

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

Curtis A. Barringer, Jr.
1543 Forrester Avenue
Sharon Hill, PA 19079

Respondent

: ALLEGED VIOLATIONS:

:
: Sections 6(a)(11) and (13) of the
: Insurance Adjusters Act, Act of
: December 20, 1983, P.L. 260, No. 72,
: (63 P.S. §§ 1601-1608)

:
: Docket No. **SC06-06-027**

ADJUDICATION AND ORDER

AND NOW, this 6th day of November, 2006, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order.

HISTORY

This case began when the Pennsylvania Insurance Department ("Department") filed an Order to Show Cause ("OTSC") on June 22, 2006 directed to Curtis A. Barringer, Jr. ("Barringer" or "the respondent"). The OTSC alleged that Barringer violated the Insurance Adjusters Act.¹ Specifically, the OTSC alleged that Barringer, a licensed public adjuster, on his license renewal application answered "no" to the question of whether he had ever been convicted of a crime or misdemeanor even though he was convicted of a crime in 2001.

The OTSC advised Barringer to file an answer in accordance with applicable

¹ Act of December 20, 1983, P.L. 260, No. 72, 63 P.S. §§ 1601-1608 ("Insurance Adjusters Act").

DATE MAILED: November 6, 2006

regulations (1 Pa. Code § 35.37), and further advised him that the answer must specifically admit or deny each of the factual allegations made in the OTSC. The respondent was advised to set forth the facts and state concisely the matters of law upon which he relies. He further was advised of the consequences of failing to answer the OTSC. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on Barringer by first class mail.

Barringer failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On September 25, 2006, the Department filed a motion for default judgment and served Barringer in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent both by certified mail and by regular mail to his last known address as kept on file in the Department. The certified OTSC was returned to the Department on August 24, 2006 as unclaimed. However, the document sent by first class mail was not returned to the Department as undeliverable. The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter.

This adjudication and order addresses the motion for default judgment and the order to show cause. Factual findings and some legal conclusions are contained within the body of this adjudication.

DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since Barringer failed to answer the order to show cause or motion for default judgment. The order to show cause and motion advised as to the consequences of the failure to respond;²

² The OTSC warned the respondent that failure to answer in writing would result in the factual allegations being deemed admitted and that the Commissioner could enter an order imposing penalties.

however, because of the language in the penalty provisions of the applicable statute, an analysis of the Commissioner's ability to impose penalties absent an evidentiary hearing is required.

There are no factual disputes in the present matter. All factual averments in the OTSC are deemed to be admitted under 1 Pa. Code § 35.37.

Under general rules of administrative procedure, a final order may be entered without hearing for an insufficient answer to the OTSC unless otherwise provided by statute. *See* 1 Pa. Code § 35.37 ("Mere general denials . . . will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings."). A respondent failing to file an answer within the time allowed shall be deemed in default. *Id.* Department regulations do not limit the Commissioner's ability to order a default judgment without a hearing, so any limitation must come, if at all, from a statute.

In order for an adjudication by a Commonwealth agency to be valid, a party must have a "reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. § 504 (Administrative Agency Law). Similarly, the Insurance Adjusters Act applicable to the present matter provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 63 P.S. § 1606.³ However, given that the respondent has not answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

³ The Insurance Adjusters Act mandates written notice of the nature of the alleged violations and requires that a hearing be fixed at least ten (10) days thereafter, and further provides that:

After such hearing or failure of the accused to appear at such hearing, the Insurance Commissioner shall impose such of the above penalties as he deems advisable.

63 P.S. § 1606(c).

While no court has directly addressed the power of a Commissioner to enter a default judgment without hearing, the caselaw supports such power. For example, in *United Healthcare Benefits Trust v. Insurance Commissioner*, 620 A.2d 81 (Pa. Cmwlth. 1993), the Court affirmed the Commissioner's grant of summary judgment for civil penalties despite the language contained in 2 Pa.C.S. § 504 and 40 P.S. § 47.⁴ Also, the Court specifically has upheld a decision in which the Commissioner granted default judgment for an Unfair Insurance Practices Act (UIPA) violation. *Zimmerman v. Foster*, 618 A.2d 1105 (Pa. Cmwlth. 1992).

In a case involving another agency, the Commonwealth Court upheld summary judgment imposing discipline issued by a commission despite the fact that the respondent had requested a hearing. *Kinniry v. Professional Standards and Practices Commission*, 678 A.2d 1230 (Pa. Cmwlth. 1996). In *Kinniry*, the applicable statute (24 P.S. §§ 2070.5(11), 2070.13) provided for a hearing procedure before discipline was imposed. However, the respondent's attorney merely requested a hearing without answering the specific factual averments in the charges against the respondent (which charges were treated as an order to show cause). The Court upheld the summary judgment since deemed admission of the factual averments presented no factual issues to be resolved at hearing.

The Commissioner consistently has applied the reasoning of *United Healthcare* and similar cases when the respondent does not answer the order to show cause and a motion for default judgment. See *In re Kozubal*, P93-08-13 (1997); *In re Phelps*, P95-09-007 (1997); *In re Taylor*, SC96-11-034 (1997); *In re Crimboli*, SC99-04-015 (1999); *In re Young*, SC98-08-027 (2000); *In re Jennings*, SC99-10-001 (2001); *In re Warner*, SC01-08-001 (2002). The Commissioner adopts this reasoning in the present case: the

⁴ The operative language is identical to that in 63 P.S. § 1606(c) except reading "such penalties" instead of "such of the above penalties."

important aspects of 2 Pa.C.S. § 504 are notice and the *opportunity* to be heard. Default judgment is appropriate when a respondent fails to take advantage of his opportunity to be heard. When a respondent in an enforcement action is served with an order to show cause detailing the nature of the charges against him as well as the consequences of failing to respond, yet fails to answer the allegations or to answer a subsequent motion for default judgment, the Commissioner adopts the Commonwealth Court's reasoning that the respondent had an opportunity to be heard but has rejected the opportunity.

Additionally, there are no factual matters to address at a hearing. Since the factual allegations of the OTSC are deemed admitted, the determination by the Commissioner is a legal rather than a factual one. A hearing is not necessary for this type of determination. *See Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987); *United Healthcare, supra*. The Commissioner adjudicates the present case based upon the undisputed, admitted facts as alleged in the OTSC.

The facts include that Barringer has been a licensed public adjuster since 1999. On or about November 26, 2001, Barringer was convicted of intentionally possessing a controlled substance by a person not registered in violation of 35 P.S. § 780-113(a)(16). He was sentenced to one (1) year probation. [OTSC Exhibit A]. Thereafter, when he filed the March 2, 2004 and March 21, 2006 renewal applications, Barringer responded "no" to the question of whether he had ever been convicted of a crime or misdemeanor. [OTSC Exhibits B and C].

In the OTSC the Department charged Barringer with two distinct violations of the Insurance Adjusters Act: 1) made a material misstatement in the application for a public adjuster's license (63 P.S. § 1606(a)(11)) and 2) demonstrated his incompetence or untrustworthiness to transact the business of a public adjuster (63 P.S. [Exhibit 1606(a)(13)).

For each of these two charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his certificate of qualification. 63 P.S. § 1606(a). Additionally the Insurance Adjusters Act authorizes the Commissioner to impose a penalty of up to \$1,000 for each and every violation of the Act. In the present case, the facts warrant imposition of these penalties for each charge.

The first charge involves dishonesty with the Department. Even though Barringer had been convicted of a crime in 2001, he twice denied the existence of the conviction on his renewal applications. The existence of a criminal conviction is a material consideration when the Department evaluates an individual's competency or trustworthiness as a public adjuster. Although the details of the underlying criminal conviction in this case are not clear from the record, dishonesty about the conviction reveals a character flaw unacceptable in a public adjuster.

By definition, a public adjuster is one who evaluates and presents claims for property losses or damages, and receives compensation for the giving of advice or assistance to an insured in the adjustment of claims for such losses. *See* 63 P.S. § 1601. Public adjusters must be held to a very high professional standard for honesty and integrity so that their claims evaluations and advice may be trusted. A public adjuster license may only be issued when the Insurance Commissioner is "satisfied that the applicant is trustworthy and competent to transact business as a public adjuster." 63 P.S. § 1602. Likewise, the license may be suspended or revoked when the Commissioner determines that a public adjuster is no longer competent or trustworthy. 63 P.S. § 1606.

Considering the nature of a public adjuster's work in collecting information about insurance losses and presenting claims to insurance companies, the particular offense committed by Barringer goes to the heart of the requirement that public adjusters be trustworthy and reliable. If he is dishonest with the regulator, then Barringer cannot be

entrusted with the investigating, evaluating and making of claims for those individuals he purports to serve. This action makes Barringer completely untrustworthy as a public adjuster and subject to the maximum penalty.

With Barringer liable for remedial action under each of the two counts, the appropriate action must be established for each count.

PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Adjusters Act, including those provisions violated by Barringer's conduct. 63 P.S. § 1606(a). Each action violating a provision specified in section 1606(a) also subjects the respondent to a maximum one thousand dollar civil penalty. 63 P.S. § 1606(b).

A Commissioner is given broad discretion in imposing penalties. *Termini v. Department of Insurance*, 612 A.2d 1094 (Pa. Cmwlth. 1992); *Judson v. Insurance Department*, 665 A.2d at 523, 528 (Pa. Cmwlth. 1995). Barringer's underlying crime evidences a lack of integrity and respect for the law which is antithetical to the trustworthiness required in a public adjuster's profession. By definition, public adjusters have extensive personal contact with insureds. Both insurance companies and insureds must be able to rely upon the public adjuster's integrity when collecting and presenting claims information. A public adjuster who has committed a crime and misrepresented it to the Department is incapable of engendering the trust necessary in the profession. Simply put, Barringer at this time cannot be trusted to evaluate and present insurance loss claims honestly.

No evidence exists to mitigate the seriousness of the violations. Barringer did not offer mitigating evidence or arguments.

Considering the facts in this matter, the applicable law, the seriousness of the conduct and all aggravating and mitigating circumstances, penalties are imposed as set forth in the accompanying order.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the parties and subject matter of these proceedings.
2. The Department may revoke or suspend a certificate or license upon finding that a public adjuster has engaged in conduct which would disqualify him from initial issuance of a certificate or a license.
3. A public adjuster who is dishonest with the regulator cannot be trusted the personal information of his customers.
4. If incompetency or untrustworthiness is established, the Commissioner may exercise discretion to impose remedial action in light of the public adjuster's conduct as well as mitigating and aggravating factors.
5. Public adjusters are held to a high degree of professional competence and trustworthiness.
6. Curtis A. Barringer, Jr. by his conduct towards the Department has demonstrated untrustworthiness to transact the business of a public adjuster.
7. If any of the foregoing Conclusions of Law should be held to constitute Findings of Fact, the ones so found are incorporated therein by reference.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

Curtis A. Barringer, Jr.
1543 Forrester Avenue
Sharon Hill, PA 19079

Respondent

: ALLEGED VIOLATIONS:

:
: Sections 6(a)(11) and (13) of the
: Insurance Adjusters Act, Act of
: December 20, 1983, P.L. 260, No.
: 72 (63 P.S. §§ 1601-1608)

:
: Docket No. **SC06-06-027**
:

ORDER

AND NOW, based upon the foregoing findings of fact, discussion and conclusions of law, it is **ORDERED** as follows:

1. The public adjuster license of Curtis A. Barringer, Jr. IS **REVOKED** for a minimum of five (5) years pursuant to 60 P.S. § 1606(a) for each of Counts one and two, with these revocations to run **concurrently** with each other. Additionally, Curtis A. Barringer, Jr. is prohibited from applying for a public adjuster's license in this Commonwealth for a minimum of five (5) years. Curtis A. Barringer, Jr. is also prohibited from applying to renew the public adjuster's license previously held by him in this Commonwealth for a minimum of five (5) years.

2. Curtis A. Barringer, Jr. shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows:

- a. Count one: \$1,000.00
- b. Count two: \$2,000.00

for a total of \$3,000.00 Dollars (\$3,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Fraser, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

- 3. This order is effective immediately.



M. Diane Koken
Insurance Commissioner