

**STATE OF NORTH DAKOTA**  
**BEFORE THE INSURANCE COMMISSIONER**

<b>In the Matter of</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
<b>James Delmar Schnabel,</b>	)	<b>AND DEFAULT ORDER</b>
<b>NPN 16138564,</b>	)	
	)	<b>CASE NO. AG-13-400</b>
<b>Respondent.</b>	)	

On June 25, 2013, 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 James Delmar Schnabel, NPN 16138564 (“Respondent”), committed various violations of North Dakota insurance statutes. The Complaint was personally served on Respondent in a field near 91<sup>st</sup> Street SE and 33<sup>rd</sup> Avenue SE in Venturia, North Dakota, by Special Investigator Joe Dale Pittman. 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 July 17, 2013, 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

On June 25, 2013, the Complaint of Kelvin W. Zimmer was personally served on Respondent in a field near 91<sup>st</sup> Street SE and 33<sup>rd</sup> Avenue SE in Venturia, North Dakota.

III

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

IV

The Commissioner has come into information that alleges Respondent has knowingly and intentionally engaged in fraudulent insurance acts, has in the conduct of affairs under his license used fraudulent, coercive, or dishonest practices in his actions on or about January 30, 2013, and continuing through on or about March 1, 2013, by supporting the filing of a false claim with Farmers Union for insurance coverage concerning deceased livestock under the care and control of the Respondent.

V

On or about April 1, 2013, a Criminal Complaint was filed against Respondent in District Court, McIntosh County, charging him with four counts of Class A misdemeanor Overworking, Mistreating or Abandoning Animals. The Criminal Complaint alleges that Respondent deprived animals over which he had charge or control of necessary food, water and shelter, causing multiple feeder calves and at least one yearling to starve to death on his farmstead in McIntosh County. The Complaint also alleges that the Respondent deprived numerous other livestock, including cows, bulls, yearlings and calves to become severely emaciated and undernourished which resulted in death for many of these animals and undue and unnecessary suffering for the remainder of the animals at his farmstead in McIntosh County.

VI

The Affidavit in support of the Criminal Complaint states that McIntosh County Sheriff Laurie Spitzer received a report on March 4, 2013, that Respondent had numerous dead cattle at his farmstead. When Spitzer contacted Respondent later that day, Respondent acknowledged the dead cattle but stated that it was because dogs had chased them into a shed and caused trampling and suffocation.

VII

The Affidavit in support of the Criminal Complaint also states that on March 13, 2013, Spitzer traveled to Respondent's farm with Dr. Lyle Kenner, DVM. Dr. Kenner performed autopsies on three dead calves that were not frozen solid. He concluded these three animals all died of starvation. The Affidavit also states that Spitzer visually observed other livestock while at Respondent's farmstead on March 13, 2013. Spitzer states in the Affidavit it was obvious that most of the cattle were emaciated and undernourished.

VIII

According to information obtained during the course of an investigation by the North Dakota Insurance Department ("Department"), an insurance claim seeking coverage for the over 100 deceased cattle on Respondent's farm was initiated by Respondent's wife, Pamela Schnabel, on or about January 30, 2013.

IX

According to information obtained during the course of an investigation by the Department, Respondent has a Livestock Blanket insurance policy that covers defined perils for livestock loss. This policy insures against livestock loss as a result of attack by dogs or wild animals not owned or kept by the insured, but does not insure against livestock loss as a result of starvation or freezing.

X

According to information obtained during the course of an investigation by the Department, on January 31, 2013, subsequent to the time the insurance claim was initiated by the Respondent's wife, Respondent informed Farmers Union Insurance, through their Claims Manager Brad Nold, that the cattle died on January 30, 2013, because wild dogs had cornered the livestock in the barn and caused them to panic and trample each other. Respondent repeated the story of the wild dogs chasing the cattle multiple times in front of Nold and told a similar story to two other people accompanying Nold on separate trips made by Nold to the Respondent's property between January 31, 2013, and March 1, 2013.

XI

According to information obtained during the course of an investigation by the Department, Respondent also told Farmers Union Insurance agent Kary Lindgren shortly after the insurance claim had been filed that dogs had chased the cattle into the barn, causing the death of the animals. Based upon her observations of the Respondent's farmstead, Lindgren did not believe that dogs had chased the cattle.

XII

Dr. Kenner's March 15, 2013, report to State Veterinarian Dr. Susan Keller states that there were at least 100 dead cattle on Respondent's farm. Dr. Kenner believes that almost all of the dead cattle starved to death as the body condition for all of the animals was thin and emaciated. According to Dr. Kenner, involvement of stray dogs in the death of the cattle is hard to believe and is atypical.

XIII

Fred Frederickson with the Cattlemen's Association inspected the photographs taken of the dead cattle. Frederickson's opinion was that the cattle died of starvation and not by trampling. He looked at one photograph in particular of a calf carcass lying on its

side with vegetation entangled around its legs and head. Frederickson opined that this was caused by the animal lying on its side for several days, too weak to stand up and thrashing around until it created a "snow angel" effect around itself.

#### XIV

According to information obtained by the Department during the course of this investigation, neighbors of the Respondent reported that they did not see any wild dogs on or near their properties on or about January 30, 2013.

#### XV

According to Farmers Union, the estimate for the amount of the claim of loss concerning the cattle is \$93,100. This amount is based upon the number of dead cattle on the Respondent's property, the current market price for the cattle, and upon the body condition of each animal. Based in part upon the information detailed above, Farmers Union denied the insurance claim for the lost cattle.

#### XVI

Respondent's actions of supporting a false claim filed with Farmers Union for insurance coverage concerning deceased livestock under the care and control of Respondent constitutes violations of N.D.C.C. §§ 26.1-02.1-02.1, 26.1-26-15, and 26.1-26-42(6) and are grounds for revocation of Respondent's individual resident insurance producer license.

#### XVII

On June 25, 2013, Respondent was personally served with a Complaint for Revocation of License. Respondent failed to provide a written response to the Complaint.

### **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. §§ 26.1-02.1-02.1, 26.1-26-15, and 26.1-26-42(6) 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 James Delmar Schnabel, NPN 16138564, 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 18<sup>th</sup> day of July, 2013.



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

STATE OF NORTH DAKOTA  
BEFORE THE INSURANCE COMMISSIONER

In the Matter of )  
 )  
James Delmar Schnabel, )  
NPN 16138564, )  
 )  
Respondent. )

AFFIDAVIT OF SERVICE  
CASE NO. AG-13-400

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF BURLEIGH )

I, Joe Dale Pittman, swear that I am of legal age, a citizen of the United States, and on June 25, 2013, at 2:08 p.m. I personally served a **Complaint** and **Consent Order** in this matter by handing a true and correct copy of the document to:

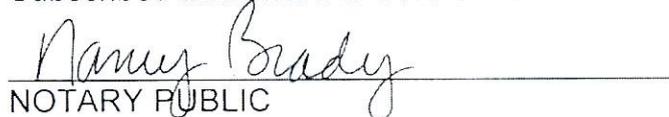
James Delmar Schnabel

In a field near 91<sup>st</sup> Street SE and 33<sup>rd</sup> Avenue SE in Venturia, North Dakota.

DATED this 26<sup>th</sup> day of June, 2013.

  
Joe Dale Pittman

Subscribed and sworn to before me this 26<sup>th</sup> day of June, 2013.

  
NOTARY PUBLIC

My Commission Expires:

