

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**IN THE MATTER OF
THE LICENSURE OF
LUCAS A. BURTON**

**ORDER AND FINAL AGENCY
DECISION**

Docket Number: 1877

THIS MATTER was heard on January 30, 2019 by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance (“Commissioner”) under N.C. Gen. Stat. § 58-2-55, pursuant to a Second Amended Notice of Administrative Hearing (“Second Amended NOAH”) that was duly issued and served on Respondent Lucas A. Burton (“Respondent”).

Respondent, proceeding *pro se*, failed to appear at the hearing.

Petitioner Agent Services Division (“Agent Services”) of the North Carolina Department of Insurance (“NCDOI”) was present at the hearing and was represented by Terence D. Friedman, Assistant Attorney General. NCDOI employee Joseph Wall testified at the hearing.

ASD offered into evidence Petitioner’s Exhibits 1 through 11, which were admitted into evidence.

BASED UPON careful consideration of the evidence and arguments presented, and based upon the entire record in the proceeding, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. NCDOI is a state agency responsible, in accordance with Chapter 58 of the North Carolina General Statutes, for enforcement of the insurance laws of North Carolina and for regulating and licensing insurance producers.
2. Respondent holds an active North Carolina license as a non-resident insurance producer (“NC License”), which has been effective since 2005.
3. Pursuant to N.C. Gen. Stat. § 58-2-69, Respondent has listed with the NCDOI residential and business addresses in Illinois.

4. The NCDOI learned that, as of September 18, 2018, Respondent was imprisoned at the Zephyrhills Correctional Institution in Zephyrhills, Florida.

5. On September 18, 2018, NCDOI served a copy of the Second Amended NOAH on Respondent at the residential and business addresses he has listed with the NCDOI and at the Zephyrhills Correctional Institution.

6. N.C. Gen. Stat. § 58-2-69(b) and (d) provide in relevant part:

(b) Every applicant for a license shall inform the Commissioner of the applicant's residential address... Every licensee shall give written notification to the Commissioner of any change to the licensee's residential or email address...

(d) Notwithstanding any other provision of the law, whenever the Commissioner is authorized or required to give any notice under this Chapter to a licensee, the notice may be given...by sending the notice by first-class mail to the licensee at the address that the licensee has provided to the Commissioner...

7. The copies of the Second Amended NOAH served on Respondent's residential and business addresses were returned. The copy of the Second Amended NOAH served on Respondent via First Class U.S. Mail at the Zephyrhills Correctional Institution was not returned. According to the U.S. Postal Service, the copy of the Second Amended NOAH served on Respondent at the Zephyrhills Correctional Institution via Certified U.S. Mail, return receipt requested, was left with an individual at the Institution on September 21, 2018.

8. The Second Amended NOAH stated:

Respondent is currently scheduled to be released on October 5, 2018 from the Florida correctional facility where he is incarcerated. The hearing in this matter will be scheduled when, upon Respondent's release from the correctional facility, the parties have an opportunity to confer about a convenient hearing date. Respondent may contact counsel for the Agent Services Division ("Agent Services") of the NC Department of Insurance ("NCDOI"), Terence D. Friedman, about scheduling the hearing date by calling him at (919) 716-6622, emailing him at tfriedman@ncdoj.gov or writing him at P.O. Box 629, Raleigh, NC 27602-0629. **If Respondent does not contact counsel for Agent Services within 30 days of Respondent's release from the correctional facility, the Hearing Officer will set a hearing date. (emphasis in the original).**

9. Respondent was released from prison in Florida on or about October 5, 2018. Respondent did not thereafter contact counsel for Agent Services about scheduling the hearing date for this matter.

10. On November 29, 2018, the Hearing Officer issued an order setting the hearing of this matter for January 30, 2019.

11. N.C. Gen. Stat. § 58-2-69(c) provides:

If a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, 'conviction' includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

12. On January 23, 2017, Respondent pleaded guilty and was convicted of felony driving under the influence of alcoholic beverages or controlled substances in the Circuit Court for the Sixth Judicial District of Florida, Pinellas County, 16-02354-CF ("Florida Conviction"). Respondent did not advise the Commissioner of the Florida Conviction.

13. N.C. Gen. Stat. § 58-33-32(k) provides:

A producer shall report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. As used in this subsection, 'administrative action' includes enforcement action taken against the producer by the FINRA. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action.

14. On February 10, 2017, the Florida Department of Financial Services revoked Respondent's non-resident insurance agent's licenses in that state ("Florida Administrative Action") based on Respondent's Florida Conviction. Respondent did not advise the Commissioner of the Florida Administrative Action.

15. N.C. Gen. Stat. §§ 58-33-32(c) and (c)(1) provide in relevant part that a nonresident person "shall receive a nonresident producer license" if the "person is currently licensed as a resident and in good standing in that person's home state."

16. On or about July 31, 2017, Respondent's resident insurance producer's license in his home-state of Illinois lapsed. Respondent's Illinois producer's license has not been reinstated.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and he has jurisdiction over the parties and the subject matter.
2. Respondent was properly served with the Second Amended NOAH in this matter.
3. N.C. Gen. Stat. § 58-33-46(a)(2) permits the Commissioner to revoke an insurance producer's license for "[v]iolating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violating any rule of the FINRA."
4. Respondent violated N.C. Gen. Stat. § 58-2-69(c) – an insurance law of this state – by failing to report the Florida Conviction to the Commissioner, and his NC License should therefore be revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2).
5. Additionally, Respondent violated N.C. Gen. Stat. § 58-33-32(k) – an insurance law of this state – by failing to report the Florida Administrative Action to the Commissioner, and his NC License should therefore be revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2).
6. N.C. Gen. Stat. § 58-33-46(a)(17) permits the Commissioner to revoke an insurance producer's license for "[a]ny cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance."
7. Respondent's maintenance of his resident insurance producer's license in his home-state license of Illinois is a requirement for his NC License under N.C. Gen. Stat. §§ 58-33-32(c) and (c)(1). Respondent's loss of his Illinois producer's license is a cause for which issuance of his NC License could have been refused had it then existed at the time of its issuance, and Respondent's NC License should therefore be revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(17).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's non-resident insurance producer's license be revoked.

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in

the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with the 11 NCAC 1.0413 and N.C.G.S. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The mailing address to be used for service on the Department of Insurance is: A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.

This the 28th day of February, 2019.



Sherri Hubbard, Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. mail, return receipt requested and via first class U.S. mail to the licensee at the addresses provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Respondent, addressed as follows:

**Lucas A. Burton
P.O. Box 768
Effingham, IL 62401**


Certified Mail Tracking Number: 70170530000073199774

**Lucas A. Burton
308 E. Washington Avenue
Effingham, IL 62401**

Certified Mail Tracking Number: 70170530000073197817

**Terence D. Friedman
Assistant Attorney General
N. C. Department of Justice
Insurance Section
P.O. Box 629
Raleigh, NC 27602**

This the 22nd day of February, 2019.


Mary Faulkner
Paralegal
N.C. Department of Insurance
General Counsel's Office
1201 Mail Service Center
Raleigh, NC 27699-1201