

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Non-Resident Insurance
Producer License of Bruce A. Hager

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Pre-Hearing Conference before Administrative Law Judge Eric L. Lipman July 30, 2009, at the Saint Paul offices of the Office of Administrative Hearings.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by, or on behalf of, Bruce A. Hager (Respondent). Following a post-hearing submission from the Department on July 31, 2009, the hearing record closed.

STATEMENT OF THE ISSUES

1. Whether the Respondent engaged in fraudulent, coercive, or dishonest practices in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), 60K.43, subd. 1(6) and (8) (2008)?
2. Whether the Respondent engaged in acts that demonstrate that he is incompetent, untrustworthy, financially irresponsible or otherwise unqualified, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), 60K.43, subd. 1(6) and (8) (2008)?
3. Whether the Respondent failed to notify the Department about the North Dakota criminal prosecution or his guilty plea and conviction in violation of Minn. Stat. §§ 60K.43, subd. 1(2), and 60K.54, subd. 2 (2008), and Minn. Rule 2795.0700, subp. 1 (2007)?
4. Whether the Respondent failed to notify the Department about administrative actions taken against his North Dakota resident insurance producer's license in violation of Minn. Stat. §§ 60K.43, subd. 1(2), and 60K.54, subd. 1 (2008) and Minn. Rule 2795.0700, subp. 2 (2007)?
5. Whether the Respondent had his North Dakota resident insurance producer's license revoked and was otherwise required to pay a civil penalty?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 25, 2009, a Notice of and Order for Prehearing Conference in this matter was mailed to the Respondent at the following address: 808 Harwood Drive, Fargo, ND 58104.¹ The Notice of and Order for Prehearing Conference indicated that a Prehearing Conference would be held in this matter on July 30, 2009.²

2. The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

....

Under Minn. Stat. § 45.027, subd. 6 (2008), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent violated any law, rule or order related to the duties entrusted to the Commissioner.³

3. No one appeared at the July 30, 2009 conference on behalf of Bruce A. Hager. No prehearing request was made for a continuance, nor was any communication received by the undersigned from Mr. Hager.

4. The Statement of Charges alleges that:

- (a) On February 8, 1984, the Department issued Respondent a non-resident insurance producer's license, No. 1142. Respondent's license is currently active.
- (b) On January 11, 2006, pursuant to a Letter of Acceptance, Waiver and Consent ("AWC"), Respondent was barred by the National Association of Securities Dealers, n/k/a Financial Industry Regulatory Authority ("NASD") from associating with any NASD member. The AWC was based on allegations that Respondent violated NASD Conduct Rules 2110 and 3010, and NASD Procedural Rules 8210.

¹ See, Affidavit of Ann Kirlin (June 25, 2009).

² Notice and Order for Hearing, at 1.

³ Notice and Order for Hearing, at 4, ¶ 1 and 6, ¶ 10.

- (c) Respondent failed to notify the Department about the NASD administrative action. See Minn. Stat. § 60K.54, subd. 1 (2008).
- (d) On or about December 20, 2007, upon a plea of guilty, Respondent was convicted of four counts of Felony Sale of Unregistered Securities and four counts of Felony Acting as an Unregistered Agent in the State of North Dakota, Cass County District Court (File No. 09-05-K02261/SA#05-CR-00747). See also, N.D.C.C. § 10-04-10. The sentence imposed against Respondent for each count was imprisonment for a period of one year, with 6 months in the custody of the Cass County Sheriff and the balance suspended for a period of 10 years, and probation for 10 years. In addition, Respondent was ordered to pay \$97,500 in restitution on or before January 21, 2008.
- (e) Respondent failed to notify the Department about his North Dakota criminal prosecution, guilty plea, or conviction.
- (f) On January 8, 2008, the North Dakota Insurance Department commenced an administrative action against Respondent that sought to revoke his North Dakota resident insurance producer's license, as well as the imposition of civil penalties, based on Respondent's December 2007 guilty pleas and criminal convictions. On January 7, 2009, Respondent signed a Consent Order with the North Dakota Commissioner of Insurance (N.D. OAH File No. 20080025) that revoked his resident insurance producer's license and ordered him to pay a \$1,000 civil penalty.
- (g) Respondent failed to notify the Department about the North Dakota administrative action that revoked his license. See Minn. Stat. § 60K.54, subd. 1 (2008).

5. The allegations contained in the Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. Respondent received notice of the charges against him and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the Administrative Law Judge's prior consent, to appear at the scheduled Pre-Hearing Conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Statement of Charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the statement of charges, Respondent violated Minn. Stat. §§ 45.027, subd. 7(a)(4), 60K.43, subd. 1(6) and (8) (2008) by engaging in fraudulent and dishonest practices.

6. Based upon the facts set forth in the statement of charges, Respondent violated Minn. Stat. §§ 45.027, subd. 7(a)(4), 60K.43, subd. 1(6) and (8) (2008) by engaging in acts that demonstrate that he is incompetent, untrustworthy, financially irresponsible and otherwise unqualified.

7. Based upon the facts set forth in the statement of charges, Respondent violated Minn. Stat. 60K.54, subd. 2 (2008) by failing to notify the Department about the North Dakota criminal prosecution.

8. Based upon the facts set forth in the statement of charges, Respondent violated Minn. Stat. § 60K.43, subd. 1(2) by failing to notify the Department about his guilty plea.

9. Based upon the facts set forth in the statement of charges, Respondent violated Minn. Stat. § 60K.43, subd. 1(2), and Minn. Rule 2795.0700, subp. 1 (2007), by failing to notify the Department about his felony convictions.

10. Based upon the facts set forth in the statement of charges, Respondent violated Minn. Stat. §§ 60K.43, subd. 1(2), and 60K.54, subd. 1 (2008) and Minn. Rule 2795.0700, subp. 2 (2007) by failing to notify the Department about administrative actions taken against his North Dakota resident insurance producer's license.

11. Respondent is subject to regulatory discipline under Minn. Stat. § 60K.43, subd. 1(9) (2008) because he had his North Dakota resident insurance producer's license revoked and was otherwise required to pay a civil penalty.

12. Minn. Stat. §§ 45.027 and 60K.43 empowers the Commissioner to take disciplinary action against the Respondent, for his violations of agency orders, state statute and state rules.

13. The imposition of a disciplinary action against Respondent is in the public interest.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.