

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

FINAL ORDER on HEARING

In Re: Norman J. Michaels, Jr.

Docket No.: INS No. 14-039-EP

I. Pursuant to the provisions of INS 204.26(a)(4), the Proposed Decision and Order for Default Judgment issued on **April 14, 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.

6-10-15
Date



Roger A. Sevigny, Commissioner

THE STATE OF NEW HAMPSHIRE INSURANCE DEPARTMENT

In Re: Norman J. Michaels, Jr.

14-039-EP

PROPOSED DECISION AND ORDER

The New Hampshire Insurance Department (“the department”) issued a show cause order to Norman J. Michaels, Jr. (“the respondent”) on January 15, 2015. The respondent was ordered to show cause why the department should not suspend or revoke his nonresident insurance producer’s license, issue a fine, or both. A hearing was held on this matter on February 25, 2015. The hearing was held open until March 12, 2015 to permit for the submission of a legal memorandum on the issue of penalties. The department was represented at the hearing by Donald Belanger. The respondent did not attend. The hearings officer proposes that the respondent’s license be **PERMANENTLY REVOKED** and that a fine be levied in the amount of **750 dollars**.

I. Allegations.

The department alleges that the respondent violated: (1) RSA 402-J:12, I (f) based upon certain New York felony convictions; (2) RSA 402-J:12, I (i) based upon a Kentucky license revocation; (3) RSA 402-J:17, I based upon a failure to report two administrative actions; and (4) RSA 402-J:12, I (h) based upon a claim that he the first three allegations warrant a cumulative finding of untrustworthiness in the conduct of business.

II. Failure to Appear.

As noted above, the respondent did not attend the hearing. The record in this matter demonstrates that the respondent 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. 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. The respondent was a New Hampshire nonresident insurance producer. He was licensed to sell life insurance, accident insurance and health insurance. His license expired on June 30, 2014¹.

A. New York Felony Convictions.

A New York felony complaint was filed against the respondent on April 2, 2013 in the City Court of Oneonta, New York, charging the respondent with stealing the property from Mohawk Valley Physicians Healthcare (MVP) in the form of illegally obtained commissions. The complaint provides that the respondent illegally obtained the commissions by submitting hundreds of health insurance applications for individuals that he knew were not qualified for the insurance. The illegal commissions totaled \$62,423.00. Based upon these allegations, the respondent was convicted of the felonies of Grand Larceny and Scheme to Defraud on May 16, 2014. He was sentenced to 180 days of incarceration and received a fine of \$5,000. The respondent disclosed the pending criminal complaint to the National Insurance Producer Registry on June 20, 2013. The respondent did not disclose the convictions to the department as of the date of the hearing on this matter.

B. Revocations and Surrenders.

On July 9, 2013, the Department of Insurance for the Commonwealth of Kentucky issued an Order of Revocation, revoking the respondent's Kentucky nonresident license based upon: (1) the above detailed New York criminal convictions; (2) providing untrue information on a Kentucky producer

¹ RSA 402-J:12 provides that the department retains the authority to enforce any penalty or remedy under RSA 402-J even against an individual who has surrendered her or his license or whose license has lapsed by operation of law. Thus, the fact that the respondent's license lapsed as matter of law does not affect the department's ability to impose any of the penalties and remedies available under the applicable law as detailed in RSA 401-J:12, V.

application; and (3) demonstrating dishonesty and untrustworthiness in business. The respondent did not report the Kentucky revocation to the department.

On June 10, 2014, the respondent requested that he be allowed to surrender his Ohio insurance producer license. The Department of Insurance for the State of Ohio granted the request and the respondent was put on inactive status as of June 24, 2014. The respondent did not report this matter to the department.

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 IV(A), proof by a preponderance of the evidence.

V. Legal Analysis and Discussion.

A. RSA 402-J:12, I (f) Allegations.

RSA 402-J:12, I (f) provides that the department "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 . . . [h]aving been convicted of a felony." *Id.* The respondent was convicted of two felonies as detailed above. The convictions center upon the respondent's submitting fraudulent applications to MVP which resulted in the respondent obtaining thousands of dollars in commissions to which he was not entitled. Based upon the egregious nature of the offenses, the fact that they

involved insurance transactions, and that they demonstrated that the respondent is not trustworthy, the hearings officer proposes a penalty of **PERMANENT REVOCATION** and a fine of **500 dollars**.

B. RSA 402-J:12, I (i) Allegations.

RSA 402-J:12, I (i) provides that the department “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 . . . [h]aving an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.” *Id.* The respondent’s Kentucky nonresident producer license was revoked by Kentucky. The revocation was based upon the above-detailed New York conviction. Based upon the reasoning in the Kentucky order and the egregious nature of the insurance related New York convictions, the hearings officer proposes a penalty of **PERMANENT REVOCATION**. The hearings officer does not propose a fine as to the Kentucky revocation because the revocation was based upon the New York convictions and the fine in Section V, Subsection A for those convictions is sufficient in terms of a monetary penalty.

C. 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 Kentucky action was taken against the respondent in July 2013 and the Ohio action in June of 2014. The record is devoid of any basis for the respondent to have failed to report these actions. Based upon the lack of any explanation as to a basis for the failure to report and, again, the egregious nature of the New York convictions, the hearings officer proposes a penalty of **PERMANENT REVOCATION**. The hearings officer proposes a fine of **250 dollars** for failing to report.

D. RSA 402-J:12, I (h) Allegations.

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 facts of this case demonstrate that the respondent engaged in theft by deception that resulted the respondent stealing 62,000 dollars from MVP. This is obviously a fraudulent and dishonest practice and demonstrates that the respondent is untrustworthy in the conduct of business. Based upon the egregious nature of this theft and the fact that it was an insurance related theft, the hearings officer proposes a penalty of **PERMANENT REVOCATION**. The hearings officer does not propose any additional fine based upon the RSA 402-J:12(h) violation.

VI. Conclusion.

Based upon the forgoing, the hearings officer proposes that the respondent’s producer’s license be **PERMANENTLY REVOKED** based upon each of the above rulings and that a total fine of **750 dollars** be imposed.

Dated: April 14, 2015



James Fox, Hearings Officer