

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Infinite Auto Protection

Docket No. 22-062-EP

PROPOSED DECISION AND ORDER

Appearance for Petitioner:

Joshua Hilliard, Esq.
Enforcement Counsel NH Insurance Department (the "NHID")

Appearance for Respondent:

No appearance for Infinite Auto Protection ("Infinite")

Hearing Officer Appointed by Commissioner:

Steven M. Notinger, Esq.

I. Summary

In April 2022 N.B. filed a complaint with the NHID regarding Infinite's failure to respond to requests for auto repair coverage she purchased through Infinite for her automobile. See Exhibit 3. The matter was resolved. See Exhibit 1. During the prosecution of N.B.'s complaint, the NHID discovered that Infinite was not registered to sell consumer guaranty contracts in New Hampshire as required by statute. RSA 415-C:3, I(a), Testimony of Linda Zalinskie and Exhibit 4. After several rounds of discussions by e-mail and phone between Infinite and the NHID, Infinite agreed to register and post a bond as required by RSA 415-C:3, 4. See Exhibit 7. Infinite never followed up and registered or posted a bond.

NHID sent Infinite an Order to Show Cause (“OSC”) for, among other things, violation of RSA 415-C:3 I(a), 4. See Exhibit 1. Infinite did not respond to the OSC. See Testimony of Sarah Prescott. Infinite violated RSA 415-C:3 I(a), 4 by failing to register as an “obligor” for consumer guaranty contracts sold in New Hampshire and failing to provide proof of financial responsibility.

The NHID also claims that Infinite violated RSA 400-A:16, II by failing to provide information requested by e mail on August 22, 2022, and September 9, 2022. See Exhibit 8. The NHID did not establish that the requests on August 22, 2022, and September 9, 2022, were for information that was not provided, but rather were follow up requests regarding the status of the registration and the bond. RSA 400-A-16, II is limited to requests for information.

II. Procedural and Jurisdictional Background.

The NHID pursued a complaint against Infinite after N.B. submitted a complaint (the “Complaint”) to the Department on or about April 11, 2022. See Exhibit 3. The Complaint was resolved, but the NHID discovered other violations by Infinite. The NHID has the authority to pursue the other violations pursuant to RSA 400-A:16, RSA 415-C, RSA 541-A:31 and Ins 200 et seq. Infinite did not appear at the hearing, but the NHID has the burden of proof and went forth with its presentation of the case. Ins 206.03(b)(2). Under New Hampshire law, the NHID may seek a cease-and-desist order and impose penalties should there be a basis to do so. RSA 415-C:10, II-IV. NHID does not seek restitution in this matter.

An evidentiary hearing was held on December 6, 2022, in front of Steven M. Notinger, Administrative Hearings Officer. The NHID appeared and offered the testimony of several witnesses. Infinite did not appear. Infinite was given proper notice of the hearing¹ by both certified and regular mail and by email. See Exhibit 2 and Testimony of Sarah Prescott. Infinite clicked the “return receipt” box for the e mail, so it received the OSC. See Id.

The following exhibits were admitted into evidence at the hearing:

Ex. No.

1. Order to Show Cause and Notice of Hearing
2. Service of notice information
3. April 11, 2022, consumer communication with NHID and policy
4. NHID licensing regarding 415-C status.
5. April 12, 2022, NHID request to Infinite
6. June 3, 2022, Infinite response and index
7. July 8, 2022, NHID request to Infinite
8. August 22, 2022, and September 8, 2022, NHID request update

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

1. Sarah Prescott, Enforcement Paralegal for the NHID; and
2. Linda Zalinskie, Financial Records Auditor for the NHID

III. 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.

IV. Findings of Fact.

N.B. purchased a “Vehicle Service Contract” from Infinite dated August 23, 2019, for her 2014 BMW X3. See Exhibit 3. At some point prior to April 11,

¹ See RSA 400-A:14, I(c).

2022, N.B. needed a repair for the car and attempted to contact Infinite for coverage. Id. She was unsuccessful. N.B. contacted the NHID to report the incident. See Exhibits 1 and 3. NHID opened an investigation at which time the issues with N.B. were resolved. Id. During the investigation the NHID discovered that Infinite was not licensed in New Hampshire. See Testimony of Linda Zalinskie and Exhibit 4. Infinite is required to be licensed in New Hampshire to sell Consumer Guaranty Contracts. See RSA 415-C, 1(a). The “Vehicle Services Contract” is a Consumer Guaranty Contract. See RSA 415-C:1, III(a). The NHID contacted Infinite by letter dated April 12, 2022 and requested information from Infinite including an explanation of why Infinite was not licensed in New Hampshire. See Exhibit 5.

Infinite responded on or about June 3, 2022, and stated it was “unaware of the NHID requirements” and that it “immediately stopped advertising and soliciting sales from NH residents” on March 1, 2021, when it learned of the licensing requirements. See Testimony of Sarah Prescott and Exhibit 6. This response is confusing because the 2019 “Vehicle Services Contract” contains a rider for “New Hampshire”, which clearly shows that someone at Infinite (or its attorneys) looked at RSA 415-C. See Exhibit 3, page 29. The legal references in the contract are similar to language in RSA 415-C:6, III(h) and 415-C:7 II (c) and appear to be taken from them. The licensing requirement is contained in RSA 415-C:3, I(a), 4 just a few paragraphs away. Id. Infinite also provided a list of contracts in New Hampshire. Infinite has about a dozen existing contracts in New Hampshire.

The parties remained in contact, and by e-mail dated July 8, 2022, Infinite stated “we will set up the bond and advise your office when completed.” See Exhibit 7. The NHID followed up with emails on August 22, 2022, and September 8, 2022, requesting the status of matters and nothing was heard further from Infinite in this matter. See Exhibit 8. An OSC was served on October 17, 2022, was received, and there has been no further response of any kind. See Testimony of Sarah Prescott and Exhibit 2.

V. The NHID’s Allegations and Penalty Requests.

The NHID raises the following allegations and requests the following penalties:

1. Violations of RSA 415-C:3, I(a) for failing to register and pay the filing fee.
2. Violations of RSA 415-C:4 for failing to provide financial assurances.
3. Violations of RSA 400-A:16, II—for failure to respond to NHID’s requests.
4. The NHID also requested a cease-and-desist order² at the hearing under RSA 415-C:10, II prohibiting Infinite from further conducting business in this state.

² The NHID did not request a cease-and-desist order in its Order to Show Cause. See Exhibit 1. The NHID did request a cease-and-desist order at the hearing which the Hearings Officer treats as an oral motion under Ins. 205.05(a). See Request of Joshua Hilliard. The NHID’s Order to Show Cause states it reserves the right to amend the Order to Show Cause. The respondent had notice of the hearing and did not appear. For all these reasons the oral motion to amend the Order to Show Cause at the hearing by oral motion is granted.

VI. Analysis

In New Hampshire, “[n]o obligor shall offer, administer, sell, solicit, negotiate, or act under a consumer guaranty contract in this state unless:

(a) The obligor registers with the commissioner on a form prescribed by the commissioner and pays the registration fee required by RSA 400-A:29, VIII-a(a).” See RSA 415-C:3, I(a). An “obligor” is “a person who is legally obligated to a contract holder under the terms of the consumer guaranty contract.” RSA 415-C-1, VIII. A “Consumer Guaranty Contract “[i]s an agreement in which one party, for consideration, promises to pay, indemnify, provide a specified or determinable amount or benefit, or to do some act of value for another party, based upon a determinable risk contingency or peril, but which is not insurance or does not warrant full application of the state's insurance statutes or rules.” RSA 415-C-1, III(a).

It is not disputed that Infinite sold consumer guaranty contracts in New Hampshire. When Infinite was confronted by the NHID that it had not registered in New Hampshire, Infinite responded that it was “unaware of the NHID requirements” and that it “immediately stopped advertising and soliciting sales from NH residents” on March 1, 2021, when it learned of the licensing requirements. See Exhibit 6. Infinite did not contest the fact that it was subject to the statutes at any time during its dealings with the NHID. See Id.

In addition, the contract fits within the definition of “Consumer Guaranty Contracts”. It is a contract in which Infinite promised to indemnify N.B. for certain repairs to her car. See Exhibit 3. This type of contract falls squarely within

the definition of “Consumer Guaranty Contracts.” See RSA 415-C:1, III(a).

Infinite sold the contract in Exhibit 3 to a New Hampshire resident, N.B., whose New Hampshire address is in the contract paperwork. Id. Infinite also provided a list of other contracts sold to New Hampshire residents. See Exhibit 6. There are approximately 12 other contracts in New Hampshire.

It is both undisputed and clear in the record that Infinite sold contracts in New Hampshire, see Exhibits 3 and 6, and that Infinite did not register or provide financial security as required by RSA 415-C:3, I(a) and RSA 415-C:4. See Exhibits 6, 7. (“IAP was simply unaware of the NHID requirements of registration in your respected state...it was somewhere around [March 1, 2021] IAP learned of the NHID requirements.”)

Infinite has not remedied the statutory deficiencies after promising to do so. See Exhibit 7. Infinite has stopped communicating with NHID and in particular has not responded to follow up emails from the NHID dated August 22, 2022, and September 8, 2022. See Exhibit 8. Infinite has also not responded to the OSC. See Testimony of Sarah Prescott and Exhibit 2.

Counsel for the NHID is correct that there is no “requirement of intentional conduct” under RSA 415-C:3, I(a) and RSA 415-C:4. If you do not register and/or provide financial security you are in violation of the statutes if you sell consumer guaranty contracts in New Hampshire. See RSA 415-C:3, I(a) and RSA 415-C:4. Infinite has not complied with the statutes.

Enhanced damages are allowed if the conduct was willful. See RSA 415-C:10, III. (\$10,000 of damages for each willful violation). The strongest evidence

of willful conduct is that the contract contains provisions of New Hampshire law that apply to residents of New Hampshire. See Exhibit 3. This New Hampshire rider shows that Infinite and/or their attorneys must have looked at New Hampshire law, particularly RSA 415-C, to determine how New Hampshire law needed to be incorporated into the "Vehicle Services Contract." See Exhibit 3. It is hard to believe that Infinite did not discover the requirements of RSA 415-C:3 and RSA 415-C: 4 when it examined how New Hampshire law needed to be incorporated into the "Vehicle Services Contract." Nevertheless, NHID has the burden of proof, see Ins 206.05. The Hearings Officer does not believe the evidence, as it stands, is sufficient to establish "willfulness" under RSA 415-C:10, III.³

RSA 400-A: 16, II states:

Any individual or entity who transacts insurance in this state or is otherwise subject to the authority of the commissioner shall, upon request of the commissioner, provide the commissioner **with all documents and information relevant to any investigation** under this section within 10 working days, or shall request within the 10 working-day period, for good cause shown, additional time to respond. (Emphasis added).

When NHID conducted its investigation, NHID requested documents and information pursuant to RSA 400-A:16, II by letter dated April 12, 2022. See Exhibit 5. Infinite provided information. See Exhibit 6. Infinite then agreed to comply with New Hampshire law. See Exhibit 7. ("We will set up the bond and advise you when

³ Willful conduct is deliberate conduct. "... [D]eliberate" is a synonym for "willful," which means "deliberate, voluntary or intentional," RANDOM HOUSE 130 N.H. 659, *662; 547 A.2d 241, **243; 1988 N.H. LEXIS 69, ***6 DICTIONARY OF THE ENGLISH LANGUAGE (unabridged) 1634 (1966). Willful is further defined as: "voluntary, as distinguished from accidental . . . [,] [i]ntentional or deliberate, yet not necessarily [***11] with an evil purpose in mind." Appeal of NH Sweepstakes Department, 130 N.H. 656, 664 (NH 1988).

completed.”) Infinite then stopped communicating with NHID who sent two e mails as follows:

August 22, 2022

“Can you please let me know where things stand in terms of getting infinite Auto registered as an obligor in the state? Thank you.

September 8, 2022

“I haven’t heard back from you on this. Can you please let me know where thing stand in terms of getting infinite Auto registered as an obligor in the state?”

NHID emails request that Infinite comply with RSA 415-C:3, I(a) and RSA 415-C:4 by registering and posting a bond. These e-mails do not request “all documents and information relevant to any investigation” as required for RSA 400-A:16, II to apply. NHID’s e-mails request Infinite follow through on its pledge to come into compliance with the statute, they do not request additional information from Infinite. RSA-400-A:16, II. If these NHID e-mail requests fall within the statute, almost any request would fall within the statute. Insurance department personnel are constantly asking for compliance. The Hearing’s Officer does not believe the intent of the statute is to incorporate all requests for compliance, but rather the requests are limited to documents or other information (like videos or recordings or statements) relative to an investigation. The Hearings Officer does agree the statue is vague, but he is interpreting it in a practical way. The word “information” means the discovery of items requested in an investigation by the NHID. See RSA 400-A: 16, II. It does not mean requests for compliance with the law, which are dealt with by other statutes like RSA 415-C:3, 4, 10. Therefore, any penalties under RSA 400-A:16, II are denied as there is

no evidence Infinite failed to provide information within the meaning and intention of RSA 400-A:16, II.

VII. Penalties.

The Hearing Officer recommends that the Commissioner impose the following penalties on Infinite:

1. Pursuant to RSA 415-C:10, III, Order Infinite to pay a \$3,000.00 penalty for its three violations of RSA 415-C:3 I(a), for failing to register as an obligor for 2020, 2021, 2022.

2. Pursuant to RSA 415-C:10, III, Order Infinite to pay a \$3,000.00 penalty for its three violations of RSA 415-C:4 for failing to provide financial security as an obligor for 2020, 2021, 2022.

3. Pursuant to RSA 415-C:10, II, Infinite shall cease and desist from further conducting business in the state of New Hampshire, which shall include a prohibition on advertising in the state of New Hampshire.

All other requests for penalties are denied.

SO, ORDERED.

12-22-22
date


Steven M. Notinger, Hearing Officer