

**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

FINAL ORDER on HEARING

In Re: Michael Keith Arbo

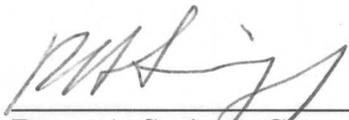
Docket No.: Ins 11-025-EP

Pursuant to the provisions of Ins 204.26(a)(4), the Proposed Order on Hearing issued on March 26, 2012 by Hearing Officer Jennifer Patterson is hereby ACCEPTED as a FINAL ORDER and DECISION.

This is the final action of the department. You have the right to request reconsideration of this final action within 30 days in accordance with RSA 541.

So ORDERED,

Date: April 26, 2012



Roger A. Sevigny, Commissioner

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Michael Keith Arbo

Docket No.: INS No. 11-025-EP

PROPOSED DECISION and ORDER

Procedural History

Respondent Michael Keith Arbo ("Mr. Arbo") is a licensed New Hampshire insurance producer. On December 14, 2011, the New Hampshire Insurance Department ("Department") issued an Order to Show Cause and Notice of Hearing ("First Show Cause Order") alleging that Mr. Arbo violated RSA 402-J:7, VI, RSA 402-J:12, I(h) and RSA 400-A:16, II and ordering that he show cause why his producer license should not be revoked based on failure to inform the Department of his change of address, demonstrated untrustworthiness or financial irresponsibility, and/or failure to provide the Department with information requested in connection with the Department's investigation of a consumer complaint. The Department also sought an administrative fine of \$7,500. The First Show Cause Order included notice of a hearing scheduled for January 11, 2012.

On January 9, 2012, the Department filed a motion to continue the January 11, 2012 hearing. In its motion, the Department indicated that the First Show Cause Order had been returned to the Department as undeliverable, but that the Department had discovered another address for Mr. Arbo and wished to attempt to establish contact with Mr. Arbo at that address. The undersigned hearing officer granted the Department's motion and ordered that the hearing be rescheduled for March 7, 2012. On January 11, 2012, the Department mailed the First Show Cause Order and notice of the new hearing date to Mr. Arbo at the new address.

On February 10, 2012, the Department issued an Amended Order to Show Cause and Notice of Hearing ("Amended Show Cause Order") to Mr. Arbo. The Amended Show Cause Order reasserted the alleged violations of RSA 402-J:7, VI and RSA 400-A:16, II, but sought indefinite suspension of Mr. Arbo's insurance producer license rather than revocation; it also removed the request for an administrative fine. The Amended Show Cause Order retained the hearing date of March 7, 2012.

On March 7, 2012, the Department held an adjudicative hearing pursuant to RSA 400-A:17-24, RSA 541-A:30-38 and N.H. Code of Admin. Rules Ins Part 200 on the Amended Show Cause Order. Mr. Arbo did not appear at the hearing. The Department was represented by Staff Advocate Donald Belanger. Other

Department staff present in addition to the hearing officer were Carolyn Petersen, assisting Mr. Belanger, and Karen Cassin, acting as clerk to the hearing officer.

At the hearing, Mr. Belanger offered eleven exhibits into evidence in a bound volume, and explained the nature and relevance of the exhibits, which pertained largely to the Department's efforts to contact Mr. Arbo.¹ There was no witness testimony, but the Department did offer an affidavit dated February 7, 2012 from Peter Spear. NHID Exhibit 3. The hearing lasted approximately thirty minutes, and was recorded electronically.

Statutory Provisions

This case arises out of the producer licensing and general enforcement provisions of the Insurance Code. RSA 402-J:7, VI provides that "[l]icensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within 30 days of the change." RSA 402-J:12, I provides that

The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, . . . for any one or more of the following causes:

...

(b) Violating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

RSA 400-A:15, III provides that

[a]ny person who knowingly violates any statute, rule, regulation, or order of the commissioner may, upon hearing, . . . be subject to such suspension or revocation of certificate of authority or license, . . . as may be applicable under this title for violation of the statute or the provision to which the rule, regulation, or order relates.

RSA 400-A:16, II provides that

Any individual or entity who transacts insurance in this state or is otherwise subject to the authority of the commissioner shall, upon request of the commissioner, provide the commissioner with all documents and information relevant to any investigation under this section within 10 working days, or shall request within the 10 working-day period, for good cause shown, additional time to respond.

¹ Exhibits in this volume are referenced by exhibit number and by cumulative page number, rather than the internal page number for the document.

Burden of Proof

In this administrative proceeding, the Department bears the burden of proving, by a preponderance of the evidence, that Mr. Arbo's insurance producer license should be suspended. N.H. Code of Admin. Rules, Ins 204.05.

Findings of Fact

Mr. Arbo was first licensed as a New Hampshire insurance producer on March 10, 2011. NHID Exhibit 1 at 1. Mr. Arbo's licensure application listed his residential, business and mailing address as 167 South Street, Concord, New Hampshire 03301. NHID Exhibit 1 at 1. Mr. Arbo personally submitted his license application, which included certification that "under penalty of perjury, all of the information submitted in this application and attachments is true and complete." NHID Exhibit 1-a at 3a-3b. This information included his address of 167 South Street. NHID Exhibit 1-a at 3a. In submitting the license application, Mr. Arbo acknowledged that "I understand and will comply with the insurance laws and regulations of the jurisdiction to which I am applying for licensure." NHID Exhibit 1-a at 3b.

On or about July 28, 2011, the Department received a complaint from a New Hampshire consumer, Peter Spear, with respect to Mr. Arbo. NHID Exhibit 2 at 4-6.² On August 10, 2011, Department Consumer Services Officer Barbara Anderson wrote Mr. Arbo a letter informing him of the complaint and, pursuant to RSA 400-A:16, II, requesting that he respond to the Department within 10 business days of receiving the letter. NHID Exhibit 4 at 8. Ms. Anderson's letter to Mr. Arbo was returned marked "Moved Left No Address." NHID Exhibit 4 at 9. On October 3, 2011, the Department's Compliance & Enforcement Counsel Richard McCaffrey wrote to Mr. Arbo, enclosing Ms. Anderson's letter. NHID Exhibit 5 at 10. Mr. McCaffrey's letter was also returned as undeliverable. NHID Exhibit 5 at 12.

As discussed in the "Procedural History" section above, the Department issued or attempted to deliver show cause orders to Mr. Arbo on December 14, 2011 (NHID Exhibit 6), January 11, 2012 (NHID Exhibit 9) and February 10, 2012 (NHID Exhibit 10). All of these attempts to communicate with Mr. Arbo failed. See NHID Exhibit 6 at 18-19, NHID Exhibit 9 at 34 and NHID Exhibit 10 at 39-40, 42. The Department attempted to reach Mr. Arbo at the "newly discovered"³ address of 218 Deer Meadow Road in Pittsfield, NH as well as the 167 South Street address. See, e.g., NHID Exhibit 9 at 34.

² As requested by the Department during the hearing, the hearing officer makes no finding with respect to the truth or falsity of the allegations made in the complaint, but finds only that the complaint was submitted to the Department on or about July 28, 2011.

³ The Department obtained the Pittsfield address from a W-2 form provided by Mr. Spear. NHID Exhibit 7 at 20.

The Department has no further information about Mr. Arbo's location, and has been unable to fully investigate Mr. Spear's complaint. Mr. Spear, who is Mr. Arbo's former landlord and who is owed back rent, does not know Mr. Arbo's current whereabouts. NHID Exhibit 3 at 7.

Rulings of Law

Mr. Arbo has violated RSA 402-J:7, VI by moving from the 167 South Street address without notifying the Department of his new address. This violation has made it impossible for the Department to investigate a consumer complaint about him, as contemplated under RSA 400-A:16, II.

Mr. Arbo's violation of RSA 402-J:7, VI was knowing, based on his acknowledgement in his producer license application that he understood and would comply with New Hampshire insurance laws.

Mr. Arbo's knowing violation of RSA 402-J:7, VI justifies suspension of his insurance producer's license pursuant to RSA 402-J:12, I(b) and RSA 400-A:15, III.

Conclusion

Based on the findings and analysis above, the hearing officer recommends that Mr. Arbo's insurance producer's license be suspended indefinitely pursuant to RSA 402-J:12, I(b) and RSA 400-A:15, III.

Under RSA 400-A:19, VII, the "validity of any hearing . . . shall not be affected by the failure of any person to attend . . ." Thus, Mr. Arbo's presence at the hearing was not required. Nevertheless, the hearing officer recommends that, should Mr. Arbo so request and show good cause for his failure to appear at the hearing, the Department reopen this matter for consideration of further relevant information.

Further Action

Pursuant to Ins 204.26(a), this proposed decision is hereby submitted to the Insurance Commissioner and the parties. Any party wishing to file exceptions and supporting memoranda of law for review by the Commissioner, or to request oral argument before the Commissioner, must do so within 20 days of the date of this proposed decision.

SO ORDERED.

Dated: March 26, 2012


Jennifer J. Patterson, Hearing Officer