

MAY 21 2019

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-2170
)	
KYLE MARING,)	
(NAIC Producer #16532623),)	
)	
RESPONDENT.)	
)	

This matter came on for hearing on May 9, 2019, before Robert E. Harkins, 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, Krystle Ledvina Garcia. Kyle Maring (“Respondent”) was present and was represented by his counsel Nick Andersen. The proceedings were recorded by Brandis Bauer, a licensed Notary Public. Both parties 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 public adjusters.
2. Respondent is a licensed non-resident public adjuster in the State of Nebraska. Respondent’s current registered business, mailing, and residence address with the Department is 217 Christopher Circle, Oswego, NY 13126 (“the Oswego address”). (Ex. 2, Attachment 1)
3. On or about January 17, 2019, a copy of the Petition and Notice of Hearing sent to the Oswego address via regular U.S. mail was returned to the Department. The return envelope contained

the following language: “Return to Sender. Not Deliverable as Addressed. Unable to Forward.” (Ex. 2, Attachment 3)

4. On or about February 1, 2019, the Petition and Notice of Hearing were served upon Respondent by certified mail, return receipt requested. (Ex. 1, Attachment 5)

5. On or about August 7, 2018, the Department sent a written inquiry to the Respondent via regular U.S. mail to the Oswego address. (Ex. 2, Attachment 2)

6. On or about August 20, 2018, the inquiry was returned to the Department by the United States Postal Service (“USPS”). The return envelope contained the following language: “Return to Sender. Not Deliverable as Addressed. Unable to Forward.” (Ex. 2, Attachment 3)

7. On or about September 21, 2018, the Department mailed a second written inquiry to Respondent at the Oswego address via certified mail. (Ex. 2, Attachment 4)

8. On or about September 24, 2018, the second inquiry was returned to the Department by the USPS. The returned envelope contained the following language: Return to Sender, and listed a forwarding address of “Kyle Maring, 1809 N. 169th Plaza #B, Omaha, NE 68118” (“the Omaha address”). (Ex. 2, Attachment 5)

9. On or about September 21, 2018, the Department sent a third inquiry to Premier Claims, LLC via certified mail, return receipt requested to the Omaha address. Respondent is the designated responsible licensed producer for that agency. The agency’s registered address is the Omaha address. (Ex. 2, Attachment 6)

10. On or about October 15, 2018, the third inquiry was returned to the Department by the USPS. The returned envelope contained the following language: “Return to Sender. Unclaimed. Unable to Forward.” (Ex. 2, Attachment 7)

11. To date, Respondent has failed to respond to any of the Department's inquiries.
(Ex. 2)

12. On or about January 2, 2019, the Department filed a Disciplinary Petition against Respondent.

13. On or about January 24, 2019, Respondent filed a Change Request Form for Individuals to update his mailing address to 120 Regency Parkway, Omaha, NE 68114 ("the Regency address"). (Ex. 2, Attachment 9)

14. Respondent testified that he resides in both Nebraska and the State of New York. Respondent also testified he had begun residing in Nebraska temporarily at or shortly before the Department mailed the first inquiry. Respondent admitted he had not updated his mailing address with the Department at the time he resided in Nebraska, but claimed he had obtained a forwarding request for the Oswego address at some unspecified time before residing in Nebraska. Respondent testified he never received any of the Department's inquiries. (Testimony of Respondent)

15. Respondent further testified that on some unknown date in September 2018, he was visited at Premier Claims, LLC by an unnamed Department employee. (Testimony of Respondent)

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of public adjusters in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-9201 to 44-9219.

2. The Department has personal jurisdiction over Respondent.

3. Respondent received proper notice of this proceeding.

4. The Nebraska Unfair Trade Practices Act, Neb. Rev. Stat. § 44-1525 provides that the following acts are considered an unfair trade practice if committed in violation of Neb. Rev. Stat.

§ 44-1524 ... (11) failing of any insurer , upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days.

5. An insurance adjuster is an “insurer” for purposes of the Nebraska Unfair Trade Practices Act, pursuant to Neb. Rev. Stat. § 44-1523(4)

6. Neb. Rev. Stat. § 44-1529 provides that the Director may issue a cease and desist order, revoke or suspend an insurer’s license, and impose a monetary penalty upon an insurer that has “engaged in an unfair trade practice.”

7. Pursuant to Neb. Rev. Stat. § 44-9211(1), the Director of insurance may suspend, revoke or refuse to issue or renew a public adjuster’s license or may levy an administrative fine for any one of more of the following causes: ... (b) violating any insurance law or violating any rule, regulation, subpoena, or order of the Director or of another state’s insurance commissioner or director ... (g) having admitted of have been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud; (h) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere or failing to comply with section 44-9217.

8. Pursuant to Neb. Rev. Stat. § 44-9210(3)(b), “licensees shall inform the director by any means acceptable to the director of a change of legal name, address, or other information submitted on the application within thirty days after the change. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the person’s license until the change of address is reported to the director, or both.”

9. Respondent violated Neb. Rev. Stat. §§ 44-9211(1)(b), 44-9211(1)(h), and 44-9210(3)(b), as a result of the conduct and information set forth in paragraphs 3 through 15 of the Findings of Fact.

DISCUSSION

The Department presented sufficient evidence to show Respondent received proper notice of these proceedings. The evidence established Respondent did not receive the inquiries that are the subject of this proceeding. However, the evidence establishes that Respondent failed to update his mailing address as required by Nebraska statutes.

Respondent testified he was residing in Nebraska at the time the inquiries in question were mailed, but concedes he did not update his personal licensing address with the Department. Rather, Respondent testified he submitted a forwarding request to the USPS to have his mail forwarded from the Oswego address prior to his temporary stay in Nebraska. However, Respondent testified he could not recall exactly when the forwarding request was made. Moreover, Respondent failed to provide any documentary evidence from the USPS or any other source to corroborate his testimony. The evidence established that the initial inquiry mailed by the Department to the Oswego address on August 7, 2018 was returned to the Department as “unable to forward.” Thus, the evidence strongly suggests that no forwarding order was in place at the time of the Department’s initial inquiry to Respondent.

Respondent testified he was visited at his Omaha business address by an unnamed Department employee sometime in September 2018, and that the Department was therefore on notice Respondent could be reached by mail in Omaha. This testimony is not dispositive. No evidence was presented to show Respondent explicitly advised any Department employee, at any time relevant to these proceedings, to send all future mailings to the Omaha address. Regardless of any contact Respondent may or may not have had with unknown Department representatives, Nebraska statutes place the responsibility to maintain an updated and accurate mailing address solely with Respondent. The evidence established Respondent spent a good deal of his time in Nebraska and operated a business

here, and no evidence was presented to show Respondent was unable to update his personal mailing address with the Department during the significant periods of time he resided and worked in Nebraska. The evidence established that on at least two separate occasions, inquiries sent to the Oswego address were returned to the Department as undeliverable. In addition, an attempt to serve Respondent with the Petition and Notice of Hearing at the Oswego address was unsuccessful. Based on the foregoing, the evidence establishes the Oswego address was invalid, and Respondent failed to update his mailing address with the Department. Therefore, Respondent is subject to disciplinary action. Respondent's failure in this regard also demonstrates incompetence and untrustworthiness incompatible with a licensed public adjuster.

The Department relies on all licensed entities to respond to Department inquiries in a timely fashion. Timely responses to Department inquiries are impossible if licensees fail to update their mailing addresses. The vital mission of the Department is frustrated when, as in the present case, licensees fail to fulfill the responsibilities placed upon them by Nebraska statutes.

The Department also alleges in its Petition that Respondent failed to timely respond to Department inquiries as required by Neb. Rev. Stat. § 44-1525(11). However, the statute prohibits failure to timely respond to inquiries "upon receipt" (emphasis supplied). The testimony of Respondent, as well as the voluminous evidence of returned mail in the record, demonstrates Respondent did not receive the inquiries in question, at least as of the date the disciplinary petition was filed. However, as has been more fully discussed above, the failure to receive these important inquiries was due solely to the actions, and inactions, of the Respondent.

Department counsel requests a fine and a suspension of Respondent's license until a valid personal mailing address has been provided to the Department. It appears the Respondent submitted an update to his mailing address after the filing of the Petition in this matter, specifically listing the

Regency address. Respondent and his counsel both stated that the Regency address is the preferred mailing address going forward, so a suspension does not seem warranted at this time. However, based on Respondent's conduct, a significant fine is appropriate, as spelled out more fully below.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent pay an administrative fine of \$500.00 within fourteen (14) days of the adoption of this Order by the Director. Respondent is also ordered to certify his personal mailing address with the Department's Licensing Division within ten (10) days of the adoption of this Order. Respondent's failure to comply with the Order will result in the summary indefinite suspension of his public adjuster's license until Respondent fully complies with said Order. Failure to comply with this Order may also subject Respondent to further disciplinary action, up to and including revocation of his public adjuster license. 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 20th day of May, 2019.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Robert E. Harkins
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. Kyle Maring (NAIC Producer #16532623), Cause No. A-2170.

Dated this 20 day of May, 2019.

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 counsel of record, Mr. Nick Andersen at 120 Regency Parkway, Omaha, NE 68114, via certified mail, return receipt requested and via regular U.S. mail on this 21 day of May, 2019.

