

MAY 14 2015

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-2016
VS.)	
)	
JOSEPH BRISTOW,)	
National Producer #17313574,)	
)	
RESPONDENT.)	

This matter came on for hearing on May 14, 2015, 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 outside counsel, Scott Schroetlin. Joseph Bristow (“Respondent”) was not present and was not represented by counsel. The proceedings were tape recorded by Brandis Courser, 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 13950 Ballantyne Corporate Pl, Ste. 200, Charlotte, NC 28277-3163. Respondent’s current registered residence address with the Department is 8842 Rally Dr, Charlotte, NC 28277-5662. (See Ex. 1).

3. On or about April 14, 2015, the Petition and Notice of Hearing were served upon Respondent by mailing the same to his registered business address via certified mail, return receipt requested, and to his registered residence address via regular U.S. mail. On or about May 7, 2015, the mailing sent to Respondent's registered business address was returned to the Department by the United States Postal Service marked "Return to Sender, Attempted – Not Known, Unable to Forward." The correspondence sent to Respondent's registered residence address has not been returned to the Department, nor has the Department received notification that the letter was undeliverable. (See Ex. 3).

4. On or about December 24, 2014, Jane Francis ("Francis"), Administrator for the Consumer Affairs Division of the Nebraska Department of Insurance, sent a written inquiry to Respondent at his registered home address via regular U.S. mail. (See Ex. 2).

5. To date, the Department of Insurance has not received a response from Respondent regarding the December 24, 2014 inquiry, nor has the December 24, 2014 letter been returned to the Department. The Department has not received notification that the letter was undeliverable. (See Ex. 2).

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), 44-4059(1)(b), 44-4059(1)(g), and 44-4059(1)(h).

DISCUSSION

The Department provided sufficient evidence to show that reasonable notice of these proceedings was provided to Respondent. Department regulation 210 Neb. Admin. Code § 26-002 requires 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 by mailing the Petition and Notice of Hearing to Respondent's registered business address via certified mail. The Department made additional reasonable efforts by mailing copies of the Petition and Notice of Hearing to Respondent's registered residence address.

The Nebraska Unfair Insurance Trade Practices Act states that it shall be an unfair trade practice in the business of insurance for any insurer to commit any act or practice defined in section 44-1525 if the practice (1) is committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or any rule or regulation adopted pursuant to the act or (2) has been committed with such frequency as to indicate a general business practice to engage in that type of conduct. Neb. Rev. Stat. § 44-1525(11) requires an insurer to respond to Department inquiry within fifteen working days of receipt of the inquiry. Evidence was presented which clearly shows the Department sent one inquiry to Respondent at his registered home address via regular U.S. mail. No response to this inquiry was received, and the Department was not notified of nondelivery. 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. Therefore, the uncontested evidence does show that Respondent failed to respond to Department inquiry within fifteen days of receipt.

However, as stated in Neb. Rev. Stat., § 44-1524, Respondent's conduct must be either in flagrant disregard of the law or be committed with such frequency as to indicate a general business practice to engage in that type of conduct. Although the evidence shows a failure to respond to Department inquiry, the evidence presented is insufficient to show that this conduct was committed in flagrant disregard of the Unfair Trade Practices Act. Further, failure to respond to a single Department inquiry is insufficient evidence to indicate a general business to engage in that type of conduct.

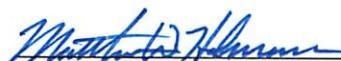
All alleged violations hinge on Respondent's failure to respond to a single Department inquiry. For the above reasons, the Hearing Officer hereby recommends that the Director find no violation of the Neb. Rev. Stat. §§ 44-1525(11), 44-4059(1)(b), 44-4059(1)(g), and 44-4059(1)(h).

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), 44-4059(1)(b), 44-4059(1)(g), and 44-4059(1)(h) 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 14th day of May, 2015.

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. Joseph Bristow, NAIC Producer #17313574, Cause No. A-2016.

Dated this 14 day of May, 2015.

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 13950 Ballantyne Corporate Pl, Ste. 200, Charlotte, NC 28277-3163, by certified mail, return receipt requested and regular U.S. mail on this 14 day of May, 2015.