

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA)	BEFORE THE
COUNTY OF WAKE)	COMMISSIONER OF INSURANCE
)	
)	
IN THE MATTER OF:)	
)	
THE LICENSURE OF:)	ORDER AND
FERNANDO CLAUSTRO)	<u>FINAL AGENCY DECISION</u>
(NPN #18982610))	
)	Docket No. 2149
)	
Respondent.)	
)	

THIS MATTER was heard on December 7, 2023 in Hearing Room #131 of the Albemarle Building, located at 325 North Salisbury Street Raleigh, North Carolina. 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 Notice of Administrative Hearing that was duly issued and served.

Petitioner Agent Services Division (“Agent Services”) of the North Carolina Department of Insurance (“NCDOI”) was present at the hearing and was represented by Todd H. Neal, Assistant Attorney General.

Respondent, Fernando Claustro (hereinafter, “Respondent”), did not appear at the hearing and was not represented by counsel.

Carisa Ransome, Complaint Analyst, testified on behalf of Agent Services at the hearing. Petitioner’s Exhibits 1 through 13, 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. The North Carolina Department of Insurance (“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. The Notice of Administrative Hearing and Petition for Administrative Hearing were properly served on Respondent via first class mail. The Notice of Administrative Hearing, Petition for Administrative Hearing, and Affidavit of Service were admitted into evidence as Petitioner's Exhibits 1, 1A, and 2, respectively.

3. At all times relevant herein, Respondent currently holds an active Nonresident Insurance Producer License ("License") with a line of authority for Personal Lines. Respondent's National Producer License Number (NPN) is 18982610 and Respondent's License was first active in North Carolina on July 13, 2021. See Petitioner's Exhibit 4.

4. Carisa Ransome, Complaint Analyst, testified that Agent Services became aware of this matter via a report on the Regulatory Information Retrieval System ("RIRS"), which is an automatic notification system through the National Association of Insurance Commissioners ("NAIC"), that Respondent had received an adverse administrative action in New York State. See Petitioner's Exhibit 3.

5. On or about November 22, 2021, the New York State Department of Financial Services, via written correspondence, notified Respondent it was denying Respondent's application (the "New York State Denial") for a nonresident insurance producer's license for having demonstrated untrustworthiness within the meaning and intent of New York State Insurance Law. That denial constitutes an administrative action. A certified copy of the New York State Denial was admitted into evidence as Petitioner's Exhibit 8.

6. Analyst Ransome testified that a licensee may report an administrative action against a license by uploading a copy of the administrative action to the NIPR Attachment Warehouse or reporting the administrative action directly to Agent Services. Respondent failed to timely report the New York State Denial to the Commissioner within thirty (30) days of the final disposition of that matter, as required by N.C. Gen. Stat. § 58-33-32(k). See Petitioner's Exhibit 5.

7. Analyst Ransome testified she then discovered that Respondent had answered "No" to Question 2 on Respondent's July 6, 2021 application for a North Carolina Nonresident Insurance Producer's License ("Respondent's NC Application"), which read "Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?" See Petitioner's Exhibit 6.

8. In consideration of Respondent's application for a California Insurance Producer's License a hearing was held on September 10, 2018, in which Respondent was a named party and at which Respondent was present at the hearing, and after which an order denying that application was issued (the "Initial California Denial").

That hearing constitutes an administrative proceeding regarding a professional or occupational license. Later on October 23, 2018 the Initial Denial was vacated and California issued Respondent an restricted license to act as a Personal Lines Broker-Agent. A certified copy of the Initial California Denial was entered into evidence as Petitioner's Exhibit 7.

9. Based on the Initial California Denial and later restricted license issued, Respondent should have answered "Yes" to Question 2 on Respondent's NC Application regarding involvement in prior administrative proceedings against the applicant.

10. On or about January 31, 2022, the California Department of Insurance issued an Order of Summary Revocation (the "California Revocation") of Respondent's insurance producer's license based on findings that Respondent was both convicted of a felony, on February 3, 2021, and that Respondent failed to notify them of that conviction. A certified copy of the California Revocation was admitted into evidence as Petitioner's Exhibit 9.

11. Analyst Ransome testified that Respondent did not report the California Revocation to the Commissioner within 30 days of the final disposition of that matter via the NIPR Attachment Warehouse of direct notification to Agent Services.

12. On August 16, 2022, the South Dakota Division of Insurance of the South Dakota Department of Labor & Regulation issued written notice ("South Dakota Denial") that Respondent's application for licensure as a non-resident insurance producer has been denied based on violation of South Dakota Codified Law 58-30-167(1), (2), (6), and (9) by "providing incomplete information in the license application, violating...insurance law, rules or order[s] of another state's insurance director, having been convicted of a felony, and having an insurance producer license denied in another state." The South Dakota Denial is an adverse administrative action effective on August 16, 2022. *See* Petitioner's Exhibit 10.

13. Analyst Ransome testified that Respondent failed to report the South Dakota administrative action to the NIPR Attachment Warehouse or directly to Agent Services.

14. On November 28, 2022, Agent Services sent Respondent notice of an informal conference which was scheduled on January 5, 2023, at 11:30 a.m. to address the following allegations: "...regulatory action from the state of South Dakota (reported late) and a regulatory action from New York (not reported). In addition, you answered "no" to background question #2 regarding prior administrative actions. When in fact, you had a regulatory action from the state of California." This correspondence was mailed to Respondent's address of record. *See* Petitioner's Exhibit 11.

15. On January 5, 2023, Agent Services held the informal conference and spoke with Respondent via telephone. The parties attempted to address these matters after said conference but shortly thereafter Analyst Ransome testified that communication and resolution with Respondent become limited overtime and the decision for administrative proceeding was made by Agent Services.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. Respondent was properly served with the Notice of Administrative Hearing in this matter.

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. Respondent failed to report to the Commissioner the November 22, 2021 New York State Denial and failed to timely report the January 31, 2022 California Revocation within thirty (30) days of the respective final dispositions of those matters and therefore violated N.C. Gen. Stat. § 58-33-32(k).

5. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) one basis for revocation of a license issued by NCDOI is violation of any insurance laws of North Carolina or any other state.

6. Respondent's violation of N.C. Gen. Stat. § 58-33-32(k) constitutes a violation of insurance laws of this state and is therefore grounds for license revocation under N.C. Gen. Stat. § 58-33-46(a)(2).

7. N.C. Gen. Stat. § 58-33-46(a)(1) provides that the Commissioner may place on probation, suspend, revoke, or refuse to renew a license issued by NCDOI if the licensee provides materially incorrect, misleading, incomplete, or materially untrue information in the license application.

8. Respondent provided materially incorrect and materially untrue information provided in Respondents NC Application submitted on July 6, 2021 by answering "no" to background question #2 regarding prior administrative actions and failing to disclose the administrative proceedings from September 10, 2018 which

resulted in a denial and later a restricted license in California. This constitutes grounds for license revocation under § 58-33-46(a)(2).

9. N.C. Gen. Stat. § 58-33-46(a)(9) authorizes the Commissioner to place on probation, suspend, revoke or refuse to renew a license if a licensee has an insurance producer license or its equivalent denied, suspended or revoked in any other jurisdiction.


10. Respondent violated insurance laws in the state of New York and South Dakota which resulted in license denials. Pursuant to Respondent's adverse administrative actions in the States of New York and South Dakota, Respondent's North Carolina insurance producer license may be revoked.

11. Respondent's violation of N.C. Gen. Stat. § 58-33-32(k), N.C. Gen. Stat. § 58-33-46(a)(2) and N.C. Gen. Stat. § 58-33-46(a)(9) provides the statutory authority for revoking Respondent's resident North Carolina insurance producer license.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's Nonresident insurance producer's license be revoked effective as of the date of the signing of this Order.

This 14th day of February, 2024.



Alisha Benjamin
Hearing Officer
N.C. Department of Insurance

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 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.

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 Petitioner addressed as follows:

Fernando Claustro
139 Stillman Way #3
Upland, California, 91786
(Respondent)

Certified Mail Tracking #: 70222410000096626830

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

This the 15th day of February, 2024


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