

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
ZACHARY PRICE
(NPN # 20162477)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2139

THIS MATTER came on for hearing on Wednesday, September 19, 2023, before the undersigned Hearing Officer, as designated by the North Carolina Commissioner of Insurance pursuant to North Carolina General Statutes §§ 58-2-50, 150B-38, 150B-40, 150B-41, 150B-42, 11 NCAC 6A.0402(d)(3) and 11 NCAC 1.0401 et. seq., and other applicable statutes and regulations. The administrative hearing was held in Hearing Room #131 of the Albemarle Building, located at 325 North Salisbury Street, Raleigh, North Carolina

Petitioner, the Agent Services Division of the North Carolina Department of Insurance (hereinafter "Petitioner" or "Agent Services"), was represented by Assistant Attorney General Anne Goco Kirby. Respondent Zachary Price (hereinafter, "Respondent") did not appear and was not represented by counsel.

Petitioner's Exhibits 1- 16 were admitted into evidence.

On September 7, 2023, Petitioner filed a Motion to Allow Remote Testimony to allow witnesses Mary Ellen Modlin and Scott Medeiros to testify remotely. On September 14, 2023, the undersigned Hearing Officer entered a Prehearing Order & Order on Conduct of Remote Hearing which granted Petitioner's motion.

Mary Ellen Modlin and Scott Medeiros testified for the Department via Web Ex. Gwen Harris, Complaint Analyst for the Department's Agent Services Division, and Norwood Ligon, Life and Health Complaint Analyst for the Department's Consumer Services Division, appeared and testified in person for the Department.

BASED UPON the careful consideration of the testimony and documentary evidence presented by the Petitioner and the entire record in this proceeding, 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") 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. Respondent holds an active resident producer license with a line of authority for Life which was first active on December 23, 2021. Respondent's National Producer License Number (NPN) is 20162477.

3. N.C. Gen. Stat § 58-2-69(b) requires, in pertinent part, that all licensees must inform the Commissioner of the applicant's residential address and e-mail address and give written notification to the Commissioner 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. The address on record with the Department were the addresses used by Agent Services to communicate with Respondent. *See* Pet'r's Ex. 3.

4. The Notice of Administrative Hearing and Petition for Administrative Hearing were properly served on Petitioner via first class mail and federal express to Respondent's residential address of record with the Department. *See* Pet'r's Ex. 2.

5. Mary Ellen Modlin appeared via Web Ex and testified that she is 83 years of age. She was capable of expressing herself concerning this matter as to be understood directly and capable of understanding the duty of a witness to tell the truth. Thus, Ms. Modlin was found competent to testify and a credible witness at the hearing in this matter.

6. Ms. Modlin testified that in May 2022, Respondent came to her home uninvited and told her that he was there to sell her a life insurance policy. At the time of Respondent's May 2022 unsolicited sales visit, Ms. Modlin was 81 years of age. Ms. Modlin told Respondent that she was not interested in purchasing life insurance from Respondent because she already had life insurance, she did not want or need more life insurance, and she could not afford more life insurance.

7. Ms. Modlin testified that Respondent came into her home and began soliciting her to cancel and surrender her existing life insurance policies and replace them with an Americo policy which he falsely represented was for a face value of \$10,000 and a monthly premium of \$120.

8. Ms. Modlin showed Respondent a copy of her two whole life insurance policies with Columbian Financial Group ("CFG") which she purchased from Agent Scott Medeiros in April 2020. The CFG policies were for \$5,000 each and had a monthly premium of \$92.19 each. Although the CFG policies showed that they were issued effective May 3, 2020, that the policies had passed the 2-year contestability period, and that CFG would have been required to pay the full combined \$10,000 face value to Ms. Modlin's beneficiary upon Ms. Modlin's death, Respondent insisted that Ms. Modlin replace the CFG policies with his Americo policy and never mentioned the contestability period to her.

9. In order to persuade Ms. Modlin to replace the CFG policies with the Americo policies, Respondent represented that the Americo policy was better than her CFG policies and that she did not need the CFG policies. Respondent also offered to perform any handywork that Ms. Modlin needed to have done around her house. Ms. Modlin testified that Respondent hung up a decoration on the exterior of the home while he was there in May 2022.

10. Ms. Modlin further testified that Respondent was typing on his laptop while he was talking to Ms. Modlin however she was didn't know what Respondent was typing, she was not shown any documents, and Respondent did not leave her with any documents to read at a later time. While at Ms. Modlin's home, Respondent called CFG and canceled Ms. Modlin's policies with information in her presence.

11. Prior to the hearing, the Department obtained documents pertaining to Ms. Modlin's CFG policies, including copies of: (a) the CFG policies, (b) policy applications, (c) surrender forms apparently signed by Ms. Modlin and dated May 10, 2022 which CFG received, and (d) the Replacement Notice and Replacement Appropriateness Agent Verification form that CFG received for the Americo policy. An affidavit of Frank Lettera, General Counsel for CFG, authenticated these documents CFG provided to the Department regarding Ms. Modlin's CFG policies. See Pet'r's Exs. 4 and 4A-4D.

12. The evidence showed that at the time Ms. Modlin applied for and was issued the CFG policies on May 3, 2020, she only had complications of diabetes and that she later developed dementia and congestive heart failure after the CFG policies were issued. Ms. Modlin testified that she explicitly informed Respondent that she had diabetes, dementia, and congestive heart failure while he was at her home in May 2022.

13. Prior to the hearing, the Department obtained documents pertaining to the Americo policy by an Affidavit of Steve Hittner, an employee in Americo's

Regulatory Compliance Department. Mr. Hittner's affidavit authenticated the documents that Americo provided to the Department. Mr. Hittner's affidavit included that Americo contacted Respondent twice requesting a written statement regarding this matter; however, Respondent failed to respond to Americo's requests. See Pet'r's Exs. 5 and 5A-5B.

14. Americo issued a whole life policy to Ms. Modlin effective June 3, 2022 after Respondent submitted a signed policy application, Replacement Notice, and Replacement Appropriateness Agent Verification Form dated May 10, 2022 to Americo by Respondent. See Pet'r's Exs. 5C through 5G.

15. The Americo policy application and Americo policy showed that the policy was actually for \$20,000 with a monthly premium of \$288.02. Thus, Respondent misrepresented the terms of the Americo policy as being a \$10,000 death benefit with a \$120 monthly premium. Ms. Modlin testified that although Respondent did not ask her any of the health questions listed on the Americo policy application, she explicitly told Respondent that she had diabetes, dementia, and congestive heart failure at the time of his visit. Nevertheless, Respondent falsely answered "No" instead of "Yes" in response to the application health questions which asked if Ms. Modlin has dementia and congestive heart failure. Since the health questions ask whether the applicant has any complications from diabetes and it is unknown whether Ms. Modlin was suffering from any complications of diabetes, it is uncertain whether Respondent truthfully answered "No" to the health question asking whether Ms. Modlin has complications of diabetes. See Pet'r Ex. 5C.

16. Although the Americo policy application, the Replacement Notice, and surrender forms were signed by Respondent and had what appeared to be the signatures of Mary Ellen Modlin, Ms. Modlin testified that none of these purported signatures were actually signed by her. Thus, Respondent forged Ms. Modlin's signatures on the Americo policy documents that he submitted to the insurer.

17. Respondent typewrote Ms. Modlin's initials beside the sentence "I do not want this notice read aloud to me" on the Replacement Notice. Ms. Modlin testified that she did not authorize Respondent to type her initials indicating that she did not want the notice read to her, that Respondent did not read the replacement notice to her, and that Respondent did not show the notice to her.

18. Ms. Modlin told Respondent that she was satisfied with her existing CFG policies. Nevertheless, the question on the Replacement Notice which asks why the applicant is replacing her existing policies, Respondent falsely typewrote that Ms. Modlin was "UNHAPPY WITH CFG."

19. Ms. Modlin testified that Respondent indicated she needed to destroy the CFG policy up but she refused to give her CFG policy to Respondent or tear the policy up. It was at this time that she felt something wasn't right and wanted Respondent to leave her home.

20. Ms. Modlin testified after Respondent left, she called her friend and insurance agent Scott Medeiros and told him what had transpired with the Respondent as she felt uncomfortable. Ms. Modlin first met Mr. Medeiros in April 2020 when he sold her the 2 CFG policies and they become close friends over the years spending time with one another's families and dining together. Mr. Medeiros holds an active resident life insurance agent license which was first issued in February 2018 and has been selling life insurance for the past 5 years.

21. Mr. Medeiros provided testimony confirming that he received Ms. Modlin's phone call in May 2022 regarding Respondent's visit to her home. Ms. Modlin told Mr. Medeiros that she was afraid she had done something wrong with her CFG policies and sought his help to sort things out. Mr. Medeiros then learned that Respondent did not discuss the contestability period with Ms. Modlin, did not leave her any literature, and did not ask her any health questions. Ms. Modlin also informed Mr. Medeiros that she had told Respondent about her diabetes, dementia, and congestive heart failure. Mr. Medeiros was alarmed by what Ms. Modlin told him and believed that Respondent had taken advantage of Ms. Modlin due to her age and health.

22. After making inquiries into the matter, Mr. Medeiros confirmed that Respondent had requested that Ms. Modlin's CFG policies be canceled and that Americo had issued a whole life insurance policy to Ms. Modlin. With Mr. Medeiros' assistance, Ms. Modlin called CFG and asked that it disregard any requests to cancel and surrender her policies. Ms. Modlin also called Americo and requested that it cancel the Americo policy. In his affidavit, Mr. Lettera acknowledged that CFG received Ms. Modlin's call requesting that her policies not be canceled and surrendered and stated that CFG has thus kept Ms. Modlin's CFG policies in effect. In his affidavit, Mr. Hittner confirmed that Americo canceled Ms. Modlin's policy after receiving her May 2022 call requesting that the policy be canceled. See Pet'r's Ex. 4A and 5H

23. Mr. Medeiros testified that based on his experience it was not in Ms. Modlin's best interests to cancel and surrender her CFG policies and apply for a replacement policy with Americo and that it was not appropriate for Respondent to have recommended that Ms. Modlin do this because: (a) as of May 3, 2022, CFG could

not review Ms. Modlin's medical records and deny coverage for any undisclosed health conditions upon Ms. Modlin's death given that the 2-year contestability period had passed, (b) CFG was already required to pay the full total death benefit of \$10,000 to Ms. Modlin's beneficiary upon Ms. Modlin's death since the policies were in their 3rd year, and (c) Ms. Modlin would not have been eligible for the Americo policy had Respondent truthfully answered "Yes" to the health questions regarding Ms. Modlin's dementia and congestive heart failure.

24. Mr. Medeiros further testified that since the Americo policy also had a 2-year contestability period, Americo could have reviewed Ms. Modlin's medical records if she died within 2 years of the policy's issuance and would have denied payment of any death benefit to her beneficiary if it learned that she had dementia and congestive heart failure which was not disclosed on her policy application. Moreover, if Ms. Modlin's CFG policies had been cancelled and surrendered in May 2022, her dementia and congestive heart failure would have made her ineligible to reapply for and obtain the same CFG policies.

25. Mr. Medeiros testified that he believed that Respondent had taken advantage of Ms. Modlin and that he called Respondent to confront him about this. During Mr. Medeiros' phone call with Respondent, Respondent did not try to deny or justify his actions and suggested that Mr. Medeiros could not do anything about it. Mr. Medeiros further indicated that he would help Ms. Modlin file a complaint with the state.

26. Respondent called Ms. Modlin several times after Mr. Medeiros spoke with Respondent. Ms. Modlin refused to speak with Respondent when he called. Respondent later came by Ms. Modlin's home and knocked on her door. Ms. Modlin did not answer the door for Respondent and shouted through the door at him to go away.

27. Mr. Medeiros testified that replacing life insurance companies require agents to follow certain guidelines and to complete and submit a Replacement Notice and Replacement Appropriateness Agent Verification Form with the policy application when selling a life insurance policy to an individual who has existing life insurance policies. The Replacement Notice and Replacement Appropriateness Agent Verification Form outline the guidelines which the agent must follow when selling a replacement policy. The purpose of these guidelines is to ensure that it is in the applicant's best interest to cancel and surrender his or her existing life insurance policy and replace it with the replacement policy.

28. The Replacement Notice is required by 11 NCAC 12.0605(b), which requires that the life insurance agent present and read to the applicant, not later than at the time of taking of the application, a notice regarding replacement. 11 NCAC 12.0605(b) further requires that the notice be: (a) signed by both the applicant and the producer attesting that the agent has read the notice aloud or that the applicant did not wish the notice to be read aloud and (b) left with the applicant. The top of the Americo Replacement Notice states, in bold letters, **“Important Note—This document must be signed by the applicant and the agent, if there is one, and a copy left with the applicant. . .”** Respondent violated 11 NCAC 12.0605(b) by failing to show Ms. Modlin the Replacement Notice, to read the Replacement Notice out loud to Ms. Modlin, to obtain Ms. Modlin’s signature on the Replacement Notice, and to leave a copy of the Replacement Notice with Ms. Modlin.

29. The Replacement Appropriateness Agent Verification Form [“Verification Form”] which Respondent signed stated that it “must be completed and submitted when replacing an existing policy or contract in NC.” The first paragraph of the Verification Form states:

Americo Financial Life and Annuity Insurance Company regularly advises appointed agents of the need to fully evaluate replacement recommendations. Replacements should only occur when it is in the client’s best interest and when the client fully understands both the benefits and any disadvantages of the product change. Americo expects each agent proposing a replacement to evaluate the appropriateness of the replacement according to the following guidelines, and any other factors relevant at the time of sale. For each replacement, the product replacing an existing policy or contract must meet the client’s needs and objectives, the agent must fully explain the product, including a discussion of the advantages and disadvantages of replacement, all state required replacement disclosures must be read aloud, where required, and/or reviewed and forms completed by the client and agent, and sales materials used to explain the product or justify the replacement must be left with the client. Clients have the right to make an informed decision regarding replacements. The agent’s role in a replacement sale is to make sure the client is armed with the information he/she needs.

30. The cancelation and surrender of Ms. Modlin’s CFG policies and replacement with the Americo policy was not appropriate and was not in Ms. Modlin’s best interests. Respondent failed to follow any of the guidelines outlined in the first paragraph of the Replacement Appropriateness Agent Verification Form and thus failed to ensure that the cancelation and surrender of the CFG policies and replacement with the Americo policy was appropriate and in Ms. Modlin’s best interests.

31. The second paragraph of the Verification Form states:

As an agent, you must also consider any alternatives to replacement that may meet your client's needs. You should present your client with all options to weigh against the replacement of his/her existing product. For example, the client may be able to update an existing policy to provide better cash value growth. The client may also benefit from keeping the existing policy and purchasing another product to fill in for additional needs. Determine if the client qualifies for a rating reclassification, which could lower his/her premiums. In some cases, considering an alternative may still meet the definition of a replacement, but would ultimately be a better solution for the client instead of lapsing an existing product for another.

32. Respondent failed to follow any of the guidelines outlined in the second paragraph of the Verification Form when recommending that Ms. Modlin cancel and surrender her CFG policies and replace them with the Americo policy.

33. The third paragraph of the Verification Form states:

By signing below, you confirm that you have discussed the following factors, where applicable, with each customer prior to completing a sale involving the replacement of an existing policy or contract:

- *Reduction of current cash value due to new acquisition costs
- *Length of time needed to recover the costs associated with the proposed policy or annuity contract
- *Tax implications discussed, if any, and client advised to consult a professional tax or financial advisor
- *Impact on client's immediate liquidity needs
- *Surrender charge schedule on existing and proposed policy or annuity contract.
- *Potential increase in cost of insurance due to insured's increased age or health at the time of replacement
- *Available riders and their associated costs/benefits
- *Financial status of the client and retirement income needs
- *Circumstances under which the existing and proposed policy could lapse
- *Duration of coverage under the existing and proposed policy
- *Differences in features and benefits between the existing and proposed coverage or annuity contract
- *Differences in loan features between the existing and proposed

coverage or annuity contract

34. Mr. Medeiros testified that Respondent should have discussed the following applicable factors with Ms. Modlin: (a) Reduction of current cash value due to new acquisition costs, (b) Potential increase in cost of insurance due to insured's increased age or health at the time of replacement, (c) Duration of coverage under the existing and proposed policy, and (d) Differences in features and benefits between the existing and proposed coverage. Respondent failed to discuss any of these applicable factors with Ms. Modlin and thus failed to follow the guidelines outlined in the third paragraph of the Verification Form.

35. The "Agent Verification" paragraph which appears at the bottom of the Verification Form states:

I hereby certify that in proposing the replacement to the client, I have reviewed each of the above factors and other considerations with said client and discussed all advantages and disadvantages of the proposed replacement. I am submitting all required state replacement forms and confirm that each form has been reviewed with the client and answered truthfully. I have determined and confirmed with the client that the existing policy or contract no longer meets their needs and objectives, and that the proposed replacement is appropriate in accordance with this Replacement Appropriateness-Agent Verification and state law. I have left copies of the company-approved advertising material with the client and have also identified the materials I used on the relevant replacement forms.

Respondent signed the foregoing Agent Verification certifying that he had performed the acts listed in the Agent Verification paragraph. Respondent did not perform any of those acts and thus falsely verified that he had performed those acts.

36. In June 2022, Agent Medeiros assisted Ms. Modlin in preparing a detailed written complaint against Respondent for his misconduct in the solicitation of the replacement Americo policy. Ms. Modlin read and signed the written complaint and submitted it to the Department on June 12, 2022. See Pet'r's Ex. 6.

37. On July 1, 2022, the Department's Consumer Services Division (hereinafter "Consumer Services") sent a copy of Ms. Modlin's complaint to Americo and requested that it provide the Department with, among other things, a statement from Respondent and all related documents concerning the sale and marketing of the Americo policy. See Pet'r's Ex. 7.

38. In a written response from Americo dated July 8, 2022, Americo informed the Department that it e-mailed Respondent on July 1, 2022 and July 6,

2022 to request his statement in response to Ms. Modlin's complaint and eight specific questions regarding his dealings with Ms. Modlin during his sales call to her home; however, Respondent never responded to Americo's requests in order to meet the Department's response deadline. See Pet'r's Exs. 5A, 5B and 8.

39. On July 8, 2022 and July 22, 2022 Consumer Services issued letter sent by certified mail addressed to Respondent at his address of record with the Department, attaching a copy of Ms. Modlin's complaint and requested that Respondent provide Consumer Services with "a full and complete written explanation of all circumstances surrounding the solicitation of this policy, dates, names, and coverage written, as well as copies of applications." Consumer Services also requested that Respondent provide Consumer Services with a full and complete explanation of how the sale of the policy was presented to Ms. Modlin. Consumer Services requested that Respondent provide his written statement to Consumer Services. Both certified letters were delivered to Respondent and signed for on July 27, 2022. Respondent failed to respond to Consumer Services' requests. See Pet'r's Exs. 9 and 10.

40. On September 14, 2022, Consumer Services e-mailed Respondent at one of his e-mail addresses of record with the Department. In its e-mail, Consumer Services advised Respondent that it had "sent two response request (July 8, 2022 and July 22, 2022) for an Agent Statement by certified mail. Neither has been responded too. This has become an URGENT. Please respond immediately!" Consumer Services attached a copy of Ms. Modlin's complaint and its previous agent statement requests. See Pet'r's Ex. 11.

41. Although Consumer Services had advised Respondent that the matter was urgent and requested Respondent to provide an immediate response, Respondent never responded to Consumer Services' third and last response request.

42. The investigation of Ms. Modlin's complaint was then referred to Agent Services for handling. On October 13, 2022, Agent Services e-mailed Respondent at one of his e-mail addresses of record. In its e-mail, Agent Services referred to Ms. Modlin's written complaint and requested that Respondent provide a written statement and applicable documents regarding each complaint that Ms. Modlin had lodged against him to the Department within 10 days. Respondent never responded to Agent Services. See Pet'r's Ex. 12.

43. On November 2, 2022, Agent Services sent a follow up e-mail to Respondent in which it attached its October 13, 2022 e-mail request and advised Respondent that if Agent Services did not receive a response from Respondent in 10 days it may proceed to take administrative action against his license. Respondent failed to respond to Agent Services multiple attempts. See Pet'r's Ex. 13.

44. On November 17, 2022, Agent Services e-mailed a letter to Respondent notifying him of in an informal conference by telephone scheduled on January 11, 2023 at 11:30am to discuss the allegations of misconduct arising from Ms. Modlin's complaint. Agent Services indicated they would call Respondent at the phone number he had on file with the Department. See Pet'r's Ex. 14.

45. On January 11, 2023 at 11:30am, Agent Services attempted to reach Respondent by telephone but Respondent did not answer. Agent Services left Respondent a voicemail message requesting that Respondent call Agent Services back by the end of the business day. Respondent did not return Agent Services' phone call.

46. After multiple attempts by Agent Services to communicate with Respondent regard this matter, Respondent failed to produce records or otherwise respond to written request from Agent Services as required by N.C. Gen. Stat. §§ 58-2-185 and 58-2-195.

CONCLUSIONS OF LAW

1. Respondent was properly served with the Notice of Hearing and this matter is property before the Commissioner, as the Commissioner has personal and subject matter jurisdiction in this matter.

2. N.C. Gen. Stat. § 58-2-195(a) authorizes the Commissioner to make and promulgate rules governing the recording and reporting of insurance business transactions by insurance agencies, agents, brokers, and producers of record licensed in the State or transacting insurance business in this State to the end that such records and reports will accurately and separately reflect their insurance business transactions in this State. N.C. Gen. Stat. § 58-2-195(a) also provides that information from records required to be kept pursuant to the provisions of this section must be furnished to the Commissioner on demand.

3. 11 NCAC 6A.0402(d)(2) states that "Every licensee shall, upon demand from [Agent Services] Division, furnish in writing any information relating to the licensee's insurance business within 10 business days after the demand in accordance with G.S. § 58-2-195(a)."

4. Agent Services evidence shows that Respondent violated N.C. Gen. Stat. § 58-2-195(a) and 11 NCAC 6A.0402(d)(2) by failing to respond to Agent Services' October 13, 2022 and November 2, 2022 e-mail response requests.

5. 11 NCAC 12.0605(b) states requires insurance producers to "present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the for format of 11 NCAC 12.0611. The notice shall

be signed by both the applicant and the producer attesting that the notice has been read aloud...and left with the applicant.”

6. Agent Services’ evidence shows that Respondent violated 11 NCAC 12.0605(b) by failing to show Ms. Modlin the Replacement Notice, to read the Replacement Notice out loud to Ms. Modlin, to obtain Ms. Modlin’s signature on the Replacement Notice, and to leave a copy of the Replacement Notice with Ms. Modlin.

7. N.C.G.S. § 58-33-105 states that “If any insurance producer, examining physician, applicant, or other person shall knowingly or willfully make any false or fraudulent 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, he shall be guilty of a Class 1 misdemeanor.”

8. Agent Services’ evidence based on Ms. Modlin’s testimony overwhelming shows that Respondent knowingly and willfully made false and fraudulent statements and representations in the Americo application for insurance when he falsely answered “No” to health questions which asked whether Ms. Modlin has dementia and congestive heart failure. Respondent also knowingly and willfully made false and fraudulent representations and statements in or with reference to the Americo application for insurance by: (a) telling Ms. Modlin that the application was for a \$10,000 Americo policy with monthly premium of \$120, (b) writing down on the Replacement Notice that Ms. Modlin was replacing her existing CFG policies because she was unhappy with the policies, and (c) signing the “Replacement Appropriateness Agent Verification Form” representing that Ms. Modlin provided her signature. It should be noted, that while Respondent’s false and fraudulent representations and statements satisfy the preponderance of the evidence burden required in this administrative hearing the issue of any criminal standard required in violation of N.C.G.S. § 58-33-105 is not for this Hearing Officer to determine.

9. N.C. Gen. Stat. § 58-63-15(1) provides that “making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance” is defined as “unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.”

10. The evidence presented is overwhelming that Respondent misrepresented to Ms. Modlin that she did not need the CFG policies, that the Americo policy was better for her, and that the Americo policy was for a \$10,000 death benefit with a monthly premium of \$120.00. Respondent made these misrepresentations to Ms. Modlin in an attempt to misguide her and take advantage of her given her age and health status for the purpose of inducing Ms. Modlin to

lapse, forfeit, or surrender her CFG policies in violation of N.C. Gen. Stat. § 58-63-15(1).

11. N.C. Gen. Stat. § 58-33-46(a)(2) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee who has violated “any insurance law of this or any other state, violated any administrative rule, subpoena, or order of the Commissioner or of another state’s insurance regulator, or violated any rule of FINRA.”

12. Respondent’s resident producer license should be revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) based upon his violations of N.C. Gen. Stat. §§ 58-2-195(a), 58-33-105, 58-63-15(1), 11 NCAC 6A.0402(d)(2), and 11 NCAC 12.0605(b).


13. N.C. Gen. Stat. § 58-33-46(a)(5) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee for “[i]ntentionally misrepresenting the terms of an actual or proposed insurance contract, or application for insurance.” Respondent’s resident producer license should be revoked for having intentionally misrepresented that the Americo policy was for a \$10,000 death benefit and that the monthly premium was around \$120.00.

14. N.C. Gen. Stat. § 58-33-46(a)(8) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee for “using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere.” Respondent’s resident producer license should be revoked for having used fraudulent, coercive, and dishonest practices and demonstrating incompetence and untrustworthiness in the conduct of business in this State in violation of N.C. Gen. Stat. § 58-33-46(a)(8)

ORDER

BASED ON the foregoing Findings of Facts and Conclusions of Law, it is ordered that Respondent’s 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 3rd day of November, 2023.


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 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

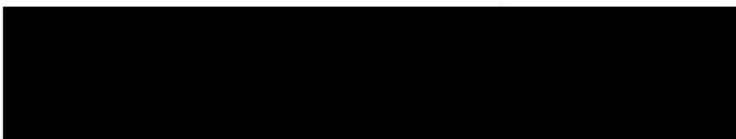
I HEREBY CERTIFY that I have this day served the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. mail, return receipt requested; via first class U.S. mail to the licensee at the residential address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b) and (d); and via State Courier to Attorney for Petitioner, addressed as follows:

Zachary Price
3630 Clemmons Road #1441
Clemmons, NC 27012
(Respondent)

Certified Mail Tracking #: 7009 2250 0000 8223 9685

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 3rd day of November, 2023.



Kimberly W. Pearce, NCCP
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