

THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In Re: Michael P. O'Keefe

No. 12-036-EP

PROPOSED DECISION AND ORDER

On November 7, 2012, the New Hampshire Insurance Department (“the department”) issued a show cause order and notice of hearing to Michael J. O’Keefe (“the respondent”). The respondent was ordered to show cause why the department should not revoke his non-resident insurance producer’s license, RSA 402-J, and non-resident insurance adjuster’s license, RSA 402-B. The department’s show cause order alleges violations of RSA 402-J:12, I(a), RSA 402-J:12(h) and RSA 402-B12. The department also seeks an administrative fine.

A merits hearing was held on December 12, 2012. The respondent failed to appear at the hearing. The hearing proceeded in the respondent’s absence consistent with RSA 400-A:19, VII. The record was left open for ten days¹ to allow the department the opportunity to file a memorandum of law.

After considering the record, the hearings officer finds and rules that the department has met its burden of going forward under Ins. 204.05 with respect to the license revocation claims. As the respondent did not appear, the department’s burden of going forward and the respondent’s burden of persuasion necessarily collapse into a single test. The department’s position as to license revocation should be upheld. *The respondent’s RSA 402-J non-resident producer’s license and his RSA 402-B non-resident adjuster’s license are **REVOKED**.* The hearings officer further finds that the department met its burden of persuasion under Ins.

¹ Based upon Ins. 204.10, the hearing terminated on December 24, 2012 and a proposed order must be submitted to the commissioner on or before January 28, 2013.

204.05 with respect to imposition of an administrative fine. *The respondent is fined \$10,000.*

I. Factual Background

For the purposes of this Order, the Hearings Officer finds the following facts relevant.

A. Questions and Answers:

On April 25, 2012, the respondent completed an original application for a New Hampshire non-resident producer's license. As part of the application process, the respondent completed a "Licensee Background Question History" form. The original applications section of the form asks whether the applicant has "ever been named or involved as a party in an administrative proceeding including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?" The respondent answered this question "[n]o."

On May 17, 2012, the respondent completed an original application for a New Hampshire non-resident adjuster's license. The adjuster application and its "License Background Question History" form also asked the respondent whether he had "ever been named as a party in an administrative proceeding including FINRA sanction or arbitration proceeding regarding any professional or occupational license." The respondent again answered "[n]o."

B. Respondent's Involvement in Prior Proceedings:

The respondent has been involved in three disbarment proceedings as a party with respect to law licenses.

Federal Proceeding:

The first proceeding culminated in an August 10, 1990 Order of Disbarment by the United States Tax Court against the respondent for knowingly perpetrating a fraud on the court. The Order was issued pursuant to United States Tax Court Rule of Practice and Procedure 202. The court's order indicates that the court conducted an investigation and issued a May 3, 1990 show cause order for the respondent to show why he should not be suspended, disbarred, or

otherwise disciplined for his conduct. The respondent failed to appear for hearing on the show cause order.

The United States Tax Court relied upon its hearing transcript and Memorandum Sur Order to support its decision to disbar the respondent. The Memorandum Sur Order details the respondent's conduct as a petitioner's attorney in *Pecoraro v. Commissioner of the Internal Revenue Service*, No. 25155-88 (U.S. Tax Ct. Jan. 30, 1990).

In *Pecoraro*, the respondent as petitioner's counsel fraudulently and dishonestly represented to the United States Tax Court that he had timely filed a petition that the court had no record of. The respondent had in fact not filed the petition and his client was time barred from doing so. In efforts to further his fraud on the court, the respondent went as far as submitting altered documents to demonstrate that he had in fact filed the petition in a timely manner and it was the court's error at issue. It was ultimately determined by the court that the respondent had committed a fraud on the court. The record in this matter is devoid of any evidence that the respondent ever admitted to his fraud.

The *Pecoraro* court found that the respondent's actions as an attorney in that case threatened the ability of the United States Tax Court to function effectively and properly adjudicate cases. The subsequent Memorandum Sur Order found that the respondent "knowingly perpetrated fraud upon this Court, by altering the handwritten delivery date on the admitted return receipt card."

Missouri Proceeding:

On August 1, 1994, the chief disciplinary counsel of Missouri commenced a disciplinary proceeding against the respondent under Missouri Supreme Court Rule 5.19, which allows the Court to discipline attorneys based on disciplinary adjudications of other jurisdictions, provided the attorney is given an opportunity to show cause why the Supreme Court of Missouri should not impose similar discipline. *In re Storment*, 873 S.W.2d 227, 231 (Mo.1994). Missouri chief disciplinary counsel relied upon the above detailed United States Tax Court disbarment to support the disbarment information that he filed with the Missouri Supreme Court. In a March 22, 1994 decision, the Missouri Supreme Court

disbarred the respondent. The office of the chief disciplinary counsel is an agency of the Missouri Supreme Court.

Kansas Proceedings:

On January 18, 1996, the Kansas Supreme Court also issued an order of disbarment against the respondent. At the time, there were seven complaints pending against respondent with the Kansas Board of Discipline of Attorneys. The board is part of the Kansas Office of the Disciplinary Administrator, a judicial branch agency.

The Kansas complaints contained allegations of improper conversion of probate funds, abandonment of a business client and failure to return financial records, violations as co-trustee of an educational trust, the respondent's disbarment by the United States Tax Court for fraud on the court, and the respondent's disbarment by the Missouri Supreme Court. On January 16, 1996 and prior to final ruling on the above complaints by the Kansas Board of Discipline of Attorneys, the respondent agreed to surrender his license to practice law in Kansas.

After examining the files of the office of the Disciplinary Administrator, the Kansas Supreme Court found that the surrender of respondent's license should be accepted and the respondent disbarred.

Respondent's awareness of the disbarment proceedings

The record indicates that the respondent was fully aware of all three disbarment proceedings. It further indicates that the respondent did not attempt in any meaningful way to fight any of the three disbarments.

II. Substantive Legal Standards

This case involves two related statutory provisions, RSA 402-J (producer licensing law) and RSA 402-B (claims adjusters law).

Pursuant to the producer licensing law, it is illegal for a person to sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed as a producer for that line of insurance. *See* RSA 402-J. Section twelve of the producer licensing law addresses acts for which the insurance commissioner has the authority to, among other things, suspend or

revoke a license or place a producer on probation when a producer is found to have committed certain acts. *See* RSA 412-J:12.

Section twelve of the producer licensing law is violated when a person provides incorrect, misleading, incomplete, or materially untrue information in the license application. *See* RSA 402-J:12, I(a). It is also violated when a person is shown to be using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. *See* RSA 402:12, I(h).

Under the claims-adjusters law, the insurance commissioner has the statutory authority to, for good cause shown, after notice and hearing, suspend or revoke the insurance claims adjuster's license. *See* RSA 402-B:12.

The producer licensing law also grants the insurance commissioner authority to issue a fine pursuant to RSA 400-A:15, III. *See* RSA 402-J:12, I. The claims-adjusters law grants the insurance commissioner the authority to issue a maximum fine of \$2,500 in addition to license suspension or revocation. *See* RSA 402-B:12.

III. Analysis

A. License Revocation Issue

Producer's license:

The evidence in this case establishes that the respondent had been a party to two administrative proceedings at the time he answered "no" to the producer application question at issue. The first proceeding was the Missouri disbarment proceeding and the second was the Kansas disbarment proceeding. Both proceedings qualify as "administrative proceedings²."

As a formerly licensed attorney, the respondent should have been well aware that both Missouri and Kansas proceedings qualified as administrative

² The phrase "administrative proceeding" encompasses both the investigatory and adjudicatory functions of agencies. *See eg* U.S. v. Schwartz, 924 F.2d 410, 423 (N.Y. 1991).

The hearings officer declines to rule that the United States Tax Court disbarment proceeding is also a ground to find that the respondent violated RSA 402-J,I(a). The hearings officer's research into the law that was in place as to that proceeding in 1990 did not establish that it was an administrative proceeding. The proceeding did not involve any agency investigation or adjudication. It appears to have been handled exclusively by the Tax Court itself.

proceedings and, as such, needed to be reported to the department. The only plausible explanation is that the respondent chose to lie on the form. Thus, the respondent violated RSA 402-J, I(a).

The hearings officer further finds that the "untrue statements" with respect to the respondent's producer application rose to the level of fraudulent conduct. Thus, the hearings officer finds a violation of RSA 402-J, I(h). Further, in *Pecoraro*, the respondent engaged in extremely egregious acts of fraud and dishonesty. The hearings officer finds the respondent's action in the *Pecoraro* matter constitutes a violation of fraud and dishonesty provisions in RSA 402-J, I(h).

The hearings officer finds and rules that the respondent's acts in the 1990s and his acts with respect to his application demonstrate a disturbing willingness to disregard ethic rules and clients rights for his own benefit. Consequently, the respondent's producer's license is hereby revoked.

As to the fine issue, the hearings officer finds and rules that the respondent, a formerly licensed attorney, would not have forgotten the Missouri and Kansas disbarment proceedings and would have understood that the application required disclosure. Based upon the evidence, the respondent is fined \$7,500 dollars for the above detailed violations of 402-J.

Adjuster's License

The above analysis with respect to the producer licensing issues also establishes that the commissioner has "good cause" to revoke the respondent's adjuster's license and issue a fine in the amount of \$2,500.

IV. Conclusion

The respondent's non-resident producer's license and his non-resident adjuster's license are hereby **REVOKED** and he is fined **\$10,000**.

SO ORDERED

Dated: January 28, 1013



James Fox, Presiding Officer