



**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: Gerald C. Wolff

Docket No.: INS No. 08-040-EP

ORDER ON HEARING

I. ADMINISTRATIVE BACKGROUND.

1. Mr. Gerald C. Wolff ("Petitioner") submitted a non-resident insurance producers license application to the Insurance Department ("Department") on May 16, 2008. Question 2. of the application asks, "Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration." Mr. Wolff answered in the negative. The Hearing Order alleges that the Petitioner failed to inform the Department of an administrative action taken against him by the Massachusetts Division of Insurance on March 2, 2000.
2. The Department denied the application for licensure pursuant to RSA 402-J:12, I (a) which provides for license denial for "(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application." This denial was sent to Petitioner by letter dated June 10, 2008. On June 23, 2008 the Petitioner filed a written request for a hearing regarding the denial of his application for a non-resident license. The request for a hearing was timely filed.
3. A Hearing was held at the Department on September 25, 2008 pursuant to NOTICE OF HEARING dated August 29, 2008 and signed by the Insurance Commissioner, Mr. Roger Sevigny. Mr. John Tally appeared for the Department and Petitioner represented himself. Also present was Petitioner's wife who observed the proceeding but did not participate therein.

II. FINDINGS OF FACT.

1. Petitioner's application for licensure responded to Question #2 in the negative.
2. The Department introduced without objection a copy of a letter dated March 2, 2000 from the Commonwealth of Massachusetts, addressed to and signed by the Petitioner, in

which the Petitioner agree to pay a \$2,000 settlement and waive his right to a hearing on the subject matter of the letter. Absent agreement and payment, the Massachusetts Insurance Department would shut down the agency for which he worked for a period of 6 months thereby putting 10 or 12 employees out of work. Petitioner testified that he left the meeting, called the President of the agency for instructions and was told by the President of the agency to sign the letter and that the agency would pay the \$2000. He went back to the Office of the Deputy Insurance Commissioner and immediately did as instructed. Petitioner acknowledged his recollection of this letter and event.

3. Petitioner testified that he was well aware that this is the age of information technology and that information was readily available and that therefore he would not intentionally answer Question #2 in the negative but that he went over the questions on the application for non-resident licensure lightly and that the event of March 2, 2000 never entered his mind.

4. Petitioner further testified that the meeting in the Office of the Massachusetts Insurance Department on March 20, 2000 was not formal, there was no court officer or recording, etc. and that it was held in a conference room with only he, the Deputy Commissioner and an observer present.

III. CONCLUSIONS OF LAW.

1. The fact that a \$2000 fine was paid on March 20, 2000 by the agency for whom the Petitioner worked is not in dispute. There is also no dispute by way of evidence or testimony as to the manner in which the meeting of March 20, 2000 between the Petitioner, Deputy Insurance Commissioner for Massachusetts and an observer was conducted. The Petitioner testified when he filled out the NH application for licensure he never would have intentionally answered application question #2 in the negative especially given this age of information technology but rather just plain forgot about that meeting.

2. Question #2 of the application directs an applicant's attention to "being involved in an administrative proceeding." The term "administrative proceeding" is not defined in the application. Administrative proceedings are, absent a clear definition, by common logic and reason both formal and informal proceedings to include a meeting the result of which is the payment of a fine. The Petitioner testified that there was no court officer or recording made at the March 20, 2000 meeting with the Massachusetts Deputy Insurance Commissioner. This testimony implies that Petitioner considered or remembered the meeting as other than a formal proceeding. Nevertheless, at the time of the meeting on March 20, 2000 the Petitioner was an insurance professional, licensed by the State of Massachusetts as an agent, who went to the Massachusetts Insurance Department and was handed a letter containing allegations of wrong doing the result of which was the payment of a \$2000 fine. It would strain logic to consider that meeting as other than an administrative proceeding.

3. The facts and circumstances of the March 20, 2000 meeting with the Massachusetts Deputy Insurance Commissioner does raise some cloud about how that meeting could be remembered with the passage of time. Irrespective of the allegations contained in the letter, the Deputy Insurance Commissioner told the Petitioner that if he did not sign the letter the agency for which he worked would be shut down for six months, people would be put out of work and the President of the agency directed him to sign the letter and the agency would pay the \$2000 fine. The Petitioner testified that he had done nothing wrong in conducting an insurance transaction which he thought was the subject matter of the March 20, 2000 meeting and couple this with what the Deputy Insurance Commissioner told him would be the outcome for not signing the letter and the direction given him by the President of the agency for whom he worked, raises some doubt as to what exactly would be remembered and the context for that memory in relation to question #2 given the passage of time. Nevertheless, there is also no doubt that it was a meeting of at least professional significance given the resultant fine of \$2000. Question #2 must be answered truthfully. The purpose of the question is to vet the applicant's insurance background in determining his qualification for licensure in this state. Intentionally answering question #2 untruthfully is very different from doing so unintentionally. The former is hardly mitigating to the untruthful answer. The later, when supported by evidence, is mitigating although still evidence of giving an untruthful answer to the question. I find based upon the evidence of record that Petitioner failed to answer question #2 truthfully but that his failure to answer application question #2 in the affirmative was not intentional but rather it was unintentional. I further find that Petitioner's testimony that he just plain forgot about that meeting, given the facts and circumstances of the meeting, to be creditable.

ORDER.

THEREFORE, as Hearing Officer, I find that the evidence of record is sufficient to demonstrate that Petitioner answered question #2 untruthfully but that he did so unintentionally and it is therefore ORDERED that;

1. The Petitioner pay an administrative fine of \$250 to the Department for failure to answer application question #2 truthfully and,
2. Upon payment of the administrative fine of \$250 the Petitioner be immediately issued the non-resident license applied for in his application for licensure made to the Department on May 16, 2008.

November 5, 2008

Date

Donald L. Belanger
Donald L. Belanger, Hearing Officer