



**The State of New Hampshire
Insurance Department**

21 South Fruit Street, Suite 14

Concord, NH 03301

David J. Bettencourt
Commissioner

Keith E. Nyhan
Deputy Commissioner

In Re: Antonio Acevedo

Docket No.: 24-029-EP

FINAL DECISION and ORDER

Pursuant to the provisions of Ins 207.04 and upon review of the complete record, the *Proposed Decision and Order* issued on June 28, 2024 by Hearing Officer Steven M. Notinger is ACCEPTED with MODIFICATIONS as follows:

1. In Section II, Procedural and Jurisdictional Background, the sentence in paragraph two beginning with "Acevedo was given" is REJECTED and REPLACED by the following: The Order to Show Cause and Notice of Hearing was sent to Acevedo at his last known address via first-class mail in the U.S. Postal Service, and accordingly, he was given proper notice. The corresponding footnote 2 is modified by adding the following: Ins 205.03(c).

2. Section III is REJECTED and REPLACED by the following: The NHID has the burden to prove a prima facie case by a preponderance of the evidence. Ins 206.05.

3. In Section IV, Findings of Fact, the first sentence is REJECTED and REPLACED by the following: The NHID received the CMS Letter dated February 1, 2024.

4. The citation to "record at 7:30" in Section IV, paragraph two is REJECTED and REPLACED by the following: Record at 10:55-12:50.

5. The last sentence of paragraph two in Section IV beginning with "The conduct at issue" is REJECTED.

6. The last paragraph in Section IV is REJECTED and REPLACED by the following: Sarah Prescott, who is the enforcement investigative paralegal at NHID, testified regarding service of the Order to Show Cause and Notice of Hearing

("OSC"). Prescott mailed the OSC to Acevedo at his mailing address on May 29, 2024 by first-class mail. Ex. 2, 3; Record at 19:03. The first-class mailing was not returned to NHID, and Acevedo has not responded up to and including the time of the hearing. Record at 21:34 and 23:11.

7. Section VI, Analysis, is REJECTED and REPLACED by the following:

The Department alleges Acevedo twice violated RSA 400-A:16, II by failing to respond within ten working days to its requests for information dated February 23 and March 20, 2024. The Department bears the burden of proving a prima facie case, by a preponderance of the evidence, that he committed the alleged violations. See Ins 206.05. As part of the that burden, the Department must prove Acevedo acted knowingly as to his conduct, e.g. a voluntary act rather than mistake or inadvertence. See RSA 400-A:15, III; Appeal of Metropolitan Property & Liability Ins. Co., 120 N.H. 733, 736 (1980).

The NHID must prove that (1) the Department requested Acevedo provide documents and information pursuant to an investigation, and (2) Acevedo knowingly did not provide the information sought. Here, Belanger testified that he sent two e-mails to Acevedo requesting information about the misconduct alleged in the CMS Letter. Belanger sent the first request to Acevedo's business e-mail, as listed on Acevedo's license application submitted earlier that month. Belanger sent a follow up e-mail, again seeking the same information, approximately one month later. The second communication, however, was sent to both Acevedo's business and personal e-mail addresses. Despite the follow up e-mail, Acevedo did not provide the information requested by Belanger. While correspondence is deemed to have been received on the day it is sent by electronic mail pursuant to Ins 205.01(c) and that alone may be sufficient to sustain its burden of proof, the NHID provided additional evidence in that Belanger received electronic confirmation that all three e-mails were delivered. Thus, it is more probable than not that Acevedo's failure to respond was a voluntary act rather than mistake or inadvertence.

Because Belanger's follow up demand in March does not request new or different information, it does not impose an additional obligation on Acevedo. Thus, Acevedo had but one obligation to supply the information requested. Therefore, the Department has proven a prima facie case, by a preponderance of the

evidence, that Acevedo violated RSA 400-A:16, II when he failed to respond to the February 23, 2024 e-mail. The Department has not proven a prima facie case as to the second alleged violation for the reason stated herein.

8. Section VII, Penalties, is REJECTED and REPLACED by the following: Acevedo violated RSA 400-A:16, II by failing to respond to NHID's investigation request dated February 23, 2024. Accordingly, pursuant to RSA 400-A:15, III, his non-resident producer license is revoked. He may apply for reinstatement after five (5) years from the date of this order provided he has not engaged in the unauthorized practice of insurance. Additionally, Acevedo is fined \$2,500. He shall pay the fine by check made payable to "Treasurer, State of New Hampshire" forthwith.

This is the final action of the Department. You have the right to appeal by requesting reconsideration of this final action within 30 days in accordance with RSA 541.

SO ORDERED.

Date: 9/20/24



David J. Bettencourt, Commissioner