

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
ALBERT GROFF
(NPN #17149641)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2034

This matter was heard on Thursday, April 30, 2021, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to North Carolina General Statutes §§ 58-2-70, 58-2-162, 58-2-185, 58-33-30, 58-33-46, 150B-38, 150B-40 and 11 N.C.A.C. 1.0401 et seq. and other applicable statutes and regulations. Petitioner, the North Carolina Department of Insurance [“the Department”], was represented by Assistant Attorney General Anne Goco Kirby. Respondent Albert Groff (hereinafter, “Respondent”) did not appear. The administrative hearing was held in the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General Anne Goco Kirby represented the North Carolina Department of Insurance, Agent Services Division (hereinafter “Petitioner” or “ASD”).

Due to Petitioner’s failure to appear at the hearing, pursuant to 11 NCAC 01.0423(a)(1), the allegations of the Notice of Hearing and the attached Petition for Administrative Hearing are taken as true and deemed to be proved.

Based on the allegations set forth in the Notice of Hearing, the Petition for Administrative Hearing, Affidavit of Service, the testimony of the Department’s witnesses, and other documentary exhibits admitted into evidence, 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 Petitioner pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 58-2-69(d).

2. Respondent held a non-resident producer's license with authority for Life and Accident & Health or Sickness lines of insurance issued by the Department. Respondent's National Producer License Number (NPN) is 17149641.

3. Mary Sanders, a North Carolina resident, testified that in May 2017, she called and spoke with the Respondent about her interest in purchasing a health insurance plan to bridge the gap between her recent retirement and her eligibility for Medicare in 2020. After explaining her insurance needs, Respondent offered her a bundled health plan which included medical, vision, and dental benefits [hereinafter, "first plan"]. After Ms. Sanders decided to purchase the plan, she was transferred to a verification team which took down her application and credit card information in order for her monthly premiums and applicable fees to be automatically drafted.

4. After enrolling in the first plan, Ms. Sanders' received her insurance information, used the benefits as needed, and paid the monthly premiums and any applicable fees via automatic drafts to her credit card. In September 2019, Respondent called Ms. Sanders and informed her that the first plan was expiring and that she would have to purchase a replacement plan. Ms. Sanders expressed frustration upon learning that the plan was expiring, but nonetheless agreed to purchase a similar bundled health plan which Respondent offered her in reliance on Respondent's representation that the first plan was expiring. After Ms. Sanders decided to purchase the second plan, she was again transferred to a verification team which took down her application and credit card information in order for her monthly premiums and applicable fees to be automatically drafted. Ms. Sanders did not cancel the first plan because she believed Respondent's representation that the first plan was expiring. Nevertheless, payments for the first plan ceased to be drafted from her credit card.

5. After enrolling in the second plan, Ms. Sanders' received her insurance information, used the benefits as needed, and paid the monthly premiums and applicable fees for the second plan via automatic draft to her credit card. On January 14, 2020, Respondent called Ms. Sanders again and informed her that the second plan was also expiring and that she would have to purchase yet another replacement plan. Ms. Sanders again expressed frustration upon learning that the second plan was expiring, but nonetheless agreed to purchase a similar bundled health plan which Respondent offered her in reliance on Respondent's representation that the second plan was expiring. After Ms. Sanders decided to purchase the third plan, she was again transferred to a verification team which took down her application and credit card information in order for her monthly premiums and any applicable fees to be automatically drafted.

6. After enrolling in the third plan, Ms. Sanders' received her insurance information, used the benefits as needed, and paid the monthly premiums and applicable fees for the third plan via automatic draft to her credit card. Ms. Sanders

did not cancel the second plan because she believed Respondent's representation that the second plan was expiring. However, unbeknownst to Ms. Sanders, the second plan never expired and payments for the monthly premiums and any applicable fees continued to be separately drafted from her credit card for the second plan.

7. In April 2020, Ms. Sanders became concerned about the increasing amounts of her credit card bills. Upon examining her monthly credit card charges, Ms. Sanders realized that she was paying multiple charges for separate plans. Ms. Sanders tried to contact the Respondent to resolve the issue but was unable to reach him. Ms. Sanders then contacted Premier Health Solutions, LLC ["Premier Health"], the third party administrator for the second and third plans, to address the matter. Premier Health informed Ms. Sanders that the second plan had never expired and that she could keep both of the plans or cancel one of the plans and keep the other since she still needed health insurance. When Ms. Sanders requested Premier Health to issue a refund to her for premiums and fees she had paid on the second plan since her enrollment in the third plan in January 2020, Premier Health informed her that they could not do so. Ms. Sanders initially decided to cancel the third plan and continue with the second plan. However, she later canceled the second plan and obtained other health insurance.

8. Ms. Sanders submitted a complaint against Respondent to the Department on April 9, 2020. In her complaint, Ms. Sanders identified each of the plans that Respondent sold to her and described her telephone interactions with Respondent from 2017 to 2020.

9. Jacquie Buttles, Insurance Regulatory Analyst in the Department's Life and Health Division, testified that she reviewed and investigated Ms. Sanders' written complaint in April 2020. Ms. Buttles was unable to identify the insurance carriers from the information provided in Ms. Sanders' complaint and was unable to identify a third party administrator for the first plan. After speaking with Ms. Buttles about her complaint, Ms. Buttles decided to send a copy of Ms. Sanders' complaint, along with a written request for response to Premier Health, the third party administrator for the second and third plans.

10. Premier Health responded to Ms. Buttles' request by letter dated April 20, 2020. In its response, Premier Health confirmed that Respondent was the selling agent for the second and third plans and explained that it did not have a direct contractual relationship with the Respondent. Premier Health provided a written statement from Respondent in response to Ms. Sanders' complaint and copies of enrollment and transaction records for Ms. Sanders' second and third plans which it obtained from American Online Benefits Group, a marketing organization under contract with Premier Health.

11. In his written response to Ms. Sanders' complaint, Respondent failed to address Ms. Sanders' allegations regarding his sale of the first plan to her. Although Respondent acknowledged having solicited and enrolled Ms. Sanders in the second and third plans (which he referred to as Ms. Sanders' "first" and "second" plans), in 2019 and 2020, Respondent failed to address Ms. Sanders' allegation that Respondent falsely informed her that the first and second plans were expiring. Moreover, Respondent indicated that he discussed the benefits under her second plan with Ms. Sanders in January 2020 before selling her the third plan with allegedly better benefits and alleged that he told Ms. Sanders that she needed to cancel her second plan when he enrolled her in the third plan in January 2020.

12. In its April 20, 2020 response to Ms. Buttles, Premier Health informed the Department that it had decided to refund the \$1,060.37 in premiums and fees that Ms. Sanders paid for the second plan after enrolling in the third plan in January 2020 after reviewing the file, Ms. Sanders' complaint, and Respondent's statement. Ms. Sanders testified that she received the refund from Premier Health.

13. The Department provided Ms. Sanders with a copy of Premier Health's response and attachments. Ms. Sanders testified that Respondent did not in fact discuss the benefits available to her under her second plan when he called her in January 2020 and never told her to cancel her second plan and instead falsely told Ms. Sanders that she had to purchase a third plan because the second plan was expiring.

14. After receiving Premier Health's response, Ms. Buttles referred Ms. Sanders' complaint to the Department's Agent Services Division in order to address her complaint against Respondent. Tommy Walls, Senior Complaint Analyst with the ASD, was assigned to investigate Ms. Sanders' complaint against Respondent. On May 22, 2020, Mr. Walls e-mailed and mailed a request to Respondent to provide a response to Ms. Sanders' allegations regarding the first plan which he failed to address in his written response. Mr. Walls requested that Respondent provide his written response within 10 days.

15. Respondent failed to respond to Mr. Walls' May 22, 2020 request. Thus, on June 4, 2020, Mr. Walls mailed and e-mailed a follow up request to Respondent which asked that Respondent provide the previously requested response within 10 days. Respondent again failed to respond to Mr. Walls' request. Thus, Mr. Walls scheduled an informal conference between ASD and Respondent in order to address allegations against his producer license arising out of Ms. Sanders' complaint to take place at the Department on August 20, 2020. On July 7, 2020, Mr. Walls notified Respondent of the allegations against his producer's license and the date, time, and location of the informal conference by e-mail and mail.

16. Respondent failed to appear and participate in the informal conference on August 20, 2020. When Respondent failed to appear, Agent Services called and left messages for Respondent about the conference. However, Respondent did not return ASD' calls. Thus, Mr. Walls scheduled a second informal conference with Respondent for September 1, 2020 and both e-mailed and mailed a second informal conference notification to Respondent on August 25, 2020. Respondent again failed to appear for the second conference on September 1, 2020 and ASD again tried unsuccessfully to reach Respondent by phone. Following the conference, Mr. Walls e-mailed Respondent and informed him that the Department would refer the matter to be scheduled for an administrative hearing.

17. The Petitioner requested that Respondent's license be revoked pursuant to N.C. Gen. Stat. §§ 58-33-46(a)(5) and 58-33-46(a)(8).

CONCLUSIONS OF LAW

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

2. The Notice of Administrative Hearing was properly served on Respondent.

3. N.C. Gen. Stat. § 58-33-46(a)(5) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee for "intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance."

4. Respondent intentionally misrepresented the terms of the first and second insurance policies to Mary Sanders by falsely stating that these policies had expired. This constitutes grounds to revoke Respondent's nonresident license under N.C. Gen. Stat. § 58-33-46(a)(5) for "intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance."

5. N.C. Gen. Stat. § 58-33-46(a)(8) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee for "Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere."

6. Respondent used fraudulent and dishonest practices and demonstrated incompetence and untrustworthiness in the conduct of business by making intentional misrepresentations to Mary Sanders that her policies were expiring. This constitutes grounds to revoke Respondent's nonresident license under N.C. Gen. Stat. § 58-33-46(a)(8).

ORDER

Based on the foregoing Finding of Facts and Conclusions of Law, it is ordered that Respondent's licenses issued by the North Carolina Department of Insurance are hereby REVOKED effective as of the date of the signing of this order.

This the 21st day of May, 2021.



Sherri Hubbard, Hearing Officer
North Carolina 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. § 1 A-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, including explicitly stating what exceptions are taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. 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 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:

Albert Groff
11 Sabrina Street
Wernersville, PA 19565-9507
(Respondent)

Certified Mail Tracking #: 70200640000031856084

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

This the 24th day of May, 2021.


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