

SEP 20 2016

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
PETITIONER,)	RECOMMENDED ORDER AND
)	ORDER
VS.)	
)	
ROBERT D. NOVOTNE)	CAUSE NO. A-2042
(NAIC National Producer #17051155),)	
)	
RESPONDENT.)	

This matter came on for hearing on September 7, 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 Robert D. Novotne was present and was represented by attorney William Bianco. The proceedings were recorded by Brandis Courser, a licensed Notary Public. Exhibits 1 through 8 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. Respondent’s registered business address with the Department is 2809 S. 160th Street, Suite 201, Omaha, NE 68130. Respondent’s registered residence address with the Department is 11812 Golden Boulevard, Apt. 907, Bellevue, NE 68123. (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 Petition and Notice of Hearing in this matter were served upon Respondent at his registered home address and his registered business address. (E1).

4. On or about December 23, 2013, a Criminal Complaint was filed against Respondent in the County Court of Douglas County, Nebraska, Case No. CR13-30874 (the “Douglas County case”). The Complaint charged Respondent with three Class III Felony counts of theft by deception over \$1500. (E3).

5. The Affidavit of Complaining Witness in the Douglas County case (E3) includes the following allegations:

a. Respondent was hired by Interstate Printing Company in 2008, and his position gave him full financial responsibility for the company including but not limited to accounts payable, accounts receivable, end of the month reconciliation, and financial statement preparation.

b. On or about July 10, 2013, the President of Interstate Printing met with Respondent. At the time of the meeting, the company president only knew of approximately \$42,000 in unauthorized checks. At the meeting, Respondent admitted he had been issuing unauthorized checks to himself, and stated it had only been going on for four to five months. Respondent was fired at the end of that meeting.

c. From November 2009 to July 2013, Respondent had written 85 unauthorized checks in his own name, totaling \$254,370.96. The loss to Interstate Printing, separated by year, was: \$1,658.64 in 2009; \$7,154.79 in 2010; \$89,286.86 in 2011; \$103,645.92 in 2012; and \$52,624.75 in 2013. Respondent was using two group insurance accounts in the company’s financial statements to hide the unauthorized checks.

6. On or about February 14, 2014, Respondent signed a pleading entitled “Written Arraignment and Waiver of Physical Appearance” in the Douglas County case, which had been bound over to the District Court of Douglas County, Nebraska, Case No. CR14-451. (E3), (E6).

7. On or about October 23, 2014, the Douglas County District Court entered an Order stating that Respondent pled no contest to the three Class III Felonies charged in the Complaint, and set the matter for a restitution hearing in February 2015. (E3).

8. On or about February 27, 2015, Respondent was sentenced in the Douglas County case to 36 months of probation and was ordered to pay Interstate Printing restitution of \$524.42 per month beginning March 2, 2015 until \$18,878.94 was paid in full. (E3).

9. In a related case, Sarpy County District Court Case No. CR14-1462 (the “Sarpy County case”), Respondent was charged with three counts of evading income tax and three counts of filing a fraudulent Nebraska Income Tax Return. (E4).

10. At the Department of Insurance hearing on September 7, 2016, Respondent testified that the Sarpy County case is related to the Douglas County case because the income he did not claim on his taxes was the funds he pled no contest to stealing from Interstate Printing.

11. On or about June 18, 2014, Respondent signed a pleading entitled “Written Arraignment and Waiver of Physical Appearance,” which was filed with the Court in the Sarpy County case. (E4), (E7).

12. In a plea agreement in the Sarpy County case, Respondent pled guilty to one count each of evading income tax and filing a fraudulent Nebraska tax return, both charges being Class IV Felonies. On or about December 29, 2014, Respondent was sentenced in the Sarpy County case to 36 months of probation. (E4).

13. Respondent was originally issued a Nebraska insurance producer license on September 2, 2013. That license was set to expire on March 31, 2015. On March 27, 2015, Respondent submitted a renewal application to the Department. In that renewal application, Respondent answered “yes” to the question that asks, “Have you been convicted of a felony . . . which has not been previously reported to this insurance department?” (E2).

14. Question 4 in the application asks, "In response to a 'yes' answer to one or more of the Background Questions for this renewal application, are you submitting document(s) to the NAIC/NIPR Attachments Warehouse?" Respondent answered "No" to Question 4. At the end of the application, Respondent certified, under penalty of perjury, that all information submitted in the application was true and complete. (E2).

15. Kevin Schlautman, Administrator of the Department's Producers Licensing Division, signed an Affidavit stating that at the time of renewal, Respondent did not provide documentation regarding his "yes" answer to the question about felony convictions. (E2).

16. Respondent testified at the September 7, 2016 hearing that Exhibit 8 is a copy of the documents he submitted to the Department when he renewed his license. Exhibit 8 includes a copy of the Electronic Application which documents Respondent's "yes" answer to Question 1B about felony convictions, and Respondent's "no" answer to Question 4, which asks if the applicant is submitting attachment documents. Exhibit 8 also includes a typed, three-page statement from Respondent dated "3/25/15" and copies of the probation orders in the Sarpy County case and the Douglas County case, all of which Respondent testified he submitted with his renewal application on March 27, 2015. (E8).

17. Respondent did not report the arraignment in the Sarpy County case or the Douglas County case within thirty days of arraignment or waiver of arraignment. (E2).

18. On or about April 8, 2015, the Nebraska Department of Revenue issued a Notice of Tax Lien against Respondent that includes: \$601.12 for 2010; \$11,074.26 for 2011; and \$21,807.90 for 2012, for a total due of \$33,483.28. As of August 29, 2016, that tax lien remained active. (E5).

DISCUSSION

The Department's evidence is that Respondent did not submit the renewal application attachments he offered as part of Exhibit 8. Findings of Fact 13 through 16 demonstrate that

Respondent has made conflicting statements about exactly what he submitted to the Department for his renewal application.

This case does not turn on whether Respondent submitted the documents attached to the renewal application in Exhibit 8. Respondent never fully complied with the statutory reporting requirement to provide a written statement, *copies of the charging documents*, and copies of dispositive orders. Further, even if Respondent had submitted a complete report on March 27, 2015, Respondent did not report on time. Section 44-4065(3) requires a report to the Director within thirty days of arraignment, not sentencing.

The recommended Order is revocation of Respondent's license. While Respondent has taken many positive steps, he is on probation for multiple felonies that demonstrate untrustworthiness and financial irresponsibility. Two courts have found that Respondent should serve three years of probation. After that time has passed, if Respondent accumulates a record of consistently trustworthy and financially responsible behavior, and continues to address the gambling addiction to which he attributes his past behavior, Respondent has the option to reapply for an insurance producer's license. This mention of the option to reapply should not be interpreted as an opinion as to whether Respondent should or should not be issued a license in the future.

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, ... (f) is convicted of a felony... (h) uses fraudulent, coercive, or dishonest practices, or demonstrates

incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. Respondent's conduct that formed the basis of his criminal convictions in the Sarpy County case and the Douglas County case, as set forth in paragraphs 4 through 12 of the Findings of Fact above, violated § 44-4059(1)(b), (f), and (h).

4. Pursuant to Neb. Rev. Stat. § 44-4059(1)(n), 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 fails to pay state income tax. Respondent's failure to pay Nebraska income tax, as set forth in paragraph 18 of the Findings of Fact above, violated § 44-4059(1)(n).

5. 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 arraignment within thirty days of February 14, 2014 in the Douglas County case and Respondent's failure to report his arraignment within thirty days of June 18, 2014 in the Sarpy County case, as set forth in paragraphs 6, 11 and 17 of the Findings of Fact above, are violations of § 44-4065(3).

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

7. Respondent's conduct that formed the basis of his criminal convictions in the Douglas County case and the Sarpy County case, on its own, is a sufficient basis to revoke Respondent's license under Neb. Rev. Stat. § 44-4059(1)(f) and (h).

8. Respondent pled no contest to three Class III Felonies in the Douglas County case, which involved embezzlement from Respondent's employer while Respondent had full financial

responsibility for the company. These crimes constitute a criminal felony involving dishonesty or breach of trust that requires a waiver under 18 U.S.C. § 1033. Should Respondent apply for an insurance license in the future, a § 1033 waiver is required.

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 20th day of September, 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. Robert D. Novotne, Cause No. A-2042.

Dated this 20 day of September, 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 his counsel of record, William Bianco, at 2426 South 179th Street, Omaha, NE 68130, on this 20 day of September, 2016.

A handwritten signature in blue ink, reading "Brandy J. Coussa", is written over a horizontal line.