

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
JOHN CHENEY

ORDER AND FINAL
AGENCY DECISION
Docket Number: 1236

THIS CAUSE came on to be heard before the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. §§ 58-2-55, 58-33-30, 58-33-46, and 150B-38, and other applicable statutes and rules, on the 29th day of June 2005, pursuant to a notice of hearing that was duly issued and served.

The North Carolina Department of Insurance (hereinafter "Department") was present through representatives of the Department's Agent Services Division, and was represented by Brandon L. Truman, Assistant Attorney General.

Petitioner John Cheney (hereinafter "Petitioner") was present, and represented himself after being duly advised of his right to counsel, and after affirming to the undersigned Hearing Officer that he understood his right to be represented by counsel.

After careful consideration and based on the testimony presented, the exhibits introduced, and the record as a whole, the undersigned Hearing Officer hereby enters the following:

FINDINGS OF FACT

1. Petitioner holds a Life and Health insurance agent license, a Property and Liability

insurance agent license, and a Medicare Supplement and Long Term Care insurance agent license issued by the Department.

2. On December 13, 2004, Petitioner and the Department entered into a Voluntary Settlement Agreement (hereinafter "Agreement"), arising out of an investigation and allegations by the Department that Petitioner violated insurance laws of this State.

3. The Agreement, *inter alia*, provides that Petitioner admitted that on October 5, 1998, he violated of insurance laws in this State, and he agreed to pay a \$2,000.00 civil penalty.

4. The Agreement, *inter alia*, states that "Cheney has agreed to settle, compromise, and resolve the matters referenced in this Agreement, and the Department has agreed not to pursue additional penalties, sanctions, remedies, or restitution based on these matters against Cheney," and that "the parties to this Agreement have reached a mutually agreeable resolution of this matter as set out in this Agreement."

5. The Agreement stated that Petitioner understood his right to consult an attorney prior to entering into the Agreement.

6. Petitioner had the Agreement in his possession for at least two months before he entered into the Agreement.

7. Contemporaneously with the execution of the Agreement, Petitioner paid a \$2,000.00 civil penalty to the Department.

8. Subsequent to the execution of the Agreement by Petitioner and the Department, the Department properly notified the National Association of Insurance Commissioners and the insurance carriers who appointed Petitioner, regarding the terms of the Agreement.

9. Prior to entering into a Voluntary Settlement Agreement with an insurance agent, the Department follows a standard procedure of informing the agent that upon the execution of a Voluntary Settlement Agreement, the Department will inform the National Association of Insurance Commissioners and the insurance carriers who have appointed the insurance agent of the terms of the said Voluntary Settlement Agreement.

10. On February 12, 2004, representatives from the Agent Services Division of the Department met with Petitioner in an informal conference to discuss the allegations regarding the complaint against him that initiated the Department's investigation.

11. At the February 12, 2004, informal conference, the Department offered Petitioner an opportunity to enter into a voluntary settlement agreement with the Department and thereby resolve the allegations against him.

12. At the February 12, 2004, informal conference, Petitioner was given oral notice that upon the execution of a Voluntary Settlement Agreement, the Department would inform the National Association of Insurance Commissioners and the insurance carriers who had appointed Petitioner of the terms of the said Voluntary Settlement Agreement.

13. In a letter dated January 25, 2005, Petitioner requested that the Agreement be set aside on the basis that Petitioner alleged that the Department did not inform him that the Department would notify the insurance carriers who appointed Petitioner that Petitioner entered into the Agreement.

14. Petitioner's January 25, 2005, letter requested that the Department return the \$2,000.00 civil penalty, and that the Department hold a hearing on the merits of the allegations that Petitioner violated insurance laws of this State.

15. The undersigned Hearing Officer finds that Petitioner was on notice that the Department would notify the insurance carriers who appointed Petitioner that Petitioner entered into the Agreement.

16. Petitioner did not offer a legal basis to set aside the Voluntary Settlement Agreement.

BASED UPON the foregoing Findings of Fact, the undersigned Hearing Officer makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner of Insurance, and the undersigned Hearing Officer has jurisdiction over the parties and the subject matter pursuant to Chapter 58 of the North Carolina General Statutes.

2. Notice in this matter was timely and proper.


3. Prior to entering into the Voluntary Settlement Agreement, Petitioner was on notice that upon the execution of a Voluntary Settlement Agreement, the Department would inform the National Association of Insurance Commissioners and the insurance carriers who had appointed Petitioner of the terms of the Voluntary Settlement Agreement.

4. The Voluntary Settlement Agreement is valid and binding, and there is no legal basis to set the Voluntary Settlement Agreement aside.

ORDER

BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Voluntary Settlement Agreement will not be set aside, and will remain in full force and effect.

This 25th day of July 2005.


Stewart L. Johnson, Hearing Officer
North Carolina Department of Insurance
1201 Mail Service Center
Raleigh, North Carolina 27699-1201

Appeal Rights:

This Order, which is considered a Final Agency Decision, may be appealed to Superior Court within 30 days of receipt of this Order, as set out in Chapter 150B of the North Carolina General Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER AND FINAL AGENCY DECISION by certified mail, return receipt requested, first class postage prepaid, addressed as follows:

John Cheney
109 Park Oaks Court
Cary, North Carolina 27519

This 28th day of July 2005.

ROY COOPER
ATTORNEY GENERAL

By: 

Brandon L. Truman
Assistant Attorney General
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