

STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In re: Colin P. Lindsey and Balcarres Group, LLC

Docket No.: Ins 08-013-EP

ORDER

Procedural History

An Order to Show Cause and Notice of Hearing was issued by the Insurance Commissioner in this matter on February 22, 2008. The Order to Show Cause and Notice of Hearing alleged, inter alia, that that both Respondent Lindsey and Respondent Balcarres Group, LLC (“Balcarres”) violated NH RSA 402-J:12, I(h). The Notice also stated that both Respondents were New Hampshire licensed insurance producers, that the license application filed with the New Hampshire Insurance Department (“Department”) lists Respondent Lindsey as the owner of Balcarres, and that the Merrimack County Superior Court had granted a temporary restraining order and injunction to the New Hampshire Banking Department to seize the assets and records of Noble Trust Company (“Noble Trust”), a New Hampshire chartered bank, and states that Respondent Lindsey is an owner and director of Noble Trust. The Notice of Hearing states that the Court’s actions were based upon an affidavit filed with the Court by New Hampshire Banking Department officials alleging that Respondent Lindsey engaged in unsound business transactions and practices as the agent of Noble Trust , and that Lindsey made false and

misleading statements concerning Noble Trust's business and operations, and that Respondent Lindsey concealed the financial default of another company from Noble Trust customers who invested in the defaulted company.

The Notice of Hearing in this matter set a hearing date of March 10, 2008. The hearing was continued on four different occasions by Order of the hearings officer on Motions to Continue from both Respondent Lindsey and the Department. The final Motion to Continue was granted and the hearing date was set for April 29, 2008. On March 7, 2008 Daniel M. Deschenes, of the law firm Hinkley, Allen and Snyder, filed an appearance on behalf of Respondent Lindsey. On March 26, 2008 the hearings officer wrote to Attorney Deschenes seeking clarification concerning his representation of Balcarres. On April 9, 2008 Attorney Deschenes notified the hearings officer by e-mail that Hinkley Allen and Snyder did not represent Balcarres.

At the hearing on April 29, 2008 the Department filed a Motion to Continue and Notice of Pending Consent Order with respect to Respondent Lindsey. A copy of the pending Consent Order was appended to the Motion. The Department's Motion to Continue the Hearing with respect to Respondent Lindsey was granted during the proceedings by the hearings officer, pending execution of the Consent Order.

On May 8, 2008 a Settlement Agreement and Order was executed by Respondent Lindsey and the Department. The Settlement Agreement and Order, inter alia, waived

Respondent Lindsey's right to be heard at the April 29, 2008 hearing. The Settlement Agreement also contemplated the immediate revocation of Respondent Lindsey's New Hampshire insurance producer license, and resolved all remaining matters set forth in the Order to Show Cause and Notice of Hearing dated February 22, 2008 with respect to Respondent Lindsey. On May 12, 2008 the Department filed a Motion to Accept Settlement Agreement and Order Dated May 8, 2008, and on May 14, 2008 the hearings officer issued an Order granting that motion. The matter was settled with respect to Respondent Colin P. Lindsey by the Order to Accept Settlement Agreement dated May 12, 2008.

The only remaining issues to be settled at the hearing in this matter were those concerning co-Respondent Balcarres. The hearing with respect to Respondent Balcarres proceeded as scheduled on April 29, 2008. The Department was represented at the hearing by Department Legal Counsel, Chiara Dolcino, and Department Enforcement Examiner, John Talley. The Department presented its case with respect to Balcarres. Balcarres was not present and was not represented at the hearing. Respondent Balcarres failed to contest or otherwise respond to the Notice of Hearing and Order to Show Cause.

Findings

1. Respondent Balcarres holds a New Hampshire insurance producer license issued by the Department.

2. The Department has jurisdiction over the subject matter of this case under NH RSA 402-J, and the Department has the authority to seek the relief it has requested pursuant to RSA 402-J:12.
3. Balcarres Group, LLC, Respondent Colin P. Lindsey, and Lindsey's counsel, Daniel Deschenes of the Hinkley Allen and Snyder law firm, were served with all documents related to this matter, including the Notice of Hearing and all Orders related to the continued hearing dates granted in this matter.
4. Balcarres Group, LLC failed to appear in person or by representative at the April 29, 2008 hearing in this matter, failed to communicate any reason for non-appearance and failed to request a continuance of the April 29, 2008 hearing date.
5. No representation of Balcarres Group, LLC was confirmed to the hearings officer by Balcarres, its manager Respondent Lindsey or Lindsey's legal counsel, and no appearance was filed on behalf of Balcarres.
6. At all times material to the acts and practices that are the basis of the Notice of Hearing and Order to Show Cause, Respondent Lindsey was a manager, owner, designated responsible licensed producer, managing member, registered agent, officer and/or director, directly or indirectly, of Balcarres Group, LLC.
7. Balcarres Group LLC is a limited liability corporation and is therefore neither an infant nor an incompetent.
8. Department Exhibit A, a U.S. Postal Service return receipt, confirms that the notice of Hearing and Order to Show Cause addressed to Colin P. Lindsey at Balcarres Group LLC, 900 Elm St., Suite 701, Manchester, NH, was received by

Respondent Balcarres Respondent Lindsey is or has been a manager, owner, designated responsible licensed producer, managing member, registered agent, officer and/or director of Balcarres Group, LLC during the times related to this adjudicative proceeding, including scheduled hearing dates related to this matter.

9. At the times material to the acts and practices that are the basis of the Notice of Hearing and Order to Show Cause, Respondent Lindsey was registered with the New Hampshire Secretary of State as the manager of Aegean Scotia Holdings, LLC.
10. In the 2007 Annual Report of Balcarres Group, LLC filed with the NH Secretary of State, signed by Respondent Lindsey, Aegean Scotia Holdings LLC was reported as the manager and member of Balcarres Group, LLC.
11. Respondent Lindsey entered into a Settlement Agreement with the Insurance Department in which he knowingly waived his right to be heard at the hearing on this matter scheduled for April 29, 2008.
12. The street address for all the above-named entities, including Respondent Balcarres, is listed in various documents filed with the New Hampshire Secretary of State and the Department as 900 Elm St., Suite 701, Manchester, NH.
13. The street address for Noble Trust appears on the bank's stationary as 900 Elm St., Suite 701, Manchester, NH.
14. Noble Trust Company is wholly owned by Aegean Scotia Holdings, LLC.
15. Noble Trust Company is the sole member and manager of Balcarres Group, LLC.

16. The Merrimack County Superior Court's Order Appointing Liquidator in The Matter of the Liquidation of Noble Trust Company, Docket # 08-E-0053, demonstrates that at all times material to the acts and practices that are the basis of the hearing in this matter, Balcarres Group, LLC procured life insurance policies for Noble Trust clients.
17. Balcarres Group, LLC, Aegean Scotia Holdings, LLC were deemed by Order of the Merrimack County Superior Court to have appeared and become parties to the Court's proceedings liquidating Noble Trust Company, and to have submitted themselves to the jurisdiction of the Court, and the Court appointed the New Hampshire Bank Commissioner as liquidator of both Noble Trust Company and Aegean Scotia Holdings, LLC.
18. The affidavit filed with the Court in the Noble Trust Company case by the New Hampshire Banking Department stated that Respondent Lindsey made false and misleading statements concerning Noble Trust Company's operations, including concealing from Noble Trust clients the financial default of Sierra Factoring, LLC.
19. The Merrimack County Superior Court ordered that the assets, property, books, records, accounts and other documents of all the above-named entities, including Balcarres Group, LLC, be vested in the exclusive possession, custody and control of the liquidator.

Rulings of Law

1. The validity of any hearing held in accordance with the notice thereof is not affected by the failure of any person to attend. NH RSA 400-A:19, VII
2. An agency shall not revoke a license unless the agency first gives notice to the licensee of the facts or conduct upon which the agency intends to base its action and gives the licensee an opportunity through an adjudicative proceeding to show compliance with the law for retention of the license. NH RSA 541-A:30, II
3. 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: ...
 - (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. RSA 402-J:12, I (h)
4. The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor had any corrective action taken. NH RSA 402-J:12, III

Conclusions

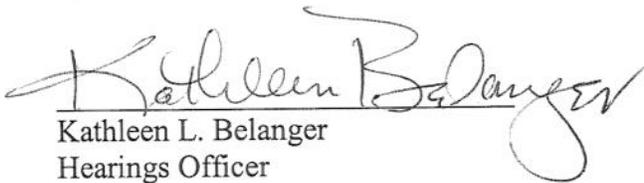
Balcarres had actual and effective notice of the hearing in this matter and the issues to be

determined at the hearing. Balcarres had the opportunity to participate in the hearing scheduled in this matter, and the opportunity to show compliance with applicable law. Balcarres did not appear at the hearing, and was not represented at the hearing. The failure of Balcarres to attend or be represented at the hearing in this matter does not affect the validity of the hearing. All facts alleged by the Insurance Department are deemed true due to the Respondent's failure to appear at the hearing. The Court's Order placing Balcarres in the possession of the appointed Liquidator in the Noble Trust case, and Balcarres' actions in concert with Respondent Lindsey, Noble Trust Company, Aegean Scotia Holdings or acting alone do not meet the standards set forth in RSA 402-J:12 for retention of a New Hampshire Insurance producer license.

Disposition

NOW THEREFORE, based upon the foregoing, Balcarres' New Hampshire insurance producer license is hereby revoked.

SO ORDERED.


Kathleen L. Belanger
Hearings Officer

Dated: June 3, 2008

Appeal

RSA 541:3 provides that "Within 30 days after any order or decision has been made by

the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.”