STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

OCT 23 2009

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

STATE OF NEBRASKA DEPARTMENT OF INSURANCE,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDED ORDER AND ORDER
PETITIONER,	)	
vs.	)	
FIRSTFIN INSURANCE SERVICES, INC., and BERNARDO F. LAGMAY, JR.	)	CAUSE NO.: A-1845
RESPONDENT.	)	

This matter came on for hearing on the 21th day of October, 2009, before Janette L. Adair, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Joel F. Green. FirstFin Insurance Services, Inc., and Bernardo F. Lagmay, Jr. ("Respondents") were not present and were not represented by counsel. The Rules of Evidence were not requested and the hearing was governed accordingly. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. Evidence was presented by Petitioner in the form of affidavits. The matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent Bernardo F. Lagmay, Jr., is a licensed non-resident insurance producer in the State of Nebraska. Respondent Lagmay's registered business address with the Department is FirstFin Insurance Services, Inc., P.O. Box 638, Lockport, IL 60441-0638. Respondent Lagmay's registered home address with the Department is 12150 Arlene Drive, Homer Glen, IL 60441. (Ex. 2).

2. Respondent FirstFin Insurance Services, Inc. was licensed as an insurance agency in the State of Nebraska until that license expired on April 30, 2009. Respondent FirstFin's registered business address with the Department is 1701 S. First Avenue, Suite 903, Maywood, IL 60153. (Ex. 2).

3. The Department is the agency of the State of Nebraska charged with licensing insurance producers and insurance agencies.

4. On or about September 1, 2009, the Petition and Notice of Hearing were served upon Respondent Lagmay by mailing the same to him at his registered business address of FirstFin Insurance Services, Inc., P.O. Box 638, Lockport, IL 60441-0638, via certified mail, return receipt requested, and a copy to his registered home address of 12150 Arlene Drive, Homer Glen, IL 60441 via regular U.S. mail. On or about September 28, 2009, the copy of the Petition and Notice of Hearing sent to Respondent Lagmay's registered business address was returned by the U.S. Postal Service marked "Return to Sender, Unclaimed, Unable to Forward." (Ex. 1).

5. On or about September 1, 2009, the Petition and Notice of Hearing were served upon Respondent FirstFin by mailing the same to it at its registered business address of 1701 S. First Avenue, Suite 903, Maywood, IL 60153, via certified mail, return receipt requested. On or about September 25, 2009, the Petition and Notice of Hearing sent to Respondent FirstFin's registered business address was returned by the U.S. Postal Service marked "Unclaimed." (Ex. 1).

6. On or about December 22, 2008, Insurance Investigator Mickey Scheidt ("Scheidt") sent a written inquiry, via certified mail, to Respondents at the registered business address of Respondent FirstFin requesting information related to an investigation. The letter stated, "Nebraska Insurance laws require an adequate response

within 15 working days of receipt of this letter. Failure to provide complete information in a timely manner is considered to be an unfair trade practice." On about January 20, 2009, the inquiry was returned to the Department by the U.S. Postal Service marked "Return to Sender, Unclaimed, Unable to Forward." (Ex. 3).

7. Respondents did not respond to the written inquiry from Scheidt dated December 22, 2008.

8. On or about April 2, 2009, Scheidt sent a written inquiry, via certified mail, to Respondent Lagmay at his registered home address requesting information related to an investigation. The letter stated, "Nebraska insurance laws require an adequate response within 15 working days of receipt of this letter. Failure to provide complete information in a timely manner is considered to be an unfair trade practice." On or about May 4, 2009, the inquiry was returned to the Department by the U.S. Postal Service marked "Return to Sender, Unclaimed, Unable to Forward." (Ex. 3).

9. Respondent Lagmay did not respond to the written inquiry from Scheidt dated April 2, 2009.

10. On or about April 28, 2009, Scheidt sent a written inquiry to Respondents, via regular U.S. mail, at Respondent FirstFin's registered business address requesting information related to an investigation. The letter stated, "We are concerned your non-response to date may be considered an unfair trade practice act, as defined by Nebraska Revised Statute 44-1525(11)." (Ex. 3).

11. Respondents did not respond to the written inquiry from Scheidt dated April 28, 2009.

12. On or about May 26, 2009, Scheidt sent a written inquiry to Respondents, via certified mail, at Respondent FirstFin's registered business address requesting

information related to an investigation. The letter stated, "Failure to respond to this Department within fifteen working days will be a violation of the Unfair Insurance Trade Practices Act, Nebraska Revised Statute 44-1525(11), and could result in action by our Legal Division." On or about June 22, 2009, the inquiry was returned to the Department by the U.S. Postal Service marked "Notify Sender of New Address, FirstFin Insurance Svcs, PO Box 638, Lockport, IL 60441-0638" and "Return to Sender, Unclaimed, Unable to Forward." (Ex. 3).

13. Respondents did not respond to the written inquiry from Scheidt dated April 28, 2009.

14. On or about July 10, 2009, Scheidt sent a written inquiry to Respondents, via certified mail, at PO Box 638, Lockport, IL 60441-0638 enclosing a copy of letters from Scheidt to Respondents dated December 22, 2008, April 2, 2009, April 28, 2009, and May 26, 2009. The written inquiry states, "Enclosed are copies of correspondence previously send. As of this date, a reply has not been received. Failure to respond to this Department within fifteen working days may be construed as an unfair trade practice, as provided by Nebraska Revised Statute 44-1525(11). Please consider this a request for your immediate response." On or about August 13, 2009, the inquiry was returned to the Department by the U.S. Postal Service marked "Return to Sender, Unclaimed, Unable to Forward." (Ex. 3).

15. Respondents did not respond to the written inquiry from Scheidt dated July 10, 2009.

DISCUSSION

The Petitioner provided evidence of five written inquiries sent to Respondents by Investigator Scheidt. Scheidt attempted to contact Respondents for a period in excess of six months. The attempts to contact Respondents included sending written inquiries to the registered business address of Respondent FirstFin, to the registered home address of Respondent Lagmay, and to the registered business address of Respondent Lagmay. The written inquiries were properly addressed and mailed with proper postage attached. The four written inquiries sent via certified mail were returned by the U.S. Postal Service as "Unclaimed." The one written inquiry sent via regular mail was not returned, so it is reasonable to presume that this written inquiry was received by the Respondents. Each of the five written inquiries included notice that failure to respond within fifteen working days may be construed as a violation of Nebraska law. There is no evidence that Respondents made any attempt to respond to any of the written inquiries.

The Petition and Notice of Hearing for the hearing in this matter were mailed to Respondents at the registered business addresses of each Respondent via certified mail. Respondents failed to claim either of the Petitions and Notices of Hearing. A copy of the Petition and Notice of Hearing was also mailed to Respondent Lagmay's registered home address via regular mail. The regular mail copy of the Petition and Notice of Hearing was not returned by the U.S. Postal Service, so it is reasonable to presume that this copy was received by the Respondents. Respondents failed to appear at the hearing in this matter and they did not enter a response or an answer to the allegations.

Licensed insurance producers and insurance agencies have an obligation to maintain a registered business address with the Petitioner. Licensed insurance producers and insurance agencies also have an obligation to respond to written inquiries from the

Petitioner within fifteen working days of receipt. Failure to claim certified mail mailed to the registered business address does not relieve insurance producers and insurance agencies of the duty to respond to the written inquiry enclosed.

Nebraska law provides a range of penalties applicable in this case including revocation or suspension of the insurance producer license. In light of the fact that Respondents have failed to claim numerous pieces of certified mail from the Department and have failed to respond to repeated attempts by the Department to obtain information related to an investigation, as well as the serious nature of the underlying allegations being investigated, this hearing officer is recommending that the Nebraska insurance producer licenses of both Respondents be revoked.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Respondent to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat.* §§ 44-101.01 and 44-4047 *et seq* (Reissue 2004).

2. The Department has personal jurisdiction over Respondent.

3. Respondents' failure to provide a written response to the written inquiry from Consumer Affairs Division Investigator Mickey Scheidt dated December 22, 2008, or to request additional reasonable time to respond, within fifteen working days of receipt is a violation of an insurance law, specifically Neb. Rev. Stat. § 44-1525(11). This violation was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act.

4. Respondents' failure to provide a written response to the written inquiry from Consumer Affairs Division Investigator Mickey Scheidt dated April 2, 2009, or to request additional reasonable time to respond, within fifteen working days of receipt is a

violation of an insurance law, specifically Neb. Rev. Stat. § 44-1525(11). This violation was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act.

5. Respondents' failure to provide a written response to the written inquiry from Consumer Affairs Division Investigator Mickey Scheidt dated April 28, 2009, or to request additional reasonable time to respond, within fifteen working days of receipt is a violation of an insurance law, specifically Neb. Rev. Stat. § 44-1525(11). This violation was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act.

6. Respondents' failure to provide a written response to the written inquiry from Consumer Affairs Division Investigator Mickey Scheidt dated May 26, 2009, or to request additional reasonable time to respond, within fifteen working days of receipt is a violation of an insurance law, specifically Neb. Rev. Stat. § 44-1525(11). This violation was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act.

7. Respondents' failure to provide a written response to the written inquiry from Consumer Affairs Division Investigator Mickey Scheidt dated July 10, 2009, or to request additional reasonable time to respond, within fifteen working days of receipt is a violation of an insurance law, specifically Neb. Rev. Stat. § 44-1525(11). This violation was committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act.

8. Neb. Rev. Stat. § 44-4059(1)(b) provides that the Director may suspend, or revoke an insurance producer's license, or levy an administrative fine for violating any

insurance law or violating any rule, regulation, subpoena, or order of the Director of another state's insurance commissioner or director.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the Nebraska insurance producer licenses of Respondent FirstFin Insurance Services, Inc., and Respondent Bernardo F. Lagmay, Jr., be immediately REVOKED upon the Director or her designee signing the certificate adopting this order.

Dated this 23rd day of October, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Janette L. Adair
Hearing Officer

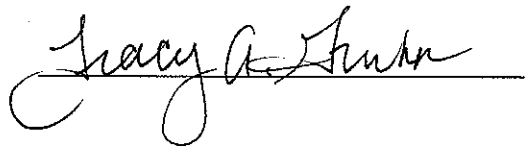
CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of State of Nebraska Department of Insurance v. FirstFin Insurance Services, Inc., and Bernardo F. Lagmay, Jr., Cause No. A-1845.

Dated this 23rd day of October, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

ANN M. FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon the Respondent FirstFin Insurance Services, Inc. by mailing a copy to 1701 S. First Avenue, Suite 903, Maywood, IL 60153; and upon the Respondent Bernardo F. Lagmay, Jr. by mailing a copy to PO Box 638, Lockport, IL 60441-0638, by certified mail, return receipt requested, and by mailing a copy to 12150 Arlene Drive, Homer Glen, IL 60441, via regular US mail, on this 23rd day of October, 2009.