

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

FINAL ORDER on HEARING

In Re: Dane C. Dowell, III

Docket No.: INS No. 14-038-EP

I. Pursuant to the provisions of INS 204.26(a)(4), the Proposed Decision and Order for Default Judgment issued on **March 5, 2015** by **Hearing Officer James Fox**, in its entirety and without any modifications, is hereby ACCEPTED as a FINAL ORDER and DECISION.

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

SO ORDERED.

4-20-15
Date



Roger A. Sevigny, Commissioner

THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In Re: Dane C. Dowell, III

14-038-EP

PROPOSED DECISION AND ORDER

The New Hampshire Insurance Department (“the department”) issued a show cause order to Dane C. Dowell, III (“the respondent”) on December 31, 2015. The respondent was ordered to show cause why the department should not suspend or revoke his resident insurance producer’s license. A hearing was held on this matter on February 4, 2015. The department was represented at the hearing by Staff Advocate Richard McCaffrey. The respondent did not attend. The hearings officer proposes that the respondent’s license be **REVOKED** and that a fine be levied in the amount of **\$3,400**.

I. Allegations.

The department alleges that the respondent violated: (1) RSA 402-J:17, I four times by failing to report administrative actions to the department that occurred on December 12, 2012, June 17, 2013, February 27, 2013, and September 4, 2013; (2) RSA 402-J:12, I(a) by providing incorrect, misleading or materially untrue information on an April 29, 2013 insurance department application; and (3) RSA 402-J:12, I(h) by conduct that demonstrates dishonest practices or incompetence, untrustworthiness or financial irresponsibly in the conduct of business in New Hampshire or elsewhere.

II. Failure to Appear.

As noted above, the respondent did not attend the hearing. The record in this matter demonstrates that the defendant was properly noticed as required by RSA 402-A:18 and that notice was properly delivered pursuant to Ins. 204.09. As such, the respondent received legal notice of the hearing and the hearing proceeded in his absence as permitted by RSA 400-A:19, VII (stating that the

validity of any hearing held in accordance with the notice thereof . . . shall not be affected by the failure of any person to attend or remain in attendance).

III. Factual Background.

The record reveals the following relevant facts. On December 26, 2012, the Massachusetts Supreme Judicial Court (SJC) suspended the respondent's Massachusetts law license. In suspending the respondent, the SJC ruled that the respondent had violated Massachusetts ethics rules related to competence and diligence with respect to two of his criminal-case clients. More specifically, the respondent failed to comply with court orders, failed to keep his clients reasonably informed, failed to respond to requests for information, abandoned his clients without giving them the opportunity to find new counsel, improperly retained unearned fees, and failed to take other steps to protect his clients. The respondent also initially failed to cooperate with the Massachusetts bar counsel's investigation. The respondent ultimately did respond to bar counsel and the matters were resolved by the respondent agreeing to the one year suspension.

On January 14, 2013, the United States District Court for the District of Massachusetts (USDCDM) issued a show cause order, ordering the respondent to show cause why it should not impose the identical disciplinary action that was imposed by the SJC. The respondent did not respond to the show cause order. On February 27, 2013, the USDCDM imposed the identical discipline that was imposed by the SJC.

From April 2012 to January 2013, the respondent represented a client in a criminal matter pending in a Maryland state court. The respondent was not a member of the Maryland Bar. As such, the respondent sought and was granted *pro hac vice* admission to the Maryland state court, representing that he was in a member in good standing of the Massachusetts bar. As detailed above, the respondent was in fact not a member in good standing with the Massachusetts Bar while representing to the Maryland court that he was.

As to the Maryland state matter, the respondent was paid fees totaling \$16,500 but performed little to no work on the case and failed to reply to his client's requests for information and failed to return unearned fees. These ethics

infractions were similar to the infractions that resulted in the respondent being suspended in Massachusetts. As a result of his conduct in Maryland, the respondent offered his resignation from the Massachusetts bar to the Massachusetts Board of Bar Overseers. Upon recommendation from the board, the resignation was ultimately accepted by the SJC on June 14, 2013.

On April 29, 2013, the respondent submitted an application to renew his New Hampshire producer's license. As part of the application process, the respondent answered a limited number of background questions. One of the questions asked the respondent: "Have you been named or involved as a party in an administrative proceeding . . . regarding any professional or occupational license or registration, which has not been previously reported to this insurance department?" The respondent answered the question in the negative. The application informed the respondent that he was certifying "that, under penalty of perjury, all the information submitted in th[e] application . . . [wa]s true and complete." The respondent further attested that he was "aware that submitting false information or omitting pertinent or material information in connection with th[e] application [would be] grounds for license revocation . . . and may subject [the respondent] to civil fines" The application was approved on April 29, 2013 and the respondent's renewal license became effective on May 1, 2013 and is set to run through April 30, 2015.

On September 4, 2013, the USDCDM issued a notice of filing of disciplinary action to the respondent, stating that the USDCDM had received a certified copy of the SJC judgment order accepting the respondent's resignation. The USDCDM issued a show cause order asking the respondent to show cause why it should not disbar the respondent based upon the SJC judgment order. The respondent was constructively served with the notice but not actually served as he failed to update his address with the USDCDM as required by court rule. The USDCDM disbarred the respondent on October 17, 2013.

IV. Burden and Standard of Proof.

A. Standard for Revocation and Suspension of a License.

The department bears the initial burden of going forward by establishing a prima facie case of a violation. The respondent then bears the burden of persuasion to present evidence that the department's position should not be upheld. The standard of proof for both the department and the respondent is proof by a preponderance of the evidence, which means that what is sought to be provided by the evidence is more probable than not.

B. Administrative Fines.

The department bears the overall burden of proof. The standard of proof is, again as detailed in Section II(A), proof by a preponderance of the evidence.

V. Legal Analysis.

A. RSA 402-J:17, I Allegations.

RSA 402-J:17, I provides that “[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.” *Id.*

The facts demonstrate that the respondent had four governmental administrative proceedings against him in Massachusetts. More specifically, the respondent had two Massachusetts state court administrative actions as to his Massachusetts law license (December 2012 and June 2013) and two related Massachusetts federal court administrative actions as to his license (February 2013 and September 2013). The facts are devoid of any indication that the respondent ever reported any of these actions to the department as required by RSA 402-J:17. The hearings officer finds that the respondent failed to report any of these administrative actions to the department which results in a ruling that the respondent violated RSA 402-J:17, I four times.

The hearings officer finds and rules that the staff advocate has met the department's burden of going forward as to whether the respondent's producer's license should be **REVOKED** based upon each violation of RSA 402-J:17, I.

Having not appeared, the respondent failed to meet his burden of persuasion. The hearings officer further finds that the staff advocate has met the department's burden as to the fine issue and the hearings officer proposes that the respondent be fined \$100 for each RSA 402-J:17, I violation for total of **\$400**.

B. RSA 402-J:12, I(a) Allegation.

RSA 402-J:12 provides that 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." *Id.*

The respondent filed an application for renewal of his New Hampshire producer's license on April 29, 2013. Though specifically asked to acknowledge administrative proceedings against any professional license which would include the December 2012 state action and the February 2013 federal action, the respondent indicated that there had been no such actions. Considering the time frames involved, the only logical conclusion, based upon the facts, for this failure is that the respondent was willfully lying to the department for purposes of misleading the department as to material information.

The hearings officer finds and rules that the staff advocate has met the department's burden of going forward to the alleged RSA 402-J:12 violation. Having not appeared, the respondent failed to meet his burden of persuasion. The hearings officer proposes that the respondent's producer license be **REVOKED** for this violation. The hearings officer further finds that the staff advocate has met the department's burden as to the fine issue and the hearings officer proposes that the respondent be fined **\$500** based upon the willful nature of the misleading nature of the omitted information.

C. RSA 402-J:12, I(h) Allegation.

RSA 402-J:12, I(h) provides that 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.” *Id.*

The respondent used dishonest and fraudulent practices when he applied for *pro hac vice* admission to the Maryland state court for the simple fact that he was in fact not a member in good standing of the Massachusetts bar. The respondent was willing to engage in such deceit only one month after being suspended from the Massachusetts bar. His conduct with respect to all three of the criminal cases raises grave concerns of his fitness to protect the interests of consumers as the facts indicate that he is willing to engage in severely dishonest practices and to perform little to no work on client matters even when a client’s liberty interests is at stake. He would surely not view such matters as a client’s insurance coverage and financial position as much of a reason not to engage in fraudulent and dishonest practices if a client’s exposure to incarceration does not deter him from dishonest and fraudulent practices.

The respondent was also dishonest with the department when he made the above misrepresentations on his application to renew his New Hampshire producer license.

The respondent’s financial dealings with his clients that led to the Massachusetts state and federal disciplinary actions further demonstrates that the respondent is untrustworthy in the conduct of business and financially irresponsible as he accepted money from his clients, performed little to no work, and failed to return unearned fees. The failure to return unearned fees is particularly egregious in all three instances in that it must have had a detrimental effect on the accused individuals’ ability to secure alternative counsel.

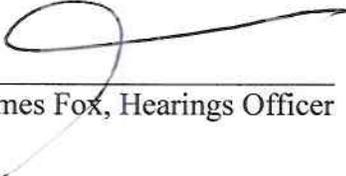
The hearings officer finds and rules that the staff advocate has met the department’s burden of going forward as to the alleged RSA 402-J:12 violation. The record more than shows that the respondent’s license should be **REVOKED** which is the hearings officer’s proposed sanction. The respondent failed to meet his burden of persuasion as he failed to appear to present a defense. The hearings

officer further finds that the staff advocate has met the department's burden as to whether a fine should be levied. Based upon the egregious nature of the above detailed facts, the hearings officer proposes that that the respondent be fined the maximum **\$2,500** for this violation.

VI. Conclusion.

Based upon the forgoing, the hearings officer proposes that the respondent's producer's license be permanently **REVOKED** as a result of each of the above-detailed violations and that a total fine be levied in the total amount of **\$3,400** based upon the total fine amount for all the violations.

Dated: March 5, 2015



James Fox, Hearings Officer