

STATE OF NORTH CAROLINA)
COUNTY OF WAKE)
)
)
IN THE MATTER OF:)
)
THE LICENSURE OF)
GERSHAM STRANGE)
(NPN #9216274))
)
Respondent.)
)

BEFORE THE
COMMISSIONER OF INSURANCE

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2024

The administrative hearing was held in the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General Rebecca E. Lem represented the North Carolina Department of Insurance, Agent Services Division (hereinafter “Petitioner”). Respondent Gersham Strange (hereinafter, “Respondent”) appeared *pro se*.

The Petitioner offered into evidence Petitioner's Exhibits 1 – 9 and subparts, which were admitted into evidence.

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

FINDINGS OF FACT

1. The Notice of Administrative Hearing was properly served on Respondent pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. §58-2-69(d).

2. After completing the required pre-licensing education, Respondent submitted an electronically-signed resident agent license application (hereinafter, "license application") to the Department with a Life line of authority on June 19, 2020.

3. Respondent previously held a resident agent license issued by the Department, NPN 9216274, which he voluntarily surrendered while in good standing.

4. On his license application, Respondent answered "No" to Question 2 on the license application, which asked "[h]ave you ever 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?"

5. The Department's vendor, Pearson VUE, which processes license applications for the Department, alerted the Agent Services Division ("ASD") of the Department that a report from the National Association of Insurance Commissioner's Regulatory Information Retrieval System ("RIRS report") that is automatically run with applications indicated that Respondent had two previous administrative actions filed by departments of insurance.

a. The RIRS report indicates that Respondent had a license suspension in North Carolina effective April 12, 2013, for failure to pay child support and failure to respond.

b. The RIRS report indicates that Respondent had a license revocation in South Carolina effective July 14, 2014, for demonstrated lack of fitness or trustworthiness.

6. Documents relating to the North Carolina administrative action were admitted into evidence showed that Respondent's license was suspended by the Department on or about April 12, 2011, for non-compliance with a child support order. Thereafter, following receipt of a Notice of Compliance from the Cumberland County Child Support Department, the Department re-activated Respondent's license on or about November 30, 2011.

7. Documents relating to the South Carolina administrative action were admitted into evidence showed that Respondent's license was suspended for one year and Respondent was fined \$1,000.00 by the South Carolina Department of Insurance on or about April 2, 2013, upon finding that Respondent had admitted to submitting fictitious applications to Washington National Insurance Company. The Findings of Fact in that Order indicate that Washington National Insurance Company initiated the complaint to the South Carolina Department of Insurance. Thereafter, on or about July 14, 2014, Respondent's South Carolina insurance license was revoked for Respondent's failure to timely pay the \$1,000.00 fine.

8. Respondent was contacted by ASD and subsequently submitted two written statements explaining why he failed to report these administrative actions, and also why he received these administrative actions.

- a. In one statement submitted on or about August 13, 2020, Respondent noted that his failure to disclose the administrative actions on his license application was due to oversight and was not intentional, and he noted that he had disclosed these administrative actions to his supervisors and thought that he had completed the disclosure process.
- b. In the second statement submitted on or about August 13, 2020, Respondent stated that his leaders in Washington National Company had instructed him to add people to groups to get paid and easy underwriting, and that his leaders had also instructed him to make up people. Respondent also noted that he has primary custody of his son and pays child support for a second son in South Carolina.

9. Following receipt and review of Respondent's license application and his written statements, ASD denied Respondent's license application by letter dated April 18, 2020. The bases for the denial were as follows:

- a. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(1), Respondent provided materially incorrect, misleading, incomplete, or materially untrue information on his license application.
- b. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2), Respondent violated an insurance law of this and another state.
- c. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(3), Respondent obtained or attempted to obtain a license through misrepresentation or fraud.
- d. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), Respondent used fraudulent, coercive, or dishonest practices, or demonstrated

incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

- e. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(9), Respondent's insurance producer license had been suspended and revoked in another jurisdiction for reasons substantially similar to those listed elsewhere in the subsections of N.C. Gen. Stat. § 58-33-46(a).

10. Respondent thereafter timely requested a review of the denial of his license application, and a denial review occurred on September 1, 2020, with Robert Cunningham in attendance on behalf of ASD, as well as Respondent. In the denial review meeting, Respondent had further opportunity to explain the circumstances involving his previous administrative actions and his inaccurate answer to Question 2 on the license application, as well as why he thought he should be granted his insurance agent license.

11. Following the denial review meeting, ASD upheld its denial of Respondent's license application and notified Respondent of this decision by letter dated September 1, 2020.

12. Respondent timely requested a hearing to appeal the denial of his license application.

Testimony of Robert Cunningham

13. Robert Cunningham testified on behalf of ASD. Mr. Cunningham is the Licensing Supervisor for ASD and has been in this position since 2005. Mr. Cunningham's duties include reviewing license applications where the applicant has previous criminal convictions. Mr. Cunningham has been involved with the matter of Respondent's license application and subsequent denial.

14. Mr. Cunningham explained that ASD initially denied Respondent's license after being alerted by Pearson Vue of Respondent's positive RIRS report.

15. Mr. Cunningham testified that Respondent had further opportunity to explain the circumstances of his answer on the license application as well as the circumstances of his prior administrative actions during the denial review meeting.

16. Mr. Cunningham testified that ASD was not concerned with the substance of Respondent's prior administrative action in North Carolina, whereby his license was suspended for failure to pay child support. Rather, ASD's concern with that action was Respondent's failure to disclose the action on his license application.

17. Mr. Cunningham testified that, in regards to the South Carolina administrative action, ASD was concerned both with Respondent's failure to disclose this action on his license application and also with the substance of that administrative action.

18. Mr. Cunningham testified that even if Respondent's inaccurate response on the insurance license application was an accidental oversight, Mr. Cunningham still did not feel it was appropriate to issue an insurance license to Respondent due to the seriousness of Respondent's misconduct in submitting fictitious insurance applications in South Carolina. Mr. Cunningham stated that an insurance agent should know that submitting fictitious applications to an insurance company is wrong. Mr. Cunningham stated that ASD was asking that the hearing officer uphold the denial of Respondent's license application.

Testimony of Respondent

19. Respondent testified that he had been out of the insurance business since 2014, and that he would like to reenter the insurance business in order to spend more time with his family. He noted that he had worked a variety of other jobs since 2014 in different industries, but that these jobs did not allow him to spend adequate time with his family.

20. Respondent explained that, when he completed his license application in June, 2020, he simply forgot about the North Carolina administrative action against his license concerning his failure to pay child support, as this occurred ten (10) years ago.

21. Respondent testified that his failure to disclose the South Carolina administrative action on his June, 2020 license application was an oversight and not intentional. Respondent disclosed this administrative action on a different application that he submitted to his employer, Primerica, which he believes may have been an application to do a criminal background check. Respondent also discussed his South Carolina administrative action at length with Primerica and thought that this disclosure would be transmitted or passed along to the Department. Respondent stated that he did not intend to mislead or give a false answer on his license application.

22. Respondent testified that, at the time of the incidents involving Washington National Insurance Company that led to the South Carolina administrative action, he was an independent contractor and not an employee. He would call companies or organizations to sell insurance policies. He stated that he added friends and family to groups for which they were not qualified in part to earn

a trip to Mexico. He stated that he was told that he could do this by his supervisors, and that he wanted to believe that this was alright.

23. Respondent testified that he was revoked in South Carolina because he did not pay the \$1,000.00 fine, and this surprised him because he did not know he would be revoked for failure to pay the fine. Respondent had not noticed the paragraph in the South Carolina "Order Imposing Administrative Fine, Suspension & Probation" dated April 2, 2013, where it states that, "[i]f Mr. Strange fails to pay the administrative fine as stated or request a public hearing before the South Carolina Administrative Law Court within thirty (30) days from the date of receipt of this order, the Department will move to have his resident producer's license revoked." Respondent noted that he had asked to make payments on the fine or do community service instead of paying the fine, but the South Carolina Department of Insurance would not accept those alternatives.

24. Respondent stated that he takes full responsibility for his actions and asked to have his license application approved, indicating a willingness to accept an alternate penalty. Respondent states that he is a very different man today than he was at the time the South Carolina administrative action occurred.

CONCLUSIONS OF LAW

1. This matter is properly before the North Carolina Commissioner of Insurance (hereinafter "Commissioner"), and the Commissioner has jurisdiction over the parties and the subject matter pursuant to N. C. Gen. Stat. §§ 58-2-55, 58-33-46, 150B-38 and 150-40, as well as 11 N.C.A.C. 10401 et seq. and other applicable statutes and regulations.

2. Respondent was properly served with the Notice of Hearing and Petition in this matter.

3. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(1), the Commissioner may deny issuance of a resident agent license if the applicant made materially incorrect, misleading, incomplete, or materially untrue information on his license application. In this case, the Hearing Officer finds that Respondent's testimony was credible and that his failure to properly answer the screening question regarding any previous administrative actions was an inadvertent mistake and does not constitute a materially incorrect, misleading, incomplete, or materially untrue statement, and therefore is not a sufficient basis for denial of Respondent's application for a resident agent license.

4. Although Respondent's insurance license was suspended in North Carolina, it was reactivated and in good standing at the time he voluntarily

surrendered the license, and his license suspension was approximately nine (9) years prior to the submission of his June, 2020 license application.

5. Further, Respondent's South Carolina administrative actions were in April, 2013 and July, 2014, respectively. These actions therefore occurred approximately seven (7) and eight (8) years prior to his June, 2020 license application. While these administrative actions are less than ten (10) years old and still relevant, they are also not within the most recent five years.

6. On balance, after consideration of all testimonial and documentary evidence in this case, Respondent's license application should not have been denied pursuant to N.C. Gen. Stat. §§ 58-33-46(a)(1), 58-33-46(a)(2), 58-33-46(a)(8), and 58-33-46(a)(9).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Agent Services Division's denial of Respondent's application for an insurance agent license be REVERSED, and that such license SHALL BE ISSUED to him. However, Respondent's license shall be placed on Probation for a period of two (2) years ("Probationary Term"), the terms of which are as follows:

1. Respondent shall comply with all applicable provisions of Chapter 58 of the N.C. General Statutes and the administrative rules contained in Title 11 of the N.C. Administrative Code.

2. Respond shall, within 90 days of the issuance of the License, provide evidence that an insurer will grant him an appointment and that said insurer will place him in a quarterly monitoring program satisfactory to the Department during the Probationary Term.

3. Pursuant to 11 NCAC 06A .0802(a), Respondent is required to obtain 24 hours of Insurance Continuing Education Credits (ICEC) each biennial compliance period. During the Probationary Term, four (4) of the 24 ICEC's shall be in Ethics, and the remaining 20 ICEC's shall be related to the line of authority for which Respondent holds a license – Life. Respondent shall submit proof to the Department of completion of the four (4) ICEC's in Ethics within 180 days of the issuance of the License.

4. Respondent shall, during the Probationary Term, report to the Department in writing no later than the 10th day of each calendar month a description of his insurance-related activities during the preceding month.

5. In accordance with N.C. Gen. Stat. § 58-2-70(c), Respondent is ordered to pay a monetary penalty of \$250.00.

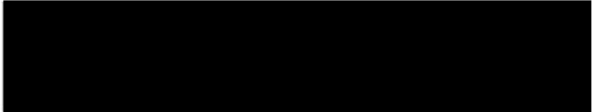
6. Failure to comply with any of the terms of this Probation constitutes a violation of an order of the N.C. Commissioner of Insurance and may result in the revocation of Respondent's license in accordance with N.C. Gen. Stat. § 58-33-46(a)(2).

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 the 11 NCAC 1.0413 and N.C.G.S. § 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.**

This the 27th day of August, 2021.



A. John Hoomani
Hearing Officer

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 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:

Gersham Strange
3310 Memorial Drive
Fayetteville, NC. 28311
(Respondent)

Certified Mail Tracking Number: 70200640000031853656

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

This the 27th day of August, 2021.


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