

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:)	
)	
)	
Dwayne Varney)	
)	
Docket No. INS-20-201)	DECISION AND ORDER
)	
)	
)	

I. PROCEDURAL HISTORY

On February 24, 2020, Maine Bureau of Insurance Superintendent Eric A. Cioppa issued an Order revoking Dwayne Varney’s resident insurance producer license and denying his application for additional lines of authority. The revocation and denial were based upon a conviction for Disorderly Conduct, a Class E crime, in Lewiston, Maine on February 19, 2010, which the Superintendent stated was not reported to the Bureau of Insurance (Bureau) in Varney’s June 2019 resident producer application. The failure to disclose the previous conviction was cited by the Superintendent as grounds for the license revocation and denial pursuant to 24-A M.R.S. § 1420-K(1)(A), for “[p]roviding incorrect, misleading, incomplete or materially untrue information in the license application.”

The revocation and denial were also based upon a Consent Order entered into with the Maine Office of Securities on December 10, 2019, which resulted in the revocation of Varney’s agent and investment advisor licenses and the imposition of a \$1,000 civil penalty. This revocation was cited as grounds for the revocation and denial pursuant to 24-A M.R.S. § 1420-K(1)(H) for “[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence,

untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.”

The Superintendent’s Order was subject to Varney’s ability to request a hearing in this matter. Varney timely requested a hearing. On March 9, 2020, the Superintendent of Insurance issued an Order pursuant to 24-A M.R.S. § 210 delegating to me the duties and functions of presiding officer and decision-maker in this matter. The hearing was originally scheduled to be held on March 26, 2020 at the Offices of the Maine Department of Professional and Financial Regulation in Gardiner Maine. Prior to the hearing, however, the current COVID-19 health emergency necessitated the continuance of the hearing. The Maine Department of Professional and Financial Regulation offices were not open to members of the public, and it did not appear to be possible to hold this hearing in person in the near future. Varney agreed to the continuance of the hearing. The hearing was rescheduled to May 12, 2020. The hearing was held remotely by electronic means.

Varney participated in the hearing. Bureau licensing attorney Lindsay Laxon, Esq. also participated in the hearing pursuant to Bureau Rule 350. Prior to the hearing, Bureau staff submitted 16 exhibits, including records related to Varney’s resident producer application of June 2, 2019, his January 13, 2020 application to add life and health authorities to his license, and documents related to the Consent Order Varney entered into with the Maine Office of Securities on December 10, 2019. Varney submitted a statement from his current employer, Matt Vierra, owner of Matt Vierra State Farm, and printouts of emails between Varney and Ms. Laxon related to his request to add authorities to his producer license and questions about the circumstances leading to the Consent Order with the Office of Securities. Entered into evidence at the hearing were a recording of a conversation between Varney and his former supervisor at

Voya Financial Partners, LLC, and a recording of Varney's conversation with one of the consumers who was enrolled without his knowledge in a Professional Management program.

Varney also submitted emails he exchanged in February 2020 with the Office of Securities in which he was told that the Consent Order did not prevent him from seeking licensure with a new securities firm in the future, although an application for re-licensure would be subject to the Office of Securities' usual review process. Bureau staff also submitted a FINRA BrokerCheck Report of Mr. Varney. All exhibits were entered into evidence without objection.

II. STANDARD OF REVIEW

The Superintendent of Insurance may deny, revoke, suspend or take other action regarding a producer license if the Superintendent finds that any of the causes listed under 24-A M.R.S. § 1420-K apply.

The Superintendent's February 24, 2020 Order listed two reasons for the revocation and denial in this matter. Under 24-A M.R.S. § 1420-K(1)(A)(H) the Superintendent may deny an application or revoke an existing license for:

- A. Providing incorrect, misleading, incomplete or materially untrue information in the license application.
- H. Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.

If either of these grounds are proven, the question at hearing becomes "the reasonableness of the superintendent's action." 24-A M.R.S. § 1420-K(2).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In December 2019, Varney entered into a Consent Order with the Maine Office of Securities. Under the terms of the Consent Order, Varney's agent and investment adviser representative licenses (securities licenses) with his previous employer, Voya Financial Partners, LLC, were revoked effective the last date of his licensure, April 17, 2019. Varney was also ordered to pay a \$1,000 civil penalty. Under the terms of the Order, Varney also agreed that he would be precluded from disputing the Findings of Fact and Conclusions of Law set out in the Order.

The Order stemmed from Varney's actions in February 2019, when he enrolled two clients in Voya's Professional Management program without their authorization. Prior to this unauthorized action, Varney had a history of not meeting sales goals. He was placed on progressive verbal and written warnings between June 14, 2016 and July 1, 2018 for failure to meet his sales goals. He was issued a Final Written Warning on January 3, 2019 for the period of January 1, 2019 through February 28, 2019. During this time period, he was required to meet 80% of his sales goal.

Toward the end of February 2019, Varney was behind on his sales goal. During the final three days of this warning period he met his sales goal by the unauthorized enrollment of the two clients in a service they did not request. In early March 2019, Varney's supervisor reviewed Varney's calls to confirm the enrollments and discovered the two unauthorized enrollments. The supervisor contacted Varney, and, after some questioning, Varney admitted to the unauthorized enrollments. Varney was placed on administrative leave by his employer on March 5, 2019. On the same day, Varney offered to resign. He was terminated by Voya on March 22, 2019. On March 26, 2019, Varney sent an email to his supervisor, apologizing for his conduct.

The Securities Consent Order specified that Varney violated his firm's Investment Advisory Policy Section 1002.16 which states that "Representatives are prohibited from...inducing the sales of any securities product by means of any manipulative, deceptive or other fraudulent device or practice, including...executing a transaction for a customer without first receiving the customer's express consent..." and "nondisclosure, manipulation or misrepresentation of material facts."

The Consent Order also specified that Varney violated Maine Office of Securities' Rule Chapter 515 § 14(23), and engaged in "dishonest and unethical practices" under 32 M.R.S. § 16412(4)(M).

On June 3, 2019, Varney applied for a Maine resident producer license with property and casualty authority. One of the questions applicants are required to answer in this application is "Have you ever been convicted of a misdemeanor, had a judgement withheld or deferred, or are you currently charged with committing a misdemeanor?" Varney answered "no" to this question. The application included a "Certification and Attestation" that states:

I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

In fact, Varney had been convicted of Disorderly Conduct, a Class E Misdemeanor, in September 2009 in Androscoggin County District Court. Varney received his producer license in June of 2019 and began work at Vierra State Farm in Bridgton, Maine. On January 13, 2020, Varney applied to have life and health authorities added to his producer license. In this application, Varney did disclose the Disorderly Conduct conviction, and also disclosed the Securities Order.

Although Varney disclosed the Securities Order in the January 2020 application, he did somewhat minimize the significance of his actions in his disclosure to the Bureau. He provided a written statement to the Bureau about the added service in which he enrolled the two clients. In this statement, he claimed that the two clients called “and were interested in the service.” He further stated that “[t]hey did not commit to the service and wanted a little more time to think about it, before enrolling.” He stated that because no charges would be made to their accounts for three weeks and that they would not be charged for the service during this time, “I felt comfortable in this action, and felt it was in the best interest of the participants...” He went on to explain that, if the consumers later decided they did not want this service, he would have the service removed prior to any charges or fees occurring.

Entered into evidence at the hearing was a recording of a phone call with one of the consumers who was enrolled in the Professional Management program without his knowledge. The consumer was very clear in the call that he did not want to give up control over allocation of his funds, stating more than once that he did not want to give up this control. Instead, he was asking for a “snapshot” of his accounts and asking for some written recommendations about possible investment options. This is in contrast to Varney’s written statements to the Bureau prior to the hearing claiming the consumers were interested in the Professional Management program but had not yet decided whether they wanted to enroll. At the hearing, Varney modified the explanations he had previously provided to the Bureau and agreed that the consumer was not interested in the Professional Management program. Varney explained that some time had passed between his interaction with the consumers and his submission to the Bureau of his written explanation of the incidents. He said, “So in listening to the calls again, yeah, I mean, obviously, it wasn’t in the best interests -- you know, wasn’t the right action to take.”

Varney did show remorse for his actions at the hearing. He stated, “This is one of the worst decisions I ever made. I have to live with that.” He also pointed out that the Consent Order with the Office of Securities is not a permanent bar to him being employed in the securities industry. He can reapply and possibly obtain his securities licenses in the future if he is hired by another securities firm.

He also explained that the failure to disclose the Disorderly Conduct conviction in his June 2019 application was “an honest mistake” and that he “just didn’t really think to put in on the application.” He decided to disclose the conviction in his later application for life and health authority after reading the criminal conviction question and thinking that “I should put this down so it doesn’t come back to bite me.” He failed to include this on the June 2019 application because “it did not involve money, theft, forgery, or anything along those lines that the public would definitely want to know before having any dealing with me.”

Mr. Varney’s current employer, Matt Vierra, testified favorably for Varney. Varney has worked for Vierra since June of 2019, and Varney has been a good employee, who recommends appropriate products for clients. Vierra said it was a “shock” when he learned of the securities violations, and that this behavior is out of character for Varney in the time he has worked with him. Vierra stated that Varney has done well in his position with the agency, and “[h]e’s hit every goal with morals, and he has hit every goal the way I plan it out to be.”

There is no dispute that the two grounds cited by the Superintendent occurred in this case. Varney failed to disclose his Disorderly Conduct conviction in his June 2019 application, and therefore violated 24-A M.R.S. § 1420-K(1)(A) by “[p]roviding incorrect, misleading, incomplete or materially untrue information in the license application.” His actions leading to the Consent Order with the Office of Securities are violations of 24-A M.R.S. § 1420-K(1)(H),

by “[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.”

His February 2019 actions while employed with Voya which led to the Consent Order with the Office of Securities are particularly concerning. Varney was dishonest in his dealings with two consumers by enrolling them in a service they did not want. He was also dishonest with his employer and violated his employer’s policies by enrolling these consumers without their permission so that he could meet his performance goals.

Although Varney has expressed remorse for his actions, he also downplayed his actions in his initial responses to the Bureau. He gave a more complete apology for his actions after listening to the recording of the call with the consumer at the hearing. These violations occurred recently, and the seriousness of these violations is not outweighed by what appears to be his successful employment since June of 2019.

The Superintendent’s Order revoking Varney’s producer license and denying his application for the addition of life and health authorities is reasonable in this case.

IV. CONCLUSION AND ORDER

Varney’s producer license is hereby REVOKED. His application to add life and health authorities to his producer license is hereby DENIED.

No civil penalty is imposed.

V. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S. § 236, 5 M.R.S. § 11001, et seq. and

M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

June 11, 2020


TIMOTHY N. SCHOTT
Deputy Superintendent of Insurance