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STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT

In Re: Dennis LaBrasca

Docket No.: INS No. 06-010-EP

**COPY**

**ORDER ON HEARING**

**I. ADMINISTRATIVE BACKGROUND**

1. On April 5, 2006 the Petitioner submitted a non-resident insurance producer's license application<sup>1</sup> to the Department.
2. In the application, at Background Questions, in response to Question #2: *"Have you or any business in which you are or were an owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license?"* the Petitioner responded "No."
3. The New Hampshire Insurance Department conducted a routine investigation of the Petitioner on the National Association of Insurance Commissioners (NAIC) database<sup>2</sup>.
4. Information in the NAIC RIRS database indicated that an administrative action by the Massachusetts Division of Insurance was brought against the Petitioner in December of 2004 that required the Petitioner to cease and desist from violations related to advertising and a failure to make a required disclosure on a license application. The Petitioner was fined \$3,500.
5. Based upon this information from the NAIC database, the Department denied the Petitioner's application in a letter dated April 14, 2006, citing RSA 402-J:12, I (a) as the reason for denial. That section of the statute states:
  - I. 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:
    - (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
6. The Petitioner was informed of the right to a hearing in the April 14, 2006 letter and the Petitioner did request a hearing on April 21, 2006.

<sup>1</sup> See Exhibit A

<sup>2</sup> See Exhibit B

7. A hearing was held at the Department on May 18, 2006 pursuant to a NOTICE OF HEARING dated May 5, 2006 before Hearing Officer Chiara Dolcino. The Petitioner attended the hearing together with his character witness Paul Argus, Divisional Sales Leader of Chesapeake Life Insurance Company. Mr. John Talley, Enforcement Officer for the Department, served as the Department's Staff Advocate in this hearing. The Hearing was closed on May 18, 2006 subject to any later determination by the Hearing Officer that it should be reopened to receive further necessary and relevant information in order to provide a full and fair consideration of the issues that form the subject matter of the Hearing.

## II. EXHIBITS

- Exhibit A RIRS Search Results- April 5, 2006 Application for Non-resident Producer License Application
- Exhibit B RIRS Regulatory Action Report regarding administrative action by the Massachusetts Division of Insurance, entry date 12/27/04.
- Exhibit C Flier submitted by Petitioner for inclusion in Quaboag Chamber of Commerce newsletter entitled "Does Your Health Insurance Policy Pass the Test?"
- Exhibit D Flier submitted by Petitioner for inclusion in Quaboag Chamber of Commerce newsletter entitled "Are You in the 90% or Are You in the 10%?"
- Exhibit E Correspondence and Informal Settlement of Administrative Action dated December 3, 2004 from Douglas A. Hale, Counsel to the Commissioner of the Division of Insurance, Commonwealth of Massachusetts, to the Petitioner and signed by the Petitioner on December 16, 2004.

## III. FINDINGS OF FACT.

1. Evidence presented at the hearing showed<sup>3</sup>:
  - a. The Massachusetts Division of Insurance brought an administrative action against the petitioner in December of 2004. As a result of informal resolution reached on December 16, 2004, the Petitioner was found in violation of M.G.L.c 176 D §2 (Unfair and deceptive practice in the business of insurance) in that the Petitioner disseminated altered incorrect sales material.
  - b. The Petitioner was also found in violation of M.G.L.c 176 D §3 (Unfair methods of competition and unfair or deceptive acts or practices) in that the Petitioner did not disclose on his application for a nonresident producer license that he had filed for bankruptcy. The Petitioner had in

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<sup>3</sup> Exhibits C, D, E

fact filed a Chapter 7 petition for bankruptcy in Connecticut, and received a discharged in January of 2002.

- c. The Massachusetts Division of Insurance did not revoke the Petitioner's license.
2. The violation of M.G.L.c 176 D §2 found by the Massachusetts Division of Insurance in December of 2004 involved a flier prepared by the divisional sales leader of Mid-West National Life & Health Insurance Company of Tennessee and submitted by the Petitioner to the Quaboag Chamber of Commerce for inclusion in its newsletter. The flier was not authorized for distribution in Massachusetts and stated that the Petitioner was licensed to sell life insurance in Massachusetts when at the time, the Petitioner was not so licensed.<sup>4</sup>
3. The Petitioner relied upon the expertise of the divisional sales leader who provided him with the flier and the Petitioner assumed the flier was in compliance with all laws. The Petitioner was not aware that the sales leader had deleted the word Nevada and substituted the word Massachusetts and that the flier was authorized for distribution only in Nevada.
4. At the time the Petitioner gave the flier to the Quaboag Chamber of Commerce, the Petitioner was license to sell only health insurance in Massachusetts. The Petitioner had passed the exam to sell life insurance and had applied for the license to sell life insurance, but his application had not been approved. The Petitioner's application was approved less than a week after the Petitioner submitted the flier to the Quaboag Chamber of Commerce. While the Petitioner's application to sell life insurance was approved before the newsletter was published and issued by the Quaboag Chamber of Commerce, his application was not approved at the time the Petitioner sent the fliers to the Quaboag Chamber of Commerce.
5. The failure of the Petitioner to disclose the personal bankruptcy on the Massachusetts license application was a result of the Petitioner's belief that this information was not required for a non-resident license. The Petitioner's belief that he was not required to attach documents relating to the bankruptcy and that information regarding the bankruptcy was not required for a non-resident license was formed as result of the Petitioner's conversations with the Connecticut Department of Insurance. The Petitioner contacted the insurance department of Connecticut rather than Massachusetts because he was at that time a resident of Connecticut.
6. Subsequent to the Massachusetts administrative action, the Petitioner did disclose the bankruptcy on the April 5, 2006 application to the New Hampshire Insurance Department for a non-resident insurance producer license.
7. The Petitioner has been appointed with Mid-West National Life & Health Insurance Company of Tennessee since 2003. If the Petitioner's New Hampshire non-resident

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<sup>4</sup> Exhibit E

producer's license is approved, he will be appointed with Chesapeake Life Insurance Company.

8. Both Mid-West National Life & Health Insurance Company and Chesapeake Life Insurance Company are subsidiaries of HealthMarkets.
9. Paul Argus, divisional sales leader of the Chesapeake Life Insurance Company has known the Petitioner for over three years. Mr. Argus attests to the Petitioner's integrity and has observed the Petitioner's commitment to strict compliance with all laws and regulations in the Petitioner's current work training Massachusetts agents.
10. No consumer complaints have been filed in the RIRS complaint database against the Petitioner.
11. At the time the Petitioner completed the application, his wife was in her last trimester of pregnancy and the family was involved with activities associated with the pending birth and a pending move to the New Hampshire/Massachusetts area.

#### **IV. CONCLUSIONS OF LAW.**

1. Licensure by a regulatory authority authorizing an individual to sell insurance to the public, and all that this entails, is a matter of significant importance and the licensing decision is not to be taken lightly. Granting a license confers upon the licensee an aura of honesty and trustworthiness by that governmental regulatory authority. The public has a reasonable expectation that a licensed producer, prior to licensure, has undergone an evaluation of his or her character and propensity for honesty and trustworthiness. Hence, the licensing application process includes, among other things, that the applicant for a license completes the license application correctly and completely without resort to misleading or materially untrue information.
2. The controlling statute under which the Department denied Petitioner's request for licensure – RSA 402-J:12, I, is discretionary in that providing incorrect, misleading, incomplete, or materially untrue information in the license application is not an absolute bar to being licensed. The statute provides that if there are deficiencies in the application "[t]he commissioner may ... refuse to issue ... an insurance producer's license." (emphasis added) Thus, an applicant for licensure, who has filed an application containing incorrect, misleading or untrue information, must demonstrate by word and deed that he is, nevertheless, a person of integrity and character worthy of being granted a license.
3. In this instance, the Petitioner's testimony is crucial to determining his fitness to be licensed despite his failure to disclose the Massachusetts administrative action in 2004. Of significant relevance in determining his fitness to be licensed, but not all inclusive, is the following:

- a. The Petitioner was forthcoming in response to questions by the Hearing Officer, did not try in any manner to trivialize or minimize his prior actions and took full responsibility for his errors in both the Massachusetts administrative action and on the New Hampshire application in question.
- b. The Petitioner did disclose the 2002 bankruptcy on the April 5, 2006 application to the New Hampshire Insurance Department for a non-resident insurance producer license.
- c. Credible testimony of the Petitioner that the failure to disclose the Massachusetts administrative action was not intentional, nor done with any intention to mislead.
- d. The Petitioner's explanation for his failure to disclose the Massachusetts administrative action on his New Hampshire application for a non-resident producer's license is credible in light of the Petitioner's misunderstanding of the nature of the question and family pressures at the time the application was completed.
- e. No consumer complaints have been filed in the RIRS complaint database against the Petitioner.
- f. The testimony of Paul Argus corroborates the Petitioner's testimony and supports the Petitioner's assertion that he is trustworthy and it is his practice to fully comply with insurance laws and regulations.
- g. The Massachusetts Division of Insurance did not determine the actions of the Petitioner warranted a revocation of the Petitioner's license as a result of the December 2004 administrative action based on the Petitioner's failure to disclose the 2001-2002 bankruptcy on his application for a non-resident license from the Massachusetts Division of Insurance.

4. Based on the testimony and evidence presented at the hearing, the Petitioner has proven that it is more probable than not that his error in completing the non-resident producer's license application does not warrant a denial of a non-resident producer's license.

5. While it is found that the Petitioner's failure to correctly complete the application does not warrant the denial of a non-resident producer's license in New Hampshire, that the Petitioner has made errors on two separate applications for a producer license is of concern. The Petitioner's failure to carefully review and ensure the accuracy of information on the New Hampshire application, so close on the heels of the 2004 Massachusetts's administrative action, indicates that the Petitioner may not appreciate the importance of ensuring the accuracy of information provided to the Department. While insurance laws and regulations may be confusing to the layperson, any applicant for a license has the opportunity to contact the state that will review the license for guidance in completing the application.

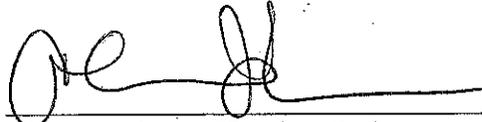
**ORDER**

THEREFORE, as Hearing Officer, I find that the evidence of record in this Hearing is sufficient to demonstrate that the Petitioner's is fit for licensure and it is hereby ORDERED that;

1. The Department's denial of licensure by letter dated April 14, 2006 is hereby REVERSED,
2. The Petitioner is hereby ordered to pay a fine in the amount of \$500 and,
3. The Department shall issue the Petitioner the non-resident license immediately upon payment in full of the fine levied pursuant to this order and,
4. In twelve months the Department will conduct a review to confirm that no further actions or complaints have been brought against the Petitioner and that there is no new or newly discovered information that would warrant further investigation of the Petitioner's fitness for licensure as a non-resident insurance producer.

6/1/06

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Date

  
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Chiara Dolcino, Hearing Officer