BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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| IN RE: | ALLEGED VIOLATIONS: |
| **George R. Brown, Jr.**<br>117 Deerbrook Lane<br>Centre Hall, PA 16828<br><br>Respondent | Sections of the Insurance Department Act of 1921, P.L. 789, No. 285, *as amended*<br>40 P.S. §§ 310.11(14), 310.11(15), 310.11(19), 310.11(20) and 310.78(b)<br><br>Docket No. **SC16-05-011** |

## ADJUDICATION AND ORDER

AND NOW, this 25th day of July, 2016, Teresa D. Miller, 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 May 18, 2016 directed to George R. Brown, Jr. ("the respondent"). The OTSC alleged that Brown violated the Insurance Department Act.[1] Specifically, the OTSC alleged that Brown, a licensed insurance producer, was arrested, charged and pled guilty to one felony and four misdemeanors, and that he failed to report the criminal charges or their disposition to the Department. He also failed to advise the Department of his change of address.

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[1] Act of May 17, 1921, P.L. 789, No 285 *as amended through* the Act of June 25, 1997, P.L. 349, No. 40, *repealed and partially reenacted by* the Act of December 3, 2002, P.L. 1183, No. 147. (40 P.S. §§ 310.1 *et. seq.*).

DATE MAILED: July 25, 2016

The OTSC advised Brown to file an answer in accordance with applicable 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 Brown by certified mail and first class mail to his last known home address as kept on file in the Department. The certified mail was returned as unclaimed but the first class mailing was not returned to the Department as undeliverable. Thus it is presumed that Brown received both the OTSC and the appointment order.

Brown failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On June 21, 2016, the Department filed a motion for default judgment and served Brown in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was served by certified mail and first class mail to the respondent to his last known home address as kept on file in the Department. The certified mail was returned as unclaimed but the first class mailing 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 opinion and order addresses the motion for default judgment and the OTSC. 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 Brown failed to answer the OTSC or motion for default judgment. The OTSC and motion

advised as to the consequences of the failure to respond.[2] However, because of the language in the penalty provisions of applicable statutes, this adjudication includes an analysis of an agency's authority for imposing penalties without an evidentiary hearing.

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 statute specifically applicable to the present case[3] provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.[4] However, given that the respondent has not

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[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.

[3] Insurance Department Act, Act of May 17, 1921, P.L. 789, No. 285 *as amended* by the Act of December 3, 2002, Act. No. 147 (40 P.S. §§ 310.1 *et seq.*).

[4] 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 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: . . .

answered the OTSC 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.

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 OTSC and a motion for default judgment. *See In re Czmus*, SC09-05-009 (2009); *In re Kroope*, SC09-12-005 (2010); *In re Chappel*, SC14-10-024 (2015); *In re Ott*, SC15-11-002 (2016). The Commissioner adopts this reasoning in the present case: the important aspects of 2

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

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 OTSC 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 Brown was a licensed insurance producer whose license expired on March 31, 2016. [OTSC ¶ 3]. On February 4, 2015, Brown was arrested and charged with one felony count of unlawful use of a computer, one misdemeanor count of forgery, two misdemeanor counts of deceptive business practices and one misdemeanor count of radon/certification required in Centre County. [OTSC ¶ 4; Appendix A]. On November 17, 2014, the respondent pled guilty to all charges. [*Id.*]. He did not report either the charges or the convictions to the Department. [OTSC ¶ 6]. On February 3, 2016, during a telephone conversation with a Department investigator, Brown stated that he had relocated but he did not provide the Department with his new address. [OTSC ¶¶ 7 and 8].

Brown was charged with twelve violations of the Insurance Department Act: 1)

committing a felony in violation of 40 P.S. § 310.11(14); 2-4) committing the misdemeanors of forgery, and deceptive business practices all involving misuse or theft of money or property in violation of 40 P.S. § 310.11(15); 5) failing to notify the Department of a change of address in violation of 40 P.S. § 310.11(19); 6-11) failing to demonstrate worthiness of licensure as described in 40 P.S. § 310.11(20); and 12) failing to report misconduct in violation of 40 P.S. § 310.78(b).

For each of these twelve charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his certificate of qualification or license as well as imposing a penalty of up to $5,000.00 per violation. 40 P.S. § 310.91. Prohibited acts are listed in 40 P.S. §§ 310.11. In the present case, the admitted facts support sanctions for each of the charges against Brown. With his actions, Brown demonstrated that he is not worthy of licensure under 40 P.S. § 310.11(20). In the present case, the admitted facts support sanctions in all twelve counts against the respondent.

By committing the felony of unlawful use of a computer the respondent violated 40 P.S. § 310.11(14) as described in count one. That provision prohibits a Department licensee from committing "a felony or its equivalent." Brown pled guilty to this charge and is liable under count one.

In addition, Brown pled guilty to three misdemeanor counts which included one count of forgery, and two counts of deceptive business practices. These actions violated 40 P.S. § 310.11(15) as described in counts two through four. This provision prohibits licensees from committing "a misdemeanor that involves the misuse or theft of money or property belonging to another person." His actions resulted in a sentence requiring the respondent to pay restitution to seven victims. [OTSC Appendix A]. The respondent is liable under counts two through four.

Brown also failed to notify the Department of a change of address. This failure violates 40 P.S. § 310.11(19) as described in count five which requires a licensee to "notify the department of a change of address within 30 days." The respondent is liable under count five.

As a result of these violations, the respondent is not worthy of licensure at this time under the provisions of 40 P.S. § 310.11(20) as described in counts six through eleven. The respondent's commission of a felony, commission of four misdemeanors including three which involved the misuse or theft of money or property, and an additional radon certification violation along with his failure to comply with statutory reporting requirements all evidence a lack of worthiness to hold an insurance license. 40 P.S. § 310.11(20) requires that a licensee not "[d]emonstrate a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure." Although the OTSC sets out six separate counts of unworthiness, the respondent's actions collectively make him liable for one count of unworthiness.

Finally, Brown also failed to report his criminal charges or convictions as required by 40 P.S. § 310.78(b) as described in count twelve. This provision requires a licensee to report any such activities to the Department within 30 days and to provide copies of all relevant documents. By violating this provision the respondent further demonstrated his unworthiness of licensure and is liable under count twelve.

In short, the elements of all charges are established by the admitted facts. With the respondent liable for remedial action under each of these charges, the appropriate remedial action must be established for each one.

## 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 respondent's conduct. 40 P.S. § 310.91. Each action violating a provision specified in section 310.11 subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. § 310.91(d)(2).

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). In this case the respondent has demonstrated willingness to be dishonest in his financial affairs by misusing a computer, stealing money or property, engaging in forgery and using deceptive business practices. This underlying course of conduct is of the most serious nature. This seriousness is reflected in the penalties imposed.

Brown's infliction of financial harm on multiple individuals evidences a moral turpitude which is antithetical to the trustworthiness required in the profession. By definition, insurance producers and brokers have extensive personal contact with applicants and insureds. The applicants and insureds entrust financial and personal matters to the producer, and rely upon the producer's integrity. A producer who has recently inflicted financial harm upon others is incapable of the trust necessary in the profession. Simply put, Brown at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers.

In addition, the respondent's failure to report the charges and convictions to the Commonwealth's regulator also breached his duties to the Commonwealth and to the public. Whether a conscious concealment or a negligent nondisclosure, the failure to

disclose the charges and convictions hampered the Insurance Department's ability to regulate the profession and protect insurance consumers. This concealment too goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance-buying public. As an additional aggravating factor, Brown has not appeared in these disciplinary proceedings, further evidencing a lack of respect towards his profession and its regulatory system.

Little evidence exists to mitigate the seriousness of the violations. Brown did not offer mitigating evidence or arguments. However, the Department did not allege prior complaints or disciplinary action against the respondent, and administrative notice is taken that no enforcement actions or consent orders were entered against the respondent until the present action.

The Department in its OTSC asks the Commissioner to find that the respondent violated 40 P.S. §§ 310.11(14), (15), (19), (20) and 310.78(b), to revoke his insurance producer license(s), to bar the respondent from future licensure, to impose a civil penalty of $5,000 per violation, to order him to cease and desist from violating the insurance laws of this Commonwealth and to impose any other appropriate conditions on any future licensure, should respondent ever become relicensed. In its motion for default judgment, the Department asks that the Commissioner deem all relevant facts in the OTSC admitted, admit the authenticity of all exhibits attached to the OTSC, enter a default judgment and grant other relief as requested in the OTSC.

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 an agent or a broker has engaged in conduct which would disqualify him from initial issuance of a certificate or a license.

3. Unworthiness to hold a license may be established by a producer's failure to comply with the law which prohibits a producer from committing a felony, prohibits committing misdemeanors involving the misuse or theft of money or property, requires the reporting of such charges and requires the reporting of a change of address.

4. If unworthiness is established, the Commissioner may exercise discretion to impose remedial action in light of the producer's conduct as well as mitigating and aggravating factors.

5. Producers are held to a high degree of professionalism and must exercise good judgment.

6. Producers on the front line dealing with the insurance-buying public must avoid conduct demonstrating a disregard for regulations which protect those consumers.

7. George R. Brown, Jr. by his conduct demonstrates current unworthiness to hold an insurance license.

8. 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.

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| IN RE: | : | ALLEGED VIOLATIONS: |
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| **George R. Brown, Jr.**<br>117 Deerbrook Lane<br>Centre Hall, PA 16828 | : | Sections of the Insurance Department Act of 1921, P.L. 789, No. 285, *as amended*<br>40 P.S. §§ 310.11(14), 310.11(15), |
| Respondent | : | 310.11(19), 310.11(20) and 310.78(b) |
| | : | |
| | : | Docket No. **SC16-05-011** |

**ORDER**

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

1. George R. Brown, Jr. shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of George R. Brown, Jr. **ARE REVOKED** for a minimum of eight years (8) years pursuant to 40 P.S. 310.91 for each of Counts one through four, with these revocations to run concurrently with each other, and for a minimum of two (2) years for each of Counts five through twelve to run concurrently with each other but consecutively to the revocations imposed for Counts one through four for a total minimum period of ten (10) years. Additionally, George R. Brown, Jr. is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of ten (10) years. George R. Brown,

Jr. is also prohibited from applying to renew any certificate of qualification previously held by him in this Commonwealth for a minimum of ten (10) years.

3. George R. Brown, Jr. shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

a. Count one: $5,000.00

b. Counts two through four collectively: $9,000.00 ($3,000.00 per count)

c. Count five: $500.00

d. Counts six through eleven collectively: $1,500.00

e. Count twelve: $2,000.00

for a total of eighteen thousand dollars ($18,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Administrative Assistant, Bureau of Licensing and 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.

4. This order is effective immediately.

Teresa D. Miller

TERESA D. MILLER
Insurance Commissioner