

JAN 2 2020

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-2194
)	
OSMUND MARCELLIN,)	
(NAIC Producer #8423820),)	
)	
)	
RESPONDENT.)	

This matter came on for hearing on December 3, 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, Thomas C. Green. Osmund Marcellin (“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 non-resident insurance producer whose producer license expired on August 31, 2019. Respondent’s registered residence address with the Department is 5145 Avening Ct, Charlotte, NC 28215-8075. Respondent’s registered business address with the Department is 3426 Toringdon Way Ste 102, Charlotte, NC 28277-3497. (Ex. 3, Attachment 1)

3. On or about October 9, 2019, the Petition and Notice of Hearing was served upon Respondent by mailing the same to his registered business and home addresses, by certified mail return receipt requested, and via regular U.S. mail. (Ex. 1)

4. On or about November 12, 2019, the Petition and Notice of Hearing mailed to Respondent via certified mail was returned to the Department by the United States Postal Service (“USPS”) marked, ”Return to Sender. Unclaimed. Unable to Forward.” To date, the Petition and Notice of Hearing sent to Respondent via regular U.S. mail has not been returned to the Department. (Ex. 2, Attachment 1)

5. On or about May 13, 2019, the Department received notice from TIAA-CREF Insurance Company (“TIAA”) that Respondent’s appointment with TIAA had been terminated for cause based on allegations that he copied and pasted a client signature and changed a date on a signed client form. During the course of an investigation by TIAA, Respondent admitted forging the client form. (Ex. 3, Attachment 1, Attachment 2)

6. On or about June 27, 2019, Bruce Eigsti, an insurance investigator employed by the Department’s Consumer Affairs Division, sent a letter to Respondent (“Letter 1”) at his registered residence/ mailing address by First Class United States Mail, requesting a response to the allegations forwarded to the Department by TIAA. No response was ever received by the Respondent and the letter was not returned to the Department as undeliverable by the USPS. (Ex. 3, Attachment 3)

7. On or about July 26, 2019, Mr. Eigsti sent a follow up letter to Respondent (“Letter 2”) at the Respondent’s registered residence/ mailing address by certified mail, return receipt requested. This Letter 2 again requested information related the allegations forwarded by TIAA to the Respondent and informed Respondent that failure to respond within fifteen working days may be construed as an unfair trade practice. (Ex. 3, Attachment 4)

8. On or about August 5, 2019, the domestic return receipt was returned to the Department by the USPS confirming delivery of Letter 2. (Ex 3, Attachment 5)

9. To date, the Department has not received a response from Respondent for either Letter 1 or Letter 2. (Ex. 3)

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. Pursuant to Neb. Rev. Stat. §44-4059(5), “the Director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Insurance Producers Licensing Act against any person who is under investigation for or charged with a violation of the act even if the person's license or registration has been surrendered or has lapsed by operation of law.”

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)(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.

5. 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.

6. Respondent violated Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), and 44-1525(11), as a result of the conduct set forth in paragraphs 5 through 9 of the Findings of Fact.

DISCUSSION

The Department presented sufficient evidence to show Respondent received proper notice of these proceedings. The uncontested evidence shows Respondent failed to respond to several Department inquiries regarding his unprofessional and fraudulent conduct. The evidence conclusively shows that Respondent received Letter 2, and Letter 1 has never been returned to the Department. Respondent's repeated failure to reply to 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.

The evidence also establishes the underlying conduct which was the subject of Petitioner's unanswered inquiries, namely the forgery of a client form. Respondent's actions demonstrate a high level of fraudulent, dishonest, and untrustworthy conduct incompatible with the high ethical and moral standards required of an insurance producer.

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 license is 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 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 2nd day of January, 2020.

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. Osmund Marcellin (NAIC Producer #8423820), Cause No. A-2194.

Dated this 2 day of January, 2020.

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 the Respondent by mailing a copy to Respondent's registered business and home addresses, 5145 Avening Ct, Charlotte, NC 28215-8075, and 3426 Toringdon Way Ste 102, Charlotte, NC 28277-3497, via certified mail, return receipt requested and via regular U.S. mail on this 2nd day of January, 2020.

Shelly Storie