

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 )  
MATTHEW S. MCCLAY )  
(NPN # 7270371) )

Respondent. )

ORDER AND  
FINAL AGENCY DECISION

Docket Number: 2090

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**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 Matthew S. McClay (“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 8, including all subparts, 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 lines of authority in Accident & Health or Sickness and Life (“License”). Respondent’s License was first issued on April 29, 2010. Respondent is a resident of Pennsylvania. *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. 2C.

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

5. In or around late January 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 Pennsylvania, effective January 21, 2020. *See* Pet’s Exs. 4 and 6.

6. The RIRS report revealed that, effective January 21, 2020, the Pennsylvania Department of Insurance had imposed a fine on Respondent for failing to pay Pennsylvania taxes. *See* Pet’s Ex. 4.

7. While the investigation of the Pennsylvania administrative action was originally assigned to Agent Services Complaint Analyst Lisa Webb in February 2020, the enforcement matter was reassigned to Mr. Miller in September 2020. Ms. Webb is no longer employed by Agent Services. *See* Pet’s Ex. 6.

8. The Pennsylvania Insurance Commissioner entered a Consent Order on January 21, 2020, finding that Respondent had failed to pay Pennsylvania state taxes from 2002 through 2016, that liens had been entered against Respondent totaling \$187,789.29 in Pennsylvania state courts located in Indiana County and Butler County, Pennsylvania, for Respondent’s non-compliance with his Pennsylvania state tax obligations, and that Respondent had improperly answered “no” to the question asking if he had failed to pay state income tax or comply with any court order

directing payment of state income taxes on his 2004, 2006, 2008, 2011, 2013, 2015, 2017 and 2019 Pennsylvania license renewal applications, all in violation of Pennsylvania law. *See* Pet'r's Ex. 8.

9. Based on those findings and Respondent's agreement, the January 21, 2020, Pennsylvania Consent Order required that Respondent pay a \$1,000 fine and, as a condition of keeping his Pennsylvania insurance license, that Respondent enter into a payment agreement with the Pennsylvania Department of Revenue within 90 days. *See* Pet'r's Ex. 8.

10. On February 3, 2020, Ms. Webb emailed Respondent at his electronic address of record requesting that he produce documentation and a written statement regarding the Pennsylvania administrative action within ten days. *See* Pet'r's Ex. 7A.

11. On May 4, 2020, Ms. Webb sent a follow-up email to Respondent directed to his electronic address of record noting that Respondent had failed to provide the documents and written statement requested in the February 3, 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. 6 and 7B.

12. On September 4, 2020, Mr. Miller emailed Respondent at his electronic address of record advising that Agent Services wished to speak with Respondent about the Pennsylvania administrative action at 10:00 a.m. on October 22, 2020, and that Mr. Miller would call Respondent at Respondent's residence primary phone number of record at that time. Agent Services received no response from Respondent to the September 4, 2020, email, and when Mr. Miller and his supervisor attempted to reach Respondent by phone at 10:00 a.m. on October 22, 2020, they were unable to reach Respondent. *See* Pet'r's Exs. 6 and 7C.

13. On October 26, 2020, Mr. Miller again emailed Respondent at his electronic address of record advising that Agent Services wished to speak with him about the Pennsylvania administrative action and Respondent's outstanding state tax obligations at 10:00 a.m. on November 23, 2020, and that Mr. Miller would call Respondent at Respondent's residence primary phone number of record at that time. However, once again, Agent Services received no response to the October 26, 2020, email, and when Mr. Miller and his supervisor attempted to reach Respondent by phone at 10:00 a.m. on November 23, 2020, they were unable to reach Respondent and left a voice mail. *See* Pet'r's Exs. 6 and 7D.

14. Respondent did not report the January 21, 2020, Pennsylvania administrative action to the to the Commissioner within thirty days after the final disposition of the matter as required by N.C. Gen. Stat. § 58-33-32(k).

15. When contacted by Agent Services in February 2020 and May 2020 about the January 21, 2020, Pennsylvania administrative action, Respondent failed to provide a copy of the out-of-state administrative action or any written statement regarding the administrative action. *See* Pet'r's Exs. 6, 7A and 7B.

### 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)(2), one basis for the revocation of a license issued by NCDOI is violation of the insurance laws of North Carolina or any other State.

4. 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."

5. Agent Services' evidence shows that Respondent failed to report the January 21, 2020, Pennsylvania administrative action to the Commissioner within thirty days of the action's final disposition, as mandated by N.C. Gen. Stat. § 58-33-32(k).

6. By failing to timely report the Pennsylvania administrative action within thirty days of its final disposition, Respondent violated a North Carolina insurance law within the meaning of N.C. Gen. Stat. § 58-33-46(a)(2).

7. Agent Services' evidence also shows that Respondent failed to respond to written requests from Agent Services for documents and other information related to Agent Services' 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.

8. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), another basis for the revocation of a license issued by NCDOI is if a licensee has demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of

business in this State or elsewhere.

9. Agent Services' evidence shows that Respondent failed to pay Pennsylvania income taxes for a period of 14 years, from 2002 through 2016, and that tax liens totaling \$187,789.29 were entered against Respondent in Pennsylvania state courts.

10. Demonstrated non-payment of state income taxes over a period of 14 years constitutes "financial irresponsibility in the conduct of business in this State or elsewhere" under N.C. Gen. Stat. § 58-33-46(a)(8).

11. Based on the evidence received and the applicable law, 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)(2) and (a)(8).

**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:

**Matthew S. McClay**  
**1086 Mansfield Ave**  
**Indiana, PA 15701-2414**  
*(Respondent)*

**Certified Mail Tracking Number: 70200640000031858163**

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

This 2<sup>nd</sup> day of March, 2023.

  
Mary Faulkner  
Paralegal III  
N.C. Department of Insurance  
General Counsel's Office  
1201 Mail Service Center  
Raleigh, NC 27699-1201