

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
RICHARD ALLEN BAILEY
(NPN # 19330327)

Respondent.

ORDER AND
FINAL AGENCY DECISION

Docket Number: 2182

This matter was heard on June 26, 2024, by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55. The administrative hearing was held in the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina. Special Deputy Attorney General M. Denise Stanford represented the North Carolina Department of Insurance (hereinafter "Department"), Agent Services Division (hereinafter "Petitioner" or "ASD"). Respondent Richard Allen Bailey (hereinafter, "Respondent") did not appear and was not represented by counsel at the hearing.

Elizabeth Parsons, Assistant Deputy Commissioner for ASD, and Lindsay Melgarejo, Complaint Analyst with ASD, testified for the Petitioner. Petitioner introduced Exhibits 1-8 into evidence.

BASED UPON the careful consideration of the allegations set forth in the Notice of Administrative Hearing ("Notice") and attached Petition for Administrative Hearing ("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. The Notice of Administrative Hearing was properly served on Respondent via first class mail pursuant to N.C. Gen. Stat. § 58-2-69(d) and (e). See Pet'r Exs. 1 and 2.

2. The Department is a state agency, responsible for the enforcement of insurance laws and regulating and licensing insurance agents in accordance with Chapter 58 of the North Carolina General Statutes.

3. The Notice and attached Petition and the Affidavit of Service were admitted into evidence as administrative exhibits. *See* Pet'r Exs. 1 and 2.

4. Respondent is a resident of Virginia. *See* Pet'r Exs. 3 and 4.

5. Respondent holds a Non-Resident Producer License, National Producer Number 19330327, with lines of authority in Life and Accident & Health or Sickness, first active on or about October 18, 2022. *See* Pet'r Exs. 3 and 4.

6. Assistant Deputy Commissioner Elizabeth Parsons ("Ms. Parsons") is an Assistant Deputy Commissioner for ASD. Her job duties that pertain to this matter include managing the ASD team that handles the licensing of agents.

7. Ms. Parsons testified that she first became aware of the matter involving Respondent when she received an e-mail notification from the National Insurance Producers Registry ("NIPR") on February 28, 2023, that Respondent's payment by credit card of \$149.60 for application fees from his license application had not been paid because Respondent disputed the charge. *See* Pet'r Ex. 6A.

8. Ms. Parsons explained how license application fees are collected by the National Insurance Producer Registry ("NIPR") during the online application process. The Commissioner of the Department has assigned the National Association of Insurance Commissioners ("NAIC") as its designee for the purpose of receiving electronic documents, including applications, and associated electronic payments. The NIPR is the affiliate of the NAIC which receives these applications and electronic payments.

9. Respondent electronically submitted his application for a non-resident producer license with lines of authority in Life and Accident & Health or Sickness on October 18, 2022, through the NIPR. Respondent's North Carolina producer license application required payment of \$149.60, which included a \$44 license fee; \$50 per line of authority totaling \$100 ("State fees") for the State of North Carolina; and a \$5.60 application fee (also called "transaction fee") which is retained by NIPR. These fees shall be referred to collectively as the "license application fee". Respondent paid his license application fee by credit card. *See* Pet'r Exs. 5 and 6A.

10. Prior to notifying the Department of the problem with Respondent's payment for application fees, the NIPR sent invoices and notifications to Respondent attempting to collect payment of the \$149.60 license application fee on November 1, 2022, December 14, 2022 and December 29, 2022. *See* Pet'r Exs. 6A, 6B, 6C and 6D.

Respondent did not subsequently pay the license application fee to the NIPR.

11. Ms. Parsons explained that in some cases where an individual applies for a producer license, the license is issued almost immediately after an application is submitted, before the NIPR would receive notice that an electronic payment was disputed by the applicant.

12. On June 7, 2023 and June 22, 2023, ASD Licensing Analyst Carisa Ransome ("Ms. Ransome") sent email letters to Respondent notifying him that his application fee payment had been declined by his financial institution. The letters noted that he must pay his application fee to the NIPR within ten (10) business days. *See* Pet'r Exs. 7A and 7B. Respondent did not subsequently pay the license application fee.

13. Ms. Ransome sent correspondence to Respondent attempting to discuss his potential violation of North Carolina insurance law by failing to pay the required license application fee. The correspondence sent by Ms. Ransome to Respondent regarding the unpaid fees included the following:

- a. An email sent to Respondent on July 12, 2023. *See* Pet'r Ex. 7C.
- b. An email sent to Respondent on August 9, 2023. *See* Pet'r Ex. 7D.
- c. An email sent to Respondent on November 9, 2023 by email and first class mail. *See* Pet'r Ex. 7E.
- d. An email sent to Respondent on January 16, 2024 by email and first class mail. *See* Pet'r Ex. 7F.

14. ASD Complaint Analyst Lindsay Melgarejo ("Ms. Melgarejo") testified that Ms. Ransome was initially assigned to the investigation involving Respondent for his failure to pay his license application fee. Ms. Melgarejo testified that the matter was later transferred to her when Ms. Ransome took another position in ASD. Ms. Melgarejo testified that Respondent has not paid the license application fee despite numerous requests from NIPR and the Department to do so.

15. Respondent has failed to pay the license application fee.

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 pursuant to N.C. Gen. Stat. §§ 58-2-69(d) and 58-2-69(e). *See* Pet'r Exs. 1 and 2.

3. The evidence presented shows that Respondent was required to pay a license application fee totaling \$149.60, payable electronically through the NIPR upon Respondent's application for a Non-Resident Producer license, that included the following:

- a. Two \$50.00 registration fees as set forth in N.C. Gen. Stat. § 58-33-125(c).
- b. A \$44.00 initial application processing fee for an out-of-state producer, as authorized by N.C. Gen. Stat. § 58-2-69(g), N.C. Gen. Stat. § 58-2-250 and 11 NCAC 06A .0201.
- c. A \$5.60 transaction fee to the NIPR, which is the third-party vendor as authorized by N.C. Gen. Stat. § 58-2-69(g), N.C. Gen. Stat. § 58-2-250, and 11 NCAC 06A .0201.

4. The evidence presented shows that Respondent's payment for the license application fee of \$149.60, made by credit card during the electronic license application process, was not paid by Respondent's financial institution because Respondent disputed the charges. Respondent never provided valid payment for his license application fee, which remains unpaid.

5. Pursuant to N.C. Gen. Stat. § 58-2-250(a), the NIPR is a designee of the Commissioner with the authority to oversee the electronic filing of insurance producer license applications. Pursuant to N.C. Gen. Stat. § 58-2-250(c), as the Commissioner's designee, the NIPR is authorized to charge administrative fees for electronic filing. These administrative fees may include a transaction fee, credit card processing fee, or other bank processing fee pursuant to 11 NCAC 06A .0201(a), and such fees are to be paid at the time of the electronic filing transaction by electronic payment options including electronic check, credit card, automated clearing house (ACH), or electronic funds transfer (EFT).

6. Pursuant to N.C. Gen. Stat. § 58-33-125, an applicant for a producer's license must pay a fee of \$50.00 to the Commissioner upon application for licensing and for each additional line of insurance. Respondent was required to pay \$100.00 pursuant to N.C. Gen. Stat. § 58-33-125, which has not been paid.

7. Pursuant to and as authorized by N.C. Gen. Stat. § 58-2-69(g), and 11 NCAC 06A .0201(a), Respondent was required to pay a \$44.00 application processing fee, and a \$5.60 fee for the third-party vendor, which has not been paid.

8. Pursuant to N.C. Gen. Stat. § 58-33-32(c)(2), a condition for a nonresident person to receive a nonresident producer license includes submitting a request for licensure in the form prescribed by the Commissioner, and payment of the applicable fees required N.C. Gen. Stat. § 58-33-125. Respondent has not met this

condition for licensure because he has not paid the applicable license fees due pursuant to N.C. Gen. Stat. § 58-33-125.

9. The evidence presented at the hearing shows that Respondent has failed to pay any of the required fees for licensure pursuant to N.C. Gen. Stat. §§ 58-2-69(g), 58-33-32(c)(2), 58-33-125, 58-2-250(a), and 11 NCAC 06A .0201(a), despite numerous requests and opportunities to do so by both the NIPR and ASD.

10. The Department has lost \$144.00 due to Respondent's failure to pay the required licensure fees pursuant to N.C. Gen. Stat. §§ 58-2-69(g), 58-33-32(c)(2), 58-33-125, 58-2-250(a), and 11 NCAC 06A .0201(a), including \$44.00 which was paid by the Department to its application processing vendor, Pearson Vue, and \$100.00 that was due to the Department.

11. N.C. Gen. Stat. § 58-33-46(a)(2) states that the Commissioner may place on probation, suspend, or revoke the license of a licensee that has violated any insurance law of this or any other state, violated any administrative rule, subpoena, or order of the Commissioner or of another state's insurance regulator, or violated any rule of the Financial Industry Regulatory Authority.

12. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(3), a licensee's license may be subject to disciplinary action for obtaining or attempting to obtain a license through misrepresentation or fraud. When Respondent entered payment information into the online application form, he made a representation that he had funds available to pay the application fee. This representation was false, as shown by Respondent's dispute of the fee and by Respondent's continued failure to honor his obligation to pay the license application fee despite numerous notices that the fee remained due.

13. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(8), a licensee's license may be subject to disciplinary action for demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere. Respondent's failure to pay his license application fee as set forth above, as well as his continued failure to do so after multiple reminders and opportunities to do so, constitutes incompetence and financial irresponsibility in the conduct of business.

14. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(17), a licensee's license may be subject to disciplinary action for any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance. Respondent's license would have been refused for failure to pay the required licensure fees had the Department known Respondent had not provided valid payment at the time of his license application, and therefore this is cause for revocation.

15. Respondent's non-resident producer license is subject to disciplinary

action pursuant to N.C. Gen. Stat. § 58-33-46(a)(2) based upon his failure to pay his license application fee.

16. N.C. Gen. Stat. § 58-2-70 authorizes the Commissioner to order the payment of a monetary penalty upon a finding of a violation of Chapter 58 of the North Carolina General Statutes. The Department has suffered a financial loss due to Respondent's violations of 58-33-125(c), 58-2-69(g), 58-33-46(a)(2), (3), (8), (9) & (17) and 11 NCAC 06A.0201(a) when he failed to pay his license application fee. A financial penalty is therefore appropriate in this matter.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer enters the following:

ORDER

It is ordered that Respondent's license issued by the North Carolina Department of Insurance is hereby REVOKED effective as of the date of the signing of this order.

It is further ordered that pursuant to N.C. Gen. Stat. § 58-2-70(c), Respondent shall make payment of a monetary penalty of one hundred forty-four dollars (\$144.00), by certified check made payable to the "North Carolina Department of Insurance." The certified check must be **dated on or before thirty days after this Order is signed** and received by the North Carolina Department of Insurance, Agent Services Division (Attention: Nadine Scott, ASD), 1204 Mail Service Center, Raleigh, N.C. 27699-1204.

Failure to timely pay this monetary penalty is a violation of an Order of the Commissioner and may be considered cause for future license denial by the Department and may be cause for other legal recourse required to collect this monetary penalty.

This the 10th day of January, 2025.



Kyle Heuser
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: Amy Funderburk, 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:

Richard Allen Bailey
105 Wallostten Dr.
Winchester, VA 22603
(Respondent)

Certified Mail Tracking Number: 9589 0710 5270 0742 5897 92

M. Denise Stanford
Special Deputy Attorney General
N.C. Department of Justice
Insurance Section
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This the 10th day of January, 2025.


Kimberly W. Pearce, NCCP
Clerk of Court for Administrative Hearings
Paralegal III
N.C. Department of Insurance
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