

JUN 19 2017

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, RECOMMENDED ORDER
PETITIONER,)	AND ORDER
)	
VS.)	CAUSE NO. A-2062
)	
SCOTT ANTONIAK,)	
(NAIC Producer #9467406),)	
)	
)	
RESPONDENT.)	

This matter came on for hearing on May 24, 2017, before Krystle Ledvina Garcia, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its counsel, Robert Bell. Scott Antoniak (“Respondent”) was not present and was not represented by counsel. The proceedings were 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 resident insurance producer in the State of Nebraska whose current registered business address with the Department is 11207 W. Dodge Road, Ste. 200, Omaha, NE 68154. Respondent’s registered home address with the Department is 7527 S. 103rd Ave., La Vista, NE 68128. (See Ex. 3).

3. On or about April 19, 2017, the Petition and Notice of Hearing were served upon Respondent by mailing the same to his registered business and home address, by certified mail return receipt requested, and via regular U.S. mail. (See Ex. 2).

4. On or about April 24, 2017, the Domestic Return Receipt attached to the certified letter mailed to Respondent's home address was returned to the Department by United States Postal Service ("USPS"), confirming delivery. The correspondence sent to Respondent's home via regular U.S. mail has not been returned to the Department, nor has the Department received notification that the letter was undeliverable.

5. On or about April 25, 2017, the Petition and Notice of Hearing mailed via certified mail to Respondent's registered business address was returned to the Department by the USPS as "Return to Sender. Attempted-Not Known. Unable to Forward." On or about May 1, 2017, the Petition and Notice of Hearing mailed to Respondent by regular U.S. Mail to Respondent's business address was returned to the Department by the USPS as "Return to Sender. Attempted-Not Known. Unable to Forward." (See Ex. 2, Attachment 2 & 3).

6. On or about October 5, 2016, Respondent was charged with three misdemeanors in the County Court of Douglas County in case CR 16-23058. On or about October 19, 2016, Respondent waived arraignment of the charges. On or about February 14, 2017, Respondent pled guilty to one count of Disturbing the Peace-Class III Misdemeanor and was ordered to pay fines, costs, and restitution. (See Ex. 5 & 6).

7. Respondent did not report the criminal prosecution referenced in Paragraph 6 to the Department within thirty days of waiver of arraignment. (See Ex. 3).

8. On or about December 19, 2016, Jane Francis ("Francis"), Administrator of the Consumer Affairs Division for the Department, sent a letter to Respondent at his registered business

address and home address via regular U.S. mail requesting information about case CR 16-23058. The letter explicitly explained that failure to respond within fifteen days was a violation of Nebraska law. To date a response has not been received to the inquiry. (See Ex. 4, Attachment 1).

9. On or about January 17, 2017, Francis contacted Lifetime Financial Group (“LFG”) via telephone. LFG is listed as Respondent’s registered business address with the Department. Francis was informed that Respondent no longer was employed by LFG. (See Ex. 2 & 4).

10. On or about January 17, 2017, Francis sent another letter to Respondent at his registered home address via certified mail, return receipt requested, and requested a response to her previous inquiry. This letter also noted that failure to respond to the inquiry within fifteen days was a violation of Nebraska law. On or about February 9, 2017 the letter was returned to the Department by the USPS marked “Return to Sender-Unclaimed-Unable to Forward.” (See Ex. 4, Attachment 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 et seq.

2. The Department has personal jurisdiction over Respondent.

3. Pursuant to Neb. Rev. Stat. §§ 44-1525(11) and 44-1524, failure of an insurer, upon receipt of a written inquiry from the department, to respond to such inquiry within fifteen working days shall be an unfair trade practice if the act or practice is committed flagrantly and in conscious disregard of the Unfair Trade Practices Act or has been committed with such frequency to indicate a general business practice to engage in that conduct.

4. Pursuant to Neb. Rev. Stat. § 44-4054(8), the director may suspend an insurance producer's license or may levy an administrative fine for failing to inform the director of a change of address within thirty days after the change.

5. Pursuant to Neb. Rev. Stat. § 44-4059(1)(b), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director.

6. Pursuant to Neb. Rev. Stat. § 44-4059(1)(f), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for having been convicted of a felony or a Class I, II, or III misdemeanor.

7. Pursuant to Neb. Rev. Stat. § 44-4059(1)(h), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

8. Pursuant to Neb. Rev. Stat. § 44-4065(3), licensees must provide notice to the director of any criminal prosecution taken against the licensee in any jurisdiction within thirty days of arraignment or waiver of arraignment.

9. Respondent violated Neb. Rev. Stat. §§ 44-1525(11), 44-4054(8), 44-4059(1)(b), 44-4059(1)(f), 44-4059(1)(h), and 44-4065(3) as a result of the conduct set forth in paragraphs 6 through 10 of the Findings of Fact.

DISCUSSION

The uncontested evidence shows that Respondent was convicted of a Class III Misdemeanor and failed to report the criminal action within thirty days of arraignment to the Department as required.


The Department attempted to contact Respondent about the criminal charges at both his business and residence address that he registered with the Department on two separate occasions. He failed to respond to those inquiries. In another attempt to contact Respondent, the Department contacted his business address via telephone and learned that he was no longer employed with that office. Respondent failed to inform the Department of his change of employment and provide an updated business address. Respondent's failure to reply to the numerous inquiries from the Department is sufficient to show that his lack of response was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act. Dodging certified mail by refusing to claim it does not relieve Respondent of the duty to respond. Respondent works in a highly regulated industry and his repeated violations of the insurance code show a disregard for regulatory authority. By failing to adhere to the insurance code and respond to his regulating entity, Respondent also demonstrated untrustworthiness and incompetence in the business of insurance in violation of Neb. Rev. Stat. §§ 44-44-4059(1)(h). These violations are more than sufficient to warrant revocation of Respondent's resident producer license.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's Nebraska resident 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 11th day of June, 2017.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Krystle Ledvina Garcia
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. Scott Antoniak (NAIC Producer #9467406), Cause No. A-2062.

Dated this 19 day of June, 2017.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Bruce R. Range
Director of Insurance

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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 home address, 7527 South 103rd Avenue, La Vista, NE 68128, via certified mail, return receipt requested and via regular U.S. mail on this 20 day of June, 2017.

