

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
OSAH

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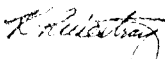
GARRETT CASSELLS,
Petitioner,

v.

DEPARTMENT OF INSURANCE,
Respondent.

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Docket No.:
OSAH-INS-SAN-1505759-60-Baxter



Kevin Westray, Legal Assistant

INITIAL DECISION

Petitioner Garrett Cassells (“Licensee”) appeals the decision of the Georgia Commissioner of Insurance (the “Commissioner”) to impose a \$500.00 fine monetary penalty. For the reasons indicated below, the Commissioner’s decision is **AFFIRMED**.

FINDINGS OF FACT

1.

The mailing address of Garrett Cassells (“Licensee”) is 4295 Shamrock Drive, Atlanta, Georgia 30349. (Exhibits R-5, R-6.)

2.

Licensee has held Resident Agent License number 2650909 since on or about July 21, 2009. (Exhibits R-5, R-6.)

3.

During December 2013, the Consumer Services Division of the Georgia Insurance Department (“the Department”) received, from persons who had been associated with Licensee, complaints about certain business practices said to have been engaged in by Licensee. (Testimony of Zenobia Cooper.)

4.

In response to the complaints, and in accordance with its normal practice when investigating allegations against a licensee, the Consumer Services Division sent two letters to Licensee by first class mail, on December 10, 2013, and on January 6, 2014, to 4295 Shamrock Drive, Atlanta, Georgia 30349, Licensee’s address on file with the Department, providing Licensee with

a copy of the complaints and asking for information about the allegations. (Testimony of Zenobia Cooper; Exhibits R-1, R-2.)

5.

The Consumer Services Division did not receive any response from Licensee to the letters referred to in the preceding paragraph. (Testimony of Zenobia Cooper.)

6.

On February 28, 2014, a representative of the Department's Fraud Unit sent a letter to Licensee's address, via certified mail, return receipt requested, asking for information about the allegations made to the Consumer Services Division. (Testimony of Patti Farha; Exhibit R-3.)

7.

According to tracking information obtained from USPS.com, notice regarding the certified letter was delivered to Licensee's address on March 1, 2014. (Testimony of Patti Farha; Exhibit R-4.)

8.

On March 28, 2014, the Fraud Division's certified letter was returned to the Department, bearing the notation "Unclaimed." (Testimony of Patti Farha; Exhibit R-8.)

9.

On April 8, 2014, a Notice of Order and Order of License Suspension ("the Suspension Order") were mailed, both by certified mail, return receipt requested, and by regular first class mail, to Licensee's address. (Testimony of Patti Farha; Exhibit R-7.)

10.

The Suspension Order was based upon Licensee's failure to provide documents or otherwise respond to a written demand by the Department sent by certified mail to his last known address, pursuant to O.C.G.A. §33-23-21(14)(B). (Testimony of Patti Farha.)

11.

On April 21, 2014, Licensee contacted the Department in person and stated that he had learned of the Suspension Order from an insurance company. (Testimony of Patti Farha.)

12.

On April 21, 2014, Licensee prepared and submitted his Request for a Hearing on the Suspension Order to the Department's Legal Division.

13.

On April 29, 2014, Licensee met with representatives of the Department's Legal Division and provided information about the matters which had been brought to the attention of the Consumer Services Division by his former business associates. (Testimony of Patti Farha.)

14.

After the meeting with Licensee, and following a review of all documentation brought to its attention by Licensee's former business associates, the Department decided not to take any action as to the matters alleged by the complaining parties. (Testimony of Patti Farha.)

15.

The Suspension Order did not become final, and Licensee has been, and is, a licensed Georgia insurance agent. (Testimony of Patti Farha.)

16.

Petitioner testified that in December 2013 he was incarcerated for failure to pay his monthly child support obligation. He was released before Christmas and moved to Florida. He did not return to Georgia to check his mail or have anyone else check his mail. He appealed the Order Imposing Monetary Penalty because he needed to delay paying the penalty amount. (Testimony of Petitioner.)

CONCLUSION OF LAW

1.

The Commissioner seeks to revoke Petitioner's License, and as such, bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07. This proceeding is a de novo review of the Commissioner's actions in suspending Petitioner's License. Longleaf Energy Assoc., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 768 (2009) (holding ALJ must "consider the applicable facts and law anew, without according deference or presumption of correctness to the [agency's] decision.").

2.

The Commissioner may seek a monetary penalty if the Commissioner finds that the agent has committed any one of the acts listed in O.C.G.A. § 33-23-21. Here, the Commissioner is seeking a monetary penalty in the amount of five hundred dollars (\$500). O.C.G.A. § 33-2-24(g).

3.

The Department has proven by a preponderance of the evidence that Petitioner failed to respond to multiple written demands by the Commissioner to respond to complaints filed against him. O.C.G.A. § 33-23-21(14)(B).

4.

As for the appropriate sanction, the Commissioner may seek penalties “up to \$2,000.00 for each and every act in violation of this title or of the rules, regulations, or orders of the Commissioner, unless such person knew or reasonably should have known he or she was in violation of this title or of the rules, regulations, or orders of the Commissioner, in which case the monetary penalty provided for in this paragraph may be increased to an amount up to \$5,000.00 for each and every act in violation.” A \$500 penalty is reasonable in light of Petitioner’s repeated failures to respond. O.C.G.A. § 33-2-24(g).

DECISION

For the foregoing reasons, the Commissioner’s Order Imposing Monetary Penalty is **AFFIRMED**.

SO ORDERED this 30th day of September, 2014.



AMANDA C. BAXTER
ADMINISTRATIVE LAW JUDGE