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ADMINISTRATIVE SERVICES OFFICE  
IN RE:

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

**Wycliffe S. Sebina**  
35 South White Horse Pike, Apt. #409  
Audubon, NJ 08106

and

**Trans Atlantic Brokerage, Inc.**  
1362 Haddon Avenue  
Camden, NJ 08103

Respondents

: ALLEGED VIOLATIONS:  
:  
: Sections 678-A, 606-A(a)(6), 611-A(20)  
: and 691-A of the Insurance Department  
: Act of 1921, P.L. 789, No. 285, *as*  
: *amended* (40 P.S. §§ 310.98, 310.6(a)(6),  
: 310.11(20) and 310.91.  
:  
:  
:  
: Docket No. **SC12-02-007**

**ADJUDICATION AND ORDER**

AND NOW, this 28<sup>th</sup> day of June, 2012, Michael F. Consedine, 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 February 17, 2012 directed to Wycliffe S. Sebina ("Sebina") and Trans Atlantic Brokerage, Inc. ("Trans Atlantic") (collectively "the respondents"). The OTSC alleged that the respondents violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that Sebina and Trans Atlantic, respectively an individual and agency licensed as non-resident insurance producers, had

<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 310.98, 310.6(a)(6), 310.11(20) and 310.91.

DATE MAILED: June 28, 2012

their licenses revoked by the New Jersey Department of Banking and Insurance for numerous insurance law violations and failed to report the revocations to the Pennsylvania Insurance Department.

The OTSC advised the respondents to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised them that the answer must specifically admit or deny each of the factual allegations made in the OTSC. The respondents were advised to set forth the facts and state concisely the matters of law upon which they rely. They further were advised of the consequences of failing to answer the OTSC. The OTSC was served upon the respondents by first class and certified mail and publication in the Pennsylvania Bulletin.<sup>2</sup> Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on the respondents by first class mail.

The respondents failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On May 17, 2012, the Department filed a motion for default judgment and served the respondents in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondents to their last known addresses as kept on file in the Department but that the mailings were returned as undelivered. The motion also declared that while not required to do so, the Department otherwise attempted in good faith and exhausted every reasonable measure to ascertain any other locations or addresses for the respondents without success. The respondents have not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter.

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<sup>2</sup> 42 Pa. Bull. 1199 (March 3, 2012).

This opinion 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 the respondents 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;<sup>3</sup> however, because of the language in the penalty provisions of applicable statutes, 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.

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<sup>3</sup> 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.

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).<sup>4</sup> Similarly, the statute specifically applicable to the present case<sup>5</sup> provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. See 40 P.S. § 310.91.<sup>6</sup> However, given that the respondent has not answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

While no court has directly addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Insurance Department Act, 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 the applicable statutes which seemed to require a hearing. 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).

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<sup>4</sup> Mailings sent to the respondents' registered addresses, including from the hearings office, were returned by the post office as undelivered. However, notice of the alleged violations and requirement to answer the OTSC were contained in the Pennsylvania Bulletin publication. A producer licensed in Pennsylvania must notify the Department of a change in residence or business address within 15 business days of the change. 31 Pa. Code § 37.43. Notice of the formal hearing sent to the last known address constitutes formal legal notice to the producer. *Id.* Thus, the Department complied with the regulatory notice provision. In addition, the Department certified that it exhausted every reasonable measure to obtain an alternate address. Given these circumstances, including the respondents' failure to report their change of address with the Department as required, notice by publication in the Pennsylvania Bulletin satisfied statutory and constitutional requirements for reasonable notice of a hearing and an opportunity to be heard. See *Grimaud v. Department of Envtl. Res.*, 638 A.2d 299 (Pa. Cmwlth. 1994).

<sup>5</sup> Insurance Department Act, Act of May 17, 1921, P.L. 789 as amended (40 P.S. §§ 1 *et seq.*) .

<sup>6</sup> The Insurance Department Act section 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 the hearing or upon failure of the person to appear at the hearing, if a violation of this act is found, the commissioner may, in addition to any penalty which may be imposed by a court, impose any combination of the following deemed appropriate: . . .

40 P.S. § 310.91. This Section then lists available penalties.

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 Phelps*, P95-09-007 (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); *In re Taylor*, SC07-11-015 (2008); *In re Kroope*, SC09-12-005 (2010). The Commissioner adopts this reasoning in the present case: the important aspects of 2 Pa.C.S. § 504 are notice and the *opportunity* to be heard. Default judgment is appropriate, despite language in applicable statutes which seems to require a hearing, 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 Sebina is licensed as a non-resident insurance producer. Sabina owned and operated Trans Atlantic, an insurance agency also licensed as a non-resident producer. Trans Atlantic's license expired on October 27, 2011 and has not been renewed.

On December 8, 2011, the New Jersey Department of Banking and Insurance issued a final order revoking the respondents' licenses. The respondents were found jointly liable for numerous insurance law violations including: submitting deficient insurance applications; using premium accounts for personal expenses; misappropriating premium funds on multiple occasions; breaching fiduciary responsibilities; commingling personal funds with premiums; selling, soliciting and placing inappropriate coverages; failing to remit and apply premiums to the respondents' general agent; failing to secure policies; and committing other insurance law violations. The New Jersey agency revoked the respondents' licenses, fined them \$61,000 and ordered restitution. The respondents never reported New Jersey's action to the Pennsylvania Insurance Department.

In the present action, Sebina and Trans Atlantic are charged with two distinct violations of the Insurance Department Act: 1) demonstrated lack of worthiness to be an insurance agent pursuant to 40 P.S. § 310.6(a)(6) in violation of 40 P.S. § 310.11(20); and 2) failure to report the New Jersey order to the Department in violation of 40 P.S. § 310.78.

For each of two charges, the Commissioner has authority to impose remedial action against the respondents, including suspension or revocation of their licenses as well as imposing a penalty of up to \$5,000.00 per violation. 40 P.S. § 310.91. In the present case, the admitted facts support sanctions for each of the charges against the respondents. The respondents failed to report the New Jersey enforcement action, itself a violation of 40 P.S. § 310.78.<sup>7</sup> In addition, the malfeasance established in New Jersey and the failure to report the enforcement action constitutes a course of conduct demonstrating a lack of general fitness, competence and reliability under 40 P.S. § 310.11(20).

With Sebina and Trans Atlantic liable for remedial action under each of the two offenses, the appropriate remedial action must be established for each offense.

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<sup>7</sup> **Misconduct Reporting.**—A licensee shall report to the department any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this Commonwealth within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

40 P.S. § 310.78(a).

## PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by the respondents' conduct. 40 P.S. § 310.91(d)(1). Each action violating a provision of the statute also subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. § 310.91(d)(2). The respondent may also be ordered to cease and desist from prohibited conduct. 40 P.S. § 310.91(d)(3). Finally, the Commissioner may impose any other conditions deemed appropriate. 40 P.S. § 310.91(d)(4). 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).

The seriousness of the respondents' course of conduct resulting in the New Jersey order is self-evident. They were sanctioned for activities directly connected with the respondents' duties as insurance producers and which harmed insurance consumers and damaged the profession. The respondents' failure to report the New Jersey action to the Pennsylvania regulator also breached the respondents' duties to the Commonwealth and to the public. Whether a conscious concealment or a negligent nondisclosure, the failure to disclose the New Jersey action hampered the Insurance Department's ability to regulate the profession and protect insurance consumers. This concealment goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance buying public.

In addition, the failure undermines the confidence placed by insurance consumers in the respondents as well as in the profession. Applicants and insureds entrust financial and personal matters to the producer, and rely upon the producer's integrity. The respondents' actions violated the laws of this Commonwealth and thus damaged the trust

consumers place in their producers. The respondents' failure to comply with applicable laws and codes of conduct in multiple states is an aggravating factor.

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

The Department in its Order to Show Cause and motion for default judgment requested revocation of the respondents' producer licenses, a civil penalty for each violation, a bar to future licensing until all the terms of the Commissioner and New Jersey orders have been satisfied and a period of supervision should the respondents become relicensed. Considering the facts in this matter, the applicable law, the seriousness of the conduct aggravating circumstances and lack of mitigating circumstances, penalties are imposed as set forth in the accompanying order.

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	: ALLEGED VIOLATIONS:
	:
<b>Wycliffe S. Sebina</b> 35 South White Horse Pike, Apt. #409 Audubon, NJ 08106	: Sections 678-A, 606-A(a)(6), 611-A(20) : and 691-A of the Insurance Department : Act of 1921, P.L. 789, No. 285, <i>as</i> : <i>amended</i> (40 P.S. §§ 310.98, 310.6(a)(6), : 310.11(20) and 310.91.
and	:
	:
<b>Trans Atlantic Brokerage, Inc.</b> 1362 Haddon Avenue Camden, NJ 08103	:
	:
Respondents	: Docket No. <b>SC12-02-007</b>

**ORDER**

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

1. All of the insurance licenses or certificates of qualification of Wycliffe S. Sebina and Trans Atlantic Brokerage, Inc. **ARE REVOKED** for a minimum of five (5) years pursuant to 40 P.S. 310.91 for each of the two violations, with these revocations to run **concurrently** with each other. Additionally, Wycliffe S. Sebina and Trans Atlantic Brokerage, Inc. are prohibited from applying for a license to act as a producer in this Commonwealth for a minimum of five (5) years. Wycliffe S. Sebina and Trans Atlantic Brokerage, Inc. also are prohibited from applying to renew any license previously held by either in this Commonwealth for a minimum of five (5) years.

2. Wycliffe S. Sebina and Trans Atlantic Brokerage, Inc. each shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as

follows:

- a. Violation of 40 P.S. § 310.78: \$5,000.00
- b. Violation of 40 P.S. § 310.11(20): \$3,000.00

for a total of Eight Thousand Dollars (\$8,000.00) from each respondent. 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 insurance license will be issued or renewed for a respondent until the civil penalty owed by that respondent is paid in full.

3. No insurance license will be issued or renewed for a respondent until all the terms of the December 8, 2011 order by the New Jersey Department of Banking and Insurance have been fulfilled and satisfactory proof thereof supplied to the Pennsylvania Insurance Department.

4. Should either respondent ever become licensed at any future date, that respondent's certificates and licenses may be immediately suspended by the Insurance Department following its investigation and determination that: (i) the penalty has not been fully paid; (ii) any other term of this order has not been complied with; or (iii) any complaint against the respondent is accurate and a statute or regulation has been violated. The Department's right to act under this section is limited to a period of five (5) years from the date of any relicensure.

5. Wycliffe S. Sebina and Trans Atlantic Brokerage, Inc. shall have no right to prior notice of a suspension imposed pursuant to paragraph 4 of this order, but will be entitled to a hearing upon written request received by the Department no later than thirty

(30) days after the date the Department mailed to the respondent by certified mail, return receipt requested, notification of the suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of the respondent's written request.

6. At the hearing described in paragraph 5 of this order, the respondent shall have the burden of establishing that the respondent is worthy of an insurance license.

7. In the event that a respondent's certificates and licenses are suspended pursuant to paragraph 4 of this order, and the respondent either fails to request a hearing within thirty (30) days or at the hearing fails to establish that the respondent is worthy of a license, the respondent's suspended certificates and licenses shall be revoked.

8. This order is effective immediately.

  
MICHAEL F. CONSEDINE  
Insurance Commissioner