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FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER AND
VS.)	ORDER
)	
JEFFREY C. ORTH)	CAUSE NO. A-2085
(NAIC National Producer #18329016),)	
)	
RESPONDENT.)	

This matter came on for hearing on October 26, 2017, 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 Jeffrey C. Orth was present and was not represented by an attorney. The proceedings were recorded by Brandis Bauer, a licensed Notary Public. Exhibits 1 through 9 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 1221 N Street, Suite 800, Lincoln, NE 68508. Respondent’s registered residence address with the Department is 1100 Claremont, Lincoln, NE 68508. (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. Respondent applied for an insurance producer license on February 17, 2017 according to the submission date on his licensing report. (E2).

5. Respondent answered “no” in response to the application question asking if he has ever been convicted of a misdemeanor, had a judgment withheld or deferred, or if he was currently charged with committing a misdemeanor. (E2).

6. The Department’s licensing administrator’s search of court records disclosed the following criminal cases:

a. In 2012, Respondent pled guilty to refusal to comply with a police order, a misdemeanor, and was fined \$250. (E2, Attachment 4).

b. In 2013, Respondent pled guilty to violation of a harassment protection order, a Class 2 misdemeanor, and was fined \$250. (E2, Attachment 4).

c. In 2013, Respondent pled guilty to misuse of a learner’s permit, a Class 3 misdemeanor, and was fined \$50. (E2, Attachment 4).

d. In 2014, Respondent pled guilty to attempt to purchase alcohol as a minor, a misdemeanor, was fined \$200, and also pled guilty to minor misrepresenting his age, a misdemeanor, and was fined \$150. (E2, Attachment 4).

7. At the October 26, 2017 hearing in this matter before the Department, Respondent testified that he admits he was found guilty of the offenses listed in Paragraph 6.

8. Respondent testified that he was blindsided by the notice from the Department that it appeared he had answered application questions untruthfully.

9. Respondent offered Exhibits 7, 8, and 9 to demonstrate that Respondent truthfully answered the questions in the Background Resume provided by his employer, New York Life.

10. New York Life's Background Resume only asked about misdemeanors "involving investments or an investment-related business or any fraud, or a conspiracy to commit any of these offenses." There was no Background Resume question about other types of misdemeanors. (E8).

11. The "Due Diligence Investigation Service Career Agent w/out Credit" report for Subject Jeffrey Curtis Orth, for client New York Life Licensing & Contracting, reports a search of "Lancaster County District and County Court" for "Felony, Misdemeanor and Other Offenses," and reports "No records found." The report appears to have been issued by Business Information Group, a registered trade name of Vertical Screen, Inc. (E9).

12. The "Due Diligence Investigation Service" report is incorrect according to records obtained directly from the online court system for Nebraska and according to Respondent's admission that he was found guilty of the offenses listed in Paragraph 6 above.

13. Respondent testified someone at New York Life submitted his application electronically and that person completed the attestation that all information was true.

14. Question 39 in the Uniform Application for an Insurance Producer's License reads in pertinent part, "The Applicant must read the following very carefully: 1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties." Respondent never personally made this certification.

15. Robert Bonk of New York Life testified at the hearing that the company has examined its licensing processes and corrected them to avoid a recurrence of what happened to Respondent. Going forward, applicants will submit their own applications.

DISCUSSION

Respondent did not willfully misrepresent his criminal history to the Department; however, intent is not required to establish a violation of § 44-4059(1)(a). This case involves two unfortunate mistakes. First, New York Life's Background Resume questions did not ask about misdemeanors other than those involving investments or investment-related business, even though those crimes must be disclosed on the NAIC Uniform Application. Second, New York Life's contracted background search disclosed no criminal cases in the Lancaster County or District Courts, even though Respondent had four misdemeanor guilty verdicts in Lancaster County Court.

Respondent's County Court misdemeanor convictions, if disclosed, would not have prevented Respondent from obtaining an insurance license. Because Respondent simply submitted to his employer's procedures, revocation of his license is not warranted in this case. But the fact of nondisclosure cannot be ignored, and Respondent's lack of intent to deceive is no excuse under the law. Therefore, Respondent will be ordered to pay a fine.

The testimony indicates a possibility that other New York Life applicants' criminal convictions were not discovered in a "Due Diligence Investigation Service Career Agent w/out Credit" search conducted by Business Information Group, a registered trade name of Vertical Screen, Inc. The testimony also indicates that someone at New York Life other than the applicant was completing the Question 39 attestation. New York Life has since corrected its procedures to use a different background search and to assure that applicants sign their own attestations 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 (a) provides incorrect, misleading, incomplete, or materially untrue information in the license application. Respondent's failure to report all listed criminal actions, as set forth in the Findings of Fact above, violated § 44-4059(1)(a).

6. A fine of \$250 is warranted based on his violations of Neb. Rev. Stat. § 44-4059(1)(a).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent be fined two hundred fifty dollars (\$250) due within thirty days of the date the Director adopts this order. 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 3 day of November, 2017.

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. Jeffrey Orth, Cause No. A-2085.

Dated this 3 day of November, 2017.

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 business address, 1221 N Street, Suite 800, Lincoln, NE 68508, via certified mail, return receipt requested and to Respondent's residence address, 1100 Claremont, Lincoln, NE 68508 via regular U.S. mail on this 3 day of November, 2017.


