

JUN 23 2020

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

STATE OF NEBRASKA	)	
DEPARTMENT OF INSURANCE,	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, RECOMMENDED ORDER
PETITIONER,	)	AND ORDER
	)	
VS.	)	CAUSE NO. A-2209
	)	
JOSEPH E. GARGAN,	)	
(NAIC Producer #2310612),	)	
	)	
	)	
RESPONDENT.	)	

This matter came on for hearing on May 14, 2020, before Thomas C. Green II, 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, Tracy Burns. Joseph E. Gargan (“Respondent”) was not present and was not represented by counsel. The proceedings were recorded by Shelly Storie, 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. Respondent’s registered residence address with the Department is 3303 Wilson Blvd Ste 700, Arlington, VA 22201-3868 and his registered mailing address with the Department is 1530 Clarendon Blvd, Apt 914, Arlington, VA

22209-4318. Respondent's registered business address with the Department is Mesirow Fin Structured Settlements LLC, 353 N Clark Street, Chicago IL 60654-4704. (Ex. 2, Attachment 2).

3. On or about March 25, 2020, the Petition and Notice of Hearing was served upon Respondent by mailing the same to his registered residence, mailing and business addresses, by certified mail, return receipt requested, and via regular U.S. mail. (Ex. 1)

4. On or about April 2, 2020, the Domestic Return Receipt attached to the Petition and Notice of Hearing mailed to Respondent's registered residence address was returned to the Department by the United States Postal Service ("USPS") evidencing delivery. (Ex. 1, Attachment 1)

5. On or about April 2, 2020, the Domestic Return Receipt attached to the Petition and Notice of Hearing mailed to Respondent's registered business address was returned to the Department by the United States Postal Service ("USPS") evidencing delivery. (Ex. 1, Attachment 2)

6. On or about October 9, 2019, the Department received notice from Berkshire Hathaway Life Insurance Company of Nebraska ("Berkshire") that Respondent's appointment with Berkshire had been terminated, for cause, on September 18, 2019. The termination was due to alleged fraudulent activity, for which the Federal Bureau of Investigation was conducting an investigation (Ex. 2, Attachment 1)

7. On or about October 31, 2019, in response to a request from the Department, Berkshire sent additional information regarding the wrongdoing allegedly committed by Respondent. In particular, the documentation received indicated that after being engaged by the United States Department of Justice, Respondent created and distributed a fraudulent annuity contract. (Ex. 3, Attachment 2)

8. On or about December 19, 2019, Barbara Peterson, Administrator of the Department's Consumer Affairs Division, sent a letter to Respondent ("Letter 1") via email to Respondent's email address of record with the Department requesting a response to the allegations made by Berkshire. No response from the Respondent to Letter 1 was ever received by the Department. (Ex. 3, Attachment 3)

9. On or about January 22, 2020, Ms. Peterson sent a follow up letter to Respondent ("Letter 2") via email at the Respondent's email address of record on file with the Department. This Letter 2 again requested a response to the Berkshire allegations and further informed Respondent that failure to respond within fifteen working days may be construed as an unfair trade practice. (Ex. 3, Attachment 4)

10. A read receipt to Letter 2, indicating that the email letter had been received and opened, was received by the Department on January 22, 2020. No response from the Respondent to Letter 2 was ever received by the Department. (Ex. 3, Attachment 5)

11. On or about February 14, 2020, a third follow-up letter ("Letter 3") was sent to the Respondent at his registered business address via certified mail, return receipt requested. The domestic return receipt was returned to the Department by the USPS confirming delivery of Letter 3 on February 21, 2020. No response from the Respondent has been received for Letter 3. (Ex. 3, Attachment 6)

### 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)(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 6 through 12 of the Findings of Fact.

#### DISCUSSION

The Department presented sufficient evidence to show Respondent received proper notice of these proceedings. The uncontested evidence conclusively shows Respondent failed to respond to three (3) separate Department inquiries regarding his unprofessional and fraudulent conduct. The evidence conclusively shows that Respondent received Letter 2; and evidence indicates that Letter 3 was received at the Respondent's business address on file with 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 shockingly fraudulent and dishonest conduct which was the subject of Department's unanswered inquiries. 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 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 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 22<sup>nd</sup> day of June, 2020.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



---

Thomas C. Green II  
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. Joseph E. Gargan (NAIC Producer #2310612), Cause No. A-2209.

Dated this 23 day of June, 2020.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

Bruce R. Range  
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 and home addresses, Mesirow Fin Structured Settlements LLC, 353 N Clark Street, Chicago IL 60654-4704 and 3303 Wilson Blvd Ste 700, Arlington, VA 22201-3868, respectively, via certified mail, return receipt requested and via regular U.S. mail on this 23<sup>rd</sup> day of June, 2020.

Shelly Storie