



**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

June 25, 2021

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

Re: Amber Menard
Docket No.: 21-024-EP

Dear Commissioner Nicolopoulos

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 black ink that reads "Roni M. Karnis".

Roni M. Karnis, Esq.

Enclosure

Copy to: Joshua Hilliard, Esq.
Ms. Amber Menard

THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re: Amber Menard

Docket No.: 21-024-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

Amber Menard (“Respondent”) is a non-resident insurance producer licensed to sell personal lines.¹ The NH Insurance Department first issued the non-resident license to Respondent on October 15, 2018, which is set to expire on February 28, 2022.² On April 19, 2021, the Department issued an Order to Show Cause and Notice of Hearing.³ The hearing was scheduled for May 18, 2021 at 2:00 p.m. at the New Hampshire Insurance Department.⁴ The Insurance Commissioner appointed the undersigned as Hearing Officer to conduct a hearing pursuant to NH RSA 400-A:19.⁵

¹ Ex. 3

² Id.

³ Ex. 1

⁴ Ex. 1 at pg. 4

⁵ Id.

Per the Order to Show Cause, the Department alleged that Respondent violated (1) NH RSA 402-J:17 by failing to notify the Department, within 30 days, of administrative actions taken against her license, (2) NH RSA 401-J:12, I (i) by having her insurance producer license suspended and revoked by other states and (3) NH RSA 401-J:12, I (b) by failing to provide information requested by the Department pursuant to NH RSA 400-A:16.⁶ The Department recommended 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 e-mail, United States Postal Service (“USPS) regular mail and certified mail, return receipt requested, to Respondent.⁸ The same was sent to Respondent’s e-mail address, residential address and business address on file at the Insurance Department.⁹ The Department received a certified mail receipt card bearing a signature and delivery date of April 26, 2021 for the certified mail sent to the Respondent’s residential address in Boulder City, Nevada.¹⁰

On May 18, 2021 at 2:00 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, appearing on behalf of the Department, proceeded by offer of proof as to the proposed exhibits 1-11 and submission of the exhibits into evidence. The following exhibits were received into evidence and marked accordingly:

- Exhibit 1: Order to Show Cause and Notice of Hearing
- Exhibit 2: Service of Notice Information
- Exhibit 3: NHID Licensing Information
- Exhibit 4: Amica Termination for Cause dated Feb. 19, 2020
- Exhibit 5: Indiana Dept. of Insurance Order dated July 1, 2020
- Exhibit 6: Utah July 1, 2020 Order
- Exhibit 7: Arkansas March 1, 2021 Revocation Order
- Exhibit 8: Louisiana January 22, 2021 Revocation Order
- Exhibit 9: Attachment Warehouse record
- Exhibit 10: NHID letters to Respondent dated 3/16/2021 and 4/1/2021
- Exhibit 11: Return Receipt card

⁶ Ex. 1 at pg. 3

⁷ Ex. 1 at pg. 4

⁸ Ex. 1, Ex. 2

⁹ Ex. 3

¹⁰ Ex. 11

At the conclusion of the Department's case in chief, the Department requested that Respondent's license be revoked. Additionally, the Department requested that an administrative fine of \$2,500 be imposed for violation of NH RSA 400-A:16.

Because the Respondent was not in attendance, the hearing was adjourned and the record was left open for either party to submit further evidence no later than 4:30 p.m. on May 25, 2021. Neither party submitted additional evidence by the deadline. An Order was issued on June 2, 2021 confirming no additional evidence was received and both the hearing and record closed on May 25, 2021.

II. Findings of Fact

The NH Insurance Department issued a non-resident producer license to Respondent on October 15, 2018 authorizing her to sell personal lines insurance. That license has an expiration date of February 28, 2022.¹¹ The Respondent's residential address on file with the Department is 751 Avenue 1, Boulder City, NV 89005-2922.¹²

The Respondent's business and mailing address on file with the Department is Amica Mutual Insurance Co., 2475 Village View #200, Henderson, NV 89074.¹³ The Respondent's e-mail address on file with the Department is amenard@amica.com.¹⁴

The Department issued an Order to Show Cause and Notice of Hearing ("Notice of Hearing") to the Respondent on April 19, 2021 in accordance with RSA 541-A:31, RSA 400-A:17,II(a) and Ins 200.¹⁵ The Notice of Hearing was sent to Respondent via first-class and certified mail to Respondent's residential address in Boulder City, NV and business address in Henderson, NV.¹⁶ The certified copy sent to Respondent's business address was returned "because the addressee was not known at the delivery address noted on the package."¹⁷ The certified mail green card that was sent with the certified mail copy to Respondent's residential address was returned to

¹¹ Ex. 3

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Ex. 1

¹⁶ Ex. 1, 2. The addresses listed are the same addresses on record at the Department. (See Ex. 3)

¹⁷ Ex. 2 at pg. 7

the Department by the U.S. Postal Service, without the envelope to which it had been attached, bearing a signature and hand-written date of April 26, 2021.¹⁸ Additionally, USPS tracking documentation referencing the certified mail copy sent to the residential address shows the item was delivered and left with an individual on April 26, 2021, 4:47 p.m.¹⁹

Amica Mutual Insurance Company (“Amica”) sent a letter dated February 19, 2020 to the Department.²⁰ The purpose of the letter was to notify the Department that Respondent was hired as an Associate Sales Representative in the National Sales Office in Henderson, NV on August 27, 2018 and that said employment was terminated on February 18, 2020.²¹ Amica stated the cause of termination was for misconduct and ethics violations in violation of Amica policies, procedures and code of ethics.²²

On July 1, 2020 the Utah Insurance Department issued a Notice of Informal Adjudicative Proceeding and Order indicating the Respondent shall forfeit \$750 to the Department.²³ The Order is “[b]ased on the facts and the law set forth in the attached Declaration, and good cause appearing...”²⁴ The Declaration states that Market Conduct Examiner Kelly Christensen declared that the department sent a letter to Respondent at her home address requesting a response within 10 days and another letter by certified mail requesting a response within 5 days.²⁵ The Declaration further indicates that on May 21, 2020 Christensen spoke with Respondent by phone, and after Respondent confirmed she had received the letters, told the Respondent that failure to respond by May 22, 2020 would result in a forfeiture of \$750.²⁶ The Order states it “...shall become final and take full effect, 15 days after this Notice of Information Adjudicative Proceeding and Order is emailed to Respondent unless a request for a hearing on this matter is received from Respondent

¹⁸ Ex. 11

¹⁹ Ex. 2 at pg. 1, 5

²⁰ Ex. 4

²¹ Id.

²² Id.

²³ Ex. 6 at pg. 2

²⁴ Ex. 6 at pg. 1

²⁵ Ex. 6 at pg. 4

²⁶ Id.

prior to that date.”²⁷ Neither the Notice nor Declaration disclose the email address of the Respondent or any distribution list.

On July 1, 2020 the Indiana Department of Insurance issued an order suspending the Respondent’s non-resident insurance producer license because the Respondent did not provide a list of appointments within ten days, as requested.²⁸ The Order states that suspension of the license was immediate and would remain in place until the list of appointments was received.²⁹ The Order indicates that a letter sent via certified mail to the Respondent’s address of record (751 Avenue I, Boulder City, NV 89005) was returned as “unclaimed”. The Order lists the Respondent’s address as 751 Avenue I, Boulder City, NV 89005.³⁰

On January 22, 2021, the Louisiana Department of Insurance (“Louisiana”) issued a Notice of Revocation Order to Amber Menard.³¹ The Notice bears indication that it was mailed to two addresses and by e-mail.³² Additionally, the Notice references two different 20-digit article numbers next to the two mailing addresses.³³ Louisiana revoked Respondent’s producer license, effective 30 days from issuance, for having her license suspended in another jurisdiction and for failing to report that action within 30 days to Louisiana.³⁴

On January 14, 2021 the Arkansas Insurance Department (“Arkansas”) held a hearing regarding Respondent. Although a Notice of Hearing dated November 25 2020 was sent via regular and certified mail to Respondent’s “last known address”, Respondent did not appear at the hearing³⁵. As a result of the hearing findings, Arkansas issued a Revocation Order dated March 1, 2021, revoking Respondent’s non-resident producer license.³⁶

²⁷ Ex. 6 at pg. 2

²⁸ Ex. 5 at pg 2

²⁹ Id.

³⁰ Ex. 5 at pg. 1

³¹ Ex. 8

³² Id.

³³ Id. (Mail sent by USPS certified mail is commonly marked with a 20-digit “article #” displayed in five 4-digit sections.)

³⁴ Id. at pg. 3

³⁵ Ex. 7 at pgs. 1, 2

³⁶ Ex. 7 at pg. 4

On March 16, 2021, the NH Insurance Department sent a letter via US Mail to Respondent at 751 Avenue I, Boulder City, NV 89005-2922.³⁷ This letter requested that Respondent contact the Department regarding "...your termination for cause from Amica, as well as the administrative actions you have been subject to in other states."³⁸ The letter also referenced NH RSA 400-A:16, which imposes a duty to comply with requests or be subject to administrative action.³⁹ On April 1, 2021 the Department sent a follow up letter via US Mail to Respondent at 751 Avenue I, Boulder City, NV 89005-2922.⁴⁰ This letter referenced the previous correspondence dated March 16, 2021 and again requested the Respondent contact the Department, failure of which could result in an administrative action.⁴¹ Enforcement counsel represented that the letters were sent and "we did not receive any response."

Enforcement counsel represented that Respondent did not inform the Department of the administrative actions involving her producer license.⁴² The most common form of notification is for a producer to upload the information into the repository warehouse for all states to access.⁴³ Respondent's warehouse record does not contain any reference to the administrative actions taken against her license.⁴⁴ Producers may also inform the Department by other means, such as through mail, email or by uploading information in the producer's National Insurance Producer Registry account.⁴⁵ If the Department had received notice from Respondent of the administrative actions by paper means, the documentation would have been uploaded by the licensing unit into the Department's record under "Attachment Details" and the information provided to the enforcement unit.⁴⁶ The only information that the Department received in paper form was the letter from Amica providing notice of Respondent's employment termination.⁴⁷

³⁷ Ex. 10

³⁸ Id.

³⁹ Id.

⁴⁰ Ex. 10 at pg. 2

⁴¹ Id.

⁴² Record at 21:00

⁴³ Record at 20:00

⁴⁴ Ex. 9, record at 17:13

⁴⁵ Record at 19:30 and 20:48

⁴⁶ Record at 20:40

⁴⁷ Record at 22:05

III. Preliminary Rulings of Law

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 the evidence that the licensee engaged in the alleged violation.⁴⁸ The Respondent then has the burden of presenting evidence to persuade the hearing officer that the Department's position should not be upheld.⁴⁹ The Department bears "the overall burden of proof by a preponderance of the evidence" to sustain an administrative fine.⁵⁰ License revocation and the imposition of an administrative fine up to \$2,500 are among the regulatory actions the Commissioner may take "for any one or more" of the causes set forth in RSA 402-J:12, I.⁵¹ A licensee may also be subject to an additional administrative fine, after a hearing, pursuant to RSA 400-A:15, III.⁵²

IV. Legal Analysis and Discussion

Proper Notice of Hearing

The Respondent's failure to attend or participate in the hearing on May 18, 2021 does not affect the validity of the adjudicatory proceeding because Respondent was provided with proper notice of the hearing date.⁵³ The Department may provide notice by mailing the Notice of Hearing to Respondent at her last address of record with the Department.⁵⁴ The Notice of Hearing was sent via USPS certified mail to Respondent's residential address of record and there is proof of its delivery.⁵⁵ Therefore, the requirements of providing notice are met.

⁴⁸ Ins 204.05 (b)

⁴⁹ Id.

⁵⁰ Ins 204.05(d)

⁵¹ RSA 402-J:12, I (b)

⁵² RSA RSA 402-J:12, IV; RSA 400-A:15, III ("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.")

⁵³ See RSA 400-A:19, VII; see also Ins 204.05(b).

⁵⁴ RSA 400-A:14, I (c)

⁵⁵ Ex. 1, 2, 11. Furthermore, the Utah Declaration shows that the Respondent previously admitted to receiving mail at that address, thus making it more reasonable than not that the home address was valid. See Ex. 6.

Failure to Report Administrative License Revocations

As an insurance producer, Respondent is bound by the provisions of RSA 402-J.⁵⁶ 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.”⁵⁷ 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.⁵⁸ 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.

The Indiana, Louisiana and Arkansas Departments of Insurance took administrative action, as final dispositions, by revoking Respondent’s insurance producer license.⁵⁹ The Department also presented evidence that the Utah Insurance Department issued a Notice of Informal Adjudicative Proceeding and Order dated July 2, 2020 wherein Respondent was to be fined \$750.⁶⁰ However, said document indicates that the “...Order shall become final and take full effect, 15 days after [it] is emailed to Respondent...”⁶¹ The document lacks any indicia of the Respondent’s email address, distribution list, or other reference that the Notice was emailed. Therefore, I find there is insufficient evidence that the Utah administrative action became a *final* disposition. Respondent failed to report to the Department the

⁵⁶ RSA 402-J:1

⁵⁷ RSA 402-J:12, I (b)

⁵⁸ RSA 402-J:17, I

⁵⁹ Ex. 5, 8, and 7

⁶⁰ Ex. 6

⁶¹ *Id.*

administrative actions taken against her in Indiana, Louisiana and Arkansas 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.⁶² Indiana suspended Respondent’s license for failing to report any and all appointments, when requested, within ten days. Arkansas and Louisiana revoked Respondent’s license for failing to report an administrative action. Each of these revocations constitutes a violation of RSA 402-J:12, I (i).

Failure to Respond

Licensed producers are required to provide the commissioner with all relevant documents and information relating to an investigation within 10 working days of a request.⁶³ RSA 400-A:14 provides that a notice or order of the commissioner may be given by mail to the individual’s “principal place of business or residence as last of record in the department.”⁶⁴ The Enforcement Unit sent written requests on March 16 and April 1, 2021 to Respondent’s residential address on file with the Department.⁶⁵ Enforcement counsel stated that the Respondent had never responded to either request.⁶⁶ I find there is sufficient evidence to support a finding that Respondent violated RSA 400-A:16, II by failing to respond to the Department’s request for information.

⁶² RSA 402-J:12, I (i)

⁶³ RSA 400-A:16, II

⁶⁴ RSA 400-A:14, I (c)

⁶⁵ Ex. 10

⁶⁶ Record at 17:34

V. Conclusion

Based on the foregoing, I propose that Respondent's non-resident producer license be PERMANENTLY REVOKED, effective immediately, and an administrative fine of \$1,000 be assessed, as a result of the Respondent's violation of NH RSA 402:J:12, I (b). The Department presented argument for an administrative penalty of \$2,500, because regulatory authorities must be able to communicate with licensees in order to carry out their functions. However, I believe a license revocation is the most significant penalty that can be imposed. Ordering the maximum allowable penalty, in addition to a license revocation, is excessive.

Dated: 6/25/2021

Roni M. Karnis

Roni M. Karnis, Hearing Officer