

NOV 26 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-2193
	)	
TARA GERBER,	)	
(NAIC National Producer #7976371),	)	
	)	
RESPONDENT.	)	

This matter came on for hearing on November 5, 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 attorney, Thomas Green. Tara Gerber (“Respondent”) was not present and was not represented by counsel. The proceedings were recorded by Peg Jasa, 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 non-resident insurance producer in the State of Nebraska whose current registered business address with the Department is 2111 E Broadway Road #12, Tempe, AZ 85282, and whose registered residence address with the Department is 4183 S Martingale Road, Gilbert, AZ 85297. (See Ex. 3, Attachment 1).

3. On or about September 13, 2019, the Petition and Notice of Hearing were served upon Respondent by mailing the same to her registered business and residence addresses, by certified mail return receipt requested, and via regular U.S. mail. (See Ex. 1).

4. On or about September 30, 2019, the Petition and Notice of Hearing mailed to Respondent's registered business address via certified mail was returned to the Department by the United States Postal Service ("USPS") as "Return to Sender. Attempted-Not Known." (See Ex. 1, Attachment 1).

5. On or about October 3, 2019, a Motion to Continue and Order Continuing Hearing ("MTC and Order") were served upon Respondent by mailing the same to her residence and business addresses, by certified mail return receipt requested, and via regular U.S. mail. (See Ex. 1).

6. On or about October 11, 2019, the original Petition and Notice of Hearing mailed to Respondent's registered residence address via certified mail were returned to the Department by USPS as "Return to Sender. Unclaimed. Unable to Forward." (See Ex. 1, Attachment 2).

7. On or about October 16, 2019, the MTC and Order mailed to Respondent's business address via regular U.S. mail were returned to the Department by USPS as "Return to Sender. Attempted-Not Known. Unable to Forward." (See Ex. 1, Attachment 3).

8. On or about November 1, 2019, the MTC and Order mailed to respondent's registered residence address via certified mail were returned to the Department as "Return to Sender. Attempted-Not Known. Unable to Forward." To date, none of the correspondence sent via regular U.S. mail to the Respondent's registered residence address have been returned to the Department. (See Ex. 2, Attachment 1).

9. On or about February 11, 2019, the Department learned Respondent had been terminated for cause by American Family Insurance Company ("American Family") for

misappropriation of insureds' premium payments. Numerous consumers notified American Family that remitted premium payments had not been applied to their accounts. (See Ex. 3, Attachment 2).

10. On or about March 31, 2019, Respondent's resident insurance producer licenses in her home state of Arizona expired. Respondent currently does not hold any insurance licenses in her home state. (See Ex. 3, Attachment 3).

11. On or about April 5, 2019, the State of Indiana suspended Respondent's insurance producer license for misappropriation of premium. (See Ex. 3, Attachment 4).

12. On or about May 2, 2019, the State of Kansas revoked Respondent's insurance licenses for: (1) demonstrated lack of fitness or trustworthiness; (2) failure to remit premiums to an insurer; (3) misappropriation of premium; and (4) no longer maintaining a license in her home state. (See Ex. 3, Attachment 4)

#### 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. § 44-4059(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.

4. Pursuant to Neb. Rev. Stat. § 44-4059(1)(d), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for improperly withholding,

misappropriating, or converting any money or property received in the course of doing insurance business.

5. 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.

6. Pursuant to Neb. Rev. Stat. § 44-4059(1)(i), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for having an insurance producer license, or its equivalent, denied, suspended, placed on probation, or revoked in Nebraska or any other state.

7. Pursuant to Neb. Rev. Stat. § 44-4059(1)(o), the director may suspend or revoke an insurance producer's license, or may levy an administrative fine for failing to maintain in good standing a resident license in the insurance producer's home state.

8. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(d), 44-4059(1)(h) 44-4059(1)(i), and 44-4059(1)(o), as a result of the conduct set forth in paragraphs 9 through 12 of the Findings of Fact.

### DISCUSSION

The Department provided evidence of its attempt to provide the Respondent with notice of these proceedings by certified mail, return receipt requested, and by regular U.S. mail to Respondent's registered business and residence addresses. As such, reasonable notice was provided to Respondent.

The evidence presented establishes Respondent engaged in a disturbing pattern of unethical and fraudulent conduct, and said conduct has already resulted in the suspension and revocation of Respondent's insurance producer licenses in at least two other states. In addition, Respondent has

failed to maintain a resident producer license in her home state of Arizona. In short, Respondent's disturbing pattern of conduct demonstrates a high level of untrustworthiness and dishonesty incompatible with the high moral and ethical standards required of a licensed insurance producer.

In its Petition, the Department alleged Respondent failed to report the sister state administrative actions described above, in violation of Neb. Rev. Stat. §44-4065(1). However, the evidence presented failed to support this allegation. Specifically, the sworn affidavit of Mr. Kevin Schlautman, the Department's Licensing Administrator, contains no statement that Respondent failed to report these administrative actions to the Department. Notwithstanding this finding, based on the serious nature of the evidence presented, and considering the totality of the circumstances involved, revocation of Respondent's non-resident insurance producer's license is clearly appropriate in this case.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's Nebraska non-resident insurance producer license (NAIC #7976371) be revoked, effective on the date this Order is approved and adopted by the Director of Insurance. 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 26<sup>th</sup> day of November, 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. Tara Gerber (NAIC Producer #7976371), Cause No. A-2193

Dated this 26 day of November, 2019.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
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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 registered business address, 2111 E Broadway Road #12, Tempe AZ 85282, and registered residence address, 4183 S Martingale Road, Gilbert AZ 85297 via certified mail, return receipt requested and via regular U.S. mail on this 26 day of November, 2019.

  
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