

**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: William Mandeline

Docket No.: 20-004-EP

PROPOSED DECISION AND ORDER

Appearance for Petitioner:

No Appearance

Appearance for Department:

Mary Bleier, Esq.
Enforcement Counsel
NH Insurance Department

Hearing Officer:

Michelle Heaton, Esq.
Administrative Hearings Judge
NH Insurance Department

I. Background

William Mandeline (“Respondent”) was a non-resident insurance producer licensed to sell life, accident, and health or sickness insurance products.¹ The Insurance Department (“Department”) first issued Respondent a non-resident producer license in New Hampshire on March 28, 2018, and his license expired on January 31, 2020.² On January 28, 2020, the Department issued an Order to Show Cause and Notice of Hearing (“Notice of Hearing”) to Respondent in accordance with RSA 400-A:17, II(a) and 402-J:12, III.³ In the Notice of Hearing, the Department alleged that on September 28, 2018, Respondent was terminated from 5 Star Life Insurance Company for selling individual term life insurance policies under a fictitious employer group.⁴ On March 28, 2019, Respondent voluntarily surrender his producer license in Virginia following allegations he made fraudulent statements or misrepresentations on an insurance

¹ Ex. 3.

² *Id.*

³ Ex. 1.

⁴ *Id.*

application.⁵ Respondent's non-resident producer license was revoked in Maine on June 6, 2019, and in Washington on September 10, 2019.⁶ On June 10, 2019, Respondent entered into a Consent Order in Arizona. It was alleged that Respondent failed to report these administrative actions within the required time period.⁷ The Department sought revocation of Respondent's non-resident insurance producer license and imposition of an administrative fine.⁸

A hearing was held at the Department on March 10, 2020. Respondent was not present for the hearing. Enforcement Counsel provided an offer of proof and submitted the following exhibits:

Department's Exhibits:

- Exhibit 1 – Order to Show Cause with cover letter
- Exhibit 2 – Notice Information
- Exhibit 3 – NH Licensing Information
- Exhibit 4 – 5 Star Life Insurance Company Termination for Cause
- Exhibit 5 – RIRS, Regulatory Information Retrieval System
- Exhibit 6 – Virginia Settlement Order
- Exhibit 7 – Washington Order
- Exhibit 8 – Maine Revocation Order
- Exhibit 9 – Washington Revocation Order
- Exhibit 10 – Attachment Warehouse

At the conclusion of the hearing, the record was held open until March 13, 2020, to allow either party to file additional documents, argument, or proposed findings. No further documents were received.

II. Findings of Fact

Respondent is a Florida resident insurance producer licensed to sell life and health insurance.⁹ On June 12, 2018, Respondent was appointed as an agent for 5 Star Life Insurance Company.¹⁰ Respondent was terminated from 5 Star Life Insurance Company on October 23, 2018, effective September 28, 2018, after it was discovered that he had sold individual term life insurance under a fraudulent employer/group name.¹¹

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ex. 6, at 18.

¹⁰ Ex. 4.

¹¹ *Id.*

On March 28, 2019, the Commonwealth of Virginia entered into a Settlement Order with Respondent.¹² Respondent agreed to voluntarily surrender his license to resolve pending allegations that he made false representations about an insured's employment on an insurance application for the purpose of obtaining a commission.¹³ In the Settlement Order, Respondent agreed to surrender his license without admitting or denying the allegations, and agreed not to submit an application to transact insurance business in Virginia for five years.¹⁴ Respondent failed to report this action to the Department and did not upload a copy to the National Insurance Producer Registry ("NIPR") Attachment Warehouse.¹⁵

On June 6, 2019, the Maine Bureau of Insurance revoked Respondent's non-resident insurance producer license for dishonesty and failing to respond to an agency request.¹⁶ The notice of revocation detailed multiple requests for information sent from the Maine Bureau of Insurance to Respondent that went unanswered.¹⁷ Respondent failed to report this action to the Department and did not upload a copy to the NIPR Attachment Warehouse.¹⁸

On June 10, 2019, Respondent entered into a Consent Order with the State of Arizona Department of Insurance revoking his license. Respondent admitted to committing fraudulent practices in the course of business and demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business by submitting untrue statements in an insurance policy application on or about July 24, 2018.¹⁹ In the Consent Order, Respondent acknowledged that the order constituted an administrative action that may need to be reported to states in which he is licensed.²⁰ Respondent failed to report this action to the Department and did not upload a copy to the NIPR Attachment Warehouse.²¹

¹² Ex. 6, at 20.

¹³ *Id.* at 18.

¹⁴ *Id.* at 19.

¹⁵ Ex. 10.

¹⁶ Ex. 7.

¹⁷ *Id.*

¹⁸ Ex. 10.

¹⁹ Ex. 8, at 24.

²⁰ *Id.* at 26.

²¹ Ex. 10.

On September 10, 2019, the Washington Office of the Insurance Commissioner revoked Respondent's non-resident producer license for failing to report the administrative actions taken against him in Arizona and Maine and for failing to respond to the Insurance Commissioner's request.²² Respondent failed to report this action to the Department and did not upload a copy to the NIPR Attachment Warehouse.²³

Louisiana revoked Respondent's license on November 27, 2019, for failing to report an administrative action from another state.²⁴ California revoked Respondent's license on February 9, 2020, for demonstrating a lack of fitness or trustworthiness and for failing to report an action from another state.²⁵

III. Legal Analysis and Discussion

Respondent's failure to attend the hearing does not affected the validity of the hearing as the Department provided Respondent with proper notice.²⁶ The Department may provide notice by mailing the Notice of Hearing to Respondent at his last address of record with the Department.²⁷ "The order or notice shall be deemed to have been given when deposited in a depository of the United States Postal Service, and of which the affidavit of the individual who so mailed the order or notice shall be prima facie evidence."²⁸ Exhibits 1-3 demonstrate that the Department satisfied the requirements for providing notice by mail.

In hearings where the Department seeks to revoke an insurance producer's license, as here, the Department bears the initial burden of presenting prima facie evidence to demonstrate by a preponderance of evidence that the licensee engaged in the alleged violation.²⁹ The Respondent then has the burden of

²² Ex. 9.

²³ Ex. 10.

²⁴ Ex. 5.

²⁵ Ex. 5.

²⁶ RSA 400-A:19, VII.

²⁷ RSA 400-A:14, I(c).

²⁸ *Id.*; *Appeal of City of Concord*, 161 N.H. 169, 173-174 (2010) (Holding notice by mail is sufficient to satisfy due process and actual notice is not required.)

²⁹ Ins 204.05 (b).

presenting evidence to persuade the hearing officer that the Department's position should not be upheld.³⁰ Respondent failed to appear for the hearing and did not submit any evidence or written argument to dispute the Department's evidence.

As an insurance producer, Respondent is bound by the provisions of RSA 402-J.³¹ RSA 402-J:12 allows the commissioner to impose a penalty against a producer for "violating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner."³² Producers are required to report to the Department any administrative action taken against the producer in any jurisdiction within 30 days of the final disposition and must include a copy of the order or any relevant legal documents.³³ Licensees can report out of state actions by either sending a copy of the action to the Department directly or by uploading the action to the NIPR Attachment Warehouse. Respondent failed to report to the Department the administrative actions taken against him in Virginia, Arizona, Maine, Washington, Louisiana, and California in violation of RSA 402-J:12, I(b) and 402-J-17, I.

"Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state," is also a violation that could lead to regulatory action by the commissioner.³⁴ Arizona, Maine, Washington, Louisiana, and California each revoked Respondent's producer license after finding that Respondent violated insurance laws in each respective state. Each of these revocations constitute a violation of RSA 402-J:12, I(i). The underlying conduct that led to each revocation constitutes a violation of RSA 402-J:12, I(b).

Additionally, the Commissioner may take action against a producer for "Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."³⁵ Respondent admitted to engaging

³⁰ *Id.*

³¹ RSA 402-J:1.

³² RSA 402-J:12, I(b).

³³ RSA 402-J:17, I.

³⁴ RSA 402-J:12, I(i).

³⁵ RSA 402-J:12, I(h).

in conduct that “constitutes fraudulent practices in the course of doing insurance business, demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business” when he entered into the Consent Order in Arizona.³⁶ The Arizona Consent Order along with the Virginia Settlement Order and the letter from 5 Star Life Insurance Company together provide sufficient evidence demonstrating Respondent violated RSA 402-J:12, I(b) and (h) by engaging in fraudulent conduct.

Although the Notice of Hearing did not reference the administrative actions in Louisiana and California, in light of all relevant circumstances, Respondent did have adequate notice of the basis for the administrative action and was not prejudiced by the inclusion of the Louisiana and California actions in the evidence. The New Hampshire Supreme Court has explained:

The notice required in an administrative proceeding does not require the same formality, specificity, and detail that is required in a criminal proceeding. *See Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (“It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands.”); cf. *Bourie v. Department of Higher Educ.*, 929 P.2d 18, 22 (Colo. Ct. App. 1996) (due process did not require employee in disciplinary hearing to receive reports, statements of witnesses or other evidence prior to pre-disciplinary meeting); *McClellan v. Bd. of Regents of State*, 921 S.W.2d 684, 688 (Tenn. 1996) (due process did not require citation to specified regulations in the notice of the administrative hearing). The charges need only be reasonably specific, in light of all the relevant circumstances, apprise the party who is the subject of the hearing of the grounds for the administrative action and to allow for the preparation of an adequate defense. *See Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); cf. *Appeal of N.H. Fireworks*, 151 N.H. 335, 338, 856 A.2d 725 (2004) (under State Constitution, “[a] fundamental requirement of the constitutional right to be heard is notice of the impending action that affords the party an opportunity to protect [a legally protected interest] through the presentation of objections and evidence” (quotation omitted)); *Garofalo v. Dowling*, 223 A.D.2d 770, 635 N.Y.S.2d 986, 989 (App. Div. 1996) (holding that notice that referred to “unacceptable practices” in amended regulations, rather than those in effect during audit period, did not violate due process).³⁷

The Notice of Hearing specifically alleged that Respondent violated RSA 402-J: 12, I (b) and (i), and RSA 402-J:17, I and referenced administrative actions taken in other jurisdictions.³⁸ Additionally, Respondent has made no objection to the inclusion of Enforcement Counsel’s exhibit 5 in the record. The

³⁶ Ex. 8, at 24.

³⁷ *In re Bloomfield*, 166 N.H. 475, 476, 98 A.3d 483, 486 (2014).

³⁸ Notice of Hearing at 3.

record was left open for three days following the hearing to provide either party with additional time to submit further evidence or argument. Respondent failed to submit any additional evidence, argument or objections despite having many opportunities to do so.³⁹

IV. Conclusion

Based on the foregoing, I propose that Respondent's producer license be PERMANENTLY REVOKED as a result of each of the violations specified above.

Date: April 3, 2020



Michelle Heaton, Hearing Officer

³⁹ See *Miller v. Slania Enters.*, 150 N.H. 655 (2004) (Trial court did not error by awarding damages under a theory not pled by plaintiff where defendant failed to object to the introduction of the evidence either during the trial or in a post-trial memorandum of law and at no time demonstrated any unfair prejudice resulting from the court's consideration of the issue.)