



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Christopher R. Nicolopoulos
Commissioner

David J. Bettencourt
Deputy Commissioner

September 29, 2021

Christopher R. Nicolopoulos, Esq.
Commissioner
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301

Re: Eric Oster, Jr.
Docket No.: 21-046-EP

Dear Commissioner Nicolopoulos:

Please find enclosed my Proposed Decision and Order in the above referenced matter in accordance with Ins 207.04(a)(1).

Sincerely,

A handwritten signature in black ink that reads "Roni M. Karnis".

Roni M. Karnis, Esq.

Enclosure

Copy to: Joshua Hilliard, Esq.
Eric Oster, Jr.

THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re: Eric Oster

Docket No.: 21-046-EP

PROPOSED DECISION AND ORDER

Appearance for Respondent:

No Appearance

Appearance for Department:

Joshua S. Hilliard, Esquire
Enforcement Counsel
NH Insurance Department

Hearing Officer:

Roni M. Karnis, Esquire

I. Background

Eric Oster (“Respondent”) is a non-resident insurance producer licensed to sell Accident and Health or Sickness insurance.¹ The New Hampshire Insurance Department (“NHID” or “Department”) first issued the non-resident license to Respondent on October 26, 2020, which is set to expire on November 30, 2021.² On July 19, 2021, the Department issued an Order to Show Cause and Notice of Hearing.³ The hearing was scheduled for August 25, 2021 at 1:00 p.m. at the New Hampshire Insurance Department.⁴ The Insurance Commissioner appointed the undersigned as Hearing Officer to conduct a hearing pursuant to NH RSA 400-A:19.⁵

¹ Ex. 3

² Id.

³ Ex. 1

⁴ Id.

⁵ N.H. R.S.A. 400-A:19, I, eff. July 25, 1975; Ins 203.01(c), eff. 7-27-20

Per the Order to Show Cause, the Department alleges that Respondent violated (1) NH RSA 402-J:12, I(c) by obtaining a license through misrepresentation or fraud when he caused the credit card payment of the required fee to be reversed and remain unpaid; (2) NH RSA 401-J:12, I (b) by failing to pay the non-refundable application fee when he caused the credit card payment of same to be reversed and (3) NH RSA 400-A:16, II by failing to provide information requested by the Department pursuant to NH RSA 400-A:16.⁶ Therein, the Department recommends both a revocation of license and administrative fine not to exceed \$2,500 as sanctions for the alleged violations.⁷

A copy of the Order to Show Cause and Notice of Hearing was sent by United States Postal Service (“USPS”) regular mail and certified mail, return receipt requested, to Respondent.⁸ The same was sent to Respondent’s residential address, business and mailing address on file at the National Insurance Producer Registry (“NIPR”).⁹ The Department received a certified mail receipt card bearing a signature and delivery date of July 29, 2021 for the certified mail sent to the Respondent’s mailing address in Lantana, Florida.¹⁰

On August 25, 2021 at 1:00 p.m., the Respondent failed to appear at the New Hampshire Insurance Department located at 21 South Fruit Street, Suite 14, Concord, New Hampshire. A hearing was held *in absentia*. Enforcement Counsel Joshua S. Hilliard presented evidence by offer of proof and testimony of Joan LaCourse. The following exhibits were received into evidence and marked accordingly:

- Exhibit 1: Order to Show Cause and Notice of Hearing dated 7/19/2021 and letter
- Exhibit 2: Service of Notice Information
- Exhibit 3: NHID Licensing Information for Respondent
- Exhibit 4: Respondent’s application through NIPR
- Exhibit 5: Electronic Correspondence from NIPR to NHID dated 5/20/2021
- Exhibit 6: NHID electronic correspondence to Respondent dated 5/20/2021
- Exhibit 7: Enforcement counsel correspondence to Respondent dated 6/16/2021
- Exhibit 8: Affidavit of Sarah Prescott dated 8/5/2021
- Exhibit 9: State of Wisconsin Order of Revocation dated 7/26/2021

⁶ Ex. 1 at pgs. 2-3

⁷ Ex. 1 at pg. 3

⁸ Ex. 1, Ex. 2

⁹ Ex. 3

¹⁰ Ex. 2

In closing, the Department requested that Respondent's license be revoked and that an administrative fine of \$1,000 be imposed.¹¹

At the conclusion of the Department's case and closing argument, both the hearing and record were closed.

II. Findings of Fact

The Department issued an Order to Show Cause and Notice of Hearing ("Notice of Hearing") to the Respondent on July 19, 2021 in accordance with RSA 541-A:31, RSA 400-A:17,II(a) and Ins 200.¹² The Notice of Hearing was mailed to Respondent via both first-class and certified, return receipt requested to his address in Lantana, FL.¹³ The certified, return receipt mail green card that was sent with the certified mail copy to Respondent's address was returned to the Department by the U.S. Postal Service, bearing a signature and hand-written date of July 29.¹⁴

On October 26, 2020, the Respondent submitted an application for a NH non-resident producer license by way of an on-line process administered by NIPR.¹⁵ At the time of that submission, the Respondent listed his residential, business and mailing address as 1946 Fittin Ct, Lantana, FL 3346, which is the same as that maintained in the SBS licensee demographics record for Respondent.¹⁶ Respondent also paid the state licensing application fee of \$210 plus \$6.18 processing fee by credit card.¹⁷ The NHID issued a non-resident producer license to Respondent on October 26, 2020 authorizing him to sell accident and health or sickness insurance. That license is set to expire on November 30, 2021.¹⁸

Joan LaCourse is the licensing supervisor at NHID. Her duties include overseeing licensing, renewals and staff.¹⁹ She testified that NHID is a participating state of NIPR. NIPR administers the electronic licensing application process²⁰ and collects the

¹¹ Record at 25:15

¹² Ex. 1

¹³ Ex. 1, Ex. 2, Ex. 8

¹⁴ Ex. 2, Ex. 8

¹⁵ Ex. 4

¹⁶ Ex. 4, Ex. 3

¹⁷ Ex. 4

¹⁸ Ex. 3, Ex. 4

¹⁹ Record at 11:00-11:31

²⁰ Record at 12:29-12:38

corresponding state licensing application fees on behalf of the states. When payment of the required fee(s) remains outstanding, NIPR will attempt to collect same on behalf of the state to which the fee is owed.²¹ After three attempts to collect unpaid fee(s), NIPR will notify the state of the unsuccessful collection attempts and it becomes the responsibility of the state to pursue collection the debt owed.²² Here, NIPR sent correspondence to Ms. LaCourse on May 20, 2021, indicating that there was a charge back on Eric Oster's credit card, resulting in an unpaid licensing application fee for the non-resident NH producer license that was issued on October 26, 2020.²³ The documentation she received further indicated that notices were sent by NIPR on December 17, 2020, March 25 2021 and April 13, 2021 to Respondent's Email address in an attempt to collect the outstanding fees.²⁴ Upon receiving this correspondence from NIPR, Ms. LaCourse sent an electronic correspondence to Respondent on May 20, 2021 requiring that he remit payment by June 1, 2021 for the outstanding debt of \$216.18 that was a result of the disputed credit card payment.²⁵ Included in the correspondence were detailed instructions on how to remit "...payment directly to NIPR, not to this Department, to resolve the matter" and "...to contact the NIPR Billing Department, Email: NIPRBillingDept @NIPR.COM" with any questions.²⁶ That correspondence also provided notice to Respondent that his license was suspended²⁷ and failure to remit payment could result in a referral to the Enforcement Unit for administrative action.²⁸ Ms. LaCourse did not receive any response from Respondent.²⁹ When the debt remained unpaid, Ms. LaCourse referred the matter to the Enforcement Unit.³⁰

On June 16, 2021 Enforcement Counsel sent a letter, via US Mail, to Respondent at the address of record.³¹ The letter advised that NHID "...has reached out to you multiple times regarding the unpaid charge related to your application for a New Hampshire insurance

²¹ Ex. 5, Record at 13:57-14:28

²² Id.

²³ Ex. 5, Record at 12:05, 12:47

²⁴ Ex. 5, Record at 14:40

²⁵ Ex. 6, Record at 16:28

²⁶ Ex. 6

²⁷ A producer license is suspended when a licensing application fee remains unpaid. See Record at 22:12

²⁸ Ex. 6

²⁹ Record at 16:37

³⁰ Record at 16:42

³¹ Ex. 7, Record at 17:51

producer license”. The letter further demanded payment be submitted “...directly to NIPR, not the NHID, to resolve the matter” and advised that failure to pay would result in administrative action against his license.³² Enforcement counsel represented that this was an attempt to speak with Respondent in order to resolve the issue prior to the need for a hearing, but there was no reply from Respondent.³³ As of the hearing date, Respondent has not contacted the Department regarding payment of the unpaid fees.³⁴ The Respondent’s non-resident, intermediary insurance license was revoked by the Wisconsin Insurance Department on July 26, 2021 for non-payment of its licensing application fee.³⁵ In that matter, Respondent applied for a non-resident license via NIPR and Respondent’s financial institution did not honor payment to NIPR. The Respondent’s license was revoked because the debt remained unpaid after notice sent to him demanded payment on or before July 23, 2021.³⁶

III. Preliminary Rulings of Law

Whenever an agency seeks to revoke a license or impose an administrative fine, as is the case here, there shall first be given notice and an opportunity to be heard at an adjudicative proceeding.³⁷ At such an adjudicative hearing, the Department bears the burden of proving a prima facie case, by a preponderance of the evidence, that the licensee committed the alleged violation of law or rule.³⁸ Thereafter, Respondent has the burden of presenting evidence to persuade “the hearing officer that the department’s position should not be upheld.”³⁹ Before an administrative fine may be imposed, however, the department must meet its “overall burden of proof by a preponderance of the evidence”.⁴⁰

³² Ex. 7, pg. 2

³³ Record at 18:03

³⁴ Ex. 8, Record at 18:51

³⁵ Ex. 9

³⁶ *Id.*

³⁷ N.H. R.S.A. 541-A:30, II, eff. Sept. 14, 1999; N.H. R.S.A. 400-A:15, III (1971); N.H. R.S.A. 400-A:14 (1971)

³⁸ Ins 206.05(b) and (c), eff. 7-27-20

³⁹ Ins 206.05(b), eff. 7-27-20

⁴⁰ Ins 206.05(d), eff. 7-27-20

IV. Legal Analysis and Discussion

Proper Notice of Hearing

The Respondent's failure to attend or participate in the hearing on August 25, 2021 does not affect the validity of the adjudicatory proceeding because Respondent was provided with proper notice of the hearing date.⁴¹ The Department may provide notice by mailing the Notice of Hearing to Respondent at his last address of record with the Department.⁴² The Notice of Hearing was sent via USPS certified mail to Respondent's residential address of record and there is proof of its delivery.⁴³ Therefore, the requirements of providing proper notice are met.

Failure to Respond

The Department alleges that Respondent violated RSA 400-A:16, II by failing to respond within 10 business days to the NHID's inquiries regarding the unpaid licensing application fee.⁴⁴ RSA 400-A:16, II requires licensed producers, "upon request of the commissioner, provide the commissioner with all documents and information relevant to any investigation under this section within 10 working days."⁴⁵ The Department bears the burden of proving a prima facie case that the Department has, first, requested Respondent respond to the Department relative to an investigation and second, Respondent did not in fact respond to the Department's request.

Joan LaCourse sent correspondence to the Respondent on May 20, 2021 demanding he remit payment for the licensing application fee. That correspondence did not request or require the Respondent to respond to NHID or to provide documents and information pertaining to an investigation. To the contrary, the correspondence directed the Respondent to remit payment or

⁴¹ N.H. RSA 400-A:19, VII (1975); Ins 206.03(b), eff 7-27-20

⁴² N.H. RSA 400-A:14, I (c) (1975)

⁴³ Ex. 1, Ex. 2, Ex. 8

⁴⁴ Ex. 1, para. 8

⁴⁵ N.H. R.S.A. 400-A:16, II (1975)

submit questions directly to NIPR, rather than NHID.⁴⁶ While the letter does require an indirect response in the form of sending payment to NIPR, it does not request the Respondent contact the Department so that the matter could be discussed or investigated.

When payment was still not received, the Enforcement Unit sent correspondence to Respondent on June 16, 2021. While the letter states that the Department had “reached out to [Respondent] multiple times regarding the unpaid charge related to your application for a New Hampshire insurance producer license”, there is no evidence of other such attempts except the May 20, 2021 letter. The June 16th letter demands payment be made “directly to NIPR, not the NHID, to resolve this matter.”⁴⁷ The letter does not indicate that the enforcement unit is conducting an investigation, nor does it require Respondent to contact the Department to discuss the issue. Rather, “the letter is the final reminder” to pay the outstanding fee.⁴⁸ Similar to the May 20th letter, it does not request the Respondent contact the Department so that the matter could be discussed or investigated.

Where there is no evidence that the Department has issued to the Respondent a request for information or notice that he must contact the Department, there can be no corresponding obligation on his part to respond, for failure of which he would knowingly violate a statute. Accordingly, I find there is insufficient evidence that the Respondent violated RSA 400-A:16, II.

Failure to Pay Application Fee

The Department alleges that Respondent violated NH RSA 402-J:12, I(b) when he failed to pay the non-refundable, non-resident licensing application fee required under RSA 400-A:29.

⁴⁶ Ex. 6

⁴⁷ Ex. 7

⁴⁸ Id.

An out-of-state producer may obtain a non-resident producer license in New Hampshire upon proper application and payment of the fees required by RSA 400-A:29.⁴⁹ The non-refundable application and license fee applicable to Respondent's application is \$210.⁵⁰ The non-refundable fee applies to the application itself and the subsequent license that is issued. If the application were to be denied, the Respondent would not be entitled to a refund of the fee paid. Payment of the non-refundable fee is also a predicate to the issuance and subsequent holding of the license granted.

Here, the Respondent initially paid the non-refundable fee by way of a credit card transaction.⁵¹ Sometime thereafter, the credit card charge was disputed and reversed, leaving the required fee unpaid.⁵² Both NIPR and NHID have notified the Respondent that the fee is required and must be paid or administrative action would result.⁵³ A total of five notices have been sent to the Respondent by way of US Mail or electronic mail.⁵⁴ Despite the notices, the Respondent has failed to pay the fee required by law as a condition precedent to holding his NH non-resident producer license. Proof by a preponderance of the evidence that Respondent acted "knowingly" in violation of a statute or rule is required.⁵⁵ Here, there is ample evidence that Respondent's action causing the credit card charge reversal, in combination with the subsequent failure to pay, is voluntary, rather than through mistake or inadvertence.⁵⁶

⁴⁹ N.H. R.S.A. 402-J:8, I(b)

⁵⁰ N.H. R.S.A. 400-A:29, X(a) (emphasis added)

⁵¹ Ex. 4

⁵² Ex. 5

⁵³ Ex. 5, Ex. 6, Ex. 7

⁵⁴ Id.

⁵⁵ N.H. R.S.A. 400-A:15, III; Appeal of Metropolitan Property and Liability Ins. Co., 120 N.H. 755 (1980)

⁵⁶ Appeal of Metropolitan Property and Liability Ins. Co., 120 N.H. 755 (1980)

I find there is sufficient evidence to make a finding that Respondent has violated RSA 402-J:12,I(b) by failing to pay the non-refundable fee that is required as a condition of holding the NH non-resident producer license.

Misrepresentation or Fraud

The Department also alleges that the Respondent violated RSA 402-J:12,I(c) by obtaining a license through misrepresentation or fraud when he applied for a non-resident NH insurance producer license and then later disputed and reversed the credit card charges for the non-refundable application fee and leaving that fee unpaid.⁵⁷

The commissioner may suspend an insurance producer's license or issue a fine for "obtaining or attempting to obtain a license through misrepresentation or fraud."⁵⁸ It is the person's actions up to the point of securing the license that are relevant. The fact that Respondent allowed the fee to remain unpaid after receiving the collection letters is not relevant.

On October 26, 2020, Respondent submitted his application for a non-resident producer license through NIPR's on-line process. At the time of his application, the Respondent certified that all of the information contained therein was true and complete and he paid the required non-refundable fee via credit card.⁵⁹ The NHID issued the license on October 26, 2020.⁶⁰ There is no evidence as to exactly when, or how close in time up to and including the application submission, Respondent disputed the transaction, resulting in reversal of the credit card charge. There is evidence that such act must have occurred after application and license issue on October

⁵⁷ The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a penalty in accordance with RSA 400-A:15, III or any combination of actions for any one or more of the following causes:

⁵⁸ N.H. R.S.A. 402-J:12, I(c)

⁵⁹ Ex. 4

⁶⁰ Id.

26, 2020 and before December 17, 2020, as that is the date NIPR sent the first of three collection notices to Respondent demanding that payment.⁶¹

Accordingly, I find there is insufficient evidence that Respondent obtained the license through misrepresentation or fraud on October 26, 2020.

V. Conclusion

The commissioner may take action upon a license and impose an administrative fine up to \$2,500 any causes set forth in RSA 402-J:12, I pursuant to RSA 400-A:15, III.⁶² Based on the foregoing, I propose that Respondent's non-resident producer license be permanently revoked, effective immediately, and an administrative fine of \$1,000 be assessed.

Dated: _____

9/29/2021

Roni M. Karnis

Roni M. Karnis, Hearing Officer

⁶¹ Ex. 5

⁶² N.H. R.S.A. 402-J:12, IV; R.S.A. 400-A:15, III