NEBRASKA DEPARTMENT
OF INSURANCE

DEC 0 3 2013

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA DEPARTMENT OF INSURANCE, PETITIONER, VS. MICHAEL LEO CRUISE, INSURANCE PRODUCER #16870230, RESPONDENT.	)))))))))))	FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDED ORDER AND ORDER CAUSE NO. A-1993

This matter came for hearing on November 18, 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. Michael L. Cruise ("Respondent") was present via telephone and was represented in person by counsel. The proceedings were tape recorded by Vicki Morehead, a licensed Notary Public. The Department and Respondent 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 in the State of Nebraska.

3. On or about October 7, 2013 the Petition and Notice of Hearing were served upon Respondent by mailing the same to his registered business address, by certified mail return receipt requested, and to his registered home address via regular U.S. mail. (See Ex. 1).

4. On or about October 15, 2013, the Petition and Notice of Hearing sent to Respondent's registered business address was returned to the department marked "Not Deliverable as Addressed Unable to Forward." The letter sent to Respondent's home address was not returned to the Department. (See Ex. 1).

5. On or about January 11, 2013, Respondent submitted to the Department a Uniform Application for Individual Producer License/Registration. (See Ex. 2).

6. On this application, Respondent checked "no" to question two, which reads:

> Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?
>
> "Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. "Involved" also means having a license, or registration application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions, in your capacity as an owner, partner, officer or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee. (See Ex. 2).

7. On or about September 25, 2002, formal charges were filed against Respondent in his capacity as a Nebraska licensed attorney. On or about December 5, 2002, these charges were

amended, and on or about February 7, 2003, Respondent voluntarily surrendered his license to practice law in the State of Nebraska in connection with these charges. (See Ex. 3).

8. On or about March 28, 2003, Respondent was subject to disbarment in *State of Nebraska ex rel Counsel for Discipline of the Nebraska Supreme Court, relator, v. Michael L. Cruise, Respondent,* 265 Neb. 653. Pursuant to this judgment of disbarment:

> respondent voluntarily consented to the entry of an order of disbarment . . . and knowingly [did] not challenge or contest the following allegations in the amended formal charges: that he failed to deposit clients' funds and advanced fee payments into his attorney trust account; that he neglected three separate clients' child support cases, by failing to file pleadings and failing to respond to discovery requests in a timely manner; that he neglected his duties as a court-appointed guardian and conservator, including failing to file an accounting for conservatorship funds in a timely manner; that he neglected a client's personal injury case, including failing to file pleadings; that he was out of trust with respect to his attorney trust account, including maintaining a negative balance for a period of several months; and that he neglected a client's federal court appeal, including failing to file a brief on appeal." (See Ex. 3).

9. On or about September 22, 2010, Respondent sent a letter to Director Debora D. Brownyard at the Office of Dispute Resolution disclosing and describing the issues that led to the surrender of his law license. (See Ex. 5).

10. On or about November 20, 2012, Respondent was subject to an issuance of a Public Reprimand by the Office of Dispute Resolution, in his capacity as an approved Parenting Act

Mediator. This reprimand required Respondent participate in a corrective action plan and be placed in a one-year probationary period through October 31, 2013. (See Ex. 4).

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. § 44-4059(1)(a), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for providing incorrect, misleading, incomplete, or materially untrue information in the license application.

4. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(a) by failing to disclose on his Uniform Application for Individual Producer License/Registration that Respondent had been subject to disbarment and surrender of his law license, and by failing to disclose the issuance of a Public Reprimand and imposition of a probationary period against Respondent in his capacity as an approved Parenting Act mediator, as set forth in paragraphs 7, 8 and 10 of the Findings of Fact.

DISCUSSION

Evidence provided by the Department indicates that Respondent previously surrendered his law license, was subject to formal disbarment, and was subject to a Public Reprimand in his capacity as an approved Parenting Act Mediator. Further, the evidence clearly shows that Respondent was required to report these actions on his uniform application. At hearing, Respondent's counsel admitted that a mistake was made on the application, and that the application contained inaccurate information. Based on the evidence presented, it is clear that Respondent

provided false information on the uniform application, in violation of Neb. Rev. Stat. § 44-4059(1)(a).

In his testimony, Respondent's explanation for failing to disclose these previous actions was that he was excited to be getting his license and that he was confused by the wording of the application. Specifically, Respondent indicated that he was confused by the reference to FINRA in question two of the uniform application, misinterpreting the question to be asking only about specific FINRA sanctions. Respondent indicated that he had no intention to mislead the Department. The application included an attestation clause, under which Respondent certified that the information submitted was true and complete.

Respondent is a law school graduate who practiced law for approximately 14 years. Respondent's resume (See Ex. 6) outlines his significant achievements as a trial lawyer. Given his academic and professional background, Respondent should have had no trouble understanding the wording of question two, even if he was unfamiliar with the Financial Industry Regulatory Authority (FINRA) as a regulating entity. Furthermore, Respondent should have understood the significance of the attestation clause, and the general emphasis on disclosure in the application process. As such, the credibility of Respondent's claim that he did not understand the wording on the uniform application is doubtful.

The underlying conduct outlined in Respondent's judgment of disbarment shows that Respondent did not contest allegations of failing to deposit client funds in his trust account, maintaining a negative balance in the trust account, and otherwise neglecting client cases. Problems with client funds and an inability to appropriately act as a fiduciary are serious concerns when the Department is evaluating a license application. The Office of Dispute Resolution Public Reprimand referenced a continued pattern of failing to communicate and respond to clients in a timely manner, which contributes to an overarching pattern of problematic behavior in the course of business.

Again, Respondent's explanation that he misunderstood the uniform application is less credible, given his academic and professional history. Regardless of Respondent's intent or understanding, this uniform application was submitted containing false information. The underlying conduct referenced in Respondent's judgment of disbarment raises significant questions as to Respondent's ability to work in a fiduciary capacity on behalf of clients and insurers. It is impossible to say whether or not Respondent's application would have been approved if he had disclosed these sanctions. However, by failing to disclose this information, Respondent denied the Department the opportunity to fully and properly evaluate Respondent's application in light of the disbarment and public reprimand (and underlying conduct).

In light of the violation described above, the Hearing Officer hereby recommends that Respondent's insurance producer license be revoked.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's Nebraska insurance producer license be revoked. 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 3rd day of December, 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. Michael Leo Cruise, Insurance Producer #16870230, Cause No. A-1993.

Dated this 3 day of December, 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 Respondent's registered business address, 2809 S. 160th Street, Suite 201, Omaha, NE 68130, and his registered home address, 1811 Normandy Lane, Lincoln, NE 68512 by certified mail, return receipt requested and regular U.S. mail on this 4th day of December, 2013. A copy of the Findings of Fact, Conclusions of Law, Recommended Order, and Order was also served upon Respondent's counsel, R. William Chapin, 421 9th Street, Lincoln, NE 68508.

Victoria A Morehead