

FEB 03 2016

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
VS.)	ORDER
)	
MICHAEL P. HOLCOMB)	CAUSE NO. A-2027
(NAIC National Producer #2280950),)	
)	
RESPONDENT.)	

This matter came on for hearing on January 28, 2016, before Laura L. Arp, 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. Respondent Michael P. Holcomb was not present and was not represented by an attorney. The proceedings were recorded by Brandis Courser, a licensed Notary Public. Exhibits 1, 2, 3, 4 and 5 were received, and the matter was taken under advisement. As a result of the hearing and evidence, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is a licensed resident insurance producer whose license expired November 30, 2015. Respondent’s registered business address and registered residence address with the Nebraska Department of Insurance is 236 N. 117th Ave., Omaha, NE 68154. (E2).

2. The Department of Insurance is the duly designated agency of the State of Nebraska empowered to exercise jurisdiction and control over the licensing of insurance agents in Nebraska pursuant to Neb. Rev. Stat. § 44-101.01 and § 44-4047 et seq. Said jurisdiction and control have been present at all times material hereto.

3. The Department retains authority to enforce the Insurance Producers Licensing Act and impose any penalty or remedy authorized by the Act against any person charged with a violation of the Act, even if the person's license is voluntarily surrendered or lapsed, for three years after termination of the license, pursuant to Neb. Rev. Stat. § 44-4059(5).

4. The Petition and Notice of Hearing in this matter were served upon Respondent at his registered home address and his registered business address. (E1).

5. Respondent purchased a Prudential Modified Whole Life Insurance Policy for his daughter, Alyssa Holcomb, on or about May 27, 1970, and Respondent purchased a Midland National Life Insurance Company Whole Life Insurance Policy for his daughter, Alyssa Holcomb, on or about March 23, 1984. The policies were transferred to Alyssa Holcomb when she reached the age of majority on or about February 21, 1990. (E3).

6. On or about December 19, 2013, Midland National received a request to change Alyssa Holcomb's address to 236 N. 117th Ave., Omaha, NE 68154, which is Respondent's address. In February and March 2014, Midland National received emails from "aljholcomb@aol.com" inquiring about cashing in the Midland National policy. On or about April 9, 2014, Midland National received a faxed copy of a completed Loan Withdrawal/Surrender Request form requesting the maximum loan value for the Midland National policy. Shortly thereafter, Midland National issued a check for \$7,637.25 and mailed it to the address on file, Respondent's address. On or about April 21, 2014, the Midland National check was deposited into a Wells Fargo account held in the names of Michael Holcomb and Alyssa Holcomb. (E3).

7. On or about February 14, 2014, Prudential received a call from a female who identified herself as Alyssa Holcomb and provided Prudential with information to verify her identity. The caller requested that a "Request to Surrender Policy" form be mailed to her at 236 N. 117th Ave., Omaha, NE 68154, which is Respondent's address. This form was completed and

signed "Alyssa Holcomb," and returned to Prudential on or about March 23, 2014. Prudential issued a check for \$2,286.10 made payable to Alyssa Holcomb, and mailed the check to Respondent's address. On or about April 4, 2014, the check was deposited into the Wells Fargo joint account held in the names of Michael Holcomb and Alyssa Holcomb.

8. Alyssa Brown (formerly Holcomb) discovered that the Midland National and Prudential policies existed after reviewing her Wells Fargo banking statement and noticed an additional checking account that listed her father as a joint account holder. The joint account lists the holder's address as 236 N. 117th Ave., Omaha, NE, Respondent's residence. On or about May 24, 2014, Ms. Brown contacted the Omaha Police Department to report that her estranged father, Respondent, fraudulently used her name and social security number to open the shared Wells Fargo bank account. Ms. Brown reported that Respondent forged her name on the two deposited checks from the Midland National and Prudential policies and the surrender forms for both issuers. (E3).

9. Alyssa Brown lives in California, has been married for over 11 years, and has not used her maiden name, Alyssa Holcomb, for several years. Ms. Brown was unaware that the Prudential and Midland policies existed, she did not contact either insurer, she did not sign the surrender forms, she did not endorse the checks, and she did not receive the \$7,637.25 from Midland National or the \$2,286.10 from Prudential. (E3, E4, E5).

10. Omaha Police Department received Wells Fargo surveillance photos that depicted Michael Holcomb depositing the Prudential check on April 4, 2014, and depicted Michael Holcomb depositing the Midland National check on April 14, 2014. (E3).

11. On or about September 10, 2014, the Respondent was charged in the County Court of Douglas County, Nebraska, Case No. CR 14-20387, with two counts of 2nd Degree Forgery, over \$300 and under \$1000, a Class IV Felony; and two counts of Fraudulent Insurance Act violations,

\$1500 or more, a Class III Felony. On or about January 2, 2015, Respondent waived arraignment in Case No. CR 14-20387. (E3).

12. Respondent failed to report the criminal case against him, Case No. CR 14-20387, to the Department within 30 days of arraignment as required. (E2).

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent 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. Pursuant to Neb. Rev. Stat. § 44-4059(1), the Director of Insurance has authority to suspend, revoke or refuse to issue or renew an insurance producer's license or levy an administrative fine if the insurance producer: . . . (b) violates any insurance law, rule, or regulation, . . . (h) uses fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, or . . . (j) forges another's name to an application for insurance or to any document related to an insurance transaction. Respondent's conduct with regard to his daughter's life insurance policies, as set forth in paragraphs 5 through 10 of the Findings of Fact above, violated § 44-4059(1)(b), (h), and (j).

4. Pursuant to Neb. Rev. Stat. § 44-4065(3), "within 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 documents." Respondent's failure to report his waiver of arraignment within thirty days of January 2, 2015, as set forth in paragraphs 11 and 12 of the Findings of Fact above, is a violation of § 44-4065(3).

5. Revocation of Respondent's insurance producer license is warranted based on his violations of Neb. Rev. Stat. § 44-4059(1)(b), (h), and (j) and § 44-4065(3).

DISCUSSION

The record does not include a final disposition of the criminal case against Respondent, and this hearing officer's findings and recommendations are not based on any result of the criminal case, but rather, on Respondent's conduct.

Respondent's counsel, J. William Gallup, sent correspondence to the Department on January 13, 2016, which included a postscript stating that "the insurance commissioner cannot fine [Respondent] for the same matter, as that would constitute double jeopardy under Nebraska law." (E1). Even if the issue of double jeopardy were properly raised in these proceedings, it would not affect the outcome. An insurance agent who violates the Insurance Producers Licensing Act cannot avoid administrative fines or license revocation imposed under the Act by arguing that his misconduct also exposes him to criminal penalties. Respondent is subject to both civil and criminal penalties as provided by law. Nebraska law provides criminal punishments for forgery and insurance fraud, and also allows administrative fines and license revocation for insurance producers' violations of the Insurance Producers Licensing Act. Regardless of whether Respondent was or will be punished in the related criminal case, the Department is authorized by statute to impose a civil penalty for Respondent's violations of the Act.¹

¹ The Double Jeopardy Clause protects only against the imposition of multiple *criminal* punishments for the same offense. In *Hudson v. U.S.*, 522 U.S. 93 (1997), the U.S. Supreme Court found no double jeopardy violation where the government administratively imposed monetary penalties and occupational debarment on bank officers for violation of federal banking statutes, and later criminally indicted the bankers for essentially the same conduct. "To hold that the mere presence of a deterrent purpose renders such sanctions 'criminal' for double jeopardy purposes would severely undermine the Government's ability to engage in effective regulation of institutions such as banks." *Id.* at 105.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's Nebraska insurance producer's license be revoked.

Dated this 3rd day of February, 2016.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



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 final Order of this Department in the matter of the State of Nebraska Department of Insurance v. Michael Holcomb, Cause No. A-2027.

Dated this 3 day of February, 2016.

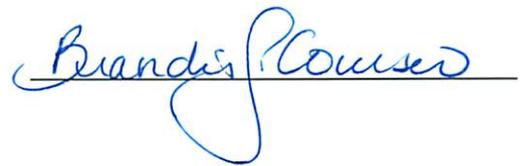
STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



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 by mailing a copy to the registered business and residential address, 236 N. 117th Ave., Omaha, NE 68154, via regular U.S. mail and via certified mail, return receipt requested, and by regular U.S. mail to attorney J. William Gallup, 209 S. 19th Street, Suite 400, Omaha, NE 68102, on this 4 day of February, 2016.

A handwritten signature in blue ink, reading "Brandis Couser", is written over a horizontal line.