

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In Re: Omega Vehicle Services, LLC
d/b/a Delta Auto Protect**

Docket No. 22-004-EP

PROPOSED DECISION AND ORDER

Appearance for Petitioner:

Joshua Hilliard, Esq.

Enforcement Counsel, NH Insurance Department (the "NHID").

Appearance for Respondent:

No appearance for Omega Vehicle Services, LLC d/b/a Delta Auto Protect
("Delta").

Hearing Officer appointed by Commissioner:

Steven M. Notinger, Esq.

I. Summary

Shae Sterrett-Goddell ("Buyer") purchased a 2013 Volkswagen Jetta SportsWagen on or about September 3, 2019 (the "Vehicle"). Buyer wished to obtain an extended warranty, and after Googling "auto warranties", purchased an extended warranty¹ from Delta. Delta is not registered with and has not provided proof of financial responsibility to the New Hampshire Insurance Department

¹ This type of contract is known in New Hampshire as a "consumer guaranty contract". See RSA 415-C:1, III(b)(1).

(“NHID”) as required by RSA 415-C:3, I(a), :4, I-III. After buying the warranty, Buyer contacted Delta with a question on October 29, 2019. Buyer then contacted Delta on November 20, 2020 regarding problems with her heated seats. In late September, 2021, Buyer made a claim against Delta for a blown air conditioning fan.

After many unanswered phone calls, emails and attempts to contact the Delta on its website, Delta did not, apart from providing one automated response, respond to Buyer’s inquiries or claims. The NHID intervened.

The NHID sent Delta several letters and also received no response. Thereafter, NHID noticed a show cause hearing. Delta signed for and received certified mail from the NHID notifying it of the hearing. However, Delta did not attend the hearing. The NHID submitted sufficient evidence at the hearing that Delta violated RSA 415-C:3, I(a), :4, I-III, RSA 415-C:I, 7(f) and RSA 415-C:7, II(a). The NHID also submitted sufficient evidence that Delta violated RSA 400-A:16, II.

As set forth in further detail below, it is recommended that Delta be ordered to cease and desist from selling consumer guaranty contracts in New Hampshire, pay penalties for its violations of law, and pay restitution to the Buyer. See RSA 415-C:10, II-IV; 400-A:15, III.

II. Procedural and Jurisdictional Background.

The NHID brought this enforcement action after Buyer submitted a complaint (the “Complaint”) to the Department on or about December 28, 2021. The NHID has the authority to pursue the Complaint pursuant to RSA 400-A:16

and RSA 415-C, RSA 541-A:31 and Ins 200 et seq. Delta did not appear at the hearing, but the NHID has the burden of proof and went forth with its presentation of the case. Ins 206.03(b)(2). Under New Hampshire law, the NHID may revoke or suspend Delta from further consumer guaranty contract operations, impose penalties and order restitution should there be a basis to do so. RSA 415-C:10, II-IV; 400-A:15, III.

An evidentiary hearing was held on March 8, 2022 in front of Steven M. Notinger, Administrative Hearings Officer. The NHID appeared and offered the testimony of several witnesses. Delta did not appear. Delta was given proper notice of the hearing² at two known addresses by both certified and regular mail. See Exhibit 10. Delta signed for at least one certified mail. See Exhibit 10.

The following exhibits were admitted into evidence at the hearing:

Ex no.

1. Contract confirmation Delta Auto Protect
2. Contract Delta Auto Protect
3. Policy question e mail 10/29/19
4. E mail re: claim submission 11/20/20
5. Confirmation of claim for blown air-conditioner motor
6. Bills
7. 12/28/21 letter from NHID to Delta
8. 01/14/22 letter from NHID to Delta
9. Order to Show Cause dated 02/01/22
10. Proof of Mailing

During the hearing, NHID presented the testimony of the following witnesses:

Douglas Bartlett, Director of Financial Regulation for NHID
Sarah Prescott, Enforcement Paralegal for the NHID
Shae Sterrett-Goddell, the Buyer (pursuant to INS 206.01, Buyer testified remotely by Webex)³

² See RSA 400-A:14, I(c).

³ See Order on Motion to Allow Remote Witness, dated 3/7/22 (allowing Buyer to testify remotely).

III. Standard of Review.

The NHID has the burden of proof on all issues in this matter by a preponderance of the evidence. Ins 206.05.

IV. Findings of Fact.

Buyer, Shae Sterrett-Goddell, a New Hampshire resident, purchased the Vehicle on or about September 3, 2019. See Testimony of Buyer. Buyer was looking for a non-dealer extended warranty for the Vehicle. Buyer Googled “auto warranties” and Delta popped up. See id. Buyer contacted Delta, who sold her a comprehensive 5 year extended warranty for 200,000 additional miles on the Vehicle for \$2,127.00. See Exhibits 1 and 2 and Testimony of Buyer. The Vehicle Service Contract is attached as Exhibit 2 (“Vehicle Services Contract”). Delta is not registered to sell consumer guaranty contracts--like the Vehicle Services Contract--in New Hampshire and has not posted a bond or otherwise satisfied the financial requirements of RSA 415-C:3, I(a), :4, I-III. See Testimony of Douglas Bartlett.

On October 29, 2019, the Buyer contacted Delta by email requesting that someone call her regarding a question about the contract she had purchased. She never heard back. See Exhibit 3 and Testimony of Buyer.

On November 20, 2020, the Buyer emailed Delta that she needed to file a claim for repairs to the Vehicle. Her heated seats were not working. See Exhibit 4. She did not hear back. Buyer submitted a formal claim for a blown a/c motor on or about September 29, 2021. See Testimony of Buyer. Buyer testified she received an auto-receipt from Delta and instructions to submit her repair bills

electronically. See Testimony of Buyer. Buyer's repair bills were submitted to Delta. See Exhibit 6; Testimony of Buyer. Buyer attempted to follow up with Delta at several different phone numbers regarding her claim, but was never able to reach anyone. See Testimony of Buyer. Buyer's repair shop also attempted to contact Delta without success. See Testimony of Buyer. Buyer then contacted the NHID about her issues with Delta. See Testimony of Buyer.

On or about December 28, 2021, pursuant to RSA 400-A:16, the NHID wrote to Delta for information regarding its business dealings in New Hampshire. NHID received no response. See Exhibit 7. A similar letter was written and mailed to Delta by first class mail on January 14, 2022, again with no response. See Exhibit 8. The NHID issued an Order to Show Cause and Notice of Hearing on February 1, 2022 (the "Show Cause Order"). This document was sent by certified mail and first class mail to Delta. See Exhibit 10. The certified receipt was signed "received" by Delta on February 8, 2022. See Exhibit 10, page 10. Despite having received notice of the March 8, 2022 evidentiary hearing Delta did not appear at the hearing. At no point during this process did Delta respond to either the Buyer's requests for performance under the Vehicle Service Contract or the NHID's requests for information regarding Delta's business dealings in New Hampshire.

V. The NHID's Allegations and Penalty Requests.

The NHID raises the following claims and requests the following penalties:

1. Violation of RSA 415-C:3, I(a)—for selling consumer guaranty contracts in New Hampshire without registering with the Commissioner. (\$1,000 penalty);
2. Violation of RSA 415-C:4, I-III—for failing to provide the “proof of financial responsibility” required by RSA 415-C:4, I-III. (\$1,000 penalty);
3. Violation of RSA 415-C:7, I(f) —for willfully failing to act promptly upon communications with respect to claims arising under a consumer guaranty contract. (\$10,000 penalty);
4. Violation of RSA 415-C:7, II(a)—for failing to perform the services promised under the contract in a timely, competent and workmanlike manner. (\$1,000 penalty);
5. Two violations of RSA 400-A:16, II—for failure to respond to NHID’s document requests dated December 28, 2021 and January 14, 2022 (a \$2,500 penalty for each violation);
6. Pursuant to RSA 415:10, IV, restitution to the Buyer in the amount of \$2,127.00, the amount she paid for the Vehicle Service Contract; and
7. The NHID seeks a cease and desist order prohibiting Delta from conducting further consumer guaranty contract operations in this state under RSA 415-C:10, II.

VI. Analysis.

(a) Delta did not comply with New Hampshire law. It sold a consumer guaranty contract in New Hampshire without registering as required by RSA 415-C:3, I(a).

Delta's conduct is precisely what New Hampshire statutes are intended to prohibit. RSA 415-C:3, I(a), captioned "obligor registration", provides:

I. No obligor shall offer, administer, sell, solicit, negotiate, or act under a consumer guaranty contract in this state unless:

(a) The obligor registers with the commissioner on a form prescribed by the commissioner and pays the registration fee.

RSA 415-C:3, I(a).

Delta is not registered to do business in this state,⁴ yet it has done business⁵ in New Hampshire without complying with state law. Delta was well aware the Vehicle it was covering was a New Hampshire vehicle since its own email lists the address of the vehicle owner as "P.O. 882 Stoddard, NH." See Exhibit 1 (underlining added). Delta knew it was selling a consumer guaranty contract. See Exhibit 2. There is no willfulness requirement in RSA 415-C:3, I(a). If you do not comply, you are in violation of the statute. Delta has violated RSA 415-C:3, I(a).

(b) Delta did not comply with New Hampshire law it failed to provide financial information, post a bond or provide re-insurance in order to operate in New Hampshire.

RSA 415-C:4, I-III requires Delta to provide the NHID with financial information, post a bond or provide re-insurance to operate in this state as part of the registration process. Delta has not met any of these requirements. It did not respond to any of NHID's communications or to the Show Cause Order. See

⁴ Douglas Bartlett, Director of Financial Regulation, NHID, testified at the hearing that there is no registration on file for Delta in New Hampshire.

⁵ As used herein, doing business in the state means to "offer, administer, sell, solicit, negotiate, or act under a consumer guaranty contract in this state". See RSA 415-C:3, I.

Testimony of Sarah Prescott and Exhibits 7, 8 and 9. The statute does not require intent. Delta is in violation of RSA 415-C:4, I-III.

(c) Delta’s failure to act promptly upon communications relating to Buyer’s claims violated New Hampshire law and was willful.

RSA 415-C:10, III allows the imposition of a penalty of up to \$10,000.00 for each violation the “commissioner finds to be willful.”⁶ RSA 415-C:7, I(f) prohibits the failure to “act promptly upon communications with respect to claims arising under a consumer guaranty contract.”

The record overwhelming establishes that Delta violated RSA 415-C:7, I(f) in a systematic way by repeatedly failing to respond to inquiries and claims arising under the Vehicle Service Contract. On October 29, 2019, Buyer first contacted Delta with a question—there was no response. See Exhibit 3. On October 20, 2020, Buyer sent an email to Delta stating “I need to submit a claim for repairs to my car. My heated seats are not working.” See Exhibit 4. She received no response. On or about September 29, 2021, Buyer submitted a formal claim for a blown a/c motor. Although she received an auto-response and submitted her bills, she was unable to reach Delta personnel after several telephone attempts where she was prompted through to other insurance products or put on hold. See Testimony of Buyer. She also attempted to use the “Send a Note” feature on Delta’s portal, but to no avail. See Exhibit 9. She never spoke to a “live” person, and to date has not heard from Delta. See Testimony of Buyer.

⁶ Underlying added.

Subsequently, NHID contacted Delta three times by two separate letters requesting information and issued a Show Cause Order notifying them of the hearing in this matter. See Exhibits 7, 8 and 9. Delta did not respond to the requests for information or to the Show Cause Order even though it signed for the certified mail of the Show Cause Order and the two first class mail letters mailed to its address in Exton, Pennsylvania, were not returned. See Exhibit 10 and Testimony of Sarah Prescott.

In Appeal of NH Sweepstakes Department, 130 N.H. 659, 664 (1988), the New Hampshire Supreme Court said that "willful" conduct is "deliberate" conduct. Id. The Court explained:

"deliberate" is a synonym for "willful," which means "deliberate, voluntary or intentional," RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (unabridged) 1634 (1966). Willful is further defined as: "voluntary, as distinguished from accidental . . . [,] [i]ntentional or deliberate, yet not necessarily with an evil purpose in mind." BALLENTINE'S LAW DICTIONARY 1369 (3d ed. 1969).

Id.

Delta's conduct is the essence of willful. Delta: (1) is not allowed to sell consumer guaranty contracts in New Hampshire, yet does so; and (2) it does not want to pay claims or even investigate them. This is intentional conduct. Delta has willfully violated RSA 415-C:7, I(f) by failing not only to act promptly on communications, but by failing to act at all. See Testimony of Buyer and Exhibits 7, 8, 9, and 10.

(d) Delta failed to perform the services required by the consumer guaranty contract or is committing fraud within the meaning of RSA 415-C:7, II(a)-(b).

NHID requests that the Hearings Officer find that Delta violated RSA 415-C:7, II. RSA 415-C:7, II is violated if: (a) there is a failure to perform services promised under the contract on time and in a competent and workmanlike manner; or (b) there is fraud. RSA 415-C:7, II(a)-(b). The Vehicle Service Contract, section IV A. 12 specifically covers “Heater and Air Conditioner” and the “blower motor”. See Exhibit 2. Buyer complained twice about repairs: once for heated seats 2020 and once for a blown motor in the a/c in 2021. Neither repair was paid by Delta, which did not even respond to the Buyer’s inquiries (other than an auto-reply). Buyer had to pay for the repairs out-of-pocket and to this day has not been reimbursed as required by the Vehicle Service Contract. This violates RSA 415-C:7, II(a).

(e) Violation of RSA 400-A:16, II—failure to respond to NHID inquiries dated December 28, 2021 and January 14, 2022.

RSA 400-A:16, II requires any individual or entity who is subject to the authority of the commissioner to provide the Commissioner with documents the NHID requests within 10 working days of the request.

RSA 400-A:16, II. The commissioner can enforce this provision through RSA 400-A:15, III, which provides:

Any person who knowingly violates any statute, rule, regulation, or order of the commissioner may, upon hearing, except where other penalty is expressly provided, be subject to such suspension or revocation of certificate of authority or license, or administrative fine not to exceed \$2,500 per violation, as may be applicable under this title for violation of the statute or the provision to which the rule, regulation, or order relates.

RSA 400-A:15, III.

There is no question that Delta violated RSA 400-A:16, II by twice failing to comply with NHID's written requests (dated December 28, 2021 and January 14, 2022) to produce information regarding: its business in the state; why it had not registered; and its financial condition. See Exhibits 7, 8. Delta was served at two addresses by first class mail, and failed to respond and has continued to fail to respond. See Exhibits 7, 8, 10 and Testimony of Sarah Prescott. Some of the mail came back, and some of it did not. The Exton, Pennsylvania, address appears to be valid as the Show Cause Order sent there by certified mail was signed for by Delta. Delta has been properly served⁷ and its conduct avoiding New Hampshire registration and financial laws is an intentional, deliberate and knowing violation. See United States v. Lange, 528 F.2d 1280, 1287-89 (5th Cir. 1976) ("To commit an act 'knowingly' is to do so with knowledge or awareness of the facts or situation, and not because of mistake, accident or some other innocent reason."). The preponderance of the evidence in this enforcement action demonstrates the failure to respond to the NHID's inquiries did not happen by accident or innocence. Lange at 1287-89.

VII. Penalties.

The Hearing Officer proposes that the Commissioner enter a final order against Delta pursuant to INS 207.04, as follows:

1. Pursuant to RSA 415-C:10, II, order Delta to cease and desist from selling consumer guaranty contracts in the State of New Hampshire.

⁷ See RSA 400-A:14, I(c).

2. Pursuant to RSA 415-C:10, III, order Delta to pay a \$1000 penalty for its violation of RSA 415-C:3, I(a), which it violated by selling consumer guaranty contracts in New Hampshire without registering with the Commissioner.

3. Pursuant to RSA 415-C:10, III, order Delta to pay a \$1,000 penalty for violating RSA 415-C:4 by failing to provide the “proof of financial responsibility” required by RSA 415-C:4, I-III.

4. Pursuant to RSA 415-C:10, III, order Delta to pay a \$10,000 penalty for its violation of RSA 415-C:7, I(f), which it violated by willfully failing “to act promptly upon communications with respect to claims arising under a consumer guaranty contract.”

5. Pursuant to RSA 415-C:10, III, order Delta to pay a \$1000 penalty for its violation of RSA 415-C:7, II(a) which it violated by failing “to perform the services promised under the contract in a timely, competent or workmanlike manner”.

6. Pursuant to RSA 400-A:15, III, order Delta to pay two penalties, each in the amount of \$2,500, for a total penalty of \$5,000, for its two violations of RSA 400-A:16, II for its failures to respond to the NHID’s document requests dated December 28, 2021 and January 14, 2022,

7. Pursuant to RSA 415-C:10, III, order Delta to pay the Buyer \$2,127.00 in restitution to reimburse the Buyer for the full amount she paid for the Vehicle Services Contract.⁸ Delta is ordered pay restitution because the Buyer relied to her detriment on Delta’s willingness to honor its commitment to

⁸ See Exhibit 1 and testimony of Buyer.

faithfully and timely perform the Vehicle Service Contract, which Delta willingly did not perform. Patch v. Arsenault 139 N.H. 313, 317 (1995) (citation omitted) (“Equitable rescission and restitution may be ordered where material misrepresentations reasonably relied upon induce the injured party to enter into a transaction. See Barber v. Somers, 102 N.H. 38, 42 (1959)”).

All other requests for penalties are denied.

SO ORDERED,

April 8, 2022


Steven M. Notinger, Hearing Officer