

STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In re: Richard Leonard Atkinson, Jr.
Docket # INS 12-037-EP

DEFAULT JUDGMENT ORDER

This matter came before the undersigned hearings officer pursuant to an Order to Show Cause and Notice of Hearing issued by New Hampshire Insurance Commissioner Roger A. Sevigny on January 29, 2013. The Insurance Commissioner's Order to Show Cause and Notice of Hearing was issued pursuant to the authority of NH RSA 541-A:31 and New Hampshire Code of Administrative Rules INS 200. Pursuant to NH RSA 400-A:19, I the undersigned hearings officer was appointed by New Hampshire Insurance Commissioner Roger A. Sevigny effective January 29, 2013.

SUMMARY

This matter was heard on March 19, 2013 at the offices of the New Hampshire Insurance Department (the "Department"), 21 South Fruit St., Concord, NH, at 9:00 AM, in accordance with the Order to Show Cause and Notice of Hearing in this matter, dated January 29, 2013. The issues before the hearings officer were (1) whether the Respondent violated NH RSA 402-J:12, I(a) for failing to disclose a State of Georgia administrative proceeding and fine against the Respondent's State of Georgia insurance producer license ("Georgia License"), (2) whether the Respondent violated NH RSA 402-J:17, I by failing to report a State of Delaware administrative proceeding concerning his Delaware non-resident insurance producer license ("Delaware License"), (3) whether the Respondent violated NH RSA 400-A:16, II by failing to respond to Department requests for information and documentation related to a

Department investigation concerning his New Hampshire non-resident producer license (“ NH License”), and (4) whether the Respondent violated NH RSA 402-J:12, I(h) by failing to disclose the State of Georgia and State of Delaware administrative proceedings. Also at issue was whether the Respondent’s NH License should be revoked and/or a fine levied for violations of New Hampshire’s insurance laws.

Donald Belanger, Enforcement Examiner, represented the Department at the hearing. Mr. Belanger offered Department exhibits 1 through 10 into evidence. The Respondent did not appear at the hearing, nor did any representative of the Respondent appear on the Respondent’s behalf at the hearing.

FINDINGS OF FACT

1. The Respondent, at all times relevant to this matter, indicated on all documents and electronic files applicable to his New Hampshire producer license application, that his business, mailing and residence address is 1027 Sham Pointe Drive, Lawrenceville, Georgia, 30043.
2. The Department mailed, via US Postal Service, the Order to Show Cause and Notice of Hearing in this matter to the Respondent’s address of record with the Department, 1027 Sham Pointe Drive, Lawrenceville, Georgia, 30043.
3. The US Postal Service delivered the Order to Show Cause and Notice of Hearing to the 1027 Sham Pointe Drive, Lawrenceville, Georgia address on February 2, 2013.
4. The US Postal Service Certified Mail return receipt was signed, but not dated.
5. The US Postal Service tracking and confirmation system indicated that the Order to Show Cause and Notice of Hearing was delivered on February 2, 2013 to Lawrenceville, Georgia.
6. The Respondent did not appear at the hearing or otherwise defend in this matter, nor did the Respondent communicate with the NH Insurance Department concerning inability to appear at the hearing at the date and time set for the hearing, nor did any representative appear at the hearing on the Respondent’s behalf.

7. The Respondent was employed by the Kubota Tractor Acceptance Corporation (“Kubota”), doing business as KTAC Insurance Agency, when the application for a NH License was electronically submitted by Kubota on the Respondent’s behalf.
8. Rhonda Zimmerman, a paralegal employed by Kubota Credit Corporation, electronically submitted the NH License application on behalf of the Respondent.
9. The information used by paralegal Rhonda Zimmerman to submit the electronic NH License application was supplied by the Respondent on a National Association of Insurance Commissioners’ (“NAIC”) Uniform Application for Individual Insurance Producer License form (“NAIC Form”).
10. On April 23, 2012 the Respondent signed the manually completed NAIC Form he supplied to Ms. Zimmerman for purposes of Kubota electronically submitting the license application on his behalf.
11. Question 39, 1. on the NAIC Form requires applicants to disclose if the applicant has “been involved” in administrative proceedings concerning any professional or occupational license or registration.
12. The NAIC Form provides a definition of the word “involvement”, which includes “being assessed a fine”.
13. The NAIC Form, Question 39, 1. requires the applicant to indicate with a checkmark if the applicant has ever been assessed a fine or been involved in any administrative proceeding against a professional or occupational license or registration.
14. The Respondent’s response to Question 39, 1. on the NAIC Form contained a handwritten “X” in the space adjacent to the “No” response, indicating that the applicant had never been assessed a fine or been involved in any administrative proceeding against a professional or occupational license or registration.
15. The NAIC Form was signed by the Respondent in the “Applicant’s Certification and Attestation” section, and dated April 23, 2012.

16. The "Applicant's Certification and Attestation" section of the NAIC Form, section 40, 1., requires the signor to certify under penalty of perjury that all the information submitted on or with the application is true and complete.
17. The "Applicant's Certification and Attestation" section of the NAIC Form, section 40, 6. states that the signor acknowledges that "I understand and will comply with the insurance laws and regulations of the jurisdictions to which I am applying for licensure."
18. The Respondent was assessed a fine of \$150.00 as part of a License Reinstatement Consent Order entered into with the Georgia Office of the Commissioner of Insurance ("Georgia Consent Order"), signed by the Respondent on April 12, 2012, and signed by the Georgia Commissioner of Insurance, Ralph H. Hudgens, on April 23, 2012.
19. The Respondent did not disclose the Georgia Consent Order on the NAIC Form he signed and provided to Kubota for purposes of completing the electronic license application submission on his behalf.
20. The Respondent's employment was terminated by Kubota by letter to the Respondent dated and effective August 21, 2012.
21. The August 21, 2012 Kubota letter to the Respondent stated the Respondent's employment was terminated due to submitting "incorrect information" on his non-resident insurance producer license application to the Department.
22. The Respondent was assessed a fine of \$500.00 in a Stipulation and Consent Order entered into with the Delaware Insurance Department on August 10, 2012 ("Delaware Consent Order").
23. The Respondent did not disclose the Delaware Consent Order to the Department.
24. The Department sent a letter to the Respondent dated October 17, 2012 via US Postal Service Certified Mail to the 1027 Sham Pointe Drive, Lawrenceville, Georgia address.
25. The US Postal Service Certified Mail return receipt indicates that the Department's October 17, 2012 letter was delivered to the Respondent's 1027 Sham Pointe Drive, Lawrenceville, Georgia address on October 22, 2012.

26. The signature on the US Postal Service Certified Mail return receipt dated October 22, 2012 matches the signature on the NAIC Form signed by the Respondent on April 23, 2012.
27. US Postal Service Certified Mail return receipt for delivery of the Department's October 17, 2012 letter was signed by the Respondent on October 22, 2012.
28. The Department's October 17, 2012 letter notifies the Respondent that the Department is conducting an investigation into the Respondent's past administrative and criminal history.
29. The Department's October 17, 2012 letter to the Respondent states that the Department is seeking "documents, materials and information" relating to prior criminal activity and provides a specific list of information the Department is seeking concerning any prior criminal activity, including, inter alia, any charges and convictions, the city and state in which the incident occurred, the contact information for the police department with jurisdiction over the matter, the name of arresting officers and contact names and addresses for any prosecutors.
30. The Department's October 17, 2012 letter to the Respondent notifies the Respondent that failure to assist the Department in its investigation by failing to provide the indicated information and documents is a violation of RSA 402-J:12, (1), (b) and can result in administrative action against the Respondent's license.
31. The Department's October 17, 2012 letter to the Respondent notifies the Respondent that the information requested in the letter must be provided within 10 business days pursuant to RSA 400-A:16, II, and provides the deadline for submission of the information to the Department as Friday, November 2, 2012.
32. The Department's October 17, 2012 letter to the Respondent provides Department employee contact information, and instructs the Respondent to contact Department employees should the Respondent have any questions about the letter or how to transmit the requested information to the Department.

33. The Department's October 17, 2012 letter to the Respondent makes reference to a letter from the Respondent dated August 14, 2012 concerning the Respondent's request to amend his NAIC Form license application by changing the "NO" answer to question 39,1. on the NAIC Form to "YES".
34. The Respondent's August 14, 2012 letter is not part of the record of this proceeding, and was not requested to be entered into evidence.

RULINGS OF LAW

1. The Respondent is found to be in default for failing to attend the hearing in this matter. The Respondent made no attempt to be represented, request a continuance or otherwise communicate with opposing counsel, the Department or this hearings officer concerning inability to attend the hearing. The evidence presented demonstrates that the Respondent received notice of the hearing in ample time to attend the hearing, request a continuance, arrange for representation at the hearing or otherwise communicate with the Department concerning any inability to attend the hearing. Pursuant to RSA 400-A:19,VII, the validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance. Therefore, the validity of the hearing in this matter is not affected by the Respondent's failure to attend or be represented at the hearing.
2. The Respondent violated RSA 402-J:12, I(a) by indicating on the handwritten NAIC form he provided to Kubota, which he knew Kubota would use to submit an electronic application for a NH License on his behalf, that he had never been involved in an administrative proceeding against a professional or occupational license. At the time the Respondent submitted the handwritten NAIC Form to Kubota for Kubota's electronic submission for a license on his behalf, the Respondent had recently been involved in an administrative proceeding in the State of Georgia to reinstate his Georgia insurance agent license, resulting, inter alia, in a consent order

dated and signed by the Respondent on April 12, 2012 and by the Georgia Insurance Commissioner on April 23, 2012, that included imposition of a fine.

3. The Respondent violated RSA 402-J:17, I by failing to disclose to the Department, within 30 days of final disposition, the Delaware administrative proceeding against his Delaware insurance producer license, which resulted in a consent order signed by the Respondent and the Delaware Insurance Commissioner dated August 12, 2012.
4. The Respondent violated 400-A:16, II by failing to respond to the Department's October 17, 2012 letter requesting documents and information related to an ongoing investigation.
5. The Respondent is also found to have demonstrated untrustworthiness in the conduct of business in this state or elsewhere under RSA 402-J:12, I(h), by failing to respond to Department requests for information and documentation related to an investigation, by failing to report the Georgia and Delaware administrative proceedings and fines to the Department, by certifying that information supplied on the NAIC Form for a NH License was true when he knew it was not, and by failing to disclose the Georgia administrative proceeding on the NAIC Form when applying for a NH License.

ORDER

NOW THEREFORE:

- I. The Respondent's NH non-resident insurance producer license is hereby revoked with prejudice.
- II. Prior to the issuance of any future New Hampshire insurance producer license, or any license of any type issued by the Department, the Respondent shall demonstrate trustworthiness by providing proof, acceptable to the Department, that this action, and any actions taken by any other jurisdiction, whether criminal, civil or administrative, are disclosed to any and all insurance licensing authorities to which the Respondent may have applied for any type of license. In addition, a fine of \$5,000.00 (five thousand dollars) is hereby assessed. Said fine

shall be suspended until such time as the Respondent may again apply for a license of any type from the Department, at which time the fine shall be payable in full upon application for such license.

SO ORDERED.


Kathleen L. Belanger
Hearings Officer

4/5/13
Dated