

**State of New Hampshire
Insurance Department**

**Docket No.: INS 22-048-EP
Appeal of Kim Diane Hayes Butler**

Motion for Reconsideration

September 22, 2022

The above-referenced matter was docketed for hearing before Steven M. Notinger, Esq. (in his role as the New Hampshire Insurance Department's (the "Department") appointed Hearing Officer) and initially scheduled for hearing by him for October 4, 2022 at 1 p.m.

WHEREAS, Mr. Notinger was appointed to act as hearing officer by the Insurance Commissioner;

WHEREAS, based upon ongoing discussions with the Department's enforcement counsel, counsel for Ms. Butler filed an Assented to Motion to Postpone Hearing Date/Stay Appeal (the "Motion") on September 20th;

WHEREAS, enforcement counsel for the Department assented to the Motion;

WHEREAS, the Hearing Officer, Steven Notinger, DENIED the Motion, in writing, without hearing;

WHEREAS, Ins. 2006.06 (a) states that a hearing officer shall, for good cause...upon request...postpone the time and date set for any hearing;

WHEREAS, Ins. 200.06(c) provides that "good cause" shall include the likelihood that the hearing will not be necessary because the parties anticipate settlement, or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly;

WHEREAS, counsel for Ms. Butler believes that the Motion cited adequate good cause.

WHEREAS, counsel for Ms. Butler has no reason not to believe that enforcement counsel for the Department also determined that good cause existed;

WHEREAS, if the hearing officer still has doubts about the bona fides of the stipulations made by counsel for Ms. Butler and the Department, the proper course would be for him to schedule a pre-hearing conference with counsel;

WHEREAS, there is no New Hampshire law or regulation that requires that a hearing by the New Hampshire Insurance Department be held within a certain number of days of the Notice of Appeal;

WHEREAS, Texas is Ms. Butler's state of residence, and it is reasonable to permit the Texas Department of Insurance to proceed on the merits first.

WHEREAS, the status of this matter, if stayed, is that Ms. Butler will not hold a New Hampshire non-resident insurance producer license. As a result, there cannot be any harm to New Hampshire consumers from granting the relief requested by counsel for Ms. Butler and the Department;

WHEREAS, Ins. 203.01 (d) provides that a hearing officer shall, as necessary (2) facilitate an informal resolution of an appeal;

WHEREAS, Ins. 207.01 (a) provides that settlements between the parties shall be encouraged in accordance with RSA 541-A:38;

WHEREAS, Ins. 206.01 provides that in any adjudicative proceeding before the Department, all motions, requests and actions shall be conducted pursuant to RSA 541-A:31-38;

WHEREAS, RSA 541-A:31 V (a) provides that, unless precluded by law, informal disposition may be made of any contested case by stipulation.

WHEREAS, an assented to motion essentially sets forth stipulations agreed upon by the parties. In this case, the Department is represented by Attorney Hilliard and Ms. Butler is represented by myself; and we constitute the parties.

WHEREAS, RSA 541-A:38 provides that, except to the extent precluded by law, informal settlement of matters by non-adjudicative processes is encouraged.

WHEREAS, in counsel's lengthy experience, a Department hearing officer has never denied an assented to motion for a stay/continuance in an adjudicative proceeding at the Department.

WHEREAS, Ms. Butler's ability to proceed will be impaired by the rigid adherence to the Hearing Officer's initially scheduled date for hearing, which was set without consultation with the parties.

NOW THEREFORE, Ms. Butler HEREBY Moves for Reconsideration by Mr. Notinger. If Mr. Notinger continues to deny the assented-to relief that has been sought, legal counsel for Ms. Butler will treat that as a final order by Mr. Notinger, and he will seek reconsideration of this final order by the Insurance Commissioner. RSA 541-A:35 provides that a final order adverse to a party in a contested party shall be in writing and shall include findings of fact and conclusions of law, separately stated. The DENIAL ORDER meets these tests, and the conduct of the hearing on October 4th will cause Ms. Butler irreparable harm to her ability to present a full case on the merits.

Accordingly, the undersigned counsel hereby respectfully requests that the Hearing Officer postpone the Department's hearing with respect to the above-referenced matter and stay Ms. Butler's appeal, without prejudice, to a date and time that is no earlier than thirty (30) days following the final determination by the Texas Department with respect to the Texas License.

Alternatively, the undersigned counsel hereby respectfully requests that the Hearing Officer postpone the hearing for a reasonable period of time and schedule a pre-hearing conference to discuss the request for a stay.



Steven J. Lauwers, Esq.
Legal Counsel for Kim Butler

DO NOT OPPOSE:



Joshua Hilliard, Esq.
Enforcement Counsel
New Hampshire Department of Insurance

REQUESTED ORDER

The above Motion to Reconsider is hereby GRANTED, as is the Assented to Motion to Postpone Hearing Date/Stay Appeal, and the hearing shall be re-set to a date no earlier than thirty (30) days following the final determination by the Texas Department with respect to the Texas License. Counsel for Ms. Butler will affirmatively advise the Department when the Texas Department has taken final action. The precise date and time of the postponed hearing to be set by the Hearing Judge.

SO ORDERED,

Steven M. Notinger, Esq.

ALTERNATIVE REQUESTED ORDER

The hearing in the foregoing matter is postponed for sixty (60) days and a pre-hearing conference will be scheduled once the calendars of the Hearing Officer and respective counsel can be coordinated.

SO ORDERED,

Steven M. Notinger, Esq.