

STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In re: Surplex Underwriters of New Hampshire Inc.

Docket No.: INS No. 19-008-EP

ORDER TO SHOW CAUSE
AND
NOTICE OF HEARING

The New Hampshire Insurance Department ("NHID") orders Surplex Underwriters of New Hampshire Inc. (the Respondent) to show cause why the New Hampshire Insurance Commissioner should not revoke their New Hampshire business entity license, or levy an administrative fine, or both. In support of the Order to Show Cause and pursuant to NH RSAs 541-A:31, 400-A:17 *et seq.*, and CHAPTER Ins 200, the NHID states as follows:

STATEMENT OF FACTS

1. Surplex Underwriters of New Hampshire Inc. ("Surplex") is a licensed non-resident business entity. The entity was first licensed in New Hampshire on June 15, 2001 and its current license is set to expire on May 31, 2020. The entity is licensed to sell Property & Casualty and Surplus Lines insurance products.
2. Denise N. Joy ("Ms. Joy") is a non-resident New Hampshire insurance producer licensed to sell Property & Casualty and Surplus Lines insurance. She was first licensed on June 15, 2001 and her license is currently set to expire on July 31, 2020.
3. At all relevant times Ms. Joy has been the NHID's point of contact for all tax business concerning Surplex, and is currently listed on tax documents on file with the NHID as the company's Vice President.

4. Per NH RSA 405-29 I, Annual Statement; Tax, Surplex was required to file an annual tax statement no later than January 31, 2019. Failure to file by the deadline results in fine penalty equal to 10 percent of the tax due.
5. On February 5, 2019 Ms. Joy filed Surplex's 2018 annual tax statement, along with a payment for the remaining tax due for the year.
6. On February 14, 2019, Norma Stallings ("Ms. Stallings") from the NHID Tax Division emailed Ms. Joy notifying her of the late filing and invoicing Surplex a 10 percent late payment penalty. This fine was to be paid to the NHID no later than February 28th, 2019.
7. Having received no payment or response to the first invoice, on March 13, 2019 Ms. Stallings emailed Ms. Joy a second notice and informed her that if Surplex's penalty payment was not received by March 29, 2019 that regulatory action may be initiated. That same day Ms. Joy responded to Ms. Stallings' email and stated that Surplex has experienced a system crash that was under review. Ms. Joy also informed Ms. Stallings she would respond back to her during the week.
8. The NHID did not receive any further communications from either Ms. Joy or Surplex, nor was the penalty paid by March 29th as had been instructed.
9. On April 11, 2019 Ms. Stallings emailed Ms. Joy a final invoice, again attempting to secure payment of the tax penalty. This invoice indicated that if payment was not received by April 26th, 2019 than the matter would be referred to the NHID's Enforcement Division.
10. Again, no payment was received, nor has there been any further communication from Surplex or Ms. Joy.
11. Presently there is an outstanding penalty fee due from Surplex in the amount of \$1,668.68 which has not been paid to the NHID.

12. Surplex has had a history of filing its annual statements beyond the January 31st deadline.

For example, in 2017 Surplex did not file its calendar year 2016 annual statement until August 31, 2017 and in 2016 they did not file their calendar year 2015 annual statement until March 16, 2016. In both instances Surplex was assessed the 10 percent penalty for not complying with statutory deadlines.

13. NH RSA 405:25, Monthly Statements, also requires that Surplex "(s)hall, on or before the tenth day of each month, execute and file with the commissioner, a statement under oath covering all insurance policies and contracts of insurance or suretyship procured by him under his said license during the calendar month next preceding, giving the name of the company issuing each of said policies, the name and residence of the insured and the amount, term and premium of each policy and contract and the kind of property or risk insured thereby, and that he was unable to procure in companies admitted to do business in the state the amount of insurance necessary to protect said property or risk."

14. Surplex historically files these monthly statements with the NHID late or not at all. In 2016 and 2017 Surplex was late in filing its monthly statements for all twenty-four months that they were due. Surplex has also failed to file any monthly statements for 2018 and 2019.

STATEMENT OF ISSUES

15. Whether the Respondent has violated NH RSA 405:25 by routinely failing to file monthly statements on or before the tenth day of each month. Each month that Surplex failed to file a statement, or is late filing its statement, constitutes a separate insurance law violation.

16. Whether the Respondent violated NH RSA 405:29 I by not filing an annual tax statement by January 31st for the years 2016, 2017 and 2019.

17. Whether the Respondent violated NH RSA 405:29 II for failing to remit payment for the outstanding penalty fee.

18. Whether the Respondent violated NH RSA 402-J:12, I(b) by failing to comply with New Hampshire insurance laws RSAs 405:25, 405:29 I and 405:29 II.
19. Whether the Respondent has violated NH RSA 402-J:12, I(h) by demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business as evidenced by their repeated failure to comply with the requirements of NH RSA 405:25 and 405:29 I.
20. The NHID reserves the right to amend this statement of issues upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

INSURANCE LAWS VIOLATED BY RESPONDENT

21. The NHID maintains the Respondent violated the following New Hampshire insurance law statutes: NH RSAs 405:25, 405:29 I & II, 402-J:12 I(b) & (h).
22. The NHID maintains that the Commissioner has the authority to revoke the Respondent's New Hampshire insurance business entity license pursuant to NH RSAs 400-A:15, III, and 402-J:12, I(b); 402-J:12, I(h); and 405:31.
23. The NHID maintains that the Commissioner has the authority to levy a monetary penalty in accordance with RSAs 400-A:15, III and 405:31, respectively, for each violation of RSAs 402-J:12, I(b); 402-J:12, I(h); 405:25, 405:29 I and 405:29 II.
24. The NHID reserves the right to amend this list of insurance laws violated by the Respondent upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

PENALTY REQUESTED

25. In the event that the Hearing Officer determines after evidentiary hearing that the NHID sustained its burden of proof with respect to the allegations of fact and violations of law

outlined above, the NHID requests that the Hearing Officer impose the following sanctions on the Respondent:

- a. Order permanent revocation of the Respondent' New Hampshire non-resident insurance business entity license; and
- b. Order the Respondent to pay a fine in an amount not to exceed \$2,500 per violation.

NOTICE OF HEARING

A. Pursuant to NH RSA 541-A:31, 400-A:17 *et seq.* and Ins Part 200, the hearing in this matter shall commence on July 17, 2019 at 10:00 a.m. at the offices of the Department, which are located at 21 South Fruit Street, Suite 14 in Concord, New Hampshire.

B. Michelle Heaton shall preside as the Hearing Officer in this matter. Sandra Barlow shall serve as clerk to the Hearing Officer. The parties shall direct all communications to Ms. Barlow, whose contact information is:

Sandra Barlow, Clerk
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
Tel: (603) 271-2261
Fax: (603)271-1406
Email: sandra.barlow@ins.nh.gov

C. The Respondent has the right to be represented by a lawyer in this proceeding. However, the Respondent shall bear the cost of retaining said lawyer. Should the Respondent elect to retain a lawyer, their lawyer shall file a Notice of Appearance with Ms. Barlow, and said lawyer should do so at the earliest possible date. A copy of the Department's Notice of Appearance is enclosed with this Order.

D. Any party may request a transcript of the proceeding. The party requesting a transcript of the proceeding shall file a written request for a certified court reporter with the Hearing

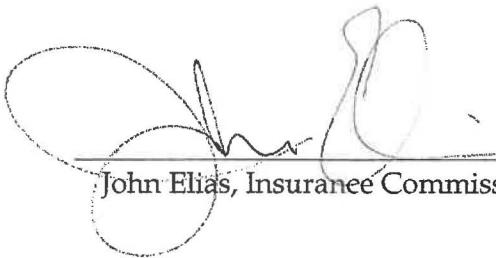
Officer at least 10 days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.

E. Mary C. Bleier, Esq. shall serve as staff advocate representing the interests of the NHID.

It is **SO ORDERED**.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 06/05/19



John Elias, Insurance Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Order to Show Cause and Notice of Hearing was sent this date by first-class mail, postage prepaid, and by certified mail, return receipt requested, to Surplex Underwriters of New Hampshire Inc. at PO Box 998, Portland, ME 04104 and PO Box 105, Westbrook, ME 04098, both mailing addresses maintained on file with the Department.

Date: 6/05/19



Mary Bleier, Esq.
Enforcement Counsel