

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: Michael A. Lamboy

Docket No.: INS No. 13-032-EP

PROPOSED DECISION AND ORDER FOR DEFAULT JUDGMENT

I. Administrative Background.

This matter came before the undersigned hearing officer pursuant to an Order to Show Cause and Notice of Hearing (“Order”) issued by New Hampshire Insurance Commissioner Roger A. Sevigny dated October 28, 2013. The Order was issued pursuant to the authority of NH RSA 541-A:31 and NH Code of Administrative Rules INS 200. Pursuant to NH RSA 400-A:19, I the undersigned hearings officer was appointed by NH Insurance Commissioner Roger A. Sevigny, effective October 28, 2013.

This matter was heard on December 4, 2013 at the offices of the New Hampshire Insurance Department (“Department” or “NHID”), 21 South Fruit Street, Suite 14, Concord, NH at 9:30 a.m. in accordance with the Order. The Respondent did not attend the hearing nor did any representative appear on behalf of the Respondent. The Department was represented at the hearing by Richard McCaffrey, Esq., the Department’s Enforcement Counsel.

II. Findings of Fact

1. The Respondent, Michael A. Lamboy, is a nonresident insurance producer who submitted a license renewal application with the NHID on July 15, 2013. The Respondent’s New Hampshire producer license lapsed on August 31, 2013. Prior to the lapse, the Respondent was authorized under his license to sell accident and health insurance products in New Hampshire.

2. The Respondent answered “NO” to Background Question #2 on the NHID license renewal application. Background Question #2 asked the applicant: “Have you been named or involved as a party in an administrative proceeding including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to this insurance department?”

3. The NHID license renewal investigation revealed that the Respondent had been named in administrative actions undertaken by FINRA and four state occupational licensing authorities. The FINRA action resulted in FINRA banning the Respondent from association with any FINRA member firm, the South Dakota action resulted in license denial, and the Kentucky, Virginia and Connecticut actions resulted in license revocation.

4. Attempts to contact the Respondent by mail and by telephone to obtain the Respondent's explanation of the administrative actions were unsuccessful.

5. The Department issued the Order in this matter when the Respondent failed to respond to the Department's communication attempts.

6. The Respondent was mailed copies of the Order on October 28, 2013 both by first-class mail, postage prepaid and by certified mail, return receipt requested. Both copies of the Order were mailed to the Respondent's mailing address as maintained in the Department's licensing records, at 1758 Pacific Street, Brooklyn, NY 11233-3506.

7.. Prior to the instant action, the Respondent was named in five administrative actions taken by federal and state regulatory authorities. Of these five administrative actions, two had concluded prior to the Respondent submitting his New Hampshire producer license renewal application.

8. Prior to submitting a producer license renewal application with the NHID, an administrative action resulting in a default decision by the federal Financial Industry Regulatory Authority ("FINRA"), which banned the Respondent from association with any FINRA member firm, was issued on July 26, 2012. The Respondent did not report the FINRA administrative action to the NHID when he submitted his license renewal application, or at the time the FINRA order was issued.

9. Prior to submitting a producer license renewal application with the NHID, an administrative action by the South Dakota Department of Labor and Regulation denying the Respondent's application for a non-resident insurance producer license was issued on May 20, 2013. The reason for denial was cited as providing incorrect, misleading and incomplete information on the South Dakota license application, and for attempting to obtain a South Dakota producer license through misrepresentation or fraud. The South Dakota Department's notice of its actions to the Respondent stated that the Respondent did not respond to a request for additional information concerning the FINRA order. The Respondent did not report the South Dakota administrative action to the NHID when he submitted his license renewal application, or at the time the South Dakota order was issued.

10. Subsequent to the Respondent filing a renewal application with the NHID, the Commonwealth of Kentucky Department of Insurance revoked the Respondent's Kentucky insurance producer license for, inter alia, failure to report the FINRA and South Dakota administrative actions. The Commonwealth issued the revocation order on July 22, 2013 while the Respondent's NHID renewal application was pending. The Respondent did not report this administrative action to the NHID.

11. Subsequent to the Respondent filing a renewal application with the NHID, the State of Connecticut Insurance Department found the Respondent in default in an administrative proceeding concerning failure to report the FINRA administrative action, and revoked the Respondent's Connecticut insurance producer license following his default at the hearing on the matter. The Connecticut order was issued on August 7, 2013, while the Respondent's NHID

renewal application was pending. The Respondent did not report this administrative action to the NHID.

12. Subsequent to the Respondent filing a renewal application with the NHID on July 15, 2013, the Commonwealth of Virginia State Corporation Commission issued an order on September 25, 2013 revoking the Respondent's insurance agent license for failure to report the FINRA administrative action to the Virginia Corporation Commission insurance producer licensing authority. The Respondent failed to request a hearing in the Virginia administrative action and did not otherwise communicate with the Virginia State Corporation Commission after issuance of the notice. The Respondent did not report this administrative action to the NHID.

13. On August 15, 2013 the NHID mailed a letter to the Respondent requesting information on the five administrative actions in which he was named. The Respondent did not respond to the NHID letter.

14. The NHID attempted to contact the Respondent by telephone to request information concerning the five administrative actions in which he was named. The NHID used the contact telephone number maintained on file with the NHID's producer licensing division. The person who answered the call denied any knowledge of the Respondent.

15. The Respondent did not appear on the date noticed in the Order for the hearing. The Respondent did not provide verbal or written testimony at the hearing, nor did the Respondent file an answer to the Order. The Respondent was not represented at the hearing by legal counsel or other person. The Respondent did not communicate with the Department prior to the noticed hearing despite NHID attempts to communicate with the Respondent.

III. Rulings of Law

1. The Respondent violated NH Revised Statutes Annotated ("RSA") 402-J:17, I by failing to report the FINRA administrative action to the Department within 30 days of final disposition.

2. The Respondent violated RSA 402-J:17, I by failing to report the South Dakota Department of Labor Regulation administrative action to the Department within 30 days of final disposition.

3. The Respondent violated RSA 402-J:12, I (a) by providing incorrect, and materially untrue information on his July 15, 2013 license renewal application form, when he answered "NO" to Background Question #2 on the application form.

4. The Respondent violated RSA 402-J:17, I by failing to report the Commonwealth of Kentucky Department of Insurance administrative action to the Department within 30 days of final disposition.

5. The Respondent violated RSA 402-J:17, I by failing to report the State of Connecticut Insurance Department administrative action to the NHID within 30 days of final disposition.

6. The Respondent violated RSA 402-J:17, I by failing to report the Commonwealth of Virginia State Corporation Commission administrative action to the NHID within 30 days of final disposition.

7. The Respondent violated RSA 400-A:16, II by failing to respond to the Department's August 15, 2013 letter requesting he contact the Department to provide information to aid in its investigation concerning his license renewal application.

8. The Respondent violated RSA 402-J: I(h) by demonstrating untrustworthiness or incompetence or both in the conduct of an insurance business by failing to report to the NHID the five administrative actions naming the Respondent conducted by FINRA, the States of South Dakota and Connecticut, and the Commonwealths of Kentucky and Virginia, within 30 days of final disposition.

9. The NH Supreme Court held in *Appeal of City of Concord*, 161 N.H. 169, 173-174, that where notices are "properly addressed and mailed in accordance with regular office procedures, [a party] is entitled to a presumption that the notices were received. Denial of receipt, without more, is insufficient to rebut the presumption." *Id.* at 174. The Court further noted that "[i]t is settled law that while actual notice should be the goal, it is not required in every case. *Id.* (citations omitted). The Respondent is therefore deemed to have received notice of the Order to Show Cause and Notice of Hearing under New Hampshire law.

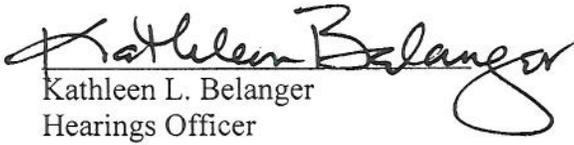
10. RSA 400-A:19, VII provides that "The validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance." RSA 400-A:18, Notice of Hearing, requires that the Department provide written notice of a hearing to the Respondent. Administrative Rule Ins 204.09, Delivery of Documents, provides that delivery of documents shall be by first class mail, postage prepaid, and addressed to the Respondent at the last address given by him to the Department. The Department's notice of hearing was transmitted to the Respondent both by first class mail, postage prepaid, and addressed to the respondent at the last address given to the Department. The Respondent's failure to attend the hearing or be represented at the hearing does not, therefore, affect the validity of the hearing.

NOW THEREFORE,

A. The Respondent's New Hampshire insurance producer license is hereby REVOKED.

B. The Respondent is hereby assessed an administrative fine of five thousand dollars (\$5,000.00).

SO ORDERED.


Kathleen L. Belanger
Hearings Officer

12/23/13
Dated