

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)
WILSON ENNIS BARKER, III)
(NPN # 17953112))

Respondent.)

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2091

THIS MATTER came on for hearing on December 8, 2022, in Hearing Room #131 of the Albemarle Building, located at 325 North Salisbury Street, Raleigh, 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 Wilson Ennis Barker, III (“Respondent”) did not appear and was not represented by counsel at the hearing.

Agent Services moved, pursuant to 11 N.C.A.C. 1.0423(A), for the imposition of sanctions due to Respondent’s failure to appear at the hearing. Petitioner’s motion for sanctions is 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 15, including Exhibit 12 subparts a–h, were admitted into evidence.

Jeff Miller, Agent Services Complaint Analyst, 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 producers.

2. Respondent currently holds an active non-resident North Carolina insurance producer license with a line of authority in Life insurance (“License”). Respondent is a resident of Texas. *See Pet’s Ex. 3.*

3. Service of the Notice of Administrative Hearing, Order Continuing Hearing, and Scheduling Order providing Respondent with due notice of the December 8, 2022, hearing was perfected by Federal Express - Priority Overnight delivery, a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), on November 9, 2022, as shown by the Affidavit of Service and signed and dated Federal Express delivery receipt admitted into evidence at the hearing. *See Pet’s Ex. 2A.*

4. Jeff Miller is a Complaint Analyst with Agent Services. Among his other duties, he handles licensure investigations of North Carolina insurance producers.

5. The case file for Respondent was initially assigned to Complaint Analyst Lisa Webb, who is no longer an employee with NCDOI. Mr. Miller took over the complaint investigation on or about August 2020. *See Pet’s Ex. 4.*

6. On September 21, 2016, Respondent applied to the Commissioner for licensure as a non-resident insurance producer. Respondent certified, under penalty of perjury, that all information submitted in the application and its attachments was true and complete. *See Pet’s Ex. 5.*

7. The September 21, 2016, license application asked Respondent “[h]ave you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court).” Respondent answered “No” to this question on the September 21, 2016, North Carolina license application. *See Pet’s Ex. 5.*

8. The September 21, 2016, license application also asked Respondent “[h]ave you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor? You may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked

license.” Respondent answered “No” to this question on the September 21, 2016, North Carolina license application. *See* Pet’r’s Ex. 5.

9. However, on September 23, 1998, in Case No. 9832315, in the State of Texas, Criminal Court of Harris County, Respondent was convicted of guilty of criminal mischief, a Class B misdemeanor. Respondent was sentenced to three days in the Harris County Jail and ordered to pay a \$250 fine. *See* Pet’r’s Ex. 10.

10. Further, on March 14, 2011, in Case No. 1298422, in the State of Texas, 262nd District Court of Harris County, an Order of Deferred Adjudication was entered upon Respondent’s plea of guilty to delivery of 1 to 4 grams of 3, 4 methylenedioxy methamphetamine (MDMA), a second-degree felony. Respondent was placed on community supervision for a period of five years and ordered to pay a \$250 fine. *See* Pet’r’s Ex. 8.

11. Then, on March 27, 2014, in Case No. 129842401010, in the State of Texas, 262nd District Court of Harris County, Respondent’s community supervision was revoked, and a Judgment Adjudicating Guilt was entered convicting Respondent of delivery of 1 to 4 grams of MDMA, a second-degree felony. Respondent was sentenced to four years imprisonment and ordered to pay a \$250 fine. Respondent was released from prison on December 2, 2014. *See* Pet’r’s Exs. 10 and 11.

12. It was not until September 10, 2019, or nearly three years after Respondent submitted his licensure application, that Respondent first disclosed his March 2014 felony conviction to Agent Services by uploading a signed statement to the Attachment Warehouse of the National Insurance Producer Registry. *See* Pet’r’s Ex. 9.

13. On October 1, 2019, Respondent then disclosed his September 1998 misdemeanor conviction to Agent Services by uploading certified court records to the Attachment Warehouse of the National Insurance Producer Registry. *See* Pet’r’s Exs. 7, 10.

14. In or around early February 2020, Agent Services became aware, via a report from the Regulatory Information Retrieval System (“RIRS”), which is an automatic notification system through the National Association of Insurance Commissioners (“NAIC”), that Respondent had received an adverse administrative action in Louisiana, effective October 30, 2019. *See* Pet’r’s Exs. 4 and 6.

15. The RIRS report revealed that, effective October 30, 2019, the Louisiana Department of Insurance had imposed a fine on Respondent for failing to make required disclosures on his application for licensure. *See* Pet’r’s Ex. 6.

16. On February 12, 2020, Ms. Webb emailed Respondent at his electronic address of record requesting that he produce documentation and a written statement regarding the Louisiana administrative action within ten days. *See* Pet'r's Ex. 12A.

17. On March 4, 2020, Ms. Webb sent a follow-up letter to Respondent, directed to Respondent's residence address of record, noting that Respondent had failed to provide the documents and written statement requested in the February 12, 2020, email and providing notice that, unless the documents and statement were received within 10 days from the date of receipt of the letter, Agent Services would consider Respondent to be in violation of N.C. Gen. Stat. §§ 58-2-185 and 58-2-195. Respondent did not provide the documentation and written statement as requested. *See* Pet'r's Exs. 4 and 12B.

18. On April 29, 2020, Agent Services received a second RIRS report indicating that, effective April 27, 2020, the Washington State Office of the Insurance Commissioner had revoked Respondent's Washington state insurance producer license for failure to report another state's action against him and for failing to respond to inquiries from the Washington Insurance Commissioner. *See* Pet'r's Exs. 4, 6, and 14.

19. By August 31, 2020, Mr. Miller had taken over for Ms. Webb as the complaint analyst and emailed Respondent at his electronic address of record requesting that he produce documentation and a written statement regarding the Louisiana and Washington administrative actions within 10 days. *See* Pet'r's Ex. 12C.

20. On September 17, 2020, Mr. Miller sent a follow-up email to Respondent at his electronic address of record noting that Respondent had failed to provide the documents and written statements requested in the August 31, 2020, email and providing notice that unless the documents and statements were received within 10 days from the date of receipt of the email, Agent Services would consider Respondent to be in violation of N.C. Gen. Stat. §§ 58-2-185 and 58-2-195. Respondent did not provide the documentation and written statements as requested. *See* Pet'r's Exs. 4 and 12D.

21. Respondent did not report the October 30, 2019, Louisiana administrative action nor the April 27, 2020, Washington administrative action to the Commissioner within thirty days after the respective final dispositions of the matters as required by N.C. Gen. Stat. § 58-33-32(k).

22. When contacted by Agent Services about the October 30, 2019, Louisiana administrative action and the April 27, 2020, Washington administrative action in October 2020, Respondent failed to provide copies of the out-of-state administrative actions or any written statements regarding the administrative actions. Instead, on October 12, 2020, Respondent wrote "I took care of that matter

sir, you can call my boss Mr. Kim Wilhelm at Final Expense Direct 1800 538 3610 ext#2.” Pet’r’s Ex. 12F. When Mr. Miller noted in an October 12, 2020, follow-up email that Respondent had not reported the Louisiana and Washington administrative actions, Respondent responded that “[l]ike I said, sir it was taken care of call 1 800 538 3610 ext. 2 ... ask for Mr. Kim Wilhelm.” Pet’r’s Ex. 12G.

23. Agent Services did attempt to contact Mr. Wilhelm, but Mr. Wilhelm did not answer or return phone calls from Agent Services. *See* Pet’r’s Ex. 4.

24. Shortly after these October 12, 2020, exchanges, Louisiana took an additional administrative action against Respondent, revoking his Louisiana insurance producer license, effective January 13, 2021. The Louisiana order cites Respondent’s failure to report the administrative action taken against his insurance license by the Washington State Office of the Insurance Commissioner within thirty days, as required by Louisiana law, and Respondent’s failure to respond to the Louisiana Department of Insurance’s requests for documentation and information related to the Washington administrative action, in violation of Louisiana law. *See* Pet’r’s Exs. 6 and 15.

25. Respondent has not reported the January 13, 2021, Louisiana administrative action to the Commissioner within thirty days of its final disposition as required by N.C. Gen. Stat. § 58-33-32(k). *See* Pet’r’s Ex. 4.

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 but failed to attend the December 8, 2022, hearing or retain counsel to represent him at the hearing.

3. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(1), one basis for the revocation of a license issued by NCDOT is when an applicant has provided “materially incorrect, misleading, incomplete, or materially untrue information in the license application.”

4. By answering “no” when asked whether he had been convicted of a felony, Respondent provided materially incorrect, misleading, incomplete, and materially untrue information in Respondent’s North Carolina license application.

5. By answering “no” when asked whether he had been convicted of a misdemeanor, Respondent provided materially incorrect, misleading, incomplete, and materially untrue information in Respondent’s North Carolina license application.

application.

6. N.C. Gen. Stat. § 58-33-46(a)(3) authorizes disciplinary action if a licensee obtains or attempts to obtain a license “through misrepresentation or fraud.”

7. By answering “no” when asked whether he had been convicted of a felony in his North Carolina license application, when in fact Respondent had been convicted on March 27, 2014, of delivery of 1 to 4 grams of MDMA, a second-degree felony, Respondent obtained his North Carolina insurance producer license through misrepresentation.

8. By answering “no” when asked whether he had been convicted of a misdemeanor in his North Carolina license application, when in fact Respondent was convicted on September 23, 1998, of criminal mischief, a Class B misdemeanor, Respondent obtained his North Carolina insurance producer license through misrepresentation.

9. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2), another basis for the revocation of a license issued by the Department of Insurance is violation of the insurance laws of North Carolina or any other State.

10. N.C. Gen. Stat. § 58-33-32(k) is a North Carolina insurance law that requires an insurance producer to report to the Commissioner “any administrative action” taken against the producer by another state “within 30 days after the final disposition of the matter.”

11. Agent Services’ evidence shows that Respondent failed to report the October 30, 2019, Louisiana administrative action, the April 27, 2020, Washington administrative action, and the January 13, 2021, Louisiana administrative action to the Commissioner within thirty days of the actions’ respective final dispositions, as mandated by N.C. Gen. Stat. § 58-33-32(k).

12. By failing to timely report the Louisiana and Washington administrative actions within thirty days of their final dispositions, Respondent violated a North Carolina insurance law within the meaning of N.C. Gen. Stat. § 58-33-46(a)(2).

13. Agent Services’ evidence also shows that Respondent failed to respond to four written requests from Agent Services for documents and other information related to its licensure investigation, despite Respondent’s obligations to provide information to Agent Services “on demand” under N.C. Gen. Stat. §§ 58-2-185 and 58-2-195.

14. The record amply supports a finding that Respondent engaged in conduct supporting revocation of his non-resident insurance producer license under N.C. Gen. Stat. §§ 58-33-46(a)(1), (a)(2), and (a)(3).

15. Failure to disclose a felony conviction and a misdemeanor conviction on an application for licensure is a serious offense that deprives NCDOI of information directly relevant to assessing whether the licensee should be allowed to engage in the insurance business in North Carolina.

16. Based on the evidence received and the applicable law, and after also considering the degree and extent of the harm caused by Respondent's violations, the undersigned Hearing Officer concludes that Respondent's North Carolina non-resident insurance producer should be revoked under N.C. Gen. Stat. §§ 58-33-46(a)(1), (a)(2), and (a)(3).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer enters the following:

ORDER

It is ORDERED that Respondent's non-resident North Carolina Insurance Producer's license is hereby **REVOKED**.

This 2nd day of March, 2023.



Erin E. Gibbs
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 I have this day served 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:

Wilson Ennis Barker, III
1500 Witte Rd No 103
Houston, TX 77080
(Respondent)

Certified Mail Tracking Number: 70200640000031856350

Nathan D. Childs
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This 2nd day of March, 2023.


Mary Faulkner
Paralegal III
N.C. Department of Insurance
General Counsel's Office
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