**STATE OF NORTH DAKOTA**

**BEFORE THE INSURANCE COMMISSIONER**

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|---|---|---|
| **In the Matter of** | ) | **FINDINGS OF FACT,** |
| | ) | **CONCLUSIONS OF LAW,** |
| **Emilio Hernandez,** | ) | **AND DEFAULT ORDER** |
| **NPN 16274224,** | ) | |
| | ) | **CASE NO. AG-15-555** |
| **Respondent.** | ) | |

**TO: Emilio Hernandez, 106 Tampa Avenue, San Antonio, TX 78211-1141**

On August 27, 2015, a Complaint for Revocation of License was filed with the Insurance Commissioner by Kelvin W. Zimmer, Director of Producer Licensing for the North Dakota Insurance Department, alleging Emilio Hernandez, NPN 16274224 ("Respondent"), committed various violations of North Dakota insurance statutes.

The Complaint was mailed to Respondent at the address on file with the Department by the United States Postal Service via certified mail, return receipt requested, on August 28, 2015. The certified mail was returned to the Department marked "unclaimed" on September 24, 2015. Proof of service of the Complaint is annexed to these Findings. Respondent failed to answer the Complaint within 20 days as required under N.D.C.C. § 28-32-21(1)(e). As such, on October 12, 2015, an Application for Default Order was made deeming the allegations made in the Complaint to be admitted pursuant to N.D.C.C. § 28-32-30.

Based on the allegations made in the Complaint and on the evidence presented in the Affidavits filed in support of the Complainant's Application for Default Order, the following Findings of Fact, Conclusions of Law, and Default Order are entered:

## FINDINGS OF FACT

I

Respondent is presently, and has at all times pertinent to this action, been an insurance producer licensed in North Dakota.

II

The Complaint was mailed to Respondent at the address on file with the Department by the United States Postal Service via certified mail, return receipt requested, on August 28, 2015. The certified mail was returned to the Department marked "unclaimed" on September 24, 2015. Respondent failed to provide a written response to the Complaint.

III

Respondent has not answered the Complaint within 20 days as required under N.D.C.C. § 28-32-21(1)(e).

IV

Respondent has been licensed as a nonresident insurance producer in North Dakota since November 26, 2012.

V

On or about April 28, 2015, Respondent submitted an application to renew his nonresident insurance producer license. On that application he answered "yes" to background question 1A regarding whether Respondent had been convicted of any misdemeanor which had not been previously reported to the Department. Respondent provided information relating to a 2002 DUI conviction and child support information that was previously disclosed on his initial application in 2012.

VI

During a review of court records, the Department discovered that Respondent pled nolo contendere to Assault Bodily Injury-Married in 2002. The court documents relating to this conviction were submitted to the Attachments Warehouse on March 24, 2015. This conviction should have been disclosed on Respondent's initial application in 2012 and also his renewal application in 2015. Respondent's failure to disclose a criminal conviction on an application is in violation of N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(1).

VII

During a review of court records, the Department discovered that a complaint was made against Respondent for Assault Bodily Injury-Married/Cohab in 2011 and a warrant was issued for his arrest. The court documents relating to this conviction were submitted to the Attachments Warehouse on March 24, 2015. The matter is currently pending with a jury trial scheduled for July 2015. This charge should have been disclosed on Respondent's initial application in 2012 and also his renewal application in 2015. Respondent's failure to disclose a criminal charge on an application is in violation of N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(1).

VIII

On or about July 28, 2015, a Consent Order was offered to Respondent for being in violation of N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(1). The Consent Order was mailed to Respondent by certified mail, return receipt requested. The certified mail was returned to the Department marked "Unclaimed – Return to Sender." Respondent failed to sign and return the Consent Order and pay the $800 fine within 20 days.

IX

Respondent's actions constitute violations of N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(1) and are grounds for revocation of Respondent's insurance producer license.

## CONCLUSIONS OF LAW

1. Respondent was properly served with the Complaint in accordance with the North Dakota Rules of Civil Procedure.

2. Because of his failure to answer the Complaint within 20 days of its proper service, Respondent is in default under N.D.C.C. § 28-32-30.

3. Because Respondent is in default, the allegations in the Complaint are deemed admitted pursuant to N.D.C.C. § 28-32-30.

4. Respondent's violations of N.D.C.C. §§ 26.1-26-15 and 26.1-26-42(1) are grounds for revocation of his insurance producer license.

5. Under N.D.C.C. § 26.1-26-42, the Commissioner of Insurance has authority to revoke Respondent's producer license for the violations cited above.

## DEFAULT ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED that the North Dakota insurance producer license of Emilio Hernandez, NPN 16274224, be **REVOKED** effective after the time for filing a motion to vacate a Default Order pursuant to N.D.C.C. § 28-32-30 expires.

DATED at Bismarck, North Dakota, this 13th day of October, 2015.

Adam Hamm
Commissioner
N.D. Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 328-2440

**TO:** Emilio Hernandez
106 Tampa Avenue
San Antonio, TX 78211-1141

**SENDER:** Jeff Ubben

**REFERENCE:** Emilio Hernandez

9314 8699 0430 0016 0989 03

PS Form 3800, January 2005

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| Your item was delivered at 9:21 am on September 24, 2015 in BISMARCK, ND 58505. | | |
| September 23, 2015 , 2:48 pm | Arrived at USPS Facility | BISMARCK, ND 58504 |
| September 21, 2015 , 10:32 pm | Departed USPS Destination Facility | SAN ANTONIO, TX 78284 |
| September 16, 2015 , 9:02 am | Unclaimed/Max Hold Time Expired | SAN ANTONIO, TX 78224 |
| August 31, 2015 , 12:34 pm | Notice Left (No Authorized Recipient Available) | SAN ANTONIO, TX 78211 |
| August 30, 2015 , 7:45 am | Arrived at USPS Destination Facility | SAN ANTONIO, TX 78284 |
| August 29, 2015 , 5:55 am | Departed USPS Facility | BISMARCK, ND 58504 |
| August 28, 2015 , 8:58 pm | Arrived at USPS Facility | BISMARCK, ND 58504 |
| August 27, 2015 | Pre-Shipment Info Sent to USPS | |

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