

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
REYNALDO RIGAUD
(NPN # 17686007)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2129

THIS MATTER came on for hearing on July 27, 2023 in Hearing Room #131 of the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina, before the undersigned Hearing Officer, as designated by the North Carolina Commissioner of Insurance ("Commissioner") under N.C. Gen. Stat. § 58-2-55.

Petitioner, the Agent Services Division of the North Carolina Department of Insurance ("Petitioner" or "Agent Services"), was represented by Assistant Attorney General Nathan Childs. Respondent Reynaldo Rigaud ("Respondent") did not appear and was not represented by counsel at the hearing.

Agent Services moved, pursuant to 11 N.C. Admin. Code 1.0423(A) for the imposition of sanctions due to Respondent's failure to appear at the hearing. Petitioner's motion for sanctions was 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.

Agent Services' Exhibits 1 through 12, including all subparts, were admitted into evidence.

Nadine Scott, Compliance Section Supervisor with Agent Services, appeared and testified on behalf of Agent Services.

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 and Conclusions of Law:

FINDINGS OF FACT

1. Agent Services is a division of the North Carolina Department of Insurance (“NCDOI”), which is a state agency responsible, in accordance with Chapter 58 of the North Carolina General Statutes, for enforcement of insurance laws and regulating and licensing insurance providers.

2. Respondent currently holds an active non-resident North Carolina insurance producer license with lines of authority in Accident & Health or Sickness and Life (“License”). Respondent’s License was first issued on May 24, 2021. Respondent is a resident of Florida. *See* Pet. Ex. 4.

3. Service of the Notice of Administrative Hearing providing Respondent with due notice of the July 27, 2023 hearing was perfected on June 11, 2023 by delivery by Federal Express, a designated delivery service, addressed to Respondent’s residence address of record with NCDOI, as shown by the Affidavit of Service and Federal Express delivery receipt admitted into evidence at the hearing. *See* Pet. Ex. 3.

4. Nadine Scott is the Compliance Section Supervisor with Agent Services and has served in that position since August 2021. Between May 2017 and August 2021, she was a Complaint Analyst with Agent Services. Among her other duties, she handles licensure investigations of North Carolina insurance producers.

5. On or about May 20, 2021, Agent Services was copied on a letter to Respondent from the Susan Kalmus, Director of the Division of Issuer Compliance & Monitoring, Center for Consumer Information and Insurance Oversight, of Centers for Medicare and Medicaid Services, indicating that Respondent had assisted consumers from North Carolina and Georgia in enrolling in qualified health plans through the federally-facilitated exchanges when Respondent was not licensed as an insurance producer in those states (the “CMS Notice”). *See* Pet. Ex. 9.

6. The Centers for Medicare and Medicaid Services (“CMS”) is a federal administrative agency within the United States Department of Health and Human Services that administers the Medicare program, works in partnership with state governments to administer Medicaid, and administers and oversees the federally-facilitated insurance exchanges offering qualified health plans under the Patient Protection and Affordable Care Act of 2010. Among other things, CMS has promulgated federal regulations governing who is allowed to assist qualified individuals, qualified employers, and qualified employees with enrolling in qualified health plans through the federally-facilitated insurance exchanges. *See, e.g.*, 45 C.F.R. § 155.220 (2023).

7. The CMS Notice stated that Respondent had executed agreements with CMS as part of Respondent's registration to assist with enrollments through the federally-facilitated insurance exchanges for plan year 2021 and that a CMS review of registration records, exchange enrollment records, information obtained through the National Insurance Producer Registry ("NIPR"), and publicly available licensure records on states' websites found that Respondent did not have a valid license to sell health insurance in North Carolina and Georgia despite having assisted consumers from those states with enrollments through the federally-facilitated exchanges, in violation of federal regulations and Respondent's agreements with CMS. *See* Pet. Ex. 9.

8. At Agent Services' request, Bernadette Ryan, an employee of General Dynamics Information Technology who is under contract with CMS to support CMS's Marketplace Program Integrity Team, examined CMS' records addressing Respondent's license verification process. According to a sworn affidavit¹ given by Ms. Ryan, CMS' records show that Respondent assisted with forty-two (42) enrollments of North Carolina residents in qualified health plans through the federally-facilitated exchanges prior to May 20, 2021. *See* Pet. Ex. 10.

9. As a result of the findings of CMS' investigation, the CMS Notice ordered Respondent to take immediate action to demonstrate to CMS that Respondent had attained valid non-resident insurance producer licenses from the states of North Carolina and Georgia "by no later than 6/19/2021..." If Respondent failed to do so, then Respondent's agreements with CMS for plan year 2021 would be terminated "on or before 6/20/21" and CMS reserved "the right to take further compliance action as appropriate, including terminating your PY 2021 agreements under 45 C.F.R. § 155.220(g)(3)(ii), barring or terminating your agreements for future years, and/or imposing civil money penalties pursuant to 45 C.F.R. § 155.220(k)(1)(ii)." *See* Pet. Ex. 9.

10. Until Respondent proved to CMS that he held valid North Carolina and Georgia non-resident insurance producer licenses, the CMS Notice also ordered that Respondent cease and desist from accessing or reviewing consumer information on the health insurance marketplace, from assisting with enrollments on the federally-facilitated exchanges, or from submitting applications via the federally-facilitated exchanges in any state where Respondent did not have a valid non-resident license to sell health insurance. *See* Pet. Ex. 9.

¹ Ms. Ryan's affidavit was admitted into evidence at the hearing under the exception to the hearsay rule set out in Rule 803(24) of the North Carolina Rules of Evidence. To lay the necessary foundation for admission of the affidavit, Agent Services introduced a July 12, 2023 letter to Respondent providing written notice that Agent Services intended to use the statement at the July 27, 2023 hearing, attaching a copy of the affidavit, and supplying the name and address of the declarant. *See* N.C. Gen. Stat. § 8C-1, Rule 803(24); Pet'r's Ex. 11.

11. On May 24, 2021, Respondent submitted an application for a North Carolina non-resident insurance producer license to NCDOL. See Pet. Ex. 6.

12. Background question 2 on the May 24, 2021 licensure application asked:

2. Have you 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?

“Involved” means having a license censured, suspended, revoked, canceled, terminated; or being assessed a fine, a cease and desist order, a compliance order, placed on probation, sanctioned, or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or registration. “Involved” also means having a license application or registration denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions in your company as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee. If you answer yes, you must attach to this application: a) a written statement explaining the circumstances of each incident, b) a copy of the charging document, c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

See Pet. Ex. 6.

13. Respondent answered “No” to background question 2 on his May 24, 2021 North Carolina license application. Respondent certified, under penalty of perjury, that all the information submitted in the May 24, 2021 application was true and complete and acknowledged that submitting false information or omitting pertinent or material information in connection with the application was grounds for license revocation. See Pet. Ex. 6.

14. License applicants can also disclose their involvement in administrative proceedings to NCDOL by electronically uploading a written statement explaining the circumstances of the proceeding and copies of the charging document(s) and official document(s) demonstrating resolution of the matter to NIPR’s Attachment

Warehouse. As of the date of the hearing in this matter, Respondent had not uploaded a written statement or any documents relating to the CMS Notice to NIPR's Attachment Warehouse. *See* Pet. Ex. 7.

15. Relying on Respondent's certified responses to the background questions in the license application, NCDOI issued a non-resident insurance producer license to Respondent on May 24, 2021. *See* Pet. Exs. 4 and 6.

16. Ms. Scott was assigned by Agent Services to investigate the CMS Notice on May 27, 2021. *See* Pet. Ex. 8.

17. On May 27, 2021, Ms. Scott emailed Respondent at his personal electronic address of record and at a gmail.com address requesting that he produce documentation and a written statement regarding the allegations contained in the CMS Notice within 10 days from the date of receipt. *See* Pet. Ex. 12A.

18. On June 8, 2021, Ms. Scott sent a follow-up email to Respondent directed to his personal electronic address of record and the gmail.com address again requesting documentation and a written statement regarding the allegations contained in the CMS Notice. *See* Pet. Ex. 12B.

19. On June 19, 2021, Respondent sent an email to Ms. Scott via the Respondent's gmail.com address attaching a copy of the North Carolina non-resident insurance producer license issued to him by NCDOI on May 24, 2021. Respondent's email did not address the allegations in the CMS Notice that Respondent had assisted North Carolina consumers with health plan enrollments through the insurance exchange when he was not licensed in North Carolina to sell health insurance. *See* Pet. Ex. 12C.

20. On June 23, 2021, Ms. Scott emailed Respondent at the gmail.com address again explaining that Agent Services had received notification from CMS that Respondent may have assisted North Carolina consumers with health plan enrollments through the insurance exchange when Respondent was not licensed in North Carolina. Ms. Scott again asked Respondent to provide a written response to the allegations. *See* Pet. Ex. 12D.

21. On July 2, 2021, Ms. Scott again emailed Respondent at the gmail.com address noting that her June 23, 2021 email required a response. *See* Pet. Ex. 12E.

22. On July 11, 2021, Respondent sent an email to Ms. Scott via Respondent's gmail.com address explaining that Respondent held multiple licenses in many states and mistakenly believed that he also held a license in North Carolina. Respondent stated that as soon as he learned of his error, he applied for a North Carolina license. On July 12, 2021, Ms. Scott emailed Respondent and advised that

she would contact him with an update when her review was completed. *See* Pet. Exs. 12F and 12G.

24. On July 15, 2021, Ms. Scott emailed Respondent at Respondent's gmail.com address advising that Agent Services wished to discuss Respondent's enrollments of North Carolina consumers through the insurance exchange when Respondent was not licensed in North Carolina at 11:30 a.m. on August 25, 2021. However, Agent Services received no response and Respondent was unable to be reached on August 25, 2021. *See* Pet. Exs. 8 and 12H.

25. On August 31, 2021, Ms. Scott again emailed Respondent advising that Agent Services wished to discuss Respondent's enrollments of North Carolina consumers through the insurance exchange when Respondent was not licensed in North Carolina at 11:30 a.m. on September 22, 2021. However, Agent Services again received no response and Respondent was unable to be reached on September 22, 2021. *See* Pet. Exs. 8 and 12I.

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.

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

4. N.C. Gen. Stat. § 58-33-5 is a North Carolina insurance law that provides that "a person shall not sell, solicit, or negotiate insurance in this State for any kind of insurance unless the person is licensed for [that] line of authority in accordance with this Article."²

² Since Article 33 is entitled "Licensing of Insurance Producer, Limited Representatives and Adjusters," it is not surprising that the bar against acting as an unlicensed insurance producer appears in several sections within Article 33 of Chapter 58. Similar prohibitions on acting as an insurance producer without a license also appear in N.C. Gen. Stat. §§ 58-33-26(a) and (b), and 58-33-120.

5. Agent Services' evidence shows that Respondent assisted with forty-two (42) enrollments of North Carolina residents in qualified health plans through the federally-facilitated insurance exchanges before he obtained a North Carolina insurance producer license or a line of authority for Accident and Health or Sickness insurance from NCDOI, in violation of N.C. Gen. Stat. § 58-33-5.

6. By acting as an insurance producer without a license, Respondent violated a North Carolina insurance law within the meaning of N.C. Gen. Stat. § 58-33-46(a)(2).

7. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(1), another basis for the revocation of a license issued by NCDOI is if an applicant has provided "materially incorrect, misleading, incomplete, or materially untrue information in the license application."

8. By answering "no" when asked whether he had been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration, Respondent provided materially incorrect, misleading, incomplete, and materially untrue information in Respondent's North Carolina license application.

9. Agent Services' evidence shows that the background question at issue defined "involved" to specifically include compliance orders, cease and desist orders, and "being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or registration."

10. Issued by a federal administrative agency, the CMS Notice (1) required that Respondent attain a North Carolina insurance producer license by June 19, 2021 or CMS would terminate Respondent's registration to assist with enrollments through the federally-facilitated insurance exchanges for plan year 2021 and (2) required that Respondent cease and desist from assisting with enrollments on the federally-facilitated exchanges until he did so. Because the CMS Order was a compliance order, cease and desist order, and is "related to a professional or occupational license or registration," Respondent was obligated to disclose the CMS Notice in his North Carolina license application and his failure to disclose it to NCDOI constitutes grounds for revocation pursuant to N.C. Gen. Stat. § 58-33-46(a)(1).

11. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(17), another basis for the revocation of a license issued by NCDOI 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."

12. Subsection (e) of federal regulation 45 C.F.R. § 155.220 requires that agents, brokers, or web-brokers that enroll qualified individuals in qualified health plans through an exchange or assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for qualified health plans “must comply with State law related to agents, brokers or web-brokers...”

13. Agent Services’ evidence shows that Respondent violated 45 C.F.R. § 155.220(e) by failing to comply with North Carolina law when he assisted with forty-two (42) enrollments of North Carolina consumers in qualified health plans through the insurance exchanges when Respondent did not hold a North Carolina insurance producer license.


14. By failing to obtain a North Carolina insurance producer license before he assisted with forty-two (42) enrollments of North Carolina residents in qualified health plans through the federal exchanges, Respondent violated 45 C.F.R. § 155.220(e). Pursuant to N.C. Gen. Stat. § 58-33-46(a)(17), the undersigned has no doubt that NCDOI could have refused to issue Respondent’s License had Respondent’s violations of federal law arising out of his prior unlicensed activities in North Carolina been known to the Commissioner when Respondent submitted his application.

15. Based on the evidence received and the applicable law, the undersigned Hearing Officer concludes that Respondent’s North Carolina non-resident insurance producer license should be revoked under N.C. Gen. Stat. §§ 58-33-46(a)(1), (a)(2), and (a)(17).

ORDER

BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Respondent’s North Carolina insurance producer license is hereby **REVOKED**.

This 22 day of September, 2023.


Alisha S. 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. § 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

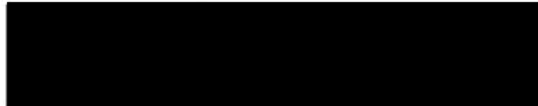
I HEREBY CERTIFY that on this day I have served a copy of the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing copies of the same via certified U.S. Mail, return receipt requested and via first class U.S. Mail to the Respondent at the address provided to the Commissioner pursuant to N.C. Gen.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

Reynaldo Rigaud
400 SW 101st Terrace #402
Pembroke Pines, FL 33025
(Respondent)

Certified Mail Tracking Number: 70222410000096626885

Nathan D. Childs
Assistant Attorney General
N.C. Department of Justice
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(Attorney for Petitioner)

This 25th day of September, 2023.


Mary Faulkner
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