

**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
ERIC R. SMITH**

**ORDER AND FINAL AGENCY
DECISION
Docket Number: 1796**

THIS MATTER was heard on October 19, 2016 by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance ("Commissioner") under N.C. Gen. Stat. § 58-2-55, pursuant to a Notice of Hearing that was duly issued and served.

Respondent, proceeding *pro se*, was present and testified at the hearing.

The Agent Services Division ("ASD") of the North Carolina Department of Insurance ("NCDOI") was present at the hearing and was represented by Terence D. Friedman, Assistant Attorney General.

Petitioner did not offer any exhibits into evidence.

ASD offered into evidence Exhibits 1 through 20, which were admitted into evidence.

Any finding of fact contained in this order and final agency decision that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this final agency decision and order that constitutes a finding of fact is hereby adopted as a finding of fact.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, the Hearing Officer hereby makes the following:

FINDINGS OF FACT

1. Respondent has a North Carolina resident insurance producer's license with lines of authority for Life and Accident and Health or Sickness ("License").
2. In or around March 2013, Respondent began work for American General Life Insurance Company, which belonged to AIG Financial Network. This Order and Final Agency Decision refers to the two companies together as "American General."

3. In March and April 2013, Respondent received written training from American General requiring him:
 - (a). To probe a proposed insured for relevant information if Respondent had any reason to believe that the information the proposed insured provided was incorrect;
 - (b). To never omit on an insurance application pertinent information with regard to a proposed insured;
 - (c). To report to American General in an "agent report" accompanying an insurance application any apparently inaccurate information given by a proposed insured;
 - (d). To communicate to American General the full details of any adverse information Respondent personally had about a proposed insured; and
 - (e). To understand that Respondent's signature on an insurance application was his personal certification that the application had been completed in accordance with American General's standards and rules.
4. On September 16, 2013, Respondent met with his sister, Diane Smith, and his nephew, Jamar Smith, in Asheville, NC. On that date, Jamar Smith completed an American General life insurance application. To create the application, Respondent entered into a notebook computer the information that Jamar Smith provided him.
5. The application asked in relevant part whether Jamar Smith had "ever been convicted of, pled [sic] guilty to, or pled [sic] no contest to a felony." In filling out the application for his nephew, Respondent represented that Jamar Smith had never been convicted of a felony or pleaded guilty or no contest to a felony. Respondent also certified in the application that he had "recorded any unfavorable information which [he had] knowledge of concerning" Jamar Smith. Likewise, in the agent report accompanying the application, Respondent stated that he had no "knowledge of any unfavorable information regarding" Jamar Smith "which has not been disclosed in the application."
6. American General processed Jamar Smith's life insurance application and issued him a policy.
7. In 2014, Jamar Smith died. American General investigated the claim on Jamar Smith's policy made by Respondent's sister, Diane Smith. During that investigation, Respondent admitted to American General that, prior to September 16, 2013, when Jamar Smith completed the life insurance application, Respondent was aware Jamar Smith had been

convicted of at least one felony. Respondent repeated this admission at the hearing of this matter.

8. American General documents and the deposition testimony of former American General employee Dudley J. Simmons established that, on October 6, 2014, American General discharged Respondent from its employment due to Respondent's knowing misrepresentation on Jamar Smith's life insurance application regarding his prior felony history.
9. On October 17, 2014, American General informed ASD that it had terminated Respondent's employment "for cause."

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and he has jurisdiction over the parties and the subject matter.
2. Respondent was properly served with the Notice of Administrative Hearing in this matter.
3. N.C. Gen. Stat. § 58-33-105, entitled "False Statements in Applications for Insurance," provides in pertinent part:

If any agent, 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.

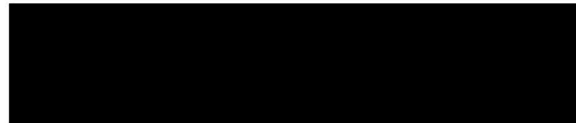
4. Respondent knowingly and willfully made false statements with regard to Jamar Smith's life insurance application when Respondent: (a) falsely represented in the application that Jamar Smith had never been convicted of a felony or pleaded guilty or no contest to a felony; (b) falsely stated in the application that Respondent had "recorded any unfavorable information which [he had] knowledge of concerning" Jamar Smith; and (c) falsely stated in the agent report that he had no "knowledge of any unfavorable information regarding" Jamar Smith "which has not been disclosed in the application."
5. Pursuant to N. C. Gen. Stat. § 58-33-46(a)(2), one of the causes for which the Commissioner may revoke a license is for violating the insurance law of North Carolina. The Hearing Officer finds that Respondent's License should be revoked under N. C. Gen. Stat. § 58-33-46(a)(2) for having violated N.C. Gen. Stat. § 58-33-105.

6. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), another cause for which the Commissioner may revoke a license grounds is using fraudulent or dishonest practices or demonstrating untrustworthiness in the conduct of business in this state. Respondent's knowing and willful false statements in the life insurance application of Jamar Smith and the accompanying agent report constitute fraudulent and dishonest practices and demonstrate untrustworthiness in the conduct of business in this state. The Hearing Officer finds that Respondent's License should also be revoked under N.C. Gen. § 58-33-46(a)(8).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's license is hereby revoked.

This the 10th day of January 2017.



Stewart Johnson, Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

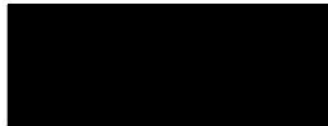
APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days of receipt of the same as set out in Chapter 150B of the North Carolina General Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing **Order & Final Agency Decision** by delivering a copy of the same via first class U.S. Mail, postage prepaid, addressed as follows:

Eric R. Smith
120 Arden Park Pl.
Holly Springs, NC 27540

This the 13th day of January, 2017.



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