

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)
YALONDA IVY)
(NPN # 17271505))

Respondent.)

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2096

THIS MATTER was heard on November 17, 2022 by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance (hereinafter, "Commissioner") under 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 (hereinafter, "Agent Services"), was represented by Assistant Attorney General Nathan Childs. Respondent Yalonda Ivy (hereinafter, "Respondent") did not appear and was not represented by counsel at the hearing.

Service of the Notice of Administrative Hearing providing Respondent with due notice of the November 17, 2022 hearing was perfected via first class U.S. Mail on November 1, 2022 pursuant to the deeming provisions of N.C. Gen. Stat. § 58-2-69(e), as shown by the Affidavit of Service admitted into evidence at the hearing.

Agent Services moved, pursuant to 11 N.C.A.C. 1.0423(A), for the imposition of sanctions due to Respondent's failure to appear at the hearing. Petitioner's motion for sanctions is DENIED. The undersigned Hearing Officer proceeded to accept and consider testimony and evidence offered by Agent Services in support of its Petition at the hearing.

Jeff Miller, Agent Services Complaint Analyst, appeared and testified on behalf of Agent Services. Agent Services' Exhibits 1 through 14, including all subparts, were admitted into evidence.

BASED UPON the careful consideration of the evidence and arguments presented at the hearing by Agent Services, and based upon the entire record in this proceeding, the Hearing Officer hereby makes the following:

FINDINGS OF FACT

1. Respondent has an active non-resident North Carolina Insurance Producer's license with lines of authority in Accident & Health of Sickness, Life, and Medicare Supplement/Long Term Care ("License"). Respondent's License was first issued to Respondent on April 12, 2016 under the name Yalonda M. Rushton.

2. Respondent is a resident of Ohio.

3. On June 30, 2014, in Case No. 13CR005364, in the State of Ohio, Franklin County Court of Common Pleas, Respondent was convicted upon her plea of guilty of theft, in violation of Section 2913.02 of the Ohio Revised Code, a felony of the fifth degree. Respondent was sentenced to three years of community control/basic supervision and ordered to pay \$9,049 in restitution to the Ohio Department of Job and Family Services.

4. On April 12, 2016, during the period that Respondent was serving her sentence of community control/basic supervision from her June 30, 2014 felony conviction, an application seeking Respondent's licensure as a non-resident insurance producer was submitted to the Commissioner by Jennifer Sears of TZ Insurance Solutions LLC. Ms. Sears declared in the application that Respondent "provided all the information submitted on this application."

5. The April 12, 2016 license application asked Respondent, among other things, "[h]ave you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court)." Respondent answered "No" to this question on the April 12, 2016 North Carolina license application.

6. Although Respondent had been convicted of theft, a criminal felony involving dishonesty or a breach of trust, in June 2014, Respondent did not separately apply for nor obtain the written consent of the Commissioner to engage in the business of insurance in North Carolina, as required by 18 U.S.C. § 1033(e)(2).

7. On June 24, 2021, more than five years after Respondent was issued her North Carolina insurance producer license, Respondent first disclosed her June 20, 2014 felony conviction to Agent Services by uploading a statement and court records to the Attachment Warehouse of the National Insurance Producer Registry.

8. Effective June 24, 2021, the New York Department of Financial Services took administrative action against Respondent by issuing a letter dated June 24, 2021 denying Respondent's application for a license to act as an insurance agent on the grounds that Respondent had "demonstrated untrustworthiness within the meaning and intent of the [New York State] Insurance Law."

9. Respondent did not report the June 24, 2021 New York administrative action to the Commissioner within thirty (30) days as required by N.C. Gen. Stat. § 58-33-32(k). Respondent first reported the June 24, 2021 New York administrative action on October 6, 2021 in an email responding to an inquiry from Agent Services Complaint Analyst Jeff Miller.

10. Effective July 14, 2021, the Insurance Department of the Commonwealth of Pennsylvania took administrative action against Respondent by entering a Consent Order dated July 14, 2021 in Docket No. CO21-07-011 revoking Respondent's Pennsylvania non-resident insurance producer license on the grounds that Respondent provided incorrect, misleading, incomplete or false information regarding her Ohio felony conviction in her Pennsylvania licensure applications and failed to obtain a waiver from the Pennsylvania Insurance Commissioner to engage in the business of insurance, as required by 18 U.S.C. § 1033(e)(2).

11. Respondent did not report the July 14, 2021 Pennsylvania administrative action to the Commissioner within thirty (30) days as required by N.C. Gen. Stat. § 58-33-32(k). Respondent first reported the July 14, 2021 Pennsylvania administrative action on October 6, 2021 in an email responding to an inquiry from Agent Services Complaint Analyst Jeff Miller.

12. Effective June 4, 2022, the California Department of Insurance took administrative action against Respondent by entering an Order of Summary Revocation dated May 4, 2022 in File No. OBS 4358-A revoking Respondent's California non-resident license on the grounds that Respondent did not disclose her 2014 felony conviction in her December 16, 2014 application for licensure in California, did not separately apply for or obtain written consent from the California Insurance Commissioner to engage or participate in the business of insurance as required by 18 U.S.C. § 1033(e)(2), and because her application for licensure was denied by the New York State Department of Financial Services and revoked by the Pennsylvania Department of Insurance.

13. Respondent did not report the June 4, 2022 California administrative action to the Commissioner within thirty (30) days as required by N.C. Gen. Stat. § 58-33-32(k) and had not reported the administrative action to the Commissioner as of the date of the November 17, 2022 hearing in this proceeding.

BASED UPON the foregoing findings of fact, the Hearing Officer makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner has jurisdiction over the parties and the subject matter.

2. Respondent was properly served with the Notice of Administrative Hearing in this matter but failed to attend the November 17, 2022 hearing or retain counsel to represent her at the hearing.

3. N.C. Gen. Stat. § 58-33-46(a) specifies seventeen grounds on which the Commissioner may “place on probation, suspend, revoke, or refuse to renew” a producer’s license.

4. N.C. Gen. Stat. § 58-33-46(a)(1) authorizes disciplinary action if an applicant has provided “materially incorrect, misleading, incomplete, or materially untrue information in the license application.”

5. By answering “no” when asked whether she had been convicted of a felony, Respondent provided materially incorrect, misleading, incomplete, and materially untrue information in Respondent’s North Carolina license application.

6. N.C. Gen. Stat. § 58-33-46(a)(3) authorizes disciplinary action if a licensee obtains or attempts to obtain a license “through misrepresentation or fraud.”

7. By answering “no” when asked whether she had been convicted of a felony in her North Carolina license application, Respondent obtained her North Carolina insurance producer license through misrepresentation.

8. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2), another basis for the revocation of a license issued by the Department of Insurance is violation of the insurance laws of North Carolina or any other State.

9. N.C. Gen. Stat. § 58-33-32(k) is a North Carolina insurance law that requires an insurance producer to report to the Commissioner “any administrative action” taken against the producer by another state “within 30 days after the final disposition of the matter.”

10. Agent Services’ evidence shows that Respondent failed to report the New York, Pennsylvania, and California administrative actions to the Commissioner within thirty days of the actions’ respective final dispositions, as mandated by N.C. Gen. Stat. § 58-33-32(k). As of the hearing date, Respondent had not reported the June 4, 2022 California administrative action to Agent Services or the National Insurance Producer Registry.

11. By failing to timely report the New York, Pennsylvania, and California administrative actions within thirty days of their final dispositions, Respondent violated a North Carolina insurance law within the meaning of N.C. Gen. Stat. § 58-33-46(a)(2).

12. N.C. Gen. Stat. § 58-33-46(a)(6) authorizes revocation if a licensee has been “convicted of a felony or a misdemeanor involving dishonesty, a breach of trust, or moral turpitude.”

13. Respondent was convicted of theft, a fifth-degree felony involving dishonesty by the State of Ohio, Franklin County Court of Common Pleas on June 30, 2014, in Case No. 13CR005364.

14. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(17), another basis for the revocation of a license issued by the Department of Insurance is “any 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.”

15. Section 1033 of Title 18 of the United States Code entitled “Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce” bars individuals who have been convicted of any criminal felony involving dishonesty or a breach of trust from willfully engaging in the business of insurance unless they obtain “the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.” 18 U.S.C. § 1033(e)(2).

16. By willfully engaging in the business of insurance in North Carolina following her 2014 criminal conviction in Ohio for theft, a fifth-degree felony involving dishonesty, without separately applying for and obtaining written consent from the Commissioner, Respondent violated a federal insurance law, 18 U.S.C. § 1033(e)(1)(A). Witness testimony presented by Agent Services established that Respondent would not have been issued a North Carolina insurance producer license in 2016 had the Commissioner known that Respondent required a § 1033(e)(2) waiver but had not separately applied for or obtained one.

17. The record amply supports a finding that Respondent engaged in conduct supporting revocation of her non-resident insurance producer license under N.C. Gen. Stat. §§ 58-33-46(a)(1), (a)(2), (a)(3), (a)(6), and (a)(17).

18. Failure to disclose a felony conviction on an application for licensure is a serious offense that deprives the Department of Insurance of information directly relevant to assessing whether the licensee should be allowed to engage in the insurance business in North Carolina. Where, as here, the felony conviction was for a crime involving dishonesty or breach of trust, disclosure is particularly critical, as

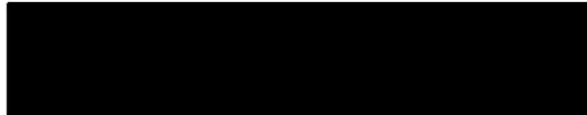
the criminal conduct is substantially related to the qualifications, functions, and duties of an insurance producer. Furthermore, federal law separately requires that such an applicant obtain a § 1033(e)(2) waiver from the Commissioner before she engages in the business of insurance in North Carolina.

19. Based on the evidence received and the applicable law, and after also considering the degree and extent of the harm caused by Respondent's violations, the undersigned Hearing Officer concludes that revocation of Respondent's North Carolina non-resident insurance producer license is the appropriate disciplinary action on this record.

ORDER

BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's non-resident North Carolina Insurance Producer's license is hereby **REVOKED**.

This 6th day of December, 2022.



Meghan N. Cook
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. § 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 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:

Yalonda Ivy
434 ½ W. 6TH Ave.
Columbus, OH 43201-3137
(Respondent)

Certified Mail Tracking Number: 70200640000031858033

Nathan D. Childs
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This 6th day of December, 2022.



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