

THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In Re: Kimberly Tacy

16-035-EP

ORDER

The New Hampshire Insurance Department (hereinafter "NHID") issued a show cause order to Kimberly Tacy (hereinafter "Respondent"), a New Hampshire insurance producer, on December 14, 2016, alleging, among other claims, that the Respondent had fraudulently misappropriated insurance premium payments made on behalf of insurance consumers in violation of RSA 402-J:12, I (d); RSA 402-J:12, I (h), RSA 402-J:12, I (g), and RSA 402-J:12, I (b). As a result, NHID seeks the permanent revocation of the Respondent's producer license and penalties of \$2500 per violation. A hearing on the merits at the New Hampshire Insurance Department was scheduled for January 19, 2017. Prior to that hearing, the parties engaged in a pretrial conference on that date.

Present before me at the pretrial conference was Attorney Bleier on behalf of NHID; the Respondent; and Attorney Julia Pothen. Also present at the pretrial conference was Attorney Emily Doherty of NHID and Clerk Sarah Prescott. Attorney Pothen is a New Hampshire Public Defender who represents the Respondent in a criminal case that is scheduled for a dispositional hearing within the next two weeks. According to Attorney Pothen, allegations in this regulatory action are very similar to the allegations in the criminal matter. In addition, although Attorney Pothen does not represent the Respondent in this administrative proceeding, she attended the conference because of the overlapping factual allegations between the two cases and her concerns about the Respondent's due process rights in both cases.

After a discussion of these issues between the parties during the pretrial conference, the Respondent, on the record, presented a verbal motion to continue the hearing on the merits for at least sixty (60) days in order to provide the Respondent with an opportunity to resolve her criminal matter. During that time, the Respondent stated that she also planned to contact NHID to determine whether the parties could resolve the administrative matter prior to an

administrative hearing. In response, NHID's counsel, Attorney Bleier, stated that she assented to the motion and that good cause existed to continue the administrative case for sixty days.

With regard to the Respondent's oral motion to continue this case for sixty (60) days, Ins 204.06 (a) and (b) provide for oral motions as long as such motions are recorded. As to continuances, pursuant to Ins 204.12 (a) and (b), a hearing officer shall postpone a hearing upon a request by a party if the hearing officer determines that good cause exists to do so. Good cause includes the unavailability of information, parties, or witnesses necessary to conduct the hearing; the likelihood that the hearing will not be necessary because the parties anticipate settlement; or any other circumstances that demonstrate that a postponement would assist in the fair resolution of the case. See Ins 204.12 (c).

Here, good cause exists based upon the representations made by the parties at the pretrial conference and on the record when the Respondent's oral motion to continue was proposed. First, given the Respondent's overlapping criminal case, it will be difficult for the Respondent to testify on her own behalf as a witness prior to the resolution of her criminal case. In addition, the parties have indicated that negotiations may lead to a resolution of the matter without a hearing. As such, on January 19, 2017, on the record, I granted the Respondent's motion to continue the case for sixty (60) days.

Pursuant to Ins 204.12 (d), the new hearing date will be March 28, 2017, at 9:00 am at the New Hampshire Insurance Department, located at 21 South Fruit Street, Suite 14, in Concord, New Hampshire.

Date: 1-20-17

Heather Silverstein
Heather Silverstein, Presiding Officer