

FEB 13 2014

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-1996
VS.)	
)	
VIVIAN LOUISE MARTIN)	
National Producer Number 16602241,)	
)	
RESPONDENT.)	

This matter came on for hearing on February 12, 2014, 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, Krystle Ledvina Garcia. Vivian L. Martin (“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 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 current registered business address with the Department is 5927 Priestly Drive, Suite 220, Carlsbad, CA 92008. Respondent’s current registered residence address with the Department is 1045 Ficus Lane, San Marcos, CA 92069. (See Ex. 2).

3. On or about January 2, 2014, the Petition and Notice of Hearing were served upon Respondent by mailing the same to her registered residence address by regular U.S. mail. On or about January 13, 2014, the mailing sent to Respondent's registered home address was returned to the Department by the United States Postal Service marked "Forward Time Expired." This envelope contained a forwarding address of 1330 Calle Colnett, San Marcos, CA 92069-3111. (See Ex. 1).

4. On or about January 17, 2014, the Petition and Notice of Hearing were served on Respondent by mailing a copy to her registered business address via certified mail, return receipt requested. (See Ex. 1).

5. On or about January 22, 2014, the Petition and Notice of Hearing were sent to respondent at the forwarding address supplied by the United States Postal Service, 1330 Calle Colnett, San Marcos, CA 92069-3111, via regular U.S. mail. On or about February 3, 2014, this correspondence was returned to the Department by the United States Postal Service marked "No Such Number Unable to Forward." (See Ex. 1).

6. As of February 11, 2014, the Petition and Notice of Hearing sent by certified mail to Respondent's registered business address has not been returned to the Department, nor has the Department received confirmation of delivery. (See Ex. 1).

7. On or about August 5, 2013, Carol McDermitt ("McDermitt"), Insurance Claims Investigator for the Department, sent written inquiries to Respondent at her registered home and registered residence address via regular U.S. mail. These letters indicate they were sent to "Vivian Clark." Neither of these letters was returned to the Department undeliverable. (See Ex. 3).

8. On or about September 3, 2013, McDermitt sent a follow-up inquiry to Respondent's registered business address via certified mail. On or about October 8, 2013, this letter was returned to the Department marked "Attempted." (See Ex. 3).

9. On or about October 1, 2013, McDermitt sent another follow-up inquiry to Respondent's registered business address via certified mail. On or about October 15, 2013, this letter was returned to the Department marked "Attempted-Not Known." (See Ex. 3).

10. On or about October 8, 2013, McDermitt sent another follow-up inquiry to Respondent's registered resident address via certified mail. On or about November 12, 2013, this letter was returned to the Department marked "Unclaimed-Unable to Forward." (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 through 44-4067.

2. The Department has personal jurisdiction over Respondent.

3. The Department's actions were sufficient to provide reasonable notice of these proceedings to Respondent, pursuant to Neb. Rev. Stat. § 84-913 and 210 Neb. Admin. Code § 26-002.

4. There is insufficient evidence to show Respondent violated Neb. Rev. Stat. § 1525(11).

DISCUSSION

The Department provided sufficient evidence to show that reasonable notice of these proceedings was provided to Respondent. Although the Department has not received confirmation that the Petition and Notice of Hearing sent by certified mail was delivered (or returned

undeliverable), actual notice is not required. Department regulation 210 Neb. Admin. Code § 26-002 requires only that the Department send notice of the hearing at least ten days prior to the date of hearing via certified or registered mail. This requirement was complied with, and the Department made additional reasonable efforts by mailing copies of the Petition and Notice of Hearing to all known addresses, including the forwarding address provided by the United States Postal Service. As such, sufficient reasonable notice was provided to Respondent.

Neb. Rev. Stat. § 44-1525(11) requires an individual respond to Department inquiry within fifteen working days of receipt of the inquiry. Generally, the Department may rely on the United States Postal Service to deliver properly addressed mail, and evidence showing that properly addressed mail has not been returned undeliverable is sufficient to show receipt by the addressee. However, the evidence presented in this case shows that the initial two inquiries sent to Respondent via regular U.S. mail were addressed to Vivian Clark, not Vivian Louise Martin. No explanation was provided as to why these letters were addressed to Vivian Clark. The Department has the duty to ensure inquiries are properly addressed. Additionally, all properly addressed follow-up inquiries sent to Respondent's registered addresses have returned to the Department undeliverable.

Reliance on the United States Postal Service is generally acceptable, and "dodging" certified mail by not picking it up does not relieve the duty to respond to the Department. However, given the uncertainty surrounding the misaddressed initial inquiries and the subsequent non-delivery, the Department has not sufficiently shown that Respondent received the inquiries and failed to respond.

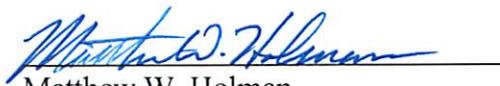
For the above reasons, the Hearing Officer hereby recommends that the Director find no violation of the Neb. Rev. Stat. § 44-1525(11).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the Director find no violation of Neb. Rev. Stat. § 44-1525(11) in this case. 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 13th day of February, 2014.

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. Vivian Louise Martin, National Producer Number 16602241, Cause No. A-1996.

Dated this 13 day of February, 2014.

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 address 5927 Priestly Drive, Suite 220, Carlsbad, CA 92008, by certified mail, return receipt requested and regular U.S. mail on this 14th day of February, 2014.

