



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Kelly J. Shanahan

Docket No.: Ins. No. 08-048-EP

ORDER ON HEARING

I. ADMINISTRATIVE BACKGROUND.

On December 16, 2008 a Hearing was held at the New Hampshire Insurance Department ("Department") pursuant to an Order to Show Cause and Notice of Hearing dated October 13, 2008 signed by Commissioner Roger Sevigny. The Hearing date in the Order to Show Cause and Notice of Hearing was November 13, 2008. This was moved to December 16, 2008 by agreement between the Department and Kelly J. Shanahan ("Respondent").

The Order to Show Cause and Notice of Hearing at paragraph 6 informed that Attorney John Talley, Enforcement Examiner, would appear for the Department as Staff Advocate. This was changed by letter dated December 11, 2008 to substitute Attorney Richard P. McCaffrey, Compliance and Enforcement Counsel, to be the Staff Advocate for the Department. This letter was sent to the Respondent and given to this Hearing Officer on December 11, 2008.

Attorney John Talley was present but did not participate in the Hearing.

Attorney Scott Flegal was at the Hearing with the Respondent.

II. FINDINGS OF FACT.

Respondent was first licensed by the Department as a producer on March 6, 2003. The address on the application for licensure was 31 Orchard Avenue, Nashua NH. This license would expire on January 31, 2005. On December 6, 2004 the Department sent Respondent a Producer Renewal form reminding her that the form must be completed and returned to the Department by January 31, 2005 in order to renew her producers license for the period February 1, 2005 to January 31, 2007. Respondent and counsel in

testimony agreed that the license renewal notice is done as a courtesy by the Department. This renewal reminder was sent to the Respondent's address at 31 Orchard Avenue, Nashua, NH. Respondent timely completed the form, signed it, and dated it December 12, 2004. Her producers license was thus effective for the period February 1, 2005 through January 31, 2007.

Respondent did not renew her license on or before January 31, 2007 and it expired on that date. Respondent first became aware that her license had expired in May 2008 when she had the opportunity to become appointed with another title insurance company First American. Prior to this date she was only appointed to write title insurance policies with Chicago Title Insurance Company. She testified that on May 20, 2008 she looked at her license as she was considering an appointment with First American, discovered that her license had expired, and then immediately applied to the Department for reinstatement of her license on that date. In that application for reinstatement at Background Information, question #4 on page two of the form, she affirmed that she had transacted insurance business in this state since her license had expired. Respondent listed her address on this form as 3 Congressional Avenue, Plaistow, NH.

Respondent testified she moved from the 31 Orchard Avenue, Nashua, NH address to 3 Congressional Avenue, Plaistow, NH address in April 2005.

During the period of time in which she was unlicensed – February 1, 2007 through May 20, 2008, she issued 79 policies and received premiums thereon as evidenced at Exhibit DOI-A at tab #6. The reference to premiums in the body of that document is nevertheless the commission part of the premium the producer receives from writing the policy.

Respondent testified that the failure to renew her license on or before January 31, 2007 was a mistake and unintentional. She further testified that she realizes it was her responsibility to renew her license, that she did not realize she needed to notify the Department of her change in address, and that she did not realize that her license had expired on January 31, 2007 until May 20, 2008. Respondent also testified that she did not receive a reminder from the Department to renew her license before January 31, 2007 as it would have been sent to her former address at 31 Orchard Avenue, Nashua, NH.

III. CONCLUSIONS OF LAW.

RSA 402-J: 7, VI provides, in pertinent part, as follows, "Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within 30 days of the change. ..." The evidence of record shows that the Department was first informed of her change in address from 31 Orchard Avenue, Nashua, NH to 3 Congressional Avenue, Plaistow, NH when she applied for license reinstatement on May 20, 2008. Respondent testified she moved from the 31 Orchard Avenue address to 3 Congressional Avenue address in April 2005. She further testified that she was not aware

that she had to inform the Department of her change of address as required by this section of the statute. I find that Respondent did not comply with RSA 420-J:7, VI and that the Department was first put on notice of her change of address when she applied for license reinstatement on May 20, 2008.

The Department introduced as Exhibit DOI-A, at Tab #6 a fax transmission from Chicago Title Insurance Company establishing that the Flegal Law Office of which Respondent was a member issued 79 policies and retained approximately \$21,000 in premium. Respondent testified that she first saw this fax and the information therein at the Hearing. She further testified that during the time in which she was not licensed she had issued policies on behalf of Chicago Title Insurance Company and that she had issued, in her words, quite a few. Counsel with Respondent did not challenge this document but on the record stated that he assumed it was accurate. Respondent thus admitted issuing policies for Chicago Title Insurance Company while being unlicensed and the information contained in that fax regarding the number of policies issued and the amount of premium retained was information she had at her disposal. Further, she admitted to conducting the business of insurance while being unlicensed when she answered question #4 on the license reinstatement form. She testified that the only company she was placing business with while being licensed and during the period she was unlicensed - February 1, 2007 to May 20, 2008, was Chicago Title Insurance Company. Therefore, there can be no claim of surprise regarding Tab #6 based upon these facts. I find that Respondent issued policies and received premiums on title insurance business while being unlicensed.

The Department sends out courtesy reminders to producers to renew their license. Respondent and counsel argue that the courtesy license renewal reminder was sent by the Department to her old address at 31 Orchard Avenue, she did not consequently get the renewal reminder, and that the Department should have done more due diligence in trying to determine her address and thus get the renewal reminder to her attention. Assuming that a license renewal reminder was sent prior to the renewal date of February 1, 2007 it would have been sent to her address at 31 Orchard Avenue, Nashua, NH as that was the only address the Department had for her at the time. She testified she did not inform the Department of her change in address until applying for license reinstatement on May 20, 2008. There is no statutory or administrative rule that requires the Department to send out license renewal reminders. This is merely a courtesy extended by the Department. Respondent and counsel in testimony agreed that the license renewal notice is done as a courtesy by the Department. Consequently, I find that Respondent cannot rely on her failure to inform the Department of her change in address as required by statute, and thus she did not get the license renewal notice, as a reason that she failed to reinstate her license and thus no administrative sanctions should apply for her failure to reinstate her license. I further find that the Department is under no statutory requirement or administrative rule to send out license renewal reminders as these are merely a courtesy extended to producers by the Department and thus would be irrelevant to the fact that she failed to obtain a renewal license. I also find that the responsibility for continuous licensure rests solely with Respondent.

On October 14, 2008 the Department sent the Order to Show Cause and Notice of Hearing to the Respondent at her old address at 31 Orchard Avenue, Nashua, NH. I find this is irrelevant to the fact that during the period February 1, 2007 through May 20, 2008 Respondent issued title insurance policies and received commissions thereon while being unlicensed. Respondent also sought to pose questions of Mr. Talley regarding conversations occurring post May 20, 2008. While not making a specific request to swear Mr. Talley in as a witness for the Respondent as to conversations had between him and the Respondent, but rather concluding this Hearing Officer would not do so, I also find that any testimony that would be elicited of Mr. Talley of conversations had after May 20, 2008 with the Respondent would be irrelevant to the fact that during the time frame of February 1, 2007 through May 20, 2008 Respondent issued title insurance policies and received commissions thereon while being unlicensed.

Respondent's letter to the Department dated November 4, 2008 at Exhibit DOI-A at Tab 7 characterizes her failure to obtain a renewal license as a mistake. It matters not how the failure to obtain a renewal license is characterized since the only consideration is whether or not a producer is properly licensed when policies are issued and commissions obtained. It is a producer's sole responsibility to be properly licensed when issuing policies and receiving commissions. Respondent testified that she understood that it was her responsibility to be licensed when conducting insurance business. It is the mere fact of being unlicensed at that time that is important and not how the failure to renew a license happened. The latter goes to mitigation when being unlicensed when policies are sold as an intentional failure to be licensed when issuing policies is certainly different from unintentionally issuing policies while being unlicensed. I find that the reason Respondent failed to reinstate her producers license to be a mitigating factor and not a factor that provides a defense to being unlicensed in the first place.

Respondent testified she took responsibility for failing to renew her producers license. She also testified then when she first knew that her license had expired on May 20, 2008 she immediately sought reinstatement with the Department. In doing so she answered question #4 on page two of the form truthfully in that she admitted she had conducted the business of insurance while being unlicensed. She further testified that her failure to obtain a renewal license was not intentional. I find that Respondent did not intentionally issue insurance policies and receive commissions thereon without a license and that her actions upon learning her license had expired and her truthfulness in answering question #4 of the reinstatement form to all be mitigating factors to be considered in rendering a decision.

ORDER.

Therefore as Hearing Officer, I find that Respondent violated RSA 402-J; I as referenced at RSA 416-A:15, I. An administrative penalty of \$750 is assessed for this violation in accordance with RSA 402-J:12, I. I further order that upon payment of the \$750 penalty the Respondent's producers license be immediately reinstated according to Department rules on licensing reinstatement.

March 6, 2009

Date

Donald L. Belanger

Donald L. Belanger, Hearing Officer