

RECEIVED ASD

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

2008 FEB -1 PM 1:42

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER OF
INSURANCE

IN THE MATTER OF THE LICENSURE
OF ELLIOT Y. STEVENS

ORDER AND FINAL AGENCY
DECISION

Docket Number: D-1354

THIS CAUSE was heard on January 16, 2008 by the undersigned hearing officer, designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. §58-2-55, pursuant to a notice of hearing that was duly issued and served on Respondent, Elliot Y. Stevens (hereinafter "Respondent").

The North Carolina Department of Insurance (hereinafter "Department") was present, represented by the Agent Services Division. The Department was represented by Assistant Attorney General Robert D. Croom.

Respondent was present and represented by Dan Flebotte of the Durham County bar.

At the hearing, Respondent testified on his own behalf.

The Department offered into evidence Exhibits 1, 2, 3A and 3B, and said exhibits were admitted into evidence without objection.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, 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 Respondent.
2. Respondent is licensed by the Department as a Life and Health Insurance agent and a Medicare Supplement / Long Term Care agent.
3. Respondent admits to negotiating an application for an annuity with a company for which he did not have an appointment.
4. Respondent admits to collecting a fee for negotiating an application for an annuity with a company for which he did not have an appointment.

Based on the forgoing Findings of Fact, the Hearing Officer makes the following:

Conclusions of Law

1. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to North Carolina General Statutes §58-33-46, 150B-38, 150B-40, 11 N.C.A.C. 1.0401 et seq. and other applicable statutes and regulations.
2. Respondent was properly served with the Notice of Administrative Hearing.
3. Respondent's negotiating an application for an annuity with a company for which he did not have an appointment is a violation of N.C. Gen. Stat. §§ 58-33-40(a), 58-33-46(a)(2) and 58-33-46-(a)(8).
4. Respondent's collecting a fee for negotiating an application with a company for which he did not have an appointment is a violation of N.C. Gen. Stat. §§ 58-33-82(d), 58-33-46(a)(2) and 58-33-46(a)(8)
5. The Respondent's licenses may be revoked or suspended for violating N.C. Gen. Stat. §§ 58-33-46(a)(2) and 58-33-46(a)(8).
6. Pursuant to N.C. Gen. Stat. § 58-2-70(b), the Commissioner may, instead of revoking or suspending the license of the Respondent, order payment of a monetary penalty.
7. In the discretion of the undersigned, the evidence presented at the hearing, in the form of testimony and the exhibits introduced, is sufficient to support a monetary penalty.

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

Order

It is therefore ordered that:


1. Respondent shall pay a civil monetary penalty in the amount of \$1,000 to the North Carolina Department of Insurance pursuant to N.C. Gen. Stat. §58-2-70 by reason of his violations of N.C. Gen. Stat. §§ 58-33-40(a), 58-33-82(d), 58-33-46(a)(2) and 58-33-46-(a)(8), as set out above. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of the public schools.
2. The above-referenced civil monetary penalty will be paid by check made payable

to the "North Carolina Department of Insurance." The check shall be delivered to the Department within ten (10) days of the entry of this Order.

3. Respondent shall comply with all provisions of Chapter 58 of the North Carolina General Statutes and Title 11 of the North Carolina Administrative Code that are applicable to him.

4. This administrative action when finalized will be a public record and is not confidential. Any and all licenses issued by the Department to the licensee shall reflect that Regulatory Action has been taken against the licensee following the entry of this Order. Either Respondent or the Department is free to disclose this Order to third parties since it is a matter of public record.

This the 29th day of January, 2008.


Stewart Johnson, Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days of receipt, as set forth in the General Statutes of North Carolina.