STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

Docket No.: INS No. 18-025-EP

In re: William Earl Robinson

PROPOSED DECISION AND ORDER

I. OVERVIEW

The New Hampshire Insurance Department ("Department" or "NHID") issued an Order to Show Cause and Notice of Hearing ("show cause order" or "Notice") on June 12, 2018 to the Respondent, William Earl Robinson, a resident New Hampshire insurance producer. The show cause order notified the Respondent of his July 25, 2018 administrative hearing at the New Hampshire Insurance Department in Concord, New Hampshire. The Department seeks permanent revocation of the Respondent's New Hampshire insurance producer license. The Department also requests that the Respondent be fined $2,500 for each violation of New Hampshire insurance law.

In accordance with the Order to Show Cause and Notice of Hearing, a hearing on the merits ("hearing") was conducted at the New Hampshire Insurance Department ("Department") on July 25, 2018. Attorney Mary Bleier, Compliance and Enforcement Counsel, represented the Department at the hearing. Although the Respondent, William Earl Robinson, was notified of the hearing in conformance with RSA 400-A:18, I, and Ins 204.09(c), Mr. Robinson did not appear for the hearing. Whereas the hearing was properly noticed, the validity of the hearing was not affected by the Respondent's absence. RSA 400-A:19, VII.

The Department called three witnesses to provide testimony at the hearing. The witnesses were: NHID Compliance and Enforcement Unit Paralegal Carolyn Petersen; NHID Licensing Supervisor Joan LaCourse; and American General Life's New Hampshire State General Agent and Thieme Agency owner, Kristopher Thieme.

As explained in a written order I issued on July 25, 2018, I entered an order at the hearing that the record would remain open in this matter until I issued an order closing it. I left the record open to provide each party with the opportunity to submit a legal memorandum on the issue of the Department's request that the Respondent's New Hampshire resident insurance producer license be permanently revoked. The parties'

deadline for submitting legal memoranda was August 6, 2018. Attorney Bleier submitted a legal memorandum on behalf of the Department on July 31, 2018. The Respondent did not submit a legal memorandum. In fact, the Respondent did not submit any filing in this matter. I issued an Order closing the record in this matter on August 23, 2018.

At the hearing, Attorney Bleier orally moved for amendment to Paragraph 8 of the Order to Show Cause and Notice of Hearing, requesting that Paragraph 8 be changed to provide as follows: "8. Whether Respondent violated RSA 402-J:12, I(h) for using fraudulent or dishonest practices or being untrustworthy." The Department requested this relief on the basis that much of the Respondent's alleged conduct relative to failing to submit applications as controlled business occurred before he was licensed in New Hampshire. However, the Department argued that the Respondent conducted insurance business in New Hampshire in a dishonest or untrustworthy manner and, therefore, that it is appropriate for the balance of Paragraph 8 to remain in the show cause order.

Presently, Paragraph 8 provides: "8. Whether Respondent violated RSA 402-J:12, I(h) for using fraudulent or dishonest practices or being untrustworthy for submitting controlled business without making it as such as required by AILife for the purpose of obtaining his commission in advance." I did not rule on the Department's motion to amend at the hearing. In this instance, the show cause order in its totality put the Respondent on notice that the hearing concerned alleged dishonest and fraudulent actions taken by him in insurance business. After due consideration of the issue, I find that it is appropriate pursuant to the authority given to me by Ins 203.01(d)(9) and Ins 204.06(i) to grant the Department's oral motion to amend Paragraph 8. Accordingly, the Department's oral motion to amend Paragraph 8 is **GRANTED**. Therefore, Paragraph 8 of the Order to Show Cause and Notice of Hearing is amended as follows: "8. Whether Respondent violated RSA 402-J:12, I(h) for using fraudulent or dishonest practices or being untrustworthy."

At the hearing, Attorney Bleier clarified that the Department is seeking permanent revocation of the Respondent's New Hampshire insurance producer license. In making this request, the Department presented evidence at the hearing, including testimony of Department licensing supervisor Joan LaCourse and Department Exhibits 4 and 5, that the Respondent voluntarily surrendered his New Hampshire insurance producer's license shortly before the hearing. The Department explained that it seeks permanent revocation of the Respondent's New Hampshire insurance producer's license to protect the public in New Hampshire. In addition, Attorney Bleier argued that permanent revocation of the Respondent's New Hampshire insurance producer's license will reduce the likelihood that another state will issue an insurance producer license to the Respondent.

The Administrative Procedure Act, RSA 541-A, and the Department's rules, Ins 200, Practices and Procedures, govern these proceedings. Evidence received in the proceeding

must be relevant to the issues presented. RSA 541-A:33, II; Ins 203.01(d)(4). All of the evidence that the Department requested be admitted into evidence at the hearing met this threshold and, thus, was admitted into evidence.[1]

After considering the record, I find that the Department sustained its burden with respect to its resident producer license revocation request. As such, I propose that the Respondent's New Hampshire insurance producer license be **permanently REVOKED**. With regard to the Department's request that an administrative fine be imposed upon the Respondent for each of the Respondent's violations of New Hampshire insurance law, I propose that the Respondent be **fined** in the amount of **$12,500** as discussed in further detail below.

I. ALLEGATIONS

The Department alleges that the Respondent violated RSA 402-J:12, I(h) by using dishonest or fraudulent practices or being untrustworthy while conducting insurance business in New Hampshire. In addition, the Department alleges that the Respondent violated RSA 402-J:12, I(d) by converting or misappropriating money while conducting insurance business. The Department also alleges that the Respondent violated RSA 402-J:12, I(g) by allegedly admitting that he falsely endorsed and cashed checks belonging to other producers for his own benefit.

II. BURDEN OF STANDARD OF PROOF

In instances, as here, where the Department seeks to revoke the license of an insurance producer, the Department carries the initial burden of going forward. In order to meet its burden, the Department must establish a prima facie case with supportive evidence for every violation. *See* Ins 204.05(b). The burden of persuasion then shifts to the Respondent "to present evidence to convince the hearing officer that the department's position should not be upheld[.]" Ins 204.05(b).

At hearings in which the Department seeks to impose administrative fines, the Department bears the overall burden of proof by a preponderance of the evidence." Ins 204.05(d). Proof by a "preponderance of the evidence" means that which "is sought to be proved is more probable than not." Ins 204.05(a).

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[1] After receiving oral motions from Attorney Bleier, with the exception of page 45 of NHID Exhibit 9, I admitted all pages of NHID Exhibits 1 through 9 into evidence at the hearing whereas each of those exhibits was relevant to the issues presented in this matter. However, NHID Exhibit 6 was admitted for the limited purpose of showing Mr. Robinson's licensing information and to show what date the letter was dated. All testimony of each of the witnesses was also accepted into evidence as it was relevant to the issues presented in this matter.

Proof by a preponderance of the evidence is the standard of proof applicable to both the Department and the Respondent. *See* Ins 204.05(c). Proof by a "preponderance of the evidence" means that which "is sought to be proved is more probable than not." Ins 204.05(a).

The Respondent did not appear at his hearing and no one appeared at the hearing on his behalf. Consequently, no evidence or argument was presented to me at the hearing that disputed any of the Department's evidence.

III. FAILURE TO APPEAR

The Respondent did not attend the hearing that was held in this matter on July 25, 2018. However, where, as here, a hearing is properly noticed, a Respondent's failure to attend a hearing does not affect its validity. RSA 400-A:19, VII.

The record reflects that the Order to Show Cause and Notice of Hearing was served upon the Respondent in accordance with RSA 400-A:18, I. Under RSA 400-A:18, I, the Department's written notice of a hearing must: (1) be provided at least ten days in advance of the hearing; (2) include the date, time and location of the hearing; and (2) specify the matters to be considered at the hearing. Under Ins 204.09(c), "[d]elivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mails, addressed to the party at the last address given to the department by the party."

In this instance, the Department's Order to Show Cause and Notice of Hearing ("Notice" or "show cause order") provided the date, time, and location of the hearing and specified the regulatory matters that would be considered at the hearing. As the Department's evidence, including the testimony of Compliance and Enforcement Unit Paralegal Carolyn Petersen establishes, the Department sent the Notice on June 12, 2018, to the Respondent by both U.S. certified mail and U.S. first-class mail (postage prepaid) to the last address the Respondent provided to the Department.[2] NHID Exhibits 1, 4. The Notice the Department sent to the Respondent by certified mail was returned to the Department by the United States Postal Service because the Respondent did not claim it. NHID Exhibit 1 at 15, 17-19. However, Ms. Petersen testified at the hearing that the Notice that was sent to the Respondent on June 12, 2018 by first class mail, postage pre-paid, was not returned to the Department. Thus, the evidence supports a finding that the Respondent received the Notice that the Department sent to him by first class U.S. Mail. *See Appeal of City of Concord*, 161 N.H. 169, 170, 173-75 (2010) (indicating that proper notice had been given and that due

[2] Ms. Petersen testified that the State Based System ("SBS") shows that 10 Crestview Circle, Londonderry, New Hampshire, is the last mailing address that the Respondent provided to the Department.

process rights were not violated where land use change tax bills were sent to a taxpayer by first-class mail and had not been returned by the postal service).

Whereas the notice the Department sent to the Respondent on June 12, 2018 by first class mail was not returned to the Department, the Department has satisfied the notice and delivery requirements set forth in RSA 400-A:18, I, and Ins 204.09(c). Thus, the validity of the hearing was not impacted by the Respondent's failure to appear at the hearing. RSA 400-A:19, VII.

Of note, is that Ms. Petersen testified at the hearing that the Department later sent additional copies Notice to: (1) the email address the Respondent last placed on file with the Department; and (2) a postal box address that American Income Life Insurance Company ("AIL") apparently used to send communications to the Respondent. NHID Exhibits 2, 3. Relative to the copy of the Notice sent to the post office box address, Ms. Petersen testified that she, unlike AIL, used the correct zip code for Londonderry, New Hampshire. NHID Exhibit 3. The Department, however, was not required to send the additional copies of the Notice to the Respondent through these methods because, as previously explained, the evidence establishes that on June 12, 2018, in conformance with Ins 204.09(c), the Department sent the Respondent the Notice by first class mail, postage prepaid, to the last address the Respondent provided to the Department. NHID Exhibit 1.

IV. FACTUAL FINDINGS

The record reveals the following relevant facts:

A. Respondent's Insurance Producer License: NHID Exhibits 4, 5, and 7 and Testimony of Joan LaCourse

New Hampshire Insurance Department Licensing Supervisor Joan LaCourse testified at the hearing regarding the New Hampshire insurance producer licensing information and address information the Department has on file for the Respondent. Her testimony on the Respondent's New Hampshire insurance producer licensing information included testimony about Department Exhibits 4, 5, 7 and the following:

The Respondent is a resident of New Hampshire. NHID Exhibit 4, p. 37. Ms. LaCourse testified that Department Exhibit 4, which is a copy of the licensing information the Department has on file for the Respondent in the State Based System ("SBS"), shows that the Department first issued an insurance producer's license to the Respondent on October 26, 2015. NHID Exhibit 4, p. 37. She testified that SBS shows that the Respondent was authorized pursuant to his resident producer license to sell life, accident and health insurance in New Hampshire. NHID Exhibit 4, p. 38. However, she testified that the

Respondent's New Hampshire producer license is currently inactive and, therefore, he currently is not authorized to sell insurance in the state.

Relative to his producer appointments, Ms. LaCourse testified that the SBS systems information shows that the Respondent had held producer appointments with AIL and Columbian Life Insurance Company ("CLIC"). NHID Exhibit 4, p. 40. Her testimony included an explanation of page 40 of Department Exhibit 4, which shows that the Respondent's appointment with AIL was terminated in early February of 2018, and that his appointment with CLIC became inactive on July 20, 2018. NHID Exhibit 4, p. 40. Ms. LaCourse testified that the Respondent's appointment with CLIC became inactive when the voluntary surrender of the Respondent's New Hampshire insurance producer license became effective on July 20, 2018.

Ms. LaCourse testified that prior to the voluntary surrender of his license that the Respondent's New Hampshire insurance producer's license, number 2329700, was set to expire on August 31, 2019. NHID Exhibit 4, p. 37. However, in July 2018, she testified that the Respondent submitted a request to the Department, dated July 19, 2018, to voluntarily surrender his New Hampshire insurance producer license. NHID Exhibit 5. She testified that the request contained the same producer license number that the Department has on file for the Respondent in the SBS system. Ms. LaCourse testified that each insurance producer in SBS has a unique insurance producer license number. In addition, she testified that the Department uses and relies upon SBS for the storage of insurance producer information. She also testified that the surrender of the Respondent's New Hampshire insurance producer license became effective on July 20, 2018. NHID Exhibit 4, p. 39a. She further testified that Department Exhibit 4 shows that the Respondent continuously held a New Hampshire insurance producer's license from October 26, 2015 until July 20, 2018 when the voluntary surrender of his producer's license became effective. NHID Exhibit 4, p. 39a.

With regard to the Respondent's address, Ms. LaCourse testified that in March of 2018, the Respondent updated his addresses, including his mailing and business addresses, with the Department by submitting an update request with the National Insurance Producer Registry ("NIPR"). NHID Exhibit 7. The mailing address the Department has on file for the Respondent is the same address that the Respondent provided to the Department through the NIPR, namely: 10 Crestview Circle, Londonderry, New Hampshire 03053. NHID Exhibits 4, 7.

B. NHID Exhibits 1, 2, and 3 and Testimony of Carolyn Petersen

Department Exhibits 1, 2, 3, and testimony of Department Compliance and Enforcement Paralegal Carolyn Petersen relate to the Department's communications to the Respondent regarding the hearing. Ms. Petersen testified that Exhibit 1 shows that on June 12, 2018

("June 12th") that the Department sent the show cause order to the Respondent by first class and certified mail to the last address that the Respondent provided to the Department. She testified that the United States postal service tracking information in Exhibit 1 shows that the copy of the show cause order that was sent to the Respondent by certified mail on June 12th was not delivered because it was not claimed. However, she also testified that the copy of the show cause order that the Department sent to the Respondent by first class mail on June 12th was not returned to the Department.

Ms. Petersen testified that Department Exhibit 2 is a copy of the email that she sent the Respondent on July 9, 2018, using the email address the Respondent placed on file with the Department. Ms. Petersen testified that the purpose of the July 9, 2018 email was to send the Respondent another copy of the show cause order. Ms. Petersen testified that she did not receive any indication that her July 9, 2018 email was not delivered. For instance, the email did not "bounce back" to her. She also did not receive any notification that the email was undeliverable.

Department Exhibit 3 is another communication that the Department sent to the Respondent concerning the hearing. Ms. Petersen testified that she mailed another copy of the show cause order to the Respondent by first class and certified mail on July 16, 2018 using a post office box address that the Department had seen on a copy of a letter that AIL addressed to the Respondent with the modification that she used the correct zip code for Londonderry. She identified that letter from which she obtained the address as the one at Department Exhibit 8.

Ms. Petersen testified that at the time of the hearing, the copy of the show cause order that the Department sent to the Respondent on July 16, 2018 by first class mail had not been returned to the Department by the United States Postal Service. She further testified that prior to the start of the hearing on July 25, 2018, she had checked the United States Postal Service's tracking information, which is available online on the United States Postal Service's website, to see whether the additional copy of the show cause order that the Department sent to the Respondent's post office box by certified mail on July 16, 2018 had been delivered. She testified that the tracking information showed that the additional copy of the show cause order the Department sent to the Respondent's post office box address had not yet been delivered.

Ms. Petersen also provided testimony at the hearing about why the Department's Compliance and Enforcement Unit opened a file on the Respondent. She testified that the Department opened a file on the Respondent after the Department received notice from AIL, a letter dated February 8, 2018, that it had terminated the Respondent. Ms. Petersen testified that a copy of that letter was the one presented at the hearing as Department Exhibit 6.

C. NHID Exhibit 6

Department Exhibit 6 is a letter, dated February 8, 2018, from American Income Life Insurance Company to the New Hampshire Insurance Department indicating that it had terminated the Respondent. Exhibit 6 was entered, per the Department's request, for the limited evidence that: (1) the letter prompted the Department's Compliance and Enforcement Unit to open a file on the Respondent; and (2) the producer license number used in the AIL letter addressed to the Respondent at Exhibit 6 is the same producer license number that the Department has on file for the Respondent.

D. NHID Exhibit 8

Department Exhibit 8 shows that by letter, dated February 2, 2018, AIL terminated its contract with the Respondent for his alleged breach of contract relative to the writing of multiple applications that AIL required to be submitted as controlled business. Exhibit 8 also explains that AIL was terminating its relationship with the Respondent because he allegedly deposited checks that did not belong to him. Ms. Petersen testified that it is from AIL's letter to the Respondent at Exhibit 8 that the Department learned that the Respondent also has a postal box address.

E. NHID Exhibit 9

At the Department's request, only pages 46, 47, and 48 of Department Exhibit 9 were admitted into evidence. Page 45 of Department Exhibit 9 was not admitted into evidence. There are copies of three different checks in Department Exhibit 9. Every check in Exhibit 9 was issued by AIL to producers who worked at the Thieme Agency for part of the same time that the Respondent worked there.

With respect to the particular checks that comprise Exhibit 9, the check at page 46 of Exhibit 9, is dated May 17, 2017, and was made payable to Tina Harris in the amount of $441.67. Kristopher Thieme, State General Agent for AIL, testified that the $441.67 check was an advanced commission check that AIL had issued to Ms. Harris. There is a second check dated May 17, 2017, in Exhibit 9 which was also made payable Tina Harris. The check, which is on page 47 of Exhibit 9, is in the amount of $60.46. Mr. Thieme testified that the $60.46 check AIL issued to Ms. Harris was a bonus check. The third check within Exhibit 9 is dated July 5, 2017. It is in the amount of $78.77 and was made payable to Jennifer Joseph. Mr. Thieme testified that the $78.77 check on page 48 of Exhibit 9 which AIL had made payable to Ms. Joseph was an advanced commission check.

F. Testimony of Kristopher Thieme

The Department called Kristopher Thieme as a witness at the hearing. Mr. Thieme provided testimony at the hearing including the following:

Mr. Thieme testified that he is the State General Agent for American Income Life Insurance Company ("AIL") as well as the owner of the Thieme Agency. As AIL's State General Agent, he runs the operations for the entire agency, which is located in New Hampshire. He took over the agency in New Hampshire in November 2015. He has been with AIL since March of 2001. Mr. Thieme's agency transacts insurance business in New Hampshire, Vermont and a portion of Maine.

Mr. Thieme has known the Respondent since September or October of 2014. Mr. Thieme met the Respondent after Mr. Thieme transferred from Arizona to Kansas City, Missouri. Mr. Thieme was the Respondent's manager at AIL in Kansas City. When Mr. Thieme transferred to New Hampshire to take over the agency, the Respondent transferred with him. In New Hampshire, the Respondent worked as the Master General Agent, or main manager, for the Thieme Agency. In that capacity, the Respondent had supervisory responsibilities and was responsible for all aspects of running the agency.

During the time period that the Respondent held the position of Master General Agent, producers Tina Harris and Jennifer Joseph worked at the agency. Both Ms. Harris and Ms. Joseph worked at the agency for a short time period. Mr. Thieme does not believe that either Ms. Harris or Ms. Joseph worked at the agency for more than thirty days. The Respondent held a supervisory position above Ms. Harris and Ms. Joseph.

Mr. Thieme also provided testimony on the subject of checks that AIL had made payable to Ms. Harris and Ms. Joseph. The copies of the three checks about which he provided testimony are in Department's Exhibit 9. NHID Exhibit 9, pp. 46-48. He identified two of the checks as commission checks and one of the checks as a bonus check. He explained that the check dated May 17, 2017 in the amount of $441.67 which AIL had made payable to Tina Harris was a commission check. He also identified a check dated July 5, 2017, which was in the amount of $78.77, and which AIL had made payable to Jennifer Joseph, as a commission check. NHID Exhibit 9, pp. 46, 48. He explained that the check dated May 17, 2017 in the amount of $60.46 which AIL had made payable to Tina Harris was a bonus check. NHID Exhibit 9, p. 47. He further testified that the checks were sent to his agency's office and were given to the Respondent by a secretary for handling due to the fact that neither Ms. Harris nor Ms. Joseph worked at the agency when the checks arrived in the mail.

He testified that he later learned from AIL's home office that it believed that the Respondent had falsely endorsed/signed over and deposited or cashed the checks that AIL had made payable to Ms. Harris and Ms. Joseph. Mr. Thieme explained that although he was initially in disbelief that the Respondent would have taken such action his opinion shifted when he viewed the handwriting on the three checks. He explained that his opinion shifted because he recognized the handwriting on each of the three checks to be the Respondent's handwriting.

Mr. Thieme testified that shortly before AIL home's office notified him of the issue with the three checks, he had received notice from AIL that the Respondent had failed to comply with AIL's procedure relative to the writing of certain policies. In particular, Mr. Thieme learned from AIL's home office that the Respondent had submitted applications for life insurance that should have been submitted to AIL in a manner that would have alerted it that the policies were for the Respondent's family members or were being paid for by the Respondent. AIL refers to such applications as controlled business. AIL informed Mr. Thieme that it had determined from information that the Respondent had placed on file with it including his emergency contact information that the certain applications should have been submitted to AIL as controlled business. Mr. Thieme explained that where applications are submitted to AIL as controlled business, AIL does not issue advanced commission or bonus checks to the producer or the producer's supervisor because controlled business applications are not eligible for the advanced commission or bonus system. He testified that a producer in a supervisory position cannot bypass the controlled business procedure by having a subordinate producer submit the application. In other words, where a producer submits an insurance application for a supervisor that the supervisor would have had to submit as controlled business, then the subordinate producer must also submit the application as controlled business.

Mr. Thieme testified that for non-controlled business that 65% of the commission is advanced to the producer and that producer may also be eligible for a bonus. With respect to advanced commission, he testified that AIL pays the commission but that his agency and AIL equally share the cost of bonus money paid to producers. Relative to controlled business, he indicated that the commission is paid to the producer on as paid basis and not upfront. He testified that he spoke with the Respondent in January of 2018 about the controlled business applications and explained that there were going to be ramifications for him. Mr. Thieme testified at the hearing that the possible ramifications being considered were demotion and removal from leadership. He testified that a couple days later his supervisor, Kevin Dunn, met with the Respondent to discuss the controlled business transactions. Mr. Thieme testified that the Respondent was provided with a strong warning regarding his failure to mark controlled business as such and was told that such future failures would result in his termination.

In relation to the checks made payable to Ms. Harris and Ms. Joseph, Mr. Thieme testified that he and Mr. Dunn met with the Respondent regarding these checks in early 2018. He testified that during that meeting that the Respondent admitted that AIL's suspicions regarding his falsely signing over/endorsing and cashing those checks were accurate. Mr. Thieme testified that AIL formally terminated its contract with the Respondent by letter dated February 2, 2018, a copy of which he identified as Department Exhibit 8. From the record, it appears that the termination of the Respondent's appointment with AIL became effective in early February 2018. NHID Exhibit 4, p. 40.

Mr. Thieme testified that under normal circumstances, Ms. Harris and Ms. Joseph would have been responsible for a debit in the amount of the checks that AIL had issued to them. He explained that this is because when an advance is made and the producer leaves a short time later that the producer becomes liable to AIL for any advance or bonus payment made to the producer due to the fact that by leaving the producer loses eligibility to receive that advance commission or bonus money. However, the producer does not usually have to pay money back to AIL because typically the advanced commission payment or bonus payment is returned to AIL's home office where AIL credits the amounts of the checks against the producer's internal account. In this instance, however, the commission checks and bonus check were not returned to AIL's home office as they should have been. Nonetheless, Mr. Thieme testified that he does not believe that AIL held Ms. Harris or Ms. Joseph liable for the debits they would have normally owed for the advance checks or bonus check in such instance due its belief that the Respondent had falsely signed over/endorsed the checks and cashed the checks it had issued to them without their knowledge.

Mr. Thieme testified, however, that his agency was out the amount of half of the bonus check that had been made payable to Ms. Harris since his agency was responsible for paying half of the bonus payment. He further testified that his agency was out half the bonus money that AIL paid to the Respondent as a supervisor of Ms. Harris and Ms. Joseph relative to those transactions because AIL supervisors are eligible for bonus money for sales made by subordinate producers. Mr. Thieme testified that the Respondent's actions were harmful to the internal operation of his business because it created trust issues. In addition, he testified that the Respondent's actions caused his agency to lose the investments it had made in getting the Respondent's team up and running.

V. LEGAL ANALYSIS

A. Fraudulent, Dishonest Practices and Untrustworthiness Allegations, RSA 402-J:12, I(h)

RSA 402-J:12, I(h) provides that "[t]he 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 . . . [u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."

As detailed above, Mr. Thieme, testified at the hearing that he believes the Respondent signed over to himself and cashed the checks AIL had made payable to Ms. Harris and Ms. Joseph without their permission. He recognized the checks at issue to be those that comprise Department Exhibit 9. Mr. Thieme testified that two of the checks at Department Exhibit 9 are commission checks and the other is a bonus check.

Mr. Thieme testified that he recognized the handwriting on each of the three checks in Exhibit 9 to be the Respondent's handwriting. Further, Mr. Thieme testified at the hearing that during a lunch meeting he and Mr. Dunn held with the Respondent regarding the checks that the Respondent admitted that AIL's suspicion that he had falsely signed over/endorsed and cashed the checks without Ms. Harris' or Ms. Joseph's knowledge was correct.

Based upon the foregoing evidence, I find that the Department has sustained its burden of persuasion with going forward on the issue of whether the Respondent's New Hampshire insurance producer license should be permanently revoked. Whereas the Respondent failed to appear for the hearing, he has not met his burden of persuasion. As detailed above, the record reflects that, in violation of RSA 402-J:12, I(h), the Respondent engaged in fraudulent, dishonest or untrustworthy conduct while engaging in the business of insurance in New Hampshire relative to his improper signing over of and taking of two commission checks and a bonus check issued to producers with whom he formerly worked at the Thieme Agency. I find, therefore, that the Respondent violated RSA 402-J:12, I(h).

With regard to the Department's request that the Respondent's New Hampshire insurance producer license be permanently revoked, this issue requires consideration of the provisions of RSA 402-J:12, I(h) and V. RSA 402-J:12, V, vests the Commissioner with the authority to enforce the provisions of and impose any penalty or remedy authorized by RSA Chapter 402-J and Title XXXVII against any person charged with violating the chapter or title even where, as here, the producer surrendered his license. RSA 402-J:12, V, provides as follows:

> The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and title XXXVII against any person who is under investigation for or charged with a violation

of this chapter or title XXXVII even if such person's license or registration has been surrendered or has lapsed by operation of law.

RSA 402-J:12, V. Further, license revocation is recognized as an action that the Commissioner may take under RSA 402-J:12, I(h). Pursuant to the authority given to the Commissioner by RSA 402-J:12, I(h) and RSA 402-J:12, V, I propose that the Respondent's New Hampshire insurance producer license be **permanently REVOKED**.

With regard to fines, for the reasons discussed herein above with respect to its burden on the issue of producer license revocation, I find that the Department has met its burden of persuasion with the regard to the assessment of a fine against the Respondent in relation to his violation of RSA 402-J:12, I(h). It is my understanding that the Department requests the maximum fine of $2,500 be imposed upon the Respondent in relation his violation of RSA 402-J:12, I(h). Given the Respondent's dishonest conduct relative to the unauthorized endorsing/signing over and taking of checks belonging to other producers, I recommend that a **fine** of **$2,500** be imposed upon the Respondent for his violation of RSA 402-J:12, I(h).

B. Misappropriation or Conversion Allegation, RSA 402-J:12, I(d)

RSA 402-J:12, I(d), provides that "[t]he 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 . . . [i]mproperly withholding, misappropriating, or converting any moneys or properties in the course of doing insurance business."

The evidence entered at the hearing in this matter establishes that the Respondent improperly withheld and misappropriated three checks that did not belong to him. In particular, the evidence establishes that the Respondent improperly withheld or misappropriated the checks at Department Exhibit 9 that AIL had made payable to Ms. Harris and Ms. Joseph. The evidence establishes that the checks at issue were: (1) a commission check and a bonus check that AIL had issued to Ms. Harris; and (2) a commission check AIL had made payable to Ms. Joseph.

Based upon the foregoing evidence, I find that the Department has sustained its burden of persuasion with going forward on the issue of whether the Respondent's New Hampshire insurance producer license should be permanently revoked. Whereas the Respondent failed to appear for the hearing, he has not met his burden of persuasion. As discussed above, the evidence establishes that the Respondent improperly withheld misappropriated or converted moneys or properties in the course of doing insurance business in New

Hampshire. For these reasons, I find that the Respondent violated RSA 402-J:12, I(d) relative to each of the three checks in Department's Exhibit 9.

Permanent revocation of the Respondent's New Hampshire insurance producer's license for the Respondent's three violations of RSA 402-J:12, I(d) is appropriate. The Commissioner's authority to take this action exists even though the Respondent voluntarily surrendered his New Hampshire insurance producer license a short while before the hearing. The Commissioner's authority to take such action is grounded in RSA 402-J:12, V, which vests the Commissioner with the authority to enforce the provisions of and impose any penalty or remedy authorized by RSA Chapter 402-J and Title XXXVII against any person charged with violating the chapter or title even where the person's license has been surrendered. RSA 402-J:12, V. Further, RSA 402-J:12, I(d), authorizes the Commissioner to revoke an insurance producer's license for violations of that statutory provision. Whereas RSA 402-J:12, V, and RSA 402-J:12, I(d) authorize the Commissioner to permanently revoke the Respondent's New Hampshire insurance producer license for each of the Respondent's three violations of RSA 402-J:12, I(d), I propose that the Respondent's New Hampshire insurance producer license be **permanently REVOKED** for his three violations of RSA 402-J:12, I(d).

Relative to fines, for the same reasons stated herein above relative to its request that the Respondent's New Hampshire insurance producer license be permanently revoked, I find that the Department has met its burden of persuasion relative to its request that fines be imposed upon the Respondent for his violations of RSA 402-J:12, I(d). The Department has requested that the maximum penalty amount of $2,500 be ordered for each of the Respondent's violations of RSA 402-J:12, I(d). Given that the evidence establishes that the Respondent misappropriated three checks that belonged to other producers, I recommend that the Respondent be fined $2,500 for each of those misappropriations. Thus, whereas the Respondent violated RSA 402-J:12, I(d), three times by misappropriating the checks AIL issued to Ms. Harris and Ms. Joseph, I recommend that the Respondent be fined a total **$7,500** for his three violations of RSA 402-J:12, I(d).

C. Fraud, RSA 402-J:12, I(g)

RSA 402-J:12, I(g), provides that "[t]he 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]aving admitted or been found to have committed any insurance unfair trade practice or fraud."

At the hearing, the testimony of Mr. Thieme indicated that during the meeting that he and Mr. Dunn held with the Respondent about the checks that the Respondent admitted to the unauthorized taking and false endorsement/signing over of: (1) the commission and bonus checks that AIL had issued to Ms. Harris; and (2) the commission check that AIL had issued to Ms. Joseph.

Given the foregoing evidence, the Department has sustained its burden of going forward on the issue of whether the Respondent's New Hampshire insurance producer license should be permanently revoked based upon a violation of RSA 402-J:12, I(g). I find that the admission that the Respondent made to Mr. Thieme relative to his taking and endorsing the checks AIL had made payable to Ms. Harris and Ms. Joseph is a violation of RSA 402-J:12, I(g). The Respondent did not attend the hearing and, therefore, failed to meet his burden of persuasion on this issue. Whereas RSA 402-J:12, V, and RSA 402-J:12, I(g) give the Commissioner the authority to permanently revoke the Respondent's New Hampshire insurance producer license even though the Respondent voluntarily surrendered it a short time before the hearing, I recommend that the Respondent's New Hampshire insurance producer license be **permanently REVOKED** for his violation of RSA 402-J:12, I(g).

With respect to a fine, I find, for the same reasons stated herein above relative to its request for permanent revocation of the Respondent's producer license, that the Department has met it burden with respect to its request that a fine be imposed upon the Respondent. The Department requests that the maximum fine in the amount of $2,500 be imposed upon the Respondent for his violation of RSA 402-J:12, I(g). Given the concerning nature of this violation, I find that the imposition of the maximum fine in the amount of $2,500 is appropriate. Therefore, I propose that the Commissioner impose a **fine** in the amount of **$2,500** upon the Respondent for his violation of RSA 402-J:12, I(g).

VI. CONCLUSION AND RECOMMENDATIONS

In conclusion, for the reasons discussed herein above, I propose that the Respondent's New Hampshire insurance producer license be **permanently REVOKED** for the violations of New Hampshire insurance law specified above. In addition, I propose that a fine totaling **$12,500** be imposed upon the Respondent for the violations of New Hampshire insurance law discussed in this Proposed Decision and Order.

Date: 9/27/18

Emily Doherty, Hearing Officer