

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
NATHANAEL R. GARDNER
(NPN # 16732157)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2138

THIS MATTER came on for hearing on Wednesday, September 2-, 2023, before 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 the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General Anne Goco Kirby was present and represented the Agent Services Division of the North Carolina Department of Insurance ("Petitioner" or "Agent Services"). Respondent Nathanael R. Gardner did not appear.

Petitioner's Exhibits 1 through 12 were admitted into evidence.

Jeff Miller, Complaint Analyst for the Department's Agent Services Division, appeared and testified for the Department.

Based on the allegations set forth in the Notice of Hearing in this matter, as well as documentary and testimonial evidence introduced at the hearing, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The North Carolina Department of Insurance ("Department" or "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. Licensees are required, pursuant to N.C. Gen. Stat § 58-2-69(b), to notify the Commissioner in writing of any change of the licensee's residential or e-mail address within ten business days after the licensee moves into the licensee's new residence or obtains a different e-mail address.

3. Respondent has held non-resident producer's license with lines of authority in Property and Casualty since 2015. *See* Pet'r's Ex. 3.

4. The Notice of Administrative Hearing was properly served on Petitioner pursuant to N.C. Gen. Stat. § 58-2-69(b) and Rule 4 of the North Carolina Rules of Civil Procedure. *See* Pet'r's Ex. 2.

5. On August 24, 2022, the Illinois Department of Insurance denied Respondent's application for licensure ("Illinois Denial") based on the following:

- a) Having been convicted of a felony, which is ground for a denial pursuant to Section 500-70(a)(6) to the Illinois Insurance Code (215 ILCS 5/500-70(a)(6);
- b) falsely answering "no" to being a party to an administrative action although he was party to administrative actions in 2015 by the Georgia Office Of Insurance and Safety Fire and Commissioner, the Alabama Department of Insurance, and the Florida Office of Insurance Regulation;
- c) failure to disclose said administrative actions on his 2019 application for licensure; and
- d) providing incorrect, misleading, incomplete, and materially untrue information on the license application, and attempting to obtain a license through misrepresentation, which are grounds for a denial pursuant to Section 500-70(a)(1) and (3) of the Illinois Insurance Code (215 ILCS 5/500-70(a)(1) and (3)).

See Pet'r's Ex. 5.

6. On or around October 25, 2022, the Illinois Denial was uploaded to the Regulatory Information Retrieval System ("RIRS"), a system that is accessible via the National Association of Insurance Commissioners ("NAIC"). *See* Pet'r's Ex. 4.

7. Agent Services became aware of the Illinois Denial through RIRS, and Jeff Miller was assigned to investigate.

8. Mr. Miller e-mailed Respondent at his email addresses of record on October 25, 2022, and November 4, 2022, requesting that he provide a copy of the Illinois Denial to the Department within ten days pursuant to N.C. Gen. Stat. §§ 58-2-185 and 58-2-195. *See* Pet'r's Exs. 6 and 7. Respondent did not reply to either of those e-mails.

9. After receiving no responses to his October 25, 2022, and November 4, 2022, emails, Mr. Miller sent a letter to Respondent on January 5, 2023, via e-mail and U.S. mail, requesting his participation in an informal conference via telephone. Said informal conference was scheduled for January 24, 2023. *See* Pet'r's Ex. 8.

10. On January 24, 2023, Agent Services called Respondent at the appointed time but received no answer. Agent Services left a voicemail asking for Respondent asking him to call back, but Respondent did not return the call.

11. On January 27, 2023, the Louisiana Department of Insurance issued an order revoking Respondent's Louisiana producer's license ("Louisiana Revocation") for having failed to report the Illinois Denial and an additional denial from Oklahoma, and for failing to response to requests for documentation and information regarding the Illinois and Oklahoma denials. These are both violations of the Louisiana Code. *See* Petr's' Ex. 11. The Louisiana Revocation went into effect on February 6, 2023. *See id.*

12. On February 21, 2023, the State Corporation Commission for the Commonwealth of Virginia issued an order immediately revoking Respondent's Virginia producer's license ("Virginia Revocation"). *See* Pet'r's Ex. 10. The Virginia Revocation was based on Respondent's failure to report the Illinois and Oklahoma Revocations within thirty days of the final dispositions of the actions, which is a violation of the Virginia Code. *See id.*

13. On or around February 14, 2023, Agent Services became aware of the Virginia Revocation and sent another letter to Respondent, via e-mail and U.S. mail, requesting his participation in an informal conference via telephone. Said informal conference was scheduled for March 2, 2023. *See* Pet'r's Ex. 9. Mr. Miller followed up with an email to Respondent on February 27, 2023, requesting a copy of the Virginia Revocation prior to the informal conference date. *Id.*

14. On March 2, 2023, Agent Services called Respondent at the appointed time but received no answer. Agent Services left a voicemail asking for Respondent asking him to call back, but Respondent did not return the call.

15. To date, Respondent has not provided a copy of the Illinois Denial, the Louisiana Revocation, or the Virginia Revocation to Agent Services.

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 Petitioner pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

3. Pursuant to N.C. Gen. Stat. § 58-33-32(k), Respondent was required to report the Illinois Denial, the Louisiana Revocation, and the Virginia Revocation to Petitioner within thirty days of the effective date of the actions. Accordingly, Respondent's failure to report to Agent Services the Illinois Denial, the Louisiana Revocation, and the Virginia Revocation constitute violations of N.C. Gen. Stat. § 58-33-32(k).

4. N.C. Gen. Stat. § 58-33-46(a)(2) authorizes the Commissioner to "suspend, revoke, or refuse to renew any license" issued under Article 33 of Chapter 58 of the North Carolina General Statutes for violating any insurance law of this or any other state.

5. N.C. Gen. Stat. § 58-33-46(a)(9) further authorizes the Commissioner to "place on probation, suspend, revoke, or refuse to renew" any license for the licensee's "having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other jurisdiction for reasons substantially similar to those listed in [N.C. Gen. Stat. § 58-33-46(a)]."

6. Respondent's Illinois Denial was based on his having provided incorrect, misleading, incomplete, and materially untrue information on his license application and for attempting to obtain a license through misrepresentation. *See* Pet'r's Ex. 5.

7. The grounds for the Illinois Denial are substantially similar to the grounds for revocation delineated in N.C. Gen. Stat. §§ 58-33-46(a)(1) and 58-33-46(a)(3).

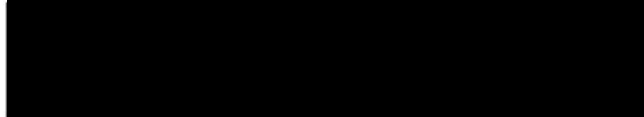
8. Respondent's nonresident producer's license, therefore, is subject to revocation pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) for violating the insurance laws of Illinois, Louisiana, and Virginia, and for his violation of N.C. Gen. Stat. § 58-33-32(k).

9. Additionally, Respondent's nonresident producer's license is subject to revocation pursuant to N.C. Gen. Stat. § 58-33-46(a)(9) for having his application for licensure in Illinois denied for reasons substantially similar to the grounds for revocation listed in N.C. Gen. Stat. §§ 58-33-46(a)(1) and 58-33-46(a)(3).

ORDER

Based on the foregoing Findings of Facts and Conclusions of Law, it is ordered that Respondent's non-resident producer's license issued by the North Carolina Department of Insurance is hereby REVOKED effective as of the date of the signing of this order.

This the 5th day of October, 2023.



Erin E. Gibbs
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 01.0413 and N.C. Gen. Stat. § 1 A-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; via first class U.S. mail to the licensee at the residential address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b) and (d); and via State Courier to Attorney for Petitioner, addressed as follows:

Nathanael Gardner
3050 Brockport Road
Spencerport, NY 14559-2110
(Respondent)

Certified Mail Tracking #: 70222410000096626847

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

This the 5th day of October, 2023.

0

0

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