



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Christopher R. Nicolopoulos
Commissioner

David J. Bettencourt
Deputy Commissioner

October 22, 2021

Christopher R. Nicolopoulos, Esq.
Commissioner
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301

Re: In Re Armando Gutierrez
Docket No.: 21-047-EP

Dear Commissioner Nicolopoulos

Please find enclosed my Proposed Decision and Order in the above referenced matter in accordance with Ins 207.04(a)(1).

Sincerely,

A handwritten signature in cursive script that reads "Roni Karnis".

Roni M. Karnis, Esq.

Enclosure

Copy to: Joshua Hilliard, Esq.
Armando Gutierrez ✓

THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re: Armando Gutierrez

Docket No.: 21-047-EP

PROPOSED DECISION AND ORDER

Appearance for Respondent:

No Appearance

Appearance for Department:

Joshua S. Hilliard, Esquire
Enforcement Counsel
NH Insurance Department

Hearing Officer:

Roni M. Karnis, Esquire

I. Background

Armando Gutierrez (“Respondent”) is a non-resident insurance producer licensed to sell property and casualty insurance.¹ The New Hampshire Insurance Department (“NHID” or “Department”) first issued the non-resident license to Respondent on February 11, 2021, which is set to expire on August 31, 2022.² On July 19, 2021, the Department issued an Order to Show Cause and Notice of Hearing.³ The hearing was scheduled for September 17, 2021 at 1:00 p.m. at the New Hampshire Insurance Department.⁴ The Insurance Commissioner, pursuant to RSA 400-A:19, appointed the undersigned as Hearing Officer to conduct the hearing.⁵

¹ Ex. 3

² Id.

³ Ex. 1

⁴ Id.

⁵ See NH RSA 400-A:19, I; Ins 203.01(c)

Per the Order to Show Cause, the Department alleges that Respondent violated (1) RSA 402-J:12,I(c) by obtaining a license through misrepresentation or fraud when he failed to disclose all of his criminal convictions; (2) RSA 401-J:12,I(a) by providing incorrect, misleading or incomplete information in the license application when he failed to disclose all of his criminal convictions and (3) RSA 400-A:16, II by failing to provide information requested by the Department pursuant to NH RSA 400-A:16.⁶ The Department recommends both a revocation of license and administrative fine not to exceed \$2,500 as sanctions for the alleged violations.⁷

A copy of the Order to Show Cause and Notice of Hearing was sent by United States Postal Service (“USPS”) regular mail and certified mail, return receipt requested, to Respondent.⁸ The same was sent to Respondent’s residential and mailing address at 4916 Grand Canyon Road, Concord, NC 28027. The address to which the mail was sent is the same address for the Respondent on file at the National Insurance Producer Registry (“NIPR”).⁹

On September 17, 2021 at 1:00 p.m., the Respondent failed to appear at the New Hampshire Insurance Department located at 21 South Fruit Street, Suite 14, Concord, New Hampshire. A hearing was held *in absentia*. Enforcement Counsel Joshua S. Hilliard presented evidence by offer of proof and testimony of Joan LaCourse and Sarah Prescott. During the hearing, the following exhibits were received into evidence and marked accordingly:

- Exhibit 1: Order to Show Cause and Notice of Hearing dated 7/19/2021 and letter
- Exhibit 2: Service of Notice Information
- Exhibit 3: National Producer Licensing Information for Respondent
- Exhibit 4: Respondent’s application through NIPR
- Exhibit 5: NIPR Attachment Warehouse for NPN: 19721503
- Exhibit 6: Respondent North Carolina Criminal Record 5/18/2015 and 10/15/2015
- Exhibit 7: Respondent letter dated May 12, 2021
- Exhibit 8: Department email to Respondent dated June 8, 2021
- Exhibit 9: Department letter to Respondent dated June 22, 2021
- Exhibit 10: Affidavit of Sarah Prescott dated September 7, 2021

⁶ Ex. 1

⁷ Id.

⁸ Ex. 1, Ex. 2, Ex. 10

⁹ Ex. 3

In closing, the Department requested that Respondent's license be revoked and that an administrative fine of \$1,000 be imposed.¹⁰

At the conclusion of the Department's case and closing argument, the hearing was closed and the record left open until 4:30 p.m. for submission of additional documents to be admitted into evidence, as requested during the hearing¹¹. The additional documentation requested was in fact received and is admitted into the record as Exhibit 11: Attachment Warehouse document uploaded 12/9/2020. The record is deemed closed at 4:30 p.m. on September 17, 2021.

II. Findings of Fact

The Department issued an Order to Show Cause and Notice of Hearing ("Notice of Hearing") to the Respondent on July 19, 2021 in accordance with RSA 541-A:31, RSA 400-A:17,II(a) and Ins 200.¹² The Notice of Hearing was mailed to Respondent via both first-class and certified, return receipt requested to his last known residential/ mailing address on record.¹³ Although the USPS tracking information indicates the certified mail was left with an individual at the address¹⁴, the return receipt green card that was attached to the certified mail was not returned to the Department.¹⁵ The notice that was sent via first class mail was also not returned to the Department.¹⁶ The Department has not received any communication from the Respondent.¹⁷

Joan LaCourse is the licensing supervisor at NHID.¹⁸ Her duties include overseeing the processing of all incoming applications.¹⁹ The National Insurance Producer Registry ("NIPR") is the electronic source that NHID uses for receiving incoming applications.²⁰ The NIPR system includes a national database, referred to as the "attachment warehouse", that maintains all documents for states to review as needed. The information contained in an

¹⁰ Record at 41:48

¹¹ Record at 19:30, 42:28

¹² Ex. 1

¹³ Ex. 1, Ex. 2, Ex. 10

¹⁴ Ex. 2

¹⁵ Record at 38:36

¹⁶ Ex. 10

¹⁷ Record at 01:43

¹⁸ Hearing record at 08:00

¹⁹ Id.

²⁰ Hearing record at 08:53

application can be completed by the potential licensee and/or a “submitter”, but it is the licensee’s responsibility to submit accurate information to the states.²¹ Documents that are stored in the “attachment warehouse” are typically uploaded by either the individual license applicant or an assistant who works for a licensing service or an insurance company, but the identity of who specifically conducted a particular upload is not known.²² Here, an application for a non-resident NH producer license was submitted by Phyllis Blakeney, as an authorized submitter, on behalf of Respondent on February 11, 2021.²³ At the time of that submission, the Respondent’s residential and mailing address was listed as 4916 Grand Canyon Road, Concord, NC 28027, which is the same as that maintained in the SBS licensee demographics record for Respondent.²⁴ The NHID issued a non-resident producer license to Respondent on February 11, 2021, authorizing him to sell property and casualty insurance.²⁵ That license is set to expire on August 31, 2022.²⁶

The Respondent’s application indicates that he has been convicted of a misdemeanor. See Exhibit 4, Background Question 1A. Answering this question in the affirmative generated an automatic electronic communication to the submitter that follow up documentation regarding each incident must be sent to the state where the license application is submitted.²⁷ This follow up documentation is to be submitted electronically through the “attachment warehouse.”²⁸ It is not clear whether there is an automatic electronic communication to the submitter which provides notice of the deadline by which the applicant must supply this additional documentation to the state.²⁹ Prior to submitting the license application to NH, the Respondent’s information in the warehouse included documents regarding his 2013 convictions. After the respondent’s application was submitted and approved, additional

²¹ Hearing record at 09:43

²² Hearing record at 18:04

²³ Ex. 4, Hearing record at 10:35, 11:26 and 23:25.

²⁴ Ex. 4, Ex. 3

²⁵ Ex. 4

²⁶ Ex. 3

²⁷ Hearing record at 28:50, Ex. 4 at pg. 016, Intermediate Responses Comments, Code 4797 “For background Question 1A, you must send the following to the state you are applying to: 1) a written statement explaining the circumstances of each incident, b) a copy of the charging document, c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.”

²⁸ Ex. 4 at pg. 016, Intermediate Responses Comments, Code 9424

²⁹ Ex. 4 at pg. 016, Intermediate Responses Comments, Code 4261 which references a 30 day deadline, appears to be associated with an “Action Req’d” of “No”.

documentation regarding convictions in 2015 was uploaded. Specifically, on May 5, 2021 and May 13, 2021 a statement regarding the 2015 convictions, as well as the corresponding court documents, were uploaded into the attachment warehouse by someone.³⁰ Ms. LaCourse received notice that these documents were uploaded and she made a notation on June 7, 2021 regarding same.³¹ Although the content of the misdemeanor conviction documentation was immaterial to the Department, the late disclosure was.³²

On June 22, 2021, the Department sent a letter via US mail to Respondent, pursuant to RSA 400-A:16, requesting that he contact the Department so that it could obtain information about the incomplete license application.³³ The Respondent has not contacted the Department.³⁴

III. Preliminary Rulings of Law

Whenever an agency seeks to revoke a license or impose an administrative fine, as is the case here, there shall first be given notice and an opportunity to be heard at an adjudicative proceeding.³⁵ At such an adjudicative hearing, the Department bears the burden of proving a prima facie case, by a preponderance of the evidence, that the licensee committed the alleged violation of law or rule.³⁶ Thereafter, Respondent has the burden of presenting evidence to persuade “the hearing officer that the department’s position should not be upheld.”³⁷ Before an administrative fine may be imposed, however, the department must meet its “overall burden of proof by a preponderance of the evidence”.³⁸

³⁰ Ex. 5

³¹ Ex. 3, 6, 7; Hearing record at 23:25-33:00.

³² Hearing record at 33:10. It is also noteworthy that the application contains an attestation that the information submitted is true and complete and that failing to submit pertinent or material information is grounds for license revocation or denial. See Ex. 4 at pg. 016

³³ Ex. 9

³⁴ Hearing record at 37:40

³⁵ NH RSA 541-A:30, II; NH RSA 400-A:15, III; NH RSA 400-A:14

³⁶ Ins 206.05(b) and (c)

³⁷ Ins 206.05(b)

³⁸ Ins 206.05(d)

IV. Legal Analysis and Discussion

Proper Notice of Hearing

The Respondent's failure to attend or participate in the hearing on September 17, 2021 does not affect the validity of the adjudicatory proceeding because Respondent was provided with proper notice of the hearing date.³⁹ The Department may provide notice by mailing the Notice of Hearing to Respondent at his last address of record with the Department.⁴⁰ The Notice of Hearing in this matter was sent via USPS regular and certified mail to Respondent's residential address of record and there is proof of its delivery.⁴¹ Therefore, the requirements of providing proper notice are met.

Failure to Respond

The Department alleges that Respondent violated RSA 400-A:16, II by failing to respond within 10 business days to the NHID's inquiries regarding the reporting of his criminal convictions.⁴² RSA 400-A:16, II requires licensed producers, "upon request of the commissioner, provide the commissioner with all documents and information relevant to any investigation under this section within 10 working days."⁴³ The Department bears the burden of proving a prima facie case that the Department has, first, requested Respondent respond to the Department relative to an investigation and second, Respondent did not in fact respond to the Department's request.

³⁹ N.H. RSA 400-A:19, VII; Ins 206.03(b), Ex. 1, 2, 10

⁴⁰ N.H. RSA 400-A:14, I(c)

⁴¹ Ex. 1, Ex. 2

⁴² Ex. 1, para. 9

⁴³ N.H. R.S.A. 400-A:16, II

Here, Enforcement Counsel sent a letter to Respondent on June 22, 2021 wherein the Respondent was advised that an inquiry was being conducted pursuant to the Department's investigatory authority. This letter further advised Respondent of his statutory obligation to respond, failure of which may lead to administration action. At no time did the Respondent contact the Department as required. I find that there is sufficient evidence to make a finding that the Respondent has violated RSA 400-A:16, II.

Other Violations

The Department also alleges that the Respondent violated RSA 402-J:12, I (a) and (c) because he did not disclose all of his convictions at the time his application was submitted. An insurance application is supposed to be complete as to all material information at the time of submission. However, RSA 400-A:15-h is noteworthy in this situation. Under this statute, "...the commissioner shall [w]ithin 30 days of receipt, examine the license application and notify the applicant of any apparent errors or omissions that render the application incomplete or request any additional information that the insurance department is permitted by law to require and that is deemed by the commissioner to be relevant to the review process."⁴⁴ Omission of information, either in whole or in part, which is material could potentially be a misrepresentation. Here, Respondent's non-resident license was approved the same day application was made even though the question as to misdemeanor convictions was affirmatively answered. Also, the process here afforded the Respondent additional time within which to provide documentation about the convictions, which he did. Because there is a finding that

⁴⁴ NH RSA 400-A:15-h, I

Respondent violated RSA 400-A:16, II, I decline to make a finding as to the additional allegations.

V. Conclusion

The commissioner may, pursuant to RSA 400-A:15, III, take action upon a license and impose an administrative fine up to \$2,500 for any causes set forth in RSA 402-J:12, I.⁴⁵ Based on the foregoing, I propose that an administrative fine of \$500 be imposed.

Dated: 04 22, 2021

Roni M Karnis

Roni M. Karnis, Hearing Officer

⁴⁵ NH RSA 402:J,12, IV; NH RSA 400-A:15, III