

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)
KENNETH CHARLES SCOTT)
(NPN # 15471241))

Respondent.)

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2112

THIS MATTER was heard on Thursday, March 2, 2023, in the Albemarle Building, located at 325 North Salisbury Street, Raleigh, North Carolina before the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55.

Assistant Attorney General Rebecca E. Lem represented the Agent Services Division (hereinafter "Petitioner" or "ASD") of the North Carolina Department of Insurance (hereinafter "Department"). Respondent Kenneth Charles Scott (hereinafter, "Respondent") did not appear and was not represented by counsel.

Due to Respondent's failure to appear at the hearing, Petitioner moved pursuant to 11 NCAC 01.0423(A), for the imposition of sanctions and for the allegations of the Notice of Hearing and attached Petition for Administrative Hearing to be taken as true or deemed to be proved without further evidence. Petitioner's motion was DENIED. The Hearing Officer proceeded to consider testimony and evidence offered by ASD in support of its Petition at the hearing.

Jeff Miller, ASD Complaint Analyst, testified for the Petitioner. Petitioner Exhibits 1 through 10, and all of its subparts, were admitted into evidence.

BASED UPON the allegations set forth in the Notice of Hearing and attached Petition in this matter, as well as documentary and testimonial evidence introduced at the hearing, the undersigned 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, 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 procedures.

2. The Notice of Administrative Hearing providing due notice of the March 2, 2023 hearing was properly served by being deposited with a designated delivery service, Federal Express- Priority Overnight and delivered as evidenced by signature on the Acceptance of Service. *See* Pet'r's Exs. 1 and 2.

3. Respondent is a resident of Nevada and holds an active Non-Resident Producer License with a line of authority in Life. Respondent's North Carolina license was first active on or about February 14, 2021. *See* Pet'r's Ex. 3.

4. ASD Complaint Analyst Jeff Miller testified that this matter came to ASD's attention through a "PIC Alert" that shows up on a Regulatory Information Retrieval System ("RIRS") report from an automatic notification system through the National Association of Insurance Commissioners. The RIRS report showed that Respondent received an adverse regulatory action against his insurance license in Louisiana effective December 10, 2021 (hereinafter, "Louisiana administrative action"). Specifically, the RIRS report indicated that Respondent had a license denial in Louisiana due to failure to report another state's action. *See* Pet'r's Ex. 5.

5. Mr. Miller testified that after he was assigned to the enforcement file for Respondent as a result of the PIC alert showing regulatory action against Respondent in Louisiana, he checked to see if Respondent had timely reported the Louisiana action to the Department within thirty (30) days of the effective date of that action, as is required by N.C. Gen. Stat. § 58-33-32(k). Mr. Miller explained that a licensee can report an administrative action by uploading it to the "NIPR Attachment Warehouse", or by emailing it directly to the Department. Mr. Miller testified that Respondent had reported the Louisiana administrative action by either method at that time.

6. On January 14, 2022, Mr. Miller contacted Respondent via email to both of his electronic addresses on record with the Department, asking Respondent to provide a written response and documentation regarding the Louisiana administrative action history within ten (10) days. Respondent did not respond to this request. *See* Pet'r's Ex. 7A.

7. On January 31, 2022, Mr. Miller sent a follow up email to both of Respondent's electronic addresses on record with the Department, and again requested a written response and documentation regarding the Louisiana administrative action within ten (10) days. Respondent did not respond to this second request. *See* Pet'r's Ex. 7B.

8. On February 22, 2022, Mr. Miller sent Respondent an email to both Respondent's electronic addresses on record, notifying Respondent of an informal conference to be held by telephone conference on March 23, 2022 at 2:00 pm regarding his failure to timely report the Louisiana administrative action. *See* Pet'r's Ex. 7C.

9. On March 23, 2022, Mr. Miller and his supervisor Joe Wall attempted to call Respondent at his telephone number on record with the Department for the scheduled informal conference. Respondent did not answer but called Mr. Miller and Mr. Wall back at 2:05 pm, and an informal conference was held by telephone. *See* Pet'r's Exs. 8 and 9.

10. Following the informal conference, Mr. Miller testified that he sent two emails to Respondent at his electronic addresses on record with the Department requesting a response, each time giving Respondent approximately ten (10) days to respond. Respondent did not respond to either of these requests.

11. On April 22, 2022, Mr. Miller sent an email to Respondent at his electronic addresses on record with the Department and also a letter via first class USPS to his residential address of record, informing Respondent that ASD would be proceeding to move the matter forward to a hearing. Respondent did not contact ASD. *See* Pet'r's Ex. 8.

12. On September 22, 2022, Respondent uploaded a copy of the Louisiana administrative action, nine months after its effective date of December 10, 2021. A copy of the "NIPR Attachment Warehouse" screenshot for Respondent as of February 10, 2023, as well as copies of the documents that are linked to the NIPR Attachment Warehouse, were introduced into evidence. *See* Pet'r's Exs. 6 and all subparts.

13. The Louisiana "Notice of Revocation" issued October 21, 2021 and effective December 10, 2021, revoked Respondent's Louisiana insurance license for failure to report a license denial he received in New York on December 8, 2020, and for failure to respond to requests for information from the Louisiana Department of Insurance. *See* Pet'r's Ex. 10.

14. Respondent did not report this Louisiana administrative action to the Department within thirty days after the final disposition of the matter as required by N.C. Gen. Stat. § 58-33-32(k).

15. Petitioner requested that Respondent's licenses be revoked pursuant to N.C. Gen. Stat. §§ 58-33-32(k) and 58-33-46(a)(2), noting that Respondent failed to respond to multiple requests for responses by the Department in violation of N.C. Gen. Stat. §§ 58-2-185 and 58-2-195, and thus Respondent did not indicate a continued interest in retaining his North Carolina insurance license.

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. Respondent was properly served the Notice of Administrative Hearing in this matter.

3. N.C. Gen. Stat. § 58-33-46(a)(2) authorizes the Commissioner to suspend, revoke, or refuse to renew any license issued under this Article for violating any insurance law of this or any other state.

4. Pursuant to N.C. Gen. Stat. § 58-33-32(k) an insurance producer is required to report to the Commissioner “any administrative action” taken against the producer in another state “within 30 days after the final disposition of the matter.”

5. The evidence presented at the hearing shows that Respondent received an administrative action in the form of a license revocation from the Louisiana Department of Insurance which was effective on or about December 10, 2021. Respondent did not report the administrative action to the Department until September 22, 2022, about nine months after the effective date of the action. Respondent thus failed to comply with the requirements of N.C. Gen. Stat. § 58-33-32(k).

6. Respondent’s license is subject to suspension or revocation under N.C. Gen. Stat. § 58-33-46(a)(2) for his failure to timely report the Louisiana administrative action as required by N.C. Gen. Stat. § 58-33-32(k).

7. N.C. Gen. Stat. § 58-2-185 requires insurance companies, agents, or brokers to keep full and correct business records and produce such records to the Commissioner or other authorized employee upon demand.

8. N.C. Gen. Stat. § 58-2-195 authorizes the Commissioner and other authorized employee to request records of insurance agencies, agents, brokers, or producers and requires such information to be produced upon demand.

9. The evidence presented at the hearing shows that Respondent did not respond to multiple requests for written statements, documentation and responses from the Department relating to the administrative action against the Respondent, despite Respondent’s obligation to provide information to Agent Services “on demand” under N.C. Gen. Stat. §§ 58-2-185 and 58-2-195.

10. Based on the evidence accepted and received and the applicable law, the undersigned Hearing Officer concludes that Respondent's North Carolina non-resident insurance producer license should be revoked under N.C. Gen. Stat. § 58-33-46(a)(2).

ORDER

BASED UPON the foregoing Findings of Fact 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 8th day of March, 2023.



Alisha Benjamin
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. § 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 addresses 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:

Kenneth Charles Scott
1489 W. Warm Springs Rd, Suite 110
Henderson, NV 89014-7367
(Respondent)

Certified Mail Tracking Number: 70200640000031858323

Kenneth Charles Scott
2151 Village Walk Drive, Apt. 14207
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(Respondent)

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Rebecca E. Lem
Assistant Attorney General
N.C. Department of Justice
Insurance Section
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(Attorney for Petitioner)

This the 8th day of March, 2023.



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