

**STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

In Re: Timothy W. Newkirk

Docket No.: INS No. 07-041-EP

**ORDER ON HEARING**

**I. ADMINISTRATIVE BACKGROUND**

1. On January 4, 2007 the Petitioner submitted a non-resident insurance adjuster license application to the Department.

2. In the application, at "Background Information" in response to Question #2: "Have you or any business in which you are or were an owner, partner, officer or director, or member or manage of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration?" The Petitioner responded by checking "No."

3. Through its routine investigation, the New Hampshire Department of Insurance (Department) determined that the Arkansas, Virginia, Iowa and New York departments of insurance had taken administrative actions against the Petitioner's non-resident producer license in their respective states.

4. Based on this information, the Department denied the Petitioner's request for a nonresident producer's license in a letter dated January 31, 2007 due to the Petitioner's failure to report these administrative actions on his application in violation of RSA 402-J:12, I (a).

5. The Petitioner submitted to the Department a request dated March 2, 2007 for a hearing and a Notice of Hearing was issued on March 12, 2007 for a hearing on April 3, 2007 at 10:00 a.m. On motion of the Department and without objection from the Petitioner, a new hearing was scheduled for April 17, 2007 at 10:00 a.m. to be conducted telephonically by request of the Petitioner. This hearing was continued to May 1, 2007.

6. A hearing was held at the Department on May 1, 2007 at 10:00 a.m. before Hearing Officer Chiara Dolcino. The Petitioner participated by telephone. Mr. John Talley, Enforcement Examiner for the Department, served as the Department's Staff Advocate in this hearing. The Hearing was closed on May 1, 2007 subject to receipt of Exhibit I from the Department and/or the Petitioner and subject to any later determination by the Hearing Officer that it should be reopened to receive further necessary and relevant information in order to provide a full and fair consideration of the issues that form the subject matter of the Hearing.

## II. EXHIBITS

Exhibit A	Application for Non-resident License of Timothy Newkirk
Exhibit B	Consent Order-License Surrender (December 29, 2005) and Emergency License Suspension Order (April 20, 2005) Arkansas
Exhibit C	Statement of Charges (October 14, 2005) and Proposed Findings of Fact Conclusions of Law and Order (December 23, 2005), Iowa
Exhibit D	RIRS Regulatory Actions History
Exhibit E	Press Release New York Insurance Department
Exhibit F	U.S. Postal Service Return Receipt for Certified Mailing
Exhibit G	Correspondence March 12, 2007, Notice of Hearing
Exhibit H	Correspondence January 31, 2007, denial of non-resident producer license
Exhibit I	E-mail correspondence between Petitioner and the Department in regard to hearing of April 17, 2007
Exhibit J	Correspondence and Order for New Hearing dated April 5, 2007

## III. FINDINGS OF FACT.

### 1. Evidence presented at the hearing showed:

- a. On March 31, 2003 the Petitioner plead guilty/no contest to Credit Card False Statements and Theft of Movable Property, in the Circuit Court of Brown County, Wisconsin, both Class A misdemeanors. These charges were precipitated by an unhappy termination of a relationship with a former girlfriend who pressed charges. (Testimony of Petitioner, Exhibit B)
- b. The Petitioner had also previously been convicted of three other crimes: Underage Consumption of Alcohol, Underage Drinking-Possession and Possession of Marijuana, all in the state of Wisconsin between 1999-2002. (Testimony of the Petitioner and Exhibit B)
- c. In May 2003, the Petitioner worked for American Express Property and Casualty Insurance Company (American Express) and was licensed in 38 states. (Testimony of the Petitioner)
- d. The licensing department of American Express handled licensing for its employees including renewals and the Petitioner relied upon the staff in the licensing department to complete all producer applications. (Testimony of the Petitioner)
- e. The Petitioner provided American Express Property and Casualty with all information in regard to his criminal convictions. (Testimony of the Petitioner)
- f. After the conviction in 2003, Petitioner attempted to expunge this conviction from his record. (Testimony of the Petitioner)
- g. When this attempt to expunge his criminal conviction proved unsuccessful, in January of 2005 the Petitioner, through the licensing department of American Express, began notifying companies of the 2003 criminal conviction. (Testimony of the Petitioner)

- h. On April 20, 2005 the State of Arkansas issued an emergency license suspension order citing Petitioner's failure to disclose his criminal convictions. (Exhibit B)
- i. In August 2005 the Petitioner was given a new position at American Express Property and Casualty and this new position did not require that the Petitioner hold a producer's license. The Petitioner asserts this new position was unrelated to the Petitioner's conviction in 2003. (Testimony of the Petitioner)
- j. The licensing department of American Express was to notify all companies that the Petitioner was surrendering his license. (Testimony of the Petitioner)
- k. Subsequent to August 2005, the licensing department for American Express was to send notice to the 38 states in which the Petitioner was licensed advising that the Petitioner was surrendering his license (Petitioner's Testimony)
- l. The Petitioner subsequently entered into a consent order on December 29, 2005 with the Insurance Commissioner in Arkansas surrendering his license. (Exhibit B)
- m. In addition to Arkansas, three other states, Virginia, Iowa, New York, commenced administrative proceedings against the Petitioner for misstatements made on an application for a producer's license. (Exhibit B,C, D, E)
- n. The Petitioner did not respond to a notice of administrative action in Virginia, New York or Iowa and did not appear at any hearing in these states. (Testimony of the Petitioner and Exhibits B, C, D, and E)
- o. The Petitioner states that due to the volume of correspondence received in regard to the license surrender, the Petitioner did not open all correspondence received subsequent to August 2005. (Testimony of Petitioner).
- p. The notice of the action in Iowa was sent to the Petitioner in June of 2005. (Exhibit C)
- q. The Department did not present evidence in regard to when notices of the actions in New York or Virginia were issued.
- r. The Petitioner states he was irresponsible and negligent in not opening all correspondence in regard to his license and in not taking the necessary steps to ensure he was in good standing in all states. (Petitioner's Testimony)
- s. While the Petitioner was aware of the Arkansas administrative proceeding, he was not aware of the administrative proceedings against him in New York, Virginia, or Iowa. (Petitioner's Testimony)
- t. The Petitioner believed that the administrative proceeding in Arkansas was not relevant to Question #2 of the Background Questions on the NH Non-resident Producer License Application. (Petitioner's Testimony).
- u. The Petitioner is currently employed for United Health Care and is seeking licensure from New Hampshire and all other states in order to sell health insurance. (Petitioner's Testimony)
- v. The Petitioner has had no further criminal charges brought against him since the 2003 conviction. (Petitioner's Testimony)

- w. The Department has recommended that the Petitioner be assessed a \$250 fine and issued a license upon payment of the fine and in addition, that the Petitioner be placed on probation for one year. (Testimony of Enforcement Examiner)

#### **IV. CONCLUSIONS OF LAW.**

1. Licensure by a regulatory authority authorizing an individual to sell insurance to the public, and all that this entails, is a matter of significant importance and the licensing decision is not to be taken lightly. Granting a license confers upon the licensee an aura of honesty and trustworthiness by that governmental regulatory authority. The public has a reasonable expectation that a licensed adjuster, prior to licensure, has undergone an evaluation of his or her character and propensity for honesty and trustworthiness.
2. The Petitioner was negligent in his failure to disclose on his New Hampshire non-resident producer's license application the administrative action in Arkansas. As the Petitioner himself states, there is no excuse for this omission.
3. The Petitioner also demonstrated irresponsibility in his failure to respond to correspondence from the insurance departments of New York, Virginia and Iowa. The Hearing Officer notes that in the Iowa action, notice of an administrative proceeding was sent to the Petitioner in June of 2005, that is, prior to his assuming his new position at American Express and prior to the licensing department issuing notice to all insurance departments that the Petitioner was surrendering his license. This fact undermines the Petitioner's assertion that the flood of information received in response to the surrender of his license resulted in his failure to respond to the administrative proceedings against him in Iowa, as well as New York and Virginia.
4. However the Petitioner states that he has learned from this experience and is committed to properly completing all further applications, monitoring his licensure status and responding to all communications from insurance departments. The Petitioner was forthcoming in response to questions by the Hearing Officer, did not try in any manner to trivialize or minimize his prior actions and took full responsibility for his actions.
5. There is no evidence presented of any additional complaints brought against the Petitioner in regard to his trustworthiness or honesty or otherwise that would support a conclusion that he has not properly conducted his producer activities. No consumer complaints were presented as evidence against the Petitioner.
6. Although the Petitioner did not disclose the administrative proceeding in Arkansas, a proceeding of which the Petitioner admits he had knowledge, the Petitioner did disclose his criminal convictions on the January 4, 2007 application to the New Hampshire Insurance Department for a nonresident insurance producer's license. The failure to disclose the Arkansas action (and the New York, Virginia and Iowa actions) was not an intentional omission but a result of negligence on the part of the Petitioner.

7. Based on the testimony and evidence presented at the hearing, the Petitioner has proven that it is more probable than not that his failure to disclose the administrative proceeding in Arkansas, New York, Virginia or Iowa on his New Hampshire non-resident producer application does not warrant a denial of a nonresident adjuster license. Granting the Petitioner's license would not be against the public interest.

8. However, it is also clear that the Petitioner has shown a serious disregard for the importance of communicating with various state insurance departments and providing correct information on licensing applications. Although neither of these failures is found to be intentions, they are nevertheless of concern and thus the Hearing Officer rejects the \$250 fine suggested by the Department as inadequate.

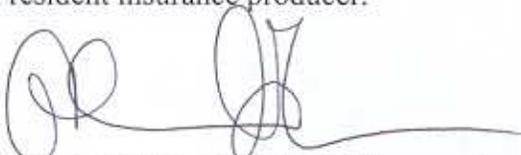
### ORDER

THEREFORE, as Hearing Officer, I find that the evidence of record in this Hearing is sufficient to demonstrate that the Petitioner's is fit for licensure and it is hereby ORDERED that;

1. The Department's denial of licensure by letter dated January 31, 2007 is hereby REVERSED,
2. The Petitioner is hereby ordered to pay a fine in the amount of \$500,
3. The Department shall issue the Petitioner a non-resident license immediately upon payment in full of the fine levied pursuant to this order and all licensing fees and,
4. In twelve months the Department will conduct a review to confirm that no further actions or complaints have been brought against the Petitioner and that there is no new or newly discovered information that would warrant further investigation of the Petitioner's fitness for licensure as a non-resident insurance producer.

Date

7/25/07

  
Chiara Dolcino, Hearing Officer

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