



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

*STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT*

FINAL ORDER on HEARING

In Re: Howard Farber

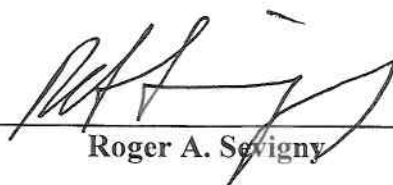
Docket No.: Ins 10-009-EP

Pursuant to the provisions of Ins 204.26(a)(4), the Proposed Order on Hearing issued on March 11, 2010 by Hearing Officer Donald L. Belanger is hereby ACCEPTED as a FINAL ORDER and DECISION.

This is the final action of the Department. You have the right to request reconsideration of this final action within 30 days in accordance with RSA 541.

So ORDERED,

Date: April 1, 2010



Roger A. Sevigny



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Commissioner

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ORDER ON HEARING

I. ADMINISTRATIVE BACKGROUND.

Mr. Farber ("Petitioner") submitted a Uniform Application for Individual Producer License Renewal/Continuation to the New Hampshire Insurance Department ("Department") on December 28, 2009.

The renewal application at Background Information question 1. asked, among other things, if he had ever been convicted of a crime. Petitioner answered "No." Background Information question 2. asked if he had been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration. Petitioner answered "Yes" and provided documents relating to administrative actions taken against him by the states of Vermont, Pennsylvania and Kansas.

The Department subsequently determined that, (1) Petitioner failed to inform the Department on his initial license application of convictions in New York and Florida, (2) Petitioner failed to inform the Department in the license renewal application process of administrative actions taken against him in the states of Virginia Ohio, and, (3) Petitioner failed to inform the Department of the administrative actions taken against him by the states of Vermont, Pennsylvania, Kansas, Virginia and Ohio within 30 days of the final disposition of those matters.

The Department denied Petitioner's application for a renewal license by letter dated January 26, 2010. Petitioner was advised in that letter of his right to a hearing on the reasonableness of the denial. Petitioner exercised this right in a timely manner and requested a hearing pursuant to RSA 400-A:17.

By letter dated February 22, 2010, sent regular and certified mail to Petitioner's last known address as shown in Department licensing records, Petitioner was informed by that the hearing he requested was scheduled for March 10, 2010 at 9:00 AM at the Department's offices at 21 South Fruit Street, Suite 14, Concord, NH, 03301. Enclosed with the February 22, 2010 letter was the Notice Of Hearing which contained the reasons his request for a renewal license was denied as well as the statutory basis upon which the denial was grounded.

The Hearing was held at the offices of the Department on March 10, 2010 at 9:00 AM.

II. FINDINGS OF FACT.

The Petitioner did not retrieve the February 22, 2010 certified letter at the post office. The same letter that was sent to him by regular mail at his last known address, according to Department licensing records, was not returned to the Department. It is reasonable to conclude that, at least by regular mail, the Petitioner was on notice of the date, time, place and nature of the hearing that he had requested. Since the Petitioner requested the hearing he would surely be awaiting a letter from the Department on his request for a hearing to appeal the denial of his renewal license. Petitioner did not request a postponement of the scheduled hearing. I FIND that Petitioner was properly notified of the date, time, place and nature of the hearing that he requested and that his failure to appear at the appointed place and time does not affect the validity of the hearing as provided for in RSA 400-A:19, VII.

The Department's denial of licensure was based upon several criminal convictions and administrative actions taken by insurance departments of other states and not reported on his application for a renewal license as well as by his failure to report those actions to the Department within 30 days of the final disposition of those proceedings. These convictions and administrative proceedings are as follows:

1. December 2, 2004, New York, Conviction - Sexual Abuse 2nd degree.
2. January 6, 2006, Florida, Conviction - Failure to Register as a Sexual Offender.
3. February 20, 2009, Vermont Department of Banking, Insurance, Securities and Health Care Administration – License Revoked.
4. March 23, 2009, Kansas Insurance Department – License Revoked.
5. June 25, 2009, Pennsylvania Insurance Department – License Revoked.
6. June 19, 2009, Virginia Bureau of Insurance – Licensed Revoked.

7. September 1, 2009, Ohio Department of Insurance – License Revoked.

Petitioner applied to the Department for his renewal license on December 28, 2009.

III. CONCLUSIONS OF LAW.

Licensure by a regulatory authority in which the licensee will deal with the public is a matter of utmost importance and the licensing decision is not taken lightly. The public has more than a reasonable expectation that a licensed producer, prior to licensure or upon the granting of a renewal license, has undergone an evaluation of his or her character and propensity for, among other things, honesty and trustworthiness. Hence, the licensing application process includes, among other things, a probing of an applicant's prior criminal convictions and administrative proceedings in which he or she was involved. Hence, on the renewal application these are questions #1 and #2 at Background Information.

The Department denied Petitioner's application for a renewal license under the authority of RSA 402-J:12, I (a), (b), (f) and (i) and RSA 402-J:17, I. These statutes provide as follows:

RSA 402-J:12.

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.

(b) Violating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

...

(f) Having been convicted of a felony.

...

(i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

...

RSA 402-J:17, I.

I. A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

Petitioner submitted an application to renew his license to the Department on December 28, 2009. On the application at Background Information question #1, asking if he had been convicted of a crime, he answered "No." At Background Information

question #2, asking if he had been involved in any administrative proceedings involving a professional or occupational license, he answered "Yes." In response to his "Yes" answer he supplied the Department with documents relating to the administrative actions taken against him by the states of Vermont, Pennsylvania and Kansas.

Petitioner answered "No" to Background Information question #1 on the renewal application. In fact he had been convicted of two crimes prior to the date he requested the renewal of his producer license. The New York conviction for Sexual Abuse 2nd degree was a felony conviction later downgraded to a misdemeanor. The Florida conviction for Failure to Register as a Sexual Offender was a felony conviction. It is totally inconceivable that Petitioner forgot about his prior convictions for Sexual Abuse 2nd degree and Failure to Register as a Sexual Offender. I FIND that Petitioner lied on his application when he answered "No" to Background Information question #1 and this is grounds to deny licensure under RSA 402-J:12, (a) and (f).

Petitioner answered "Yes" to Background Information question #2 on the renewal application. He submitted documents for the administrative actions taken against him by the states of Vermont, Pennsylvania and Kansas. He did not inform the Department about or produce documents from the administrative actions taken by the states of Virginia and Ohio. These two actions proceeded the date he requested his renewal license by six and three months respectively. I FIND that Petitioner lied on his application when he answered "Yes" to Background Information question #2 in so far as he did not report administrative proceedings against him in the states of Virginia and Ohio and this is grounds to deny licensure under RSA 402-J:12, (b) and (i).

The Petitioner was the subject of five administrative proceedings taken against his producers license by the states of Vermont, Pennsylvania, Kansas, Virginia and Ohio. All five actions predated the date he requested his renewal license from the Department. In all five administrative proceedings his producer's license was revoked. I FIND that Petitioner did not report the five administrative actions in which his producers license was revoked within 30 days of the final disposition of those proceedings and this is grounds to deny him licensure under RSA 402-J:17, I.

ORDER

THEREFORE, as Hearing Officer, I find that the evidence of record in this Hearing is sufficient to find that the Petitioner is not fit for licensure and the Department's denial of a renewal license is hereby AFFIRMED.

March 11, 2010

Date

Donald L. Belanger

Donald L. Belanger, Hearing Officer