

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA)	BEFORE THE COMMISSIONER
COUNTY OF WAKE)	OF INSURANCE
)	
IN THE MATTER OF:)	
)	
THE LICENSURE OF)	ORDER AND
HORACE T. GAINES, JR.)	FINAL AGENCY DECISION
(NPN 13342974))	
)	Docket Number: 1926
)	
Respondent.)	

THIS MATTER was heard on September 11, 2019 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 (“NOAH”) that was duly issued and served on Respondent Horace T. Gaines (“Respondent”).

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

Petitioner 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. NCDOI employee Jeffrey Miller testified at the hearing.

Before the presentation of evidence, ASD withdrew all allegations in the Petition for Administrative Hearing that related to an alleged administrative action taken against Respondent by the State of Washington Office of the Insurance Commissioner.

ASD offered into evidence Petitioner’s Exhibits A through I, which were admitted into evidence. Exhibits A, B, and I were admitted for administrative purposes only.

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. The 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. At the time of the events at issue in this action, Respondent held an active North Carolina license ("License") as a non-resident insurance producer. Respondent's License has since lapsed but, pursuant to N.C. Gen. Stat. § 58-33-46(f), the Commissioner retains the authority to enforce the provisions of N.C. Gen. Ch. 58, Article 33 regarding producers, including by imposing "any penalty or remedy authorized by" N.C. Gen. Ch. 58, "against any person who is under investigation for or charged with a violation of " N.C. Gen. Ch. 58 "even if the person's license or registration has been surrendered or has lapsed by operation of law."

3. Pursuant to N.C. Gen. Stat. § 58-2-69, Respondent has listed with the NCDOI a residential address. On August 22, 2019, the NCDOI served a copy of the August 22, 2019 Notice of Administrative Hearing ("NOAH") on Respondent at his residential address, at a second address he had provided the NCDOI and at a third address located for Respondent, all via First Class U.S. Mail and First Class U.S. Registered Mail, receipt requested, as permitted by N.C.R. Civ. P. 4. *See* NOAH, attached.

4. None of the copies of the NOAH served on Respondent via First Class U.S. Registered Mail, receipt requested, were accepted by Respondent or anybody at the three addresses used. However, the copies of the NOAH served on Mr. Hill via First Class U.S. Mail at the three addresses were not returned.

5. Effective on or about March 25, 2018, the Illinois Department of Insurance suspended Respondent's insurance producer's license in that state ("Illinois Action").

6. N.C. Gen. Stat. § 58-33-32(k) provides:

A producer shall 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. As used in this subsection, 'administrative action' includes enforcement action taken against the producer by the FINRA. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action.

7. Respondent did not report the Illinois Action to the Commissioner within 30 days.

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 NOAH in this matter.

3. This matter is properly before the Commissioner, and he has jurisdiction over the parties and the subject matter.

4. N.C. Gen. Stat. § 58-33-46(a)(2) permits the Commissioner to revoke an insurance producer's license for "[v]iolating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violating any rule of the FINRA."

5. The Illinois Action is an administrative action within the meaning of N.C. Gen. Stat. § 58-33-32(k). Respondent violated N.C. Gen. Stat. § 58-33-32(k) – an insurance law of this state – by failing to timely report the Illinois Action to the Commissioner.

6. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(2), Respondent's non-resident insurance producer license should be revoked for the violation of N.C. Gen. Stat. § 58-33-32(k).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's North Carolina non-resident insurance producer license be revoked.

This 27th day of September 2019.



Robert D. Croom, Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

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.

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, in a first-class postage prepaid envelope, and via State Courier, addressed as follows:

Horace T. Gaines, Jr.
1707 Pennington Dr.
Murfreesboro, TN 37129

Certified Mail Tracking Number: 70191120000089734756

Horace T. Gaines, Jr.
PO Box 293172
Nashville, TN 37229


Certified Mail Tracking Number: 70191120000089734749

Horace T. Gaines, Jr.
146 Tomahawk Ct.
Boilingbrook, IL 60440

Certified Mail Tracking Number: 70191120000089734732

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

This the 27th day of September, 2019.


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