

**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 STEVEN R. TOMLINSON**

**ORDER AND FINAL AGENCY
DECISION**

Docket number: 1859

To: Steven R. Tomlinson
129 Davis Street
Painted Post, New York 14870

THIS MATTER was heard on August 17, 2017 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 Administrative Hearing that was duly issued and served on Respondent Steven R. Tomlinson.

Mr. Tomlinson, proceeding *pro se*, failed to appear at the hearing.

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

ASD offered into evidence Petitioner's Exhibits 1 through 11, which were admitted into evidence.

BASED UPON careful consideration of the evidence and arguments presented, and based upon the entire record in the proceeding, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. NCDOI 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. Mr. Tomlinson holds an active license as a non-resident insurance producer.
3. Pursuant to N.C. Gen. Stat. § 58-2-69, Mr. Tomlinson has listed with the Commissioner a residence address in New York.
4. The Notice of Administrative Hearing (“NOAH”) in this matter was served on Mr. Tomlinson via registered and regular U.S. Mail. The U.S. Postal Service indicates that the NOAH was left with an individual at Mr. Tomlinson’s residence address on July 26, 2017. Further, in a letter postmarked August 10, 2017 to the Insurance Section of the N.C. Attorney General’s Office, Mr. Tomlinson acknowledged receiving the NOAH.
5. Financial Industry Regulatory Authority (“FINRA”) is the successor organization of the National Association of Securities Dealers (“NASD”).
6. In 2011, the enforcement department of FINRA initiated an enforcement action against Mr. Tomlinson alleging misuse of nonpublic, personal customer information, in violation of NASD Rule 2110.
7. Former NASD Rule 2110, which was in effect in 2008 and enforced by FINRA in its 2014 decision against Mr. Tomlinson, provided: “A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.”
8. FINRA Rule 2010 adopted former NASD Rule 2110 nearly verbatim and provides: “A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”
9. On March 5, 2014, after a full hearing and appeal, FINRA sanctioned Mr. Tomlinson for violating former NASD Rule 2110 and 17 CFR § 248.10. Specifically, FINRA found that, in 2008, Mr. Tomlinson downloaded confidential, nonpublic client information shortly before he resigned from his prior employer and then disclosed the information to his new employer.
10. On December 11, 2014, the Securities and Exchange Commission (“SEC”) affirmed the March 5, 2014 decision by FINRA, including the sanction imposed on Mr. Tomlinson.
11. On March 9, 2016, the federal Second Circuit Court of Appeals affirmed the December 11, 2014 SEC decision, including the sanction imposed on Mr. Tomlinson. Mr. Tomlinson did not appeal from the Second Circuit decision.

12. Following the Second Circuit's decision, FINRA's sanction against Mr. Tomlinson became effective on July 5, 2016.
13. NCDOJ first notified Mr. Tomlinson of receipt of allegations of the FINRA action on September 27, 2016 and requested a written response within ten (10) days.
14. After receiving no response from Mr. Tomlinson to its September 27, 2016 letter, NCDOJ sent another letter to Mr. Tomlinson dated October 20, 2016 again notifying Mr. Tomlinson it was in receipt of allegations of the FINRA action and requesting a written response.
15. NCDOJ sent a final letter to Mr. Tomlinson dated November 14, 2016 notifying Mr. Tomlinson it was in receipt of allegations of the FINRA action and the Department had not received a response to its previous two letters. Further, the Department notified Mr. Tomlinson that failure to provide the Department with a response within ten (10) days of receipt of this letter, the Department would consider Mr. Tomlinson in violation of N.C.G.S. 58-2-195 and would proceed with administrative action against Mr. Tomlinson's license.
16. On November 28, 2016, NCDOJ sent a letter to Mr. Tomlinson notifying him of the allegations against him and requesting an informal conference to discuss the allegations Monday, January 23, 2017. The letter indicated that the Department would call Mr. Tomlinson at the number on file with NCDOJ unless notified within five (5) days this number was incorrect and provided a new number.
17. Having received no response from Mr. Tomlinson, the Department, on January 23, 2017 initiated the informal conference by calling the number for Mr. Tomlinson that was on file with the Department. When Megan Daniels, a complaint analyst with the Agent Services Division called the number on file for Mr. Tomlinson, she received an automated notice that the telephone number was not working.
18. January 27, 2017 the Department sent another letter to Mr. Tomlinson notifying him of the allegations against him and requesting an informal conference to discuss the allegations on Tuesday, March 21, 2017. The letter indicated the Department would call Mr. Tomlinson at the number on file with NCDOJ unless notified within five (5) days this number was incorrect and provided with a new number.
19. Having received no response from Mr. Tomlinson, the Department, on March 21, 2017, initiated the informal conference by calling the number for Mr. Tomlinson that was on file with NCDOJ. When Megan Daniels, a complaint analyst with the Agent Services Division called the number on file for Mr. Tomlinson, she received an automated notice that the telephone number was not working.

20. The Department initiated a formal proceeding against Mr. Tomlinson pursuant to N.C.G.S. §§ 58-2-50, 58-2-55, 58-33-30, 58-33-46, 150B-38, 150B-39, 150B-40, 150B-41 and 150B-42 on July 19, 2017.
21. At all times relevant hereto, Mr. Tomlinson failed to respond to any correspondence from the Department and failed to give the Commissioner notice of FINRA's sanction against him.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and he has jurisdiction over the parties and the subject matter.
2. Mr. Tomlinson was properly served with the NOAH on July 26, 2017.
3. N.C. Gen. Stat. § 58-33-32(k) requires a producer to report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. "Administrative action" under the statute includes enforcement action taken against the producer by the FINRA.
4. Mr. Tomlinson did not give the Commissioner notice of FINRA's sanction against him within the time required by N.C. Gen. Stat. § 58-33-32(k) or at any other time.
5. N.C. Gen. Stat. § 58-33-46(a)(2) states that the Commissioner may place on probation, suspend, revoke, or refuse to renew a license if the licensee 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 the FINRA."
6. Mr. Tomlinson's insurance producer's license is revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) for having violated N.C. Gen. Stat. § 58-33-32(k), an insurance law of this state.
7. Additionally, Mr. Tomlinson's insurance producer's license is revoked pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) for having violated a "rule of FINRA." As noted above, FINRA found that Mr. Tomlinson violated former NASD Rule 2110, which was in effect in 2008 and which, as of 2014, FINRA still enforced. That this former NASD Rule is a "rule of FINRA" within the meaning of N.C. Gen. Stat. § 58-33-46(a)(2) is confirmed by 2009 N.C. Sess. Laws 566, § 10, in which the N.C. General Assembly amended N.C. Gen. Stat. § 58-33-46(a)(2) by changing "rule of the National Association of Securities Dealers" to "rule of the FINRA."

ORDER


Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Mr. Tomlinson's insurance producer's license, license number 0000379594, be revoked.

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 29th day of August 2017.


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


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of 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.G. Gen. Stat. § 58-2-69(b); and, via State Courier, addressed as follows:

Steven R. Tomlinson
129 Davis Street
Painted Post, New York 14870
Certified Mail Receipt Number: 70170530000073185548

Terence D. Friedman
Assistant Attorney General
Insurance Section
N. C. Department of Justice
P.O. Box 629
Raleigh, NC 27602

This the 29th day of August, 2017.



Mary Faulkner
Paralegal
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201