

No. 1-17-2940

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KENNETH R. MANNIE, SR.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 16 CH 1015
)	
STATE OF ILLINOIS DEPARTMENT OF INSURANCE,)	Honorable
)	Moshe Jacobius,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Administrative decision of the Department of Insurance suspending insurance producer’s license for 18 months was not contrary to the manifest weight of the evidence.

¶ 2 After a hearing, the Director of the Illinois Department of Insurance issued a final administrative decision (i) suspending plaintiff Kenneth R. Mannie, Sr.’s license as an insurance producer for 18 months, (ii) imposing a \$3,000 civil penalty, and (iii) assessing costs of \$665.

Mannie sought review in the circuit court of Cook County, which affirmed the Department’s decision.

¶ 3 Mannie appeals, challenging the sufficiency of the Department's evidence to prove that he altered a premium refund check, which he later unsuccessfully attempted to cash. We have thoroughly reviewed the administrative record and find ample support for the conclusion that Mannie did, in fact, engage in the conduct as charged by the Department and we, therefore, affirm.

¶ 4 Mannie was licensed as an insurance producer in 2000.¹ Mannie had his own company, Coordinating Care Health Services, Inc., and he was also an authorized agent of Assurant Health through its broker company, Health Care Solutions. Peter Benson was Mannie's supervisor at Health Care Solutions.

¶ 5 In November 2012, Mannie submitted an application for a health insurance policy for himself to Colorado Bankers Insurance through Benson. Colorado Bankers turned down the application. At the same time, Assurant Health issued Mannie two policies for dental and accident coverage, respectively. Applications for these policies were submitted electronically and requested e-delivery of the policies to an email address provided with the application:

krmannie@aol.com. The applications listed a residential address in Glenwood, Illinois, which was where Mannie lived, and also listed a mailing address on Kung's Way in Joliet, Illinois, which was Benson's home address. After the policies were issued, monthly premiums were deducted from a business bank account owned by Mannie.

¶ 6 In November 2013, Mannie contacted Assurant and requested paper copies of the policies, which he claimed not to have received. Mannie also corrected the mailing address on the policies to his Glenwood address. Although Assurant later mailed the policies to Mannie, he never opened the envelope.

¹ Mannie was first licensed as an insurance producer in 1979. He allowed his license to lapse between 1981 and 2000 while he pursued other employment.

¶ 7 In May 2014, Mannie contacted Assurant and requested that the policies be cancelled retroactive to the date of issuance 18 months earlier, claiming that he had never authorized issuance of the policies in the first place. Mannie also sought a refund of all premiums deducted from his bank account. Assurant cancelled the policies effective May 9, 2014. Also on May 9th, Assurant² issued two refund checks—one for each policy—in the amount of \$3.05 and \$4.90, respectively, reflecting the amount of premiums that had been deducted from Mannie’s account for May 2014. The checks were originally sent to the Kung’s Way address in Joliet and after they were returned to Assurant, were forwarded to Mannie. Assurant later advised Mannie that his bank had already declined the withdrawals for the monthly premiums and that, as a result, it would stop payment on the checks and Mannie should not cash them.

¶ 8 Mannie wrote to Assurant on June 9, 2014, again demanding a refund of all premiums deducted from his bank account. Mannie represented that “these policies were never authorized” and that since December 2012, \$1,013.54 had been deducted from his account. Mannie sought “damages of three times the fraudulent deductions for the overdraft and other fees associated with this fraud for a total of \$3,040.62.” Mannie also indicated that unless Assurant promptly paid the amounts demanded, he would report the matter to the Department.

¶ 9 In a June 24, 2014 letter, Assurant responded to Mannie’s claim for a retroactive refund of premiums. Assurant informed Mannie that it had conducted an investigation into his assertion that the policies were unauthorized and had interviewed Benson, who stated that Mannie requested issuance of the policies and provided Benson with the information necessary to submit the applications, including his bank routing and checking account numbers. Assurant further noted Mannie’s call in November 2013, in which he discussed with an Assurant customer

² The checks were actually issued by Assurant’s parent company, Time Insurance Company.

representative the benefits available under the policies and requested paper copies of the policies, but never mentioned that he had not applied for them. Assurant denied Mannie's request to backdate the termination date for the policies, advised him that he could appeal the denial of his claim, and also provided him with contact information for the Department's Consumer Division. Mannie pursued an appeal of Assurant's denial of his request to refund the premiums.

¶ 10 Sometime after he received the two checks from Assurant, Mannie claimed that he received a third check from Assurant in July 2014 in the amount of \$2,986.57, which Mannie assumed represented a refund of his premiums. The check was dated July 2, 2014, or a little over a week after Assurant's June 24th letter denying his claim. On July 7, 2014, Mannie attempted to cash the check, but his bank refused to cash it. Mannie later sent copies of all three checks from Assurant to the Department in support of a complaint he filed against Assurant for wrongfully deducting premiums from his account.

¶ 11 After it learned of the \$2,986.57 check, Assurant investigated the matter and determined that the check had been forged. On September 15, 2014, Assurant notified Mannie that his appointment as an agent for the company was terminated for cause and also notified the Department of its action.

¶ 12 On March 26, 2015, the Department entered an order revoking Mannie's license as an insurance producer and imposed a \$3,000 civil penalty based on the finding that Mannie had altered a premium refund check and attempted to cash it. In particular, the Department found that Mannie had altered the \$4.90 check actually issued by Assurant by changing the check amount, the date of the check and the check number. The Department concluded that this conduct violated section 500-70(a)(8) of the Insurance Code (215 ILCS 5/500-70(a)(8) (West 2016)), which empowers the Department to suspend, revoke, or refuse to issue or renew an insurance

producer's license if the licensee is guilty of "using fraudulent, coercive, or dishonest practices, or demonstrat[es] incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere[.]"

¶ 13 Mannie requested and the Department held a hearing on the revocation of his license.

¶ 14 At the hearing, Katharine Guilfoile, an Assurant manager, detailed Assurant's investigation into the dispute with Mannie and the circumstances surrounding the \$2,986.57 check presented by Mannie to his bank. Assurant interviewed Benson who indicated that Mannie had requested his assistance in procuring supplemental insurance plans. Mannie provided Benson with his bank information in connection with the electronic applications. Assurant concluded that Mannie had authorized Benson to submit the applications. Assurant also concluded the \$2,986.57 check was forged based on a number of irregularities. First, the check referenced two policy numbers, but if Assurant was issuing a premium refund on more than one policy held by an insured, it would always issue separate checks referencing only one policy number, as it did in the case of the checks for \$3.05 and \$4.90. Second, under Assurant's checking system, the first six digits of the check requisition numbers signify the date on which the check was issued. In the case of the checks Assurant actually issued, those numbers were "140509," indicating that they were issued on May 9, 2014. The same six numbers are contained on the forged check, but the check is dated July 2, 2014, nearly two months after the requisition numbers indicate it was issued. Third, Assurant always included asterisks on its checks between the line beginning "PAY" and the amount of the check. Thus, for example, on the "PAY" line of the \$4.90 check, it reads: "PAY *****4.09." In contrast, the forged check contained no asterisks and, unlike the checks actually issued by Assurant, included a dollar sign before the check amount. Finally, Assurant was able to determine that check number 22596687, the number listed on the

forged check, was tied to another, valid check issued to an individual in Texas in the amount of \$96.74. A review of Assurant's records showed no check in the amount of \$2,986.57 was ever issued to Mannie.

¶ 15 Mannie did not dispute that the \$2,986.57 check was forged, but denied that he was responsible for the forgery. Mannie just assumed the amount represented a refund of his premiums, plus overdraft fees and other charges incurred as a result of the deductions from his account. According to Mannie, when he became aware of the monthly deductions from his business account, he contacted Assurant to inquire regarding the policies. Mannie did not at that time inform Assurant that he had never applied for the policies because he was "not sure" whether he had authorized Benson to submit the applications and wanted to conduct his own investigation. The email address listed on the applications (krmannie@aol.com) was incorrect as his personal email address is krmanniesr@aol.com. Six months later, after speaking to people in his own office and to Benson (who informed Mannie that Mannie had authorized him to submit the applications), Mannie came to the conclusion that he had not authorized Benson to apply for the policies and that Benson, in order to earn commissions, had done so on his own and with information Mannie had given him to apply for the health policy. Mannie first contacted his bank to request reimbursement, but the bank told him he would have to obtain reimbursement from Assurant. Mannie could not recall what reason his bank gave him for refusing to cash the \$2,986.57 check or whether his complaint to the Department about Assurant was made before or after the Department was notified of his termination as an Assurant agent.

¶ 16 In her findings of fact and conclusions of law, the hearing officer credited Guilfoile's testimony, finding it "far more credible" than Mannie's, which she labeled "questionable." The hearing officer found it "strange" that Mannie, upon learning of the deductions from his bank

account for insurance policies he did not realize he had, would not say anything about his concerns to Assurant's customer representative when he called in November 2013. Mannie also failed to explain why it took him six months to determine whether he had, in fact, taken out the policies when his investigation only consisted of talking to people in his office and Benson. Mannie's displeasure over Assurant's refusal to refund his premiums provided a motive for him to alter one of the refund checks to the higher amount and he, not Benson, was the only person who stood to benefit from the forged check, which he admitted attempting to cash. Finally, the hearing officer found no plausible explanation for Mannie's claimed belief that Assurant, without further communication, sent him a refund check one week after denying his request to backdate the policies' termination date and advising him of his appeal rights. The hearing officer sustained the charge against Mannie, but recommended that Mannie's license be suspended for a period of 18 months, instead of permanently revoked. The hearing officer upheld the Department's imposition of a \$3,000 civil penalty and imposed \$665 in costs against Mannie. Mannie's motion for reconsideration was denied and the Department adopted the hearing officer's recommendation in its entirety.

¶ 17 Mannie sought administrative review in the circuit court of Cook County, which upheld the Department's final administrative decision. Mannie timely appealed.

¶ 18 The Department first argues that we should not consider the merits of Mannie's appeal given that his brief fails to comply with Illinois Supreme Court Rule 341 (eff. Nov. 1, 2017). The Department correctly observes that Mannie's brief is non-compliant in virtually every respect with the Rule. The brief contains none of the required parts specified in Rule 341(h), *e.g.*, no statement of facts with citations to the record, no argument with citation to legal authorities, and no index to the record on appeal. And because self-represented litigants are not relieved of the

obligation to comply with the rules applicable to all parties pursuing an appeal (*McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12), we could refuse to consider this appeal on its merits. We elect to proceed to the merits, notwithstanding Mannie's non-compliance with the rules, because we have the benefit of the administrative record, which we have carefully reviewed, as well as the Department's brief, which discusses that record in detail.

¶ 19 Turning to the merits, on appeal from a final administrative decision, we review the decision of the agency, not the circuit court. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010); *Jankovich v. Illinois State Police*, 2017 IL App (1st) 160706, ¶¶ 30, 35. Accordingly, although we have reviewed the circuit court's well-reasoned and detailed opinions, we focus instead on the rationale for suspending Mannie's license articulated by the Department. And although different standards of review apply on appeal from a final administrative order depending on the nature of the issue presented, the issue here relates solely to the hearing officer's factual findings based on her assessment of the credibility of the witnesses who testified at the administrative hearing and so we apply the deferential manifest weight of the evidence standard of review. *Board of Education of the City of Chicago v. Illinois Educational Labor Relations Board*, 2015 IL 118043, ¶ 15; *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006); *Schachter v. City of Chicago*, 2016 IL App (1st) 150442, ¶ 23. In order to overturn an agency's factual findings as contrary to the manifest weight of the evidence, the opposite result must be clearly evident. *Marconi*, 225 Ill. 2d at 534; *Schachter*, 2016 IL App (1st) 150442, ¶ 23. As applied here, we must affirm the Department's decision unless it is clearly evident from the record that Mannie did not alter what he claimed was the refund check from Assurant.

¶ 20 As far as we can discern from Mannie’s brief, he first characterizes the charges against him as criminal in nature, which they obviously were not. Like any other licensee subject to the Department’s jurisdiction, Mannie was subject to discipline for violation of applicable provisions of the Insurance Code, including section 500-70(a)(8), prohibiting the use of fraudulent or dishonest practices, but the discipline is civil, not criminal. 215 ILCS 5/500-70(a) (West 2016) (“The Director may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license or may levy a civil penalty[.]”).

¶ 21 Mannie also argues that the Department pursued revocation of his license in retaliation for Mannie’s accusation that the Department’s failure to charge Benson with fraud for procuring policies without Mannie’s consent was racially motivated. (Mannie is African American.) But nothing in the administrative record supports this claim and we will not consider it further.

¶ 22 On the merits, there is ample support for the Department’s determination that Mannie violated section 500-70(a)(8) by altering and attempting to cash a forged check purportedly from Assurant. Mannie did not dispute that the check was, in fact, forged, but claimed that when he received the \$2,986.57 check in the mail, he had no way of knowing it was not genuine. But given (i) the manner in which the check was altered (*e.g.*, changing the date of the check without changing the requisition date), (ii) Mannie’s possession of two validly issued checks from Assurant (providing him the opportunity to alter one of them), and (iii) Mannie’s expressed displeasure with Assurant’s refusal to retroactively refund the premiums on the two policies, we find no basis to overturn the Department’s credibility determinations. Mannie’s failure to raise any concern about the policies when he contact Assurant in November 2013, his claim that it took six months to determine that he had not, in fact, applied for the policies, and his professed belief that Assurant had acceded to his demand for a refund of premiums even though Assurant

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had denied the same claim days earlier, all cast serious doubt on Mannie's credibility. Moreover, Mannie's theory that Benson was the wrongdoer cannot explain the alteration of the check since Benson stood to gain nothing from the forgery.

¶ 23 Because the Department's decision to suspend Mannie's insurance producer's license for 18 months, impose a \$3,000 civil penalty, and award \$665 in costs is not contrary to the manifest weight of the evidence, we affirm the decision of the circuit court of Cook County.

¶ 24 Affirmed.