

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)
DAVID CLARK)
(NPN #199003650))

Respondent.)

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2200

THIS MATTER was heard on September 25, 2024 by the undersigned Hearing Officer, as designated by the Commissioner of Insurance (“Commissioner”) pursuant to N.C. Gen. Stat. § 58-2-55. The administrative hearing was held in Hearing Room #131 of the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina.

Petitioner, the Agent Services Division of the North Carolina Department of Insurance (“Petitioner” or “Agent Services”), was represented by Assistant Attorney General Anne Goco Kirby. Respondent David Clark did not appear and was not represented by counsel at the hearing.

Petitioner’s Exhibits 1 through 12, were admitted into evidence without limitation. Lindsay Melgarejo, Complaint Analyst with Agent Services, testified on behalf of Petitioner.

BASED UPON careful consideration of the evidence 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. The Notice of Administrative Hearing and Petition for Administrative Hearing were properly served on Respondent by depositing with a designated delivery service via FedEx – Priority Overnight and was delivered on September 10, 2024 at the address Respondent provided to the Commissioner of Insurance (“Commissioner”). See Pet’r Exs. 1 and 2.

2. The Department is a state agency responsible for the enforcement of the

insurance laws of North Carolina and for regulating the licensing of insurance producers, in accordance with Chapter 58 of the North Carolina General Statutes.

3. Respondent currently holds a non-resident insurance producer license issued by the Department with lines of authority in Accident and Health or Sickness and Medicare Supplement/Long Term Care. Respondent's North Carolina license was first active on May 13, 2021 and issued National Producer License Number 199003650. *See* Pet'r Ex. 3.

4. Respondent is a resident of Illinois. *See* Pet'r Ex. 3.

5. Agent Services received an automatic notification through the NAIC ("National Association of Insurance Commissioners"), notifying the Department of regulatory action that Respondent received in Illinois. *See* Pet'r Ex. 4.

6. On April 20, 2023, the Illinois Department of Insurance suspended Respondent's license for having unpaid Illinois Individual Tax liability from 2018 in the amount of \$1,863.83, failing to file tax returns and failing to pay tax liability for such unfiled tax returns which violated certain provisions of the Illinois Income Tax Act. This Order of Suspension ("Illinois Suspension") provided it would "take effect 30 days from the date of mailing but shall be stayed if, within this 30-day period, written request for hearing is filed with the Director. If a hearing is not requested within 30 days from the date of mailing this Order of Suspension, the suspension will remain in effect until the Licensee proves to the satisfaction of the Department that the Licensee complied with the requirements of Revenue and the Illinois Income Tax Act (35 ICS 5/101 *et. seq.*)". The Illinois Suspension was mailed to the Respondent on April 21, 2023. *See* Pet'r Ex. 6.

7. On June 20, 2023, the Illinois Department of Insurance issued an Order Lifting Suspension ("Illinois Reinstatement"), effectively reinstating Respondent's license, after notification from the Department of Revenue on May 31, 2023, that Respondent had subsequently complied with Illinois tax obligations. *See* Pet'r Ex. 7.

8. N.C. Gen. Stat. § 58-33-32(k) requires a producer to report to the Commissioner any administrative action taken against the producer in another state within 30 days after the final disposition of the matter. The report "shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the actions."

9. A licensee may report an administrative action to the Department by uploading a copy of the administrative action to the National Insurance Producer Registry ("NIPR") Attachment Warehouse or reporting the administrative action directly to the Department. Respondent did not provide a copy of the administrative action from Illinois in the NIPR Attachment Warehouse until January 04, 2024. *See* Pet'r Ex. 5.

10. On June 21, 2023, Agent Services sent correspondence to Respondent's e-mail addresses of record, addressing the Illinois Suspension and Illinois Reinstatement and requested that he provide a written response along with copies of any documentation regarding the Illinois orders. Respondent did not respond to Agent Services at this time. *See* Pet'r Exs. 3 and 8.

11. On July 3, 2023, Agent Services sent a second notice to Respondent's e-mail addresses of record, referencing the earlier correspondence and requested Respondent to provide a written response within 10 days along with any documentation regarding the Illinois orders. *See* Pet'r Exs. 3 and 9.

12. On July 13, 2023, Agent Services sent a written correspondence to Respondent via email and first-class US mail, scheduling a telephonic informal conference on August 22, 2023 at 11:30 AM at the telephone number on record, to explain Respondent's failure to report the Illinois administrative action to the Department. *See* Pet'r Exs. 3 and 10.

13. On the same day, July 13, 2023, Respondent contacted Agent Services apologizing for the delay and provided a statement explaining the events leading to the suspension and reinstatement of his Illinois insurance license. Agent Services reminded Respondent that copies of the Illinois administrative actions had not been provided as required. *See* Pet'r Ex. 11.

14. Also on the same day, July 13, 2023, Respondent provided copies of the Illinois administrative actions as previously requested by Agent Services showing that his Illinois license had been suspended and reinstated by the Illinois Department of Insurance. *See* Pet'r Ex. 12.

15. Agent Services considered issuing a written warning to Respondent to address the untimely reporting matter, as Agent Services often provides first time offenders, however; Agent Services considered the Illinois actions to be Respondent's first and separate reporting offense, when viewing each as two individual actions based on the separate entries Illinois entered in the NAIC database. *See* Pet'r Ex. 4.

16. On August 22, 2023, Respondent participated in the informal conference with Agent Services by telephone as scheduled and despite attempting to resolve the matter informally between the parties, a mutual resolution was unsuccessful.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner

has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. The Notice of Administrative Hearing was properly served on Respondent pursuant to N.C. Gen. Stat. § 58-2-69(b) and Rule 4 of the North Carolina Rules of Civil Procedure.

3. N.C. Gen. Stat. § 58-33-32(k) requires an insurance producer to report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within thirty (30) days after the final disposition of the matter.

4. The Illinois Suspension on April 20, 2023, constitutes an administrative action taken against Respondent's Illinois license. The language used in the Order of Suspension, specifically provided that "[t]his Order of Suspension shall take effect 30 days from the date of mailing" and the certificate of service indicated that the order was mailed on April 21, 2023, however; at the hearing, Agent Services testified that Respondent was required to report on or before May 20, 2023 without further clarity on the order's effective date. The order also provided that "the suspension will remain in effect until the Licensee proves to the satisfaction of the Department that the Licensee complied with the requirements of Revenue and the Illinois Income Tax Act". *See* Pet'r Ex. 6. This use of conditional language implies that the suspension is temporary in nature, upon conditions being met. Petitioner did not provide a sufficient showing of what constituted the "final disposition of the matter" or when the action became effective, thus triggering the 30-day clock for reporting as required by N.C. Gen. Stat. § 58-33-32(k).

5. The Illinois Reinstatement on June 5, 2023, lifted the suspension once the necessary conditions were satisfied. The license was reinstated based on findings that Respondent was compliant with his tax obligations and that Illinois Department of Insurance was fully advised after being notified on May 31, 2023, by Illinois Department of Revenue, of Respondent's tax compliance. *See* Pet'r Ex. 7. The Illinois Reinstatement did not contain any conditional language and fully resolved the tax matter at issue, which was the basis for the initial Illinois Suspension.

6. While the Illinois Department of Insurance used two separate action numbers when entering both actions into the NAIC database, it cannot be overlooked that there was only one matter at issue between the actions. Illinois designated the reason for the license suspension as "failure to pay tax" and the reason for license reinstatement as "resolution of tax obligations". *See* Pet'r Ex. 4. Absent a clear showing from Petitioner to distinguish otherwise, it is apparent to the undersigned, that Respondent's payment of tax obligation was the underlined "matter at issue", prompting Illinois to take administrative action to suspend the license. And the

subsequent action removing the suspension shortly thereafter upon learning of Respondent's compliance from Revenue, provided a final disposition fully resolving the tax matter at issue. In light of the indistinguishable connection between the Illinois actions, these administrative actions can be considered in tandem.

7. Because the Order Lifting Suspension reinstated Respondent's Illinois license upon entry of the order on June 5, 2023, Respondent was required to report the Illinois administrative action within thirty (30) days of this final disposition, pursuant to N.C. Gen. Stat. § 58-33-32(k). To be considered timely pursuant to this statute, Respondent had until July 5, 2023, to report this administrative action to the Department. However, Agent Services testified that Respondent was "given an additional 10 days" pursuant to their July 3rd letter, to respond as previously "requested to provide a written response along with any documentation regarding (the Illinois actions)" in accordance with Agent Services' June 21st email. *See* Pet'r Exs. 8 and 9. Thus, Petitioner effectively extended Respondent's reporting period to July 13, 2023.

8. Respondent successfully reported both Illinois administrative actions to Agent Services on July 13, 2023, when he provided the statement of explanation and copies of the Order of Suspension and Order Lifting Suspension directly to the Department via email. While Respondent's delay in reporting the Illinois administrative actions to the Department, constitutes a violation of N.C. Gen. Stat. § 58-33-32(k), Agent Services permitted Respondent to provide all documentation by July 13, 2023, essentially extending the period for reporting, given the date the letter was issued in relation to when the statutory reporting period provided.

9. Accordingly, Respondent did in fact provide a written explanation and all Illinois administrative actions within the allotted time frame Agent Services permitted on July 13, 2023, despite Respondent's statutory obligation running on July 5, 2023.

10. N.C. Gen. Stat. § 58-33-46(a)(2) allows the Commissioner to place on probation, suspend, revoke, or refuse to renew any license issued under this Article for a licensee violating 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 FINRA.

11. N.C. Gen. Stat. § 58-2-70(c) provides, in pertinent part, that "If, under subsection (b) of this section, the Commissioner finds a violation of this Chapter, the Commissioner may, in addition to or instead of suspending or revoking the license or certification, order the payment of monetary penalty as provided in subsection (d) of this section...."

12. Petitioner alleged that Respondent's violations of N.C. Gen. Stat. §§ 58-

33-32(k) and 58-33-46(a)(2) provides sufficient statutory authority for the Commissioner to take disciplinary action against Respondent's non-resident insurance producer license.

13. Respondent's non-resident insurance producer license should not be suspended or revoked and no monetary penalty shall be paid.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearing Officer enters the following:

ORDER

It is hereby ORDERED that no disciplinary action shall be taken against Respondent's license based on his violation of N.C. Gen. Stat. § 58-33-32(k) for failing to timely report the Illinois Order of Suspension or the Illinois Order Lifting Suspension to the Department. This violation shall be treated as a written warning based on the abovementioned Findings of Facts and Conclusions of Law. Respondent is hereby noticed that he shall fully comply with all requirements provided to maintain his North Carolina non-resident insurance producer license.

This 25 day of June, 2025.



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

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: Amy Funderburk, General Counsel, 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 copies of the same via certified U.S. Mail, return receipt requested and via first class U.S. Mail to the Respondent at the address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

David Clark
640 W Addison St., Apt. 40
Chicago, Illinois 60613
(Respondent)

Certified Mail Tracking Number: 9589 0710 5270 0742 5906 75

Anne G. Kirby
Assistant Attorney General
N.C. Department of Justice
Insurance Section
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This the 25th day of June, 2025.



Raheema I. Moore
Paralegal III
N.C. Department of Insurance
General Counsel's Office
1201 Mail Service Center
Raleigh, NC 27699-1201