

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

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**BEFORE THE COMMISSIONER
OF INSURANCE**

Docket Number: D-1856

**IN THE MATTER OF
THE LICENSURE OF:**

DONNELL T. DAVIS
NPN # 16928567

ORDER AND FINAL AGENCY DECISION

This matter was heard on April 19, 2018 by the undersigned Hearing Officer, as designated by the Commissioner of Insurance, pursuant to North Carolina General Statutes §§ 58-2-50, 58-2-55, 58-2-70, 58-33-46, 150B-38, 150B-39, 150B-40 and 11 NCAC 1.0401 et seq. and other applicable statutes.

Petitioner, the North Carolina Department of Insurance (hereinafter, "the Department") was present at the hearing, represented by the Agent Services Division. The Department was represented by Assistant Attorney General Anne Goco Kirby.

Respondent, Donnell T. Davis (hereinafter, "Respondent") was present at the hearing. Respondent was not represented by counsel and proceeded *pro se*.

The Department called Timothy Pantaleone, a State Farm Audit Consultant, and Megan Daniels, a Senior Complaint Analyst for the Department's Agent Services Division, to testify at the hearing. The Department offered into evidence Exhibits 1 through 13, and said documents were admitted into evidence. Exhibit 5 was admitted for illustrative purposes.

Respondent testified in his defense. Respondent offered into evidence Exhibit R-1, which was admitted into evidence.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, the undersigned Hearing Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Notice of Administrative Hearing was properly served on Respondent on November 30, 2017. A Rescheduling Order which rescheduled the hearing for April 19, 2018 was properly served on the Respondent on February 7, 2018.

2. Respondent holds resident Producer and Broker's licenses which were first issued by the Department on January 27, 2016 and March 10, 2017, respectively.

3. Respondent is a former resident of the State of Michigan and held a resident producer's license issued by the Michigan Department of Insurance on April 3, 2013. Effective January 13, 2016, Respondent voluntarily surrendered his Michigan agent's license.

4. Respondent worked as a licensed producer and team member in the office of State Farm Independent Contractor Agent Tim Miller Agency ["the Miller Agency"] in Southfield, Michigan from 2013 through January 2016 and was appointed by State Farm.

5. In the fall of 2016, Timothy Pantaleone, an Audit Consultant for State Farm, conducted an audit of the automobile insurance applications ["applications"] that were submitted by agent team members of the Miller Agency in order to investigate the potential falsification of information entered on auto applications after State Farm auto underwriting identified concerns with the validity of documents that had been submitted with those applications as evidence of previous insurance ["EOI documents"]. EOI documents were required to be submitted for applications in Michigan if there was no prior insurer report available.

6. After receiving the complaint and sample EOI documents from State Farm auto underwriting, Mr. Pantaleone conducted an internal review of a sample of the auto applications submitted by team members of the Miller Agency in order to determine if the information regarding vehicle purchase dates, prior time of insurance coverage for the driver ["PTI"], and prior bodily injury limits ["prior BI"] entered on the applications was accurate. The amount of prior BI limits, duration of PTI, and duration of ownership of the vehicle affect the insurance rate. In particular, the higher the prior BI limits, longer duration of PTI, and longer duration of ownership of the vehicle, the lower the premium. Mr. Pantaleone reviewed a sample of 25 applications pulled from 498 applications submitted through the Miller Agency during the period August 2015 to July 2016 and identified a number of instances in which Respondent and fellow team members Clarence Norfleet and Percy Davis had entered amounts of PTI, prior BI limits, and vehicle purchase dates which were inaccurate.

7. 13 of the 25 applications that Mr. Pantaleone reviewed had been submitted by Respondent. Mr. Pantaleone compared the PTI and prior BI entered on 5 of the applications for which there were available reports of previous insurer for the drivers ["PIR"] and observed that the PIR for 4 of the 5 applications showed a PTI which was several years less than the PTI that Respondent entered on the application and showed a prior BI for all 5 of the applications that was significantly lower than the amount that Respondent entered on the application. Mr. Pantaleone also observed that the vehicle purchase date that Respondent entered on 8 of the 13 applications was a year prior to the year model of the vehicle. Mr. Pantaleone checked the available National Insurance Crime Bureau records for these vehicles. Those records showed that these vehicles were not shipped to the dealer for purchase until after the vehicle purchase dates which were entered on the applications. Mr. Pantaleone thus concluded that Respondent entered inaccurate PTI, prior BI, and vehicle purchase dates on these applications.

8. EOI documents were submitted for 5 of the 13 applications that Respondent completed. Mr. Pantaleone contacted the insurers for which EOI documents had been submitted for applications completed by Respondent and team members Clarence Norfleet and Percy Davis in order to confirm whether the insurers had actually provided the coverage shown on the EOI documents and learned that the insurers had no record of issuing any insurance coverage to these drivers.

9. In October 2016, Mr. Pantaleone conducted separate interviews of the Respondent, Clarence Norfleet, and Percy Davis regarding the inaccurate information which State Farm discovered on the auto applications which they submitted and the fraudulent EOI documents which had been submitted with many of those auto applications. Mr. Pantaleone also interviewed the State Farm independent contractor agent Tim Miller regarding these issues. Clarence Norfleet and Percy Davis were still working and living in Michigan when Mr. Pantaleone interviewed them. Respondent had moved to North Carolina where he was employed by State Farm as an agent intern and appointed with State Farm in North Carolina. At the time of the interview in October 2016, Respondent was training at the State Farm's operations center in Georgia.

10. During his interview with Mr. Pantaleone, Respondent admitted that in order to generate cheaper premiums and allow for selling the policies he inputted higher prior BI limits of \$100,000/\$300,000 and altered vehicle purchase dates and dates of prior insurance on applications to reflect a longer duration of vehicle ownership and PTI. Respondent told Mr. Pantaleone that he estimated that he would enter the false prior insurance information and vehicle purchase dates on about 75% of the applications he completed. Respondent also told Mr. Pantaleone that he began engaging in this practice in 2013 and continued this practice until he left the Miller Agency in 2016. Respondent also admitted that there were instances in which he provided short-annual mileage discounts to applicants who drove more miles than would qualify in order to generate cheaper premiums and allow for selling the policies. Respondent denied having created or

submitted the fraudulent EOI documents that were submitted with the applications that Respondent completed and asserted that his former team members Percy Davis and Clarence Norfleet had been creating and submitting fraudulent EOI documents with his applications and their applications since September 2015.

11. After Mr. Pantaleone reported the findings of his audit to State Farm, State Farm terminated Respondent's employment with State Farm and terminated Respondent's appointment in North Carolina for cause effective November 4, 2016. By letter dated December 6, 2016, State Farm notified the Department of the for cause termination as required by N.C.G.S. § 58-33-56(a). State Farm also terminated the appointments of Percy Davis and Clarence Norfleet in Michigan for cause and notified the state of Michigan of those terminations for cause.

12. After receiving State Farm's notice of termination, the Department requested State Farm to provide documents supporting its decision to terminate Respondent for cause. After the Department received and reviewed the requested documentation from State Farm, the Department sent an e-mail to Respondent on January 12, 2017 which: (a) notified Respondent that the Department had received allegations that State Farm had terminated his appointment for cause for entering inaccurate information on auto applications and creating fraudulent EOI documents and (b) requested Respondent to provide the Department with a written, notarized statement responding to State Farm's allegations.

13. In a notarized statement submitted to the Department in response to its January 12, 2017 request, Respondent acknowledged that State Farm terminated his appointment for data manipulation done in 2015 when completing insurance applications in Michigan. Respondent explained that he had engaged in the practice of data manipulation, which consisted of "inputting into the quote that customers owned a vehicle longer than they had, Held insurance with the same carrier for longer than they had to decrease the rate for the prospective customer." Respondent further stated that "[t]his was a practice done in Michigan to decrease the higher insurance rates and was not brought down to North Carolina when I moved here." Respondent again denied responsibility for creating and submitting fraudulent EOI documents and asserted that his former co-workers had done this.

14. On March 2, 2017, Respondent met with the Department to discuss allegations of misconduct arising from State Farm's allegations. During the meeting, Respondent reiterated that he had engaged in the practice of data manipulation, including entering false amounts of prior BI limits, in order to lower the premiums. Respondent again denied having created and submitted fraudulent EOI documents and asserted that his co-workers had done this.

15. Respondent testified in his defense at the hearing. Respondent testified that his co-workers began creating and submitting fraudulent EOI documents in order to avoid binding

violations and denied that he had ever done this. Respondent testified that he ceased engaging in the practice of data manipulation after he moved to North Carolina and that his State Farm sales leader in Charlotte wrote him a reference letter after he was terminated by State Farm. The reference letter, which was not certified or attested to under oath, was admitted into evidence.

CONCLUSIONS OF LAW

16. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to N.C. General Stat. §§ 58-33-30, 58-33-46, 150B-38, 150B-40, 11 NCAC 1.0401 et seq. and other applicable statutes and regulations.

17. Respondent was properly served with the Notice of Administrative Hearing and the Rescheduling Order.

18. N.C.G.S. § 58-33-105 provides that any agent who "knowingly or willfully make[s] any false statement or representation in or with reference to any application for insurance, or shall make any such statement for the purpose of obtaining any fee, commission, money or benefit from any company engaged in the business of insurance in this State is guilty of a Class 1 misdemeanor."

19. Respondent violated N.C.G.S. § 58-33-105 by knowingly entering false information regarding the duration of PTI, amount of prior BI limits held, and vehicle purchase dates on State Farm auto applications and by providing short-annual mileage discounts to drivers who drove more miles than would qualify in order to decrease insurance rates and allow for the sale of the policies.

20. N.C.G.S. § 58-33-46(a)(2) authorizes the Commissioner to place on probation, suspend, revoke, or refuse to renew any license issued under this Article if he finds that the licensee has "violat[ed] any insurance law of this or any other state, violat[ed] any administrative rule, subpoena, or order of the Commissioner."

21. Respondent's licenses should be revoked pursuant to N.C.G.S. § 58-33-46(a)(2) for his violations of N.C.G.S. § 58-33-105.

22. N.C.G.S. § 58-33-46(a)(8) authorizes the Commissioner to place on probation, suspend, revoke, or refuse to renew any license issued under this Article if he finds the licensee used "fraudulent, coercive, or dishonest practices, or demonstrate[d] incompetence, untrustworthiness, or financial irresponsibility in the conduct of business."

23. Respondent used fraudulent or dishonest practices in the conduct of business by: (a) engaging in the practice of data manipulation on State Farm auto applications and (b) giving short-annual mileage discounts to consumers who were not eligible for such discounts with State Farm.

24. Respondent's licenses should be revoked pursuant to N.C.G.S. § 58-33-46(a)(8) for having used fraudulent or dishonest practices in the conduct of business.

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

ORDER

It is hereby ordered that the Respondent's Producer and Broker's licenses are revoked.

This 8th day of May, 2018.



Sherri L. Hubbard, 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 01 .0413 and N.C. Gen. Stat. § 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, including explicitly stating what exceptions are

taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. 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.

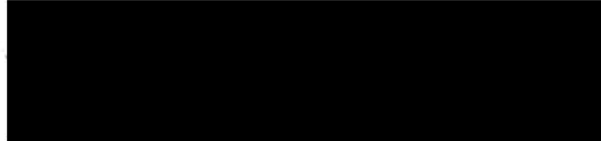
CERTIFICATE OF SERVICE

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 address provided to the Commissioner pursuant to N.C. Gen. Stat. 58-2-69(b); and via State Courier, addressed as follows:

Donnell T. Davis
8626 Castle Cliff Drive
Matthews, NC 28105
Certified Mail Tracking Number: 7017-0530-0000-7319-8111

Anne G. Kirby
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

This the 8th day of May, 2018.



Sherri L. Hubbard
Hearing Officer