesperia, MI 49421BY regular U.S. mail on this 12 day of June 2013.