

STATE of NEW HAMPSHIRE INSURANCE DEPARTMENT

**In re: Michael S. Bettencourt
Docket No.: Ins 12-008-EP**

FINAL DECISION and ORDER

Pursuant to the provisions of Ins 204.26(a)(4), the Proposed Decision and Order issued on November 16, 2012, by Hearing Officer Jennifer Patterson is hereby ACCEPTED as a FINAL DECISION and ORDER, with the following MODIFICATIONS:

- 1) The Hearing Officer's determination as to the allegation of violation of RSA 402-J:7,VI, as set forth under the heading "Change of Address" in the Proposed Decision and Order, is NOT ADOPTED and is replaced with the following determination:**

Change of Address

The Department asserts that Mr. Bettencourt violated RSA 402-J:7, VI by conducting business at 71 Split Brook Road and 154 Broad Street in Nashua without notifying the Department. Mr. Bettencourt testified that his home address remains as listed in Department records and that he does conduct some business out of his home, but did not want to use his home address on the internet.

At issue is whether the failure by Mr. Bettencourt to notify the commissioner that he was conducting business out of the two additional business addresses -- 71 Split Brook Road and 154 Broad Street -- is a violation of RSA 402-J:7,VI, which states "[I]licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within 30 days of the change."

A producer is required to provide a residential, business and mailing address in the application for resident producer license. RSA 402-J:6,I states: "[a] person applying for a resident insurance producer license shall make application to the commissioner on the uniform application." The uniform application is defined in the statute as "the current version of the NAIC uniform application for resident and nonresident producer licensing." RSA 402-J:2,XVI. Pursuant to RSA 541-A:33, V, official notice is taken that the uniform application form mandated by RSA 402-J:6,I requires disclosure of the producer's residential address *and business address*, as well the producer's mailing address. Accordingly, the Department's licensing records include separate fields for residence, business and mailing addresses (Exhibit 1 p. 1).

In order to determine whether Mr. Bettencourt has violated RSA 402-J:7,VI then, it must be determined if the new locations where he conducted insurance business resulted in a “change of address” that must be reported pursuant to RSA 402-J:7, VI.

The interpretation of this statute is guided by RSA 21:3, which governs its construction. See RSA 21:1. RSA 21:3 provides that “words importing the singular number may extend and be applied to several persons or things.” Therefore, in the construction of RSA 402-J:7, VI, the word “address” is extended to mean “addresses.”

Various provisions in RSA 402-J indicate a legislative recognition of the importance of the disclosure of business address. As discussed above, the statute requires the producer to identify his or her business addresses in the application for license. The statute requires the applicant declare that the statements made in the application are “true, correct, and complete to the best of the individual's knowledge and belief.” RSA 402-J:6,I. In fact, providing incorrect or incomplete information in the license application is grounds for license denial, nonrenewal or revocation. RSA 402-J:12,I(a). Therefore, if Mr. Bettencourt had been doing business at either the 71 Split Brook Road or at 154 Broad Street addresses at the time of his initial application in May of 2010, but disclosed only an address for 11 Merrimack Drive, this would have been grounds for denial of his license.

These provisions indicate that the disclosure of correct and complete business address information is of vital importance in the licensing and regulation of producers. A correct and complete business address does identify for the Department (and consumers and other third parties seeking information under RSA 91-A) where the producer’s insurance business is conducted¹ and where the producer’s business records may be located, and this information would be critical, for example, in the event of the Commissioner’s service of a subpoena duces tecum. See RSA 400-A:20,I.

The “change of address” referenced in RSA 402-J:7, VI is not specifically referred to as a change of address *as reported on the uniform application*, but this is the most reasonable conclusion that can be reached based on the interpretation of the provisions of RSA 402-J:7,VI in the context of the overall statutory scheme and with consideration of the policies underlying the law. Kierstead v. State Farm Fire and Casualty Company, 160 N.H. 681, 685 (2010). Therefore, in light of the statutory scheme and policy as well as the provisions of RSA 21:3, the “change” that must be reported in accordance with RSA 402-J:7,VI is a change in the addresses provided in the uniform application; that is, not just a change in residential address, but a change in mailing address or any address where business is being conducted.

¹ It is noted that testimony presented in the hearing indicated that when questioned by a consumer, Mr. Bettencourt refused to provide an address for his “employer.” Exhibit 37, p. 264.

Mr. Bettencourt admits he did not make such a report when he began to use either the Split Brook Road or the Broad Street business addresses. Therefore the Department has met its burden in showing that Mr. Bettencourt has violated RSA 402-J:7,VI.

2) The Hearing Officer's determination of findings of fact as set forth under the heading "Findings of Fact" in the Proposed Decision and Order, is ADOPTED with the following MODIFICATION:

The Department's request 40 and 41 are granted.
The Respondent's request 9 is denied.

The Department's requests 37-39 continue to be denied as worded. A change of address can result from the operation of a new business location used *in addition to* an existing business address.

3) The Hearing Officer's determination as to the impact and consequence of the violations of law on the Respondent's producer license, as set forth in the Proposed Decision and Order under "Conclusions" subsection "1. License Suspension and Probation" are ADOPTED with the following MODIFICATIONS:

The sanctions imposed on the Respondent's producer license, as set forth in the Proposed Decision and Order, are suspended until Monday, January 21, 2013, to provide the Respondent an opportunity to consider an alternative sanction. The alternative sanction offered to the Respondent is that the sanction recommended in the Proposed Decision and Order and adopted in this Final Order, shall be replaced with an alternative sanction of a 2-year period of probation, with license suspension held in abeyance provided the Respondent conduct himself with good behavior, as is more fully described in the attached ALTERNATIVE SANCTION CONSENT ORDER. If the Respondent does not accept the alternative sanction by signing and returning the attached ALTERNATIVE SANCTION CONSENT ORDER by **Monday, January 21, 2013**, the adopted provisions of the Proposed Decision and Order that suspend the Respondent's producer's license for 6 months and subjects the Respondent to 18 months of probation shall take effect on Tuesday, January 22, 2013.

4) The Hearing Officer's determination as to the administrative penalties imposed as a result of the Respondent's violations of law, as set forth in the Proposed Decision and Order under "Conclusions" subsection "2. Administrative Penalties" is ADOPTED with the following MODIFICATIONS:

The Proposed Decision and Order's recommendation of the imposition of the maximum penalty of \$2,500 for each violation is accepted, except as to the

violation of RSA 402-J:7,VI. In light of the fact that there was no evidence presented that this violation affected any consumer and the Respondent's testimony that he now understands that the law requires reporting a change of address, no additional penalty is imposed for the violation of RSA 402-J:7,VI. In addition, the penalty imposed for violations of RSA 402-J:12, I(h), RSA 417:4, I(h) and RSA 417:4, I(b) adequately ensures the regulatory goals of the Department's enforcement action.

Because no penalty is imposed for the violation of RSA 402-J:7,VI, the total penalty of \$15,000 as recommended in the Proposed Decision and Order and adopted in this Final Decision and Order is unchanged, although this Final Decision and Order has modified the Proposed Decision and Order's determinations in regard to RSA 402-J:7,VI.

SO ORDERED.



January 11, 2013
Date

Roger A. Sevigny, Commissioner

This is the final action of the Department. Pursuant to Ins 204.26(e) you have the right to appeal by requesting a rehearing of this final action ***within 30 days of the date this Order is signed by the Commissioner***, in accordance with RSA 541. Your request for rehearing must specify all grounds to support rehearing by the Commissioner. The Commissioner will grant your request if in his opinion, there is good reason to reconsider his decision.