

STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In re: Dennis Joseph Allen

Docket No.: INS No. 17-002-EP

NHID'S OBJECTION TO THE RESPONDENT'S MOTION TO REOPEN THE RECORD OR, ALTERNATIVELY, MOTION FOR HEARING ON ADMISSIBILITY OF PROPOSED EVIDENCE

The New Hampshire Insurance Department ("NHID") respectfully object's to the Motion to Reopen the Record submitted by the Respondent, Dennis Joseph Allen (the "Respondent"). In support of this OBJECTION, the NHID states as follows:

- 1.) On March 23, 2017, after an administrative hearing, the NHID Enforcement Unit, pursuant to RSA 400-A:16, sent the Respondent a document request requiring him to produce the following by April 6, 2017:
 - a. Carbon copies of all four checks allegedly written to the New Hampshire Insurance Department; and
 - b. A record of the Respondent's out-going telephone calls between November 2016 until January 2017.
- 2.) On April 5, 2017 the NHID Enforcement Unit received carbon copies of the four checks the Respondent purportedly sent to the NHID. Also included were several other carbon copies that the Respondent claims demonstrate his habit of writing checks out of sequence. No phone records were received.

- 3.) Along with sending this information to the Enforcement Unit, the Respondent also sent this information to Sarah Prescott, who is serving as the clerk in this matter.
- 4.) After reviewing the information provided by the Respondent, the Enforcement Unit, on April 5, 2017, sent a subsequent information request requiring the Respondent to produce bank records from the account from which the checks were allegedly written. These documents are due to the NHID Enforcement Unit on April 20, 2017. This information was received, indirectly, by an email forwarded from Sarah Prescott on April 14, 2017.
- 5.) At the March 23, 2017 administrative hearing the Respondent testified that he sent a total of four checks to the NHID, only two of which were received.
- 6.) The Respondent further testified that he sent the first check to the NHID prior to the December 6, 2016 deadline and the second check after a phone conversation he had with Enforcement Paralegal, Carolyn Petersen, on December 12, 2016.
- 7.) Carolyn Petersen testified at the hearing that the phone conversations alleged to have occurred between her and the Respondent, did not, in fact, ever take place.
- 8.) The Respondent's credibility in this matter is paramount. His testimony regarding the two phone conversations between himself and Ms. Petersen and his testimony that he sent two checks to the NHID in December of 2016 cannot be independently verified. In fact, the testimony provided at the hearing directly contradicts his version of events.

- 9.) The rules of evidence do not apply to administrative hearings. Instead, “(a)ny oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence.” *NH RSA 541-A:33*. Further, *Ins. 204.20 (a)* only permits for the reopening of the record “to receive relevant, material and non-duplicative testimony, evidence, arguments or exhibits not previously received” (emphasis added).
- 10.) Generally, “(e)vidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence; evidence that is not relevant is inadmissible.” *State v. Walsh*, 139 N.H. 435, 436 (1995), quoting *N.H. R. Ev.* 401 & 402.
- 11.) Here, carbon copies of checks 104, 105, 106, 108 are clearly irrelevant as these documents do not establish any evidence that the Respondent sent his fine payment to the NHID prior to the deadline. Further, an analysis of carbon copy 105 demonstrates that it is merely a fainter duplicate of 104. Inexplicably, neither of these two particular checks are confirmed within the bank records. Thus, pursuant to *NH RSA 541-A:33 II* and *Ins. 204.20 (a)* these documents should be not used as a basis for reopening the record.
- 12.) Similarly, carbon copy of check 102, which appears to be voided a check made out the “Treasurer of NH,” while curious, is both irrelevant and immaterial as it offers no evidence other than purportedly being a carbon copy of a voided check. The original check which this carbon copy supposedly represents is absent from

the bank records. Again, pursuant to *NH RSA 541-A:33 II* and *Ins. 204.20 (a)* this document cannot be not used as a basis for reopening the record.

- 13.) Carbon copies of checks 103 and 107 are also inadmissible as being unduly repetitious under *NH RSA 541-A:33 II* and *Ins. 204.20 (a)*. Photocopies of the original checks are already part of the record as Exhibits 8 and 10, respectfully.
- 14.) It is assumed that the Respondent wishes to submit copies of checks number 194 and 195 as evidence that he submitted two checks to the NHID in December of 2016. Information regarding the original checks has not been provided and the bank records do not include any evidence that these checks were ever cashed by the State of New Hampshire or that a “stop payment” was ever placed on them.
- 15.) It was the Respondent’s testimony that the likely reason the NHID never received the first two checks was most likely due to an ongoing feud between himself and his postman. No independent information was provided to substantiate the Respondent’s claim that his postman committed mail theft.¹
- 16.) Under the New Hampshire Rules of Evidence, in addition to being relevant, documents received into evidence must also be authenticated and identified pursuant to *N.H. R. Ev. 901*. As the Rules of Evidence are inapplicable to administrative hearings, there are limited means of excluding manufactured or forged documents into evidence. However, the NHID maintains that documents which have been manufactured are irrelevant and thus excludable.

¹ See 18 U.S. Code § 1708 - Theft or receipt of stolen mail matter generally. Punishment under this section can include a fine and up to 5 years imprisonment.

- 17.) It cannot be ignored that the Respondent has an overwhelming motive and incentive to fabricate testimony. In addition to the possibility of losing his New Hampshire insurance producer license and incurring fines, he also has a suspended six month House of Correction sentence which could be imposed if he commits another criminal offense. At the hearing, the undersigned attorney accused the Respondent of committing perjury and informed him that if convicted of a criminal offense that his suspended sentence may be imposed.
- 18.) The Respondent's motive to fabricate, coupled with his convoluted and inconsistent testimony, should, in itself bar admission of checks 194 and 195 into evidence or being used as the basis to reopen the record.
- 19.) The Respondent is apparently also seeking to introduce copies of "bank records" and "bank statements" into evidence. Again, these documents are irrelevant as they do not establish any evidence that the Respondent sent his fine payment to the NHID prior to the deadline and thus cannot be used to reopen the record pursuant to *NH RSA 541-A:33 II* and *Ins. 204.20 (a)*.
- 20.) However, should the hearing officer be inclined to reopen the record to admit the carbon copies of the checks or the bank records into evidence, the NHID requests a hearing to cross-examine the Respondent regarding the veracity of documents.
- 21.) As provided within the Administrative Procedure Act regarding the admission of evidence, "a party may conduct cross-examinations required for a full and true disclosure of the facts." *NH RSA 541-A:33 IV*. Here, the NHID is entitled to

question the Respondent regarding the authenticity of documents he intends to introduce was evidence.

WHEREFORE the New Hampshire Insurance Department respectfully requests that the hearing officer:

- A. Deny the Respondents Motion to Reopen the Record; or
- B. Hold a hearing on the admissibility of the documents or information the Respondent seeks to be admitted into evidence;
and
- C. Grant such further relief as may be just.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 4/18/2017



Mary C. Bleier
NH Bar # 19522
Deputy Enforcement Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Objection was sent this date electronically and by first-class mail, postage prepaid, to Dennis Joseph Allen at 95 Pigeon Drive, Farmington, NH 03835 this being the mailing address on file with the Department.

Date: 4/18/2017



Mary C. Bleier, Esq.