



**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

John Elias
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

November 20, 2019

John Elias
Commissioner
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301

Re: James E. Knee
Docket No.: 19-020-EP

Dear Commissioner Elias,

Please find enclosed my Proposed Decision and Order in the above referenced matter in accordance with Ins 204.26 (a)(1).

Sincerely,

A handwritten signature in cursive script, appearing to read "Michelle Heaton".

Michelle Heaton, Esq.

Enclosure

Copy to: Mary Bleier, Esq.
James Knee

**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: James E. Knee

Docket No.: 19-020-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

James E. Knee (“Respondent”) is a formerly licensed resident insurance producer licensed to sell life, accident and health or sickness, and variable contracts insurance products. The Insurance Department (“Department”) first issued Respondent a license in New Hampshire on August 30, 2004.¹ On September 5, 2019, 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.² In the Notice of Hearing, the Department alleged that on July 24, 2019, Respondent pled guilty to financial exploitation of an elderly adult, perjury, and witness

¹ Ex. 3, p. 14-15.

² Ex. 1.

tampering. The Department sought permanent revocation of Respondent's insurance producer license.

A hearing was held at the Department on October 15, 2019. 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 with Status History Report
- Exhibit 4 – NH Bureau of Securities, Interim Consent Order
- Exhibit 5 – Merrimack County Superior Court Indictments
- Exhibit 6 – Merrimack County Superior Court Sentencing Orders

At the conclusion of the hearing, the record was held open until October 18, 2019, to allow either party to file supplemental documents, argument, or proposed findings. No further documents were received.

II. Findings of Fact

On October 1, 1998, Respondent created Sterling Financial Services, LLC (“Sterling”).³ Sterling was licensed as an investment adviser from January 2, 2007 to January 16, 2013.⁴ Respondent was licensed as a registered representative and investment adviser representative for Voya Financial Advisors, Inc. from November 2, 2015 until August 18, 2016, when Voya terminated its contract with Respondent.⁵

On August 27, 2016, Respondent signed an Interim Consent Order with the New Hampshire Bureau of Securities Regulation (“Bureau”) on behalf of himself and Sterling.⁶ The Bureau had initiated an investigation into allegations that Respondent stole money from an

³ Ex. 4, P. 19.

⁴ *Id.*

⁵ *Id.* at 19.

⁶ Ex. 4.

elderly client.⁷ In the Interim Consent Order, Respondent agreed, in part, not to have any contact or communications with Client 1 and agreed not to spend any funds received from Client 1 until further order of the Bureau while the investigation continued.⁸

The Bureau's investigation revealed that between January 12, 2016, and July 27, 2016, Client 1, and elderly adult, gave Respondent approximately \$360,000.⁹ Client 1 had been Respondent's client for many years and Respondent had a fiduciary relationship with Client 1.¹⁰ Respondent breached his fiduciary duty to Client 1 by using Client 1's money to benefit someone other than Client 1.¹¹ On September 2, 2016, Respondent falsely testified under oath in an official proceeding before the Bureau that Client 1 gave him the money as a gift.¹²

After entering into the Interim Consent Order and in full knowledge of the Bureau's ongoing investigation, Respondent communicated with Client 1 between July 1, 2017 and October 31, 2017, in an attempted to induce Client 1 to withhold testimony or information from the Bureau.¹³ These communications with Client 1 were in violation of the Interim Consent Agreement and constituted witness tampering.¹⁴

On April 27, 2018, a Merrimack Superior Court Grand Jury indicted Respondent on eleven felony offenses.¹⁵ The charges included theft by misapplication, investment advisor fraud, financial exploitation of an elderly adult, theft by deception, violation of a cease and desist order, perjury, and witness tampering.¹⁶

⁷ Ex. 4.

⁸ *Id.* at 20.

⁹ Ex. 6, p. 45-49.

¹⁰ Ex. 4, p. 19.

¹¹ Ex. 6, p. 45-49.

¹² Ex. 6, p. 51-56.

¹³ Ex. 6, p. 57-62.

¹⁴ Ex. 6, p. 57-62; and Ex. 5, p. 29.

¹⁵ Ex. 5.

¹⁶ *Id.*

On May 15, 2019, the Department received a letter from Respondent seeking to reactivate his producer license.¹⁷ Respondent's license had previously expired on August 31, 2016, after he failed to renew his license.¹⁸ The Department informed Respondent that a new application and exam were required.¹⁹ Respondent did not have any further communication with the Department.²⁰

On July 24, 2019, Respondent pled guilty in Merrimack Superior Court to financial exploitation of an elderly adult, perjury, and witness tampering.²¹ On August 29, 2019, Respondent was sentenced to serve 4-10 years in New Hampshire State Prison, and was required to pay \$360,000 in restitution to Client 1.²²

On September 5, 2019, the Department initiated this proceeding by issuing the Notice of Hearing.²³ The Department was aware that the mailing address on file for Respondent in Concord, New Hampshire was no longer accurate.²⁴ The Concord address was associated with Respondent's business, which had been sold a few years prior.²⁵ Additionally, when Respondent contacted the Department in May 2019, Respondent's letter had a return address in Bow, New Hampshire.²⁶ The Department confirmed with the Merrimack Superior Court that the Bow address was the same address the court had on file for Respondent.²⁷ The Department sent the

¹⁷ Ex. 3, p. 15.

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 15.

²⁰ *Id.*

²¹ Ex. 6.

²² Ex. 6.

²³ Ex. 1.

²⁴ Hearing at 6:20, October 15, 2019.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Notice of Hearing to Respondent at the Bow address and delivery was confirmed on September 10, 2019.²⁸

III. Legal Analysis and Discussion

As an insurance producer, Respondent is bound by the provisions of RSA 402-J.²⁹ 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.”³⁰ Respondent has violated RSA 402-J:12, I(b) by being convicted of a felony in violation of RSA 402-J:12, I(f) and engaging in fraudulent, coercive, and dishonest conduct in violation of RSA 402-J:12, I(h).

The commissioner may take regulatory action against a producer convicted of a felony.³¹ Respondent has three felony convictions including financial exploitation of an elderly adult, perjury, and witness tampering. Although Respondent’s felony convictions did not occur while Respondent was actively licensed as a producer, the commissioner retains jurisdiction and “authority to enforce the provisions of and impose any penalty or remedy authorized by [RSA 402-J] and title XXXVII against any person who is under investigation for or charged with a violation of [RSA 402-J] or title XXXVII even if such person’s license or registration has been surrendered or has lapsed by operation of law.”³²

The commissioner may also take regulatory action against a producer that uses any fraudulent, coercive, or dishonest practices, or exhibits untrustworthiness or financial irresponsibility in the conduct of business.³³ All three of Respondent’s felony convictions

²⁸ Ex. 2, p. 11-12.

²⁹ RSA 402-J:1.

³⁰ RSA 402-J:12, I(b).

³¹ RSA 402-J:12, I(f).

³² RSA 402-J:12, V. See *also* RSA 400-A:2.

³³ RSA 402-J:12, I(h).

involved fraudulent, coercive, and dishonest conduct and related to Respondent's financial advisor business. Furthermore, Respondent's financial exploitation of an elderly adult occurred while he was actively licensed as an insurance producer.

The commissioner may take regulatory action against a producer that has admitted or been found to have committed any insurance unfair trade practice or fraud.³⁴ Respondent's conduct is fraudulent, however, there was insufficient evidence presented to establish that the fraudulent conduct related to the insurance industry or insurance products. RSA 402-J:12, I(g) specifically relates to insurance unfair trade practices and fraud. General fraud or dishonest conduct is alternatively addressed in RSA 402-J:12, I(h).

Respondent's conduct and felony convictions prevent him from meeting the requirements for licensure and justify permanent revocation of his license. As a prerequisite for licensure, the commissioner must find that the applicant "[h]as not committed any act that is a ground for denial, suspension, or revocation set forth in RSA 402-J:12."³⁵ Respondent does not meet this requirement due to his violations of RSA 402-J:12, I(b), (f), and (h). Permanent revocation of Respondent's license is further justified by the egregious nature of his crimes. Respondent took advantage of a vulnerable person to which he owed a fiduciary duty. After becoming aware of the Bureau's investigation and entering into the Interim Consent Order, Respondent then provided false testimony under oath and attempted to use his influence over Client 1 to persuade Client 1 to withhold information. Such behavior only further demonstrates Respondent's lack of integrity.


IV. Conclusion

³⁴ RSA 402-J:12, I(g).

³⁵ RSA 402-J:6, I(b).

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

Date: 11/20/19



Michelle Heaton, Hearing Officer

