

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Sandra Barnard

Docket No. 22-027-EP

PROPOSED DECISION AND ORDER

Appearance for Petitioner:

Joshua Hilliard, Esq.
Enforcement Counsel, NH Insurance Department (the “Department” or “NHID”)

Appearance for Respondent:

No appearance for Sandra Barnard (“Barnard”)

Hearing Officer appointed by Commissioner:

Steven M. Notinger, Esq.

1. Summary

Barnard is an insurance producer in New Hampshire who worked at the Jennifer Stevens Agency, LLC (“the Agency”) in 2021 and 2022. Barnard has a mailing address of 14 Doors Corner, Ossipee, New Hampshire 03814. The Department requests that Barnard’s New Hampshire insurance producer’s license (“license”) be revoked under: (1) RSA 402-J:12, I(e) for “[i]ntentionally misrepresenting the terms of an actual or proposed insurance contract”¹; and (2)

¹ The Department does not refer to RSA 402-J:12, I(e) in the Show Cause Order, but the order allows amendment to add additional counts. I(e) was raised at the hearing. 1(e) and 1(h) are very similar. The Hearings Officer believes there has been adequate notice to the Respondent of the issues. The Department did not pursue 400-A: 16, II at the hearing.

RSA 402-J:12, I(h) for “[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence or untrustworthiness ...” Through its evidence, the Department produced eleven examples of Barnard’s misconduct at the administrative hearing held at the Department demonstrating Barnard intentionally violated RSA 402-J:12, I(e) and/or (h) during her tenure at the Agency. This included evidence that: she bound policies without consent of the insureds, misrepresented the status of insureds’ domiciles, changed build dates on policies and falsified prior coverage all to get increased commissions. As a result, the Department requests that Barnard’s license be revoked, and that she pays penalties. The evidence shows that Barnard’s conduct was intentional, fraudulent, systematic and blatant and that she should have her license revoked and pay penalties.

2. Procedural and Jurisdictional Background.

The Department issued an Order to Show Cause and Notice of Hearing in this enforcement action on May 9, 2022 (“Show Cause Order”). The Department has the authority to pursue this enforcement action pursuant to RSA 402-J:12, I, RSA 400-A:15, III, RSA 541-A:31 and Ins 200. The Department has the burden of proof. Ins 206.03(b)(2). Under RSA 402-J:12, I, “The Commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy an administrative fine not to exceed \$2,500 per violation, in accordance with RSA 400-A:15, III” against any producer that violates the provisions of RSA 402-J:12, I.

An evidentiary hearing was held at the Department on June 21, 2022, in front of Steven M. Notinger, Administrative Hearings Officer. The Department appeared and offered the testimony of two witnesses in addition to written and audio evidence. Barnard did not appear. Barnard was given proper notice of the hearing, at the address of record she provided to the Department, by both certified and regular mail and by email. See RSA 400-A:14, I(c). The certified mail was not accepted, and the regular mail did not come back as undeliverable. See Exhibit 2.

The following exhibits were admitted into evidence at the hearing. The audio files were played into the record at the hearing and are also available as exhibits:

Ex no.

1. Order to Show Cause and Notice of Hearing
2. Proof of Service of Notice
3. Licensee Summary
4. F.G. Phone Call (audio)
5. A.D. (system notes)
6. A.D. text messages
7. P.M. (system notes)
8. W.D. Phone Call 1 (audio)
9. W.D. Phone Call 2 (audio)
10. W.D. (system notes)
11. C.P. Policy Docs
12. C.P. Phone Call (audio)
13. J.B. (system notes)
14. M.P. (system notes)
15. M.P. Phone Call (audio)
16. M.P. Policy Docs
17. J.B, Policy Docs
18. J.B. (system notes)
19. Z.F. (policy docs)
20. Z.F. (system notes)
21. Z.F. Phone Call (audio)
22. D.W. (system notes)

- 23. D.W. Phone Call (audio)
- 24. D.C. (system notes)
- 25. D.C. Phone Call (audio)

During the hearing, NHID presented the testimony of the following witnesses:

Sarah Prescott, Enforcement Paralegal for the NHID.
Jennifer Stevens, owner Jennifer Stevens Agency, LLC.

3. Standard of Review.

The NHID has the burden of proof on all issues in this matter by a preponderance of the evidence. Ins 206.05.

4. Findings of Fact.

Barnard worked for the Agency in 2021 until her resignation in March 2022. See Testimony of Jennifer Stevens (“Stevens”). Barnard is a licensed insurance producer in New Hampshire. See Exhibit 3. She is licensed to sell motor vehicle road service and property and casualty insurance. See id. The Agency sells Allstate insurance policies. See Testimony of Stevens. The Agency’s owner, Stevens, had COVID during the 2021-2022 period and was hospitalized for at least a month. See id. In addition, the office manager had an illness which kept him away from the office during periods in 2021-2022. See id. As a result, Barnard had more autonomy than she otherwise would normally have had to write insurance. See id.

Stevens testified that Barnard was not producing enough business during the 2021-2022 period. See id. Barnard attempted to rectify this problem, in part, by writing policies without consumer consent, misrepresenting the status of consumer real estate located inside New Hampshire as “primary”, when it was not

and could not be insured under Allstate standards, changing the date on property construction to get around lead paint flags in the Allstate system, and falsifying information regarding prior coverage to get policies that would otherwise not qualify in the Allstate system. Testimony of Stevens; Exhibits 4-25.

Barnard's violations with each customer are as follows:

F.G.

Barnard bound an insurance policy for F.G. without his knowledge or consent. See Exhibit 4, audio call; Testimony of Stevens. F.G. called to complain that a policy was bound without his knowledge or consent. Id. F.G. was extremely mad on the call, particularly when the Agency could not tell him if he still had insurance through another carrier. Id. He told the Agency never to issue another policy in his name. Id.

A.D.

A.D. was a close friend of Barnard, calling her a "second mother". See Exhibit 6 (reference to "Mom Barnard"); Testimony of Stevens. Barnard had a text message conversation with A.D. as follows:-

Barnard: (October 29, 2021) "I need to write an auto policy today. I need your VIN"

A.D.: "I don't even have Allstate lol"

Barnard "You will." ...

A.D. (January 3, 2022) "What's this Mav said I have a policy with you. I never signed anything. I am under my dad I don't want to switch bc I have a better rate being under him..."

See Exhibit 6, text exchange.

In the notes from the Allstate computer system on October 29, 2021, Barnard put “she [A.D.] wanted a quote for the auto. We are going to bind coverage.” See Exhibit 5. Since A.D. did not authorize the policy, she ignored any bills from Allstate, who sent her account to collections. See Testimony of Stevens.

P.M.

P.M. first learned that Barnard bound an insurance policy on her house without her consent when an appraiser came to the house to inspect it. See Exhibit 7. P.M. said she was particularly upset by this action. Id. It is obvious from the notes on this consumer that she did not authorize coverage. Id.

W.D.

W.D. started contacting Barnard when he started to receive bills from Allstate, and he reported to her in his phone call that there is a “collection agency on us.” See Exhibits 8, 9, and 10. Similar to the other consumers, he did not authorize any policy to be bound on his behalf by Barnard or anyone else. See Exhibits 8,9 and 10.

C.P.

Allstate has a rule that it will not write insurance on a secondary home in New Hampshire if the primary home is not located in New Hampshire. See Testimony of Stevens. C.P. has a primary home in Pennsylvania and a summer home in New Hampshire. See Exhibit 12; Testimony of Stevens. C.P. told Barnard he was living in Pennsylvania and would not move to New Hampshire

for about a year. Exhibit 12; Testimony of Stevens. She bound the policy anyway listing New Hampshire as C.P.'s primary residence. See Exhibit 11. Stevens testified that Barnard knows the underwriting guidelines very well and knows not to bind a policy for a secondary home where the primary home is not located in New Hampshire. See Testimony of Stevens. In order to prevent the policy from getting flagged by the Allstate computer system, Barnard entered the New Hampshire address as the "primary" residence. See Exhibit 11, page 30; Testimony of Stevens. Binding the property helped Barnard earn a commission. Testimony of Stevens.

J.B.

J.B. lives in the United Kingdom and owns property in New Hampshire. See Exhibit 13, page 36. The New Hampshire property is a second home and, therefore, Allstate underwriting guidelines prohibit a policy to be issued unless the primary home is also in New Hampshire. See Exhibit 13; Testimony of Stevens. Barnard listed the property in New Hampshire in the Allstate system as the "primary home." See Testimony of Stevens. Not only did Barnard misrepresent the home as a primary home, see Exhibit 13, page 36 (J.B. clearly tells Barnard he resides in the U.K.), but she listed it as having a fire hydrant nearby and no renovations, both which are untrue. Testimony of Stevens. As a result, when the misrepresentations were corrected, the premium "jumped up". Id. Stevens testified that Barnard was adequately trained and knew she could not bind this policy. Id. Stevens said Barnard also knew that the computer system would flag this policy and she knew how to get around this problem by listing the

house as “primary” rather than “secondary” to get it through the system.

Testimony of Stevens.

M.P.

M.P. wanted a condo policy for a condo she was going to rent out twenty weeks a year. See Exhibit 14. Allstate will not insure short term rentals, nor will it insure property built before 1978 because of possible lead paint contamination. See Testimony of Stevens. The lead paint issue will come up in the software as “flagged” if entered properly. See Testimony of Stevens. Stevens testified that Barnard knew the rules. See Testimony of Stevens. The condo was built in 1971 and therefore would be flagged as uninsurable by the Allstate software. Id. Barnard changed the date from 1971 to 1980 in the software to get around this problem. See Exhibit 16, pages 40-41 (tax card which Barnard had showing 1971, and policy page showing 1980).

J.B.

J.B. wanted insurance for a condo built in 1974. To get it through the system, Barnard changed the date of construction to 1978. See Exhibits 17 and 18; Testimony of Stevens.

Z.F.

Z.F. wanted a policy as a landlord for short term rental of a condominium in Alton Bay, New Hampshire. The condo was built in 1973, so it would not be insurable under Allstate standards because of lead paint issues. Allstate will not insure a property built before 1978 due to lead paint issues. Barnard changed the date of construction from 1973 to 1979 to get around the lead paint issue. See

Exhibit 19; Testimony of Stevens. She also bound the policy for short term rentals, which is prohibited by Allstate. See Testimony of Stevens; Exhibit 19; see also Exhibit 20 (wherein Barnard states she “pulled the tax cards” showing 1973 as the date the property was built).

D.W.

There are three misrepresentations with regard to D.W.’s policy. Allstate had previously cancelled the policy for non-payment when D.W. first interacted with Barnard. See Testimony of Stevens. Putting this information into the system that the policy was cancelled for non-payment would flag the consumer. Id. Rather than putting “Allstate” as the prior policyholder, Barnard put “Liberty Mutual” so as to avoid the “red flag”. See Exhibit 22; Testimony of Stevens. She also put that the property was insured for 15 years, which it was not, and that it was insured for 12 continuous months, which it was not. See Testimony of Stevens; Exhibits 22-23.

D.C.

With regard to D.C., Barnard wanted to bind the policy without waiting for the customer, so she put Progressive as the prior carrier when the insurance was terminated, when that was not accurate. See Testimony of Stevens; Exhibits 24-25.

The RV.

In February 2022, a customer owned an RV insured at \$100,000.00. See Testimony of Stevens. The policy needed to be updated due to the purchase of a new RV. Id. Barnard put the value of the new RV as \$22,000.00, when it was

worth \$100,000.00. Id. The RV had an accident. Id. As a result of Barnard's error, the Agency's E & O policy had to cover the difference between the proper value and the insured value. See id.

Barnard Quits

Stevens testified that Barnard quit on March 4, 2022, due to a work scheduling issue. Testimony of Stevens. Stevens does not believe her. See id. Barnard quit before any of these issues were discovered with the exception of the RV issue. Id. The Agency has been unable to reach Barnard since she left, and she has not appeared in these proceedings after being given proper notice. Id. Stevens testified that Barnard's motivation for most of the fraudulent or incompetent conduct was to bump up her commission payments each month to resolve her sales deficiencies. See id. The evidence is undisputed.

5. The NHID's Allegations.

The NHID raises the following two claims at the hearing:

- I. Violation of RSA 402-J:12, I(e) by "[i]ntentionally misrepresenting the terms of an actual or proposed insurance contract."
- II. Violation of RSA 402-J:12, I(h) for "[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state..."

If Barnard violated any or all of these statutes, the Commissioner may revoke or suspend her license or fine her up to \$2,500.00 per violation or "any combination" of these actions. RSA 402-J:12, I.

6. Analysis.

NHID asserts eleven violations under either RSA 402-J, I(e) and/or (h)² to justify revocation of Barnard's license and penalties against her. Under 402-J:12, I, the Commissioner has discretion whether to revoke a license or issue penalties if there is a violation or multiple violations of RSA 402-J:12, I.

Although RSA 402-J:12, I, does not itself state that a violation needs to be a "knowing" violation to revoke a license, the statute it refers to, RSA 400-A:15, III, does require a violation to be a "knowing" violation. RSA 400-A:15, III provides:

Any person who knowingly violates any statute, rule, regulation, or order of the commissioner may, upon hearing, except where other penalty is expressly provided, be subject to such suspension or revocation of certificate of authority or license, or administrative fine not to exceed \$2,500 per violation, as may be applicable under this title for violation of the statute or the provision to which the rule, regulation, or order relates.

Id.; see also United States v. Lange, 528 F.2d 1280, 1287-89 (5th Cir. 1976) ("To commit an act 'knowingly' is to do so with knowledge or awareness of the facts or situation, and not because of mistake, accident or some other innocent reason.")

RSA 402-J:12, I(e) has an even higher standard than other provisions of RSA 402-J by requiring intentional misrepresentation of the terms of an insurance contract or application for insurance. RSA 402-J:12 I(h) has two components one involves proving fraud or dishonest conduct, which is intentional conduct, and the

² Claimed violations by F.G., A.D., P.M. and W.D. are under RSA 402-J, I(h) only, and the remainder of the 7 violations are under both RSA 402-J, I(h) and (e). as stated above. (e) is very similar to (h). Since Barnard violated both (e) and (h) thorough her conduct, the failure to plead (e) in the show cause order does not affect the result of this judgment.

other merely requires “incompetence” or “untrustworthiness.” “The tort of intentional misrepresentation, or fraud, must be proved by showing that the representation was made with knowledge of its falsity or with conscious indifference to its truth and with the intention of causing another person to rely on the representation. See Jay Edwards, Inc. v. Baker, 130 N.H. 41, 46-47, 534 A.2d 706, 709 (1987).” Patch v. Arsenault, 139 N.H. 313, 319 (1995).

It is fairly easy to conclude that Barnard’s conduct was, at a minimum, incompetent or untrustworthy within the meaning of RSA 402-J:12, I(h) and Patch at 319 (an agent must exercise reasonable care to verify the truth of statements before making them). She bound four policies without authorization. See Testimony of Stevens; Exhibits 4-10. On two other occasions, she misrepresented secondary properties as primary properties. See Testimony of Stevens; Exhibits 11-13. She changed the build date on three properties on the applications to get around a lead paint prohibition. See Testimony of Stevens; Exhibits 14-21. She misrepresented prior coverage on two policies. See Testimony of Stevens; Exhibits 22-25. She insured a new camper for 20% of its value. See Testimony of Stevens. All of these incidents show high levels and systematic incompetence and untrustworthiness. In addition, listening to her interact with customers on various phone calls indicates at times she seemed to lack knowledge of the important issues. See Exhibit 13, page 33 (J.B. questions Barnard’s competence.)

The evidence, however, shows a lot more. Barnard systematically and with knowledge of the falsity of her representations lied repeatedly both to her

customers and Allstate, presumably to bind policies and get commissions. See Testimony of Stevens. Four customers F.G., A.D., P.M. and W.D. had policies bound in their names that they did not authorize. See Testimony of Stevens; Exhibits 4-10. The evidence both in the form of audio calls, typewritten notes and the testimony of Stevens shows that Barnard knew these customers did not authorize Allstate insurance policies, yet she bound them anyway. Id. Perhaps the most telling comment is from the following text message exchange she had with her friend and “adopted” daughter, A.D.:

A.D.: “I don’t even have Allstate lol”

Barnard “You will.”

See Exhibit 6.

Several of these customers were sent to collections because they did not pay bills for insurance policies that they did not know about. See Exhibits 4-10; Testimony of Stevens. Barnard seems indifferent to this fact. Barnard certainly attempted to have the customers rely on her misrepresentations or omissions so she could get commissions. See Testimony of Stevens; Exhibits 4-10; Patch at 319.

C.P. and J.B. do not live in New Hampshire but have secondary homes here. See Testimony of Stevens; Exhibits 11-13. The only way Barnard could bind coverage was to recast these two people as primary residents of New Hampshire. Id. Stevens testified that Barnard knew the software would flag this issue, so Barnard intentionally put these two customers as primary New Hampshire residents to get around the problem that she could not bind coverage

in any other way due to computer limitations. See Testimony of Stevens; Exhibits 11-13. Barnard had to intentionally manipulate the fact that New Hampshire was not either of these customers' primary residences to get the system to approve the policies. Testimony of Stevens; Exhibits 11-13. The misconduct with regard to C.P. and J.B. could not have occurred without intentional fraudulent conduct. See Testimony of Stevens.

M.P., J.B. and Z.F. wanted coverage for rental property. Stevens testified that Barnard knew Allstate did not insure short term rentals. See Testimony of Stevens. She bound the policies anyway. See Testimony of Stevens; Exhibits 14-21. Plus, Barnard knew the computer system would flag properties built before 1978 due to lead paint issues. See Testimony of Stevens. Barnard changed the build dates on the properties so they could be bound. Testimony of Stevens; Exhibits 14-21. This conduct could not have occurred accidentally; it was intentional and designed to be relied upon by the customer and Allstate. See Testimony of Stevens.

D.W. and D.C. wanted to bind coverage but had issues with prior insurance being terminated. See Testimony of Stevens; Exhibits 22-25. So, Barnard falsified the records so the policies could be bound. See Testimony of Stevens; Exhibits 22-25.

All of this conduct had to be intentional because otherwise Barnard's training, Allstate underwriting rules and the Allstate computer system would have flagged most of these issues. See Testimony of Stevens. The only logical explanation for these eleven errors is that Barnard acted with fraudulent intent in

order to boost her commissions. See Testimony of Stevens. The representations were made with knowledge of their falsity or with conscious indifference to their truth and with the intention of causing the customer and Allstate to rely on the representations. Patch at 319.

An insurance agent is not generally a fiduciary under New Hampshire law. Rather the agent has a duty of “reasonable care”. Clark & Lavey Benefits Solutions v. Educ. Dev. Ctr., 2006 N.H. Super. LEXIS 94, at *18 (N.H. Super. Ct. Nov. 9, 2006) (“Generally, ‘an insurance agent owes clients a duty of reasonable care and diligence but absent a special relationship, that duty does not include an affirmative, continuing obligation to inform or to advise an insured regarding the availability or sufficiency of insurance coverage.’” (Citations omitted)).

Nevertheless, a producer has a unique responsibility under RSA 402-J:12, I to accurately represent both the company’s interests and the consumer’s interests honestly. Otherwise, consumer expectations will not be met and corresponding policies will be inaccurate, a disaster for all involved. This situation requires the producer to be honest, competent and precise to ensure that the wishes of the consumer are carried out and that the carrier’s underwriting rules are followed. This explains why RSA 402-J:12 I(e) and (h) dealing with fraud, incompetence and dishonesty are grounds to revoke an insurance producer’s license. See RSA 402-J:12 I(e) and (h). Someone in this position must perform her duties with due care, properly and honestly so as not to run afoul of New Hampshire law³.

³ The hearings officer finds Barnard violated 402-J:12, I(h) eleven times regardless of whether 402-J:12, I(e) is applicable to this record.

In this case, it appears Barnard was solely concerned with her commissions and herself and did not properly serve as a producer for customers or an agent of Allstate. See Testimony of Stevens; Exhibits 4-25. She lied repeatedly both to consumers and to Allstate in order to secure commissions and harm consumers who had their non-payment reported to credit bureaus or insurance cancelled or increased. See Testimony of Stevens; Exhibits 4-25. She cannot be relied upon to be an honest and competent insurance producer in New Hampshire as she repeatedly puts both consumers and her carrier at risk. See Testimony of Stevens. Barnard's license must be revoked, and she must be fined for her conduct.

If Barnard had an explanation for this misconduct, she had ample opportunity to sit down with Stevens or attend the Show Cause hearing. She has chosen not to do so. Stevens testified that she has been unable to contact Barnard after she left except for one instance, and the only statement Barnard made was that "she would not talk about business." See Testimony of Stevens.

7. Revocation and Penalties.

There are eleven documented instances of misconduct and one incidence of negligence (the RV undervaluation). Barnard will be fined \$1,000 for each act of misconduct under RSA 402-J:12 I (h), a total of \$11,000.00. Barnard will also have her license revoked effective upon the Commissioner's approval of this proposed order.

All other requests for penalties are denied.

SO ORDERED.

7/20/22



Steven M. Notinger, Hearings Officer