BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
Mark Bleier 3350 Millers Run Rd Cecil, PA 15321	:	40 P.S. §§ 310.11 (4), (7), (17) and (20); 310.12(a)
and	:	
Steel City Insurance, Inc. 1352 High Oak Court Pittsburgh, PA 15241	:	
Respondents	:	Docket No. **SC17-03-004**

ADJUDICATION AND ORDER

AND NOW, this 18th day of August, 2017, 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 April 5, 2017 directed to Mark Bleier ("Bleier") and Steel City Insurance, Inc. ("Steel City") (together, "the respondents"). The OTSC alleged that the respondents violated the Insurance Department Act.[1] Specifically, the OTSC alleged that Bleier and Steel City, a licensed resident insurance producer and licensed resident producer agency respectively, accepted premium payments from

[1] Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 310.11 (4), (7), (17) and (20); 310.12(a).

DATE MAILED: August 18, 2017

multiple customers without remitting the payments to the insurance carriers and also failed to respond to multiple Department written inquiries.

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, including that the factual allegations and the authenticity of the appendices would be deemed admitted. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on the respondents by first class and certified mail. Although the certified mailing to Bleier was returned as "unclaimed," the certified mailing to Steel City was delivered, evidenced by the signed receipt card. Neither first class mailing was returned as undeliverable.

The respondents failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On May 10, 2017, 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 Bleier to his last known home and business addresses and to Steel City at its business address as kept on file in the Department and that the mailings were not returned to the Department as undeliverable. Notice of the OTSC also was published in the Pennsylvania Bulletin on April 15, 2017. The respondents have 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 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;[2] 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.

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

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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.

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 answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

While no court directly has 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)[5] 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

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3 Insurance Department Act, Act of May 17, 1921, P.L. 789 as amended (40 P.S. §§ 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 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.

5 Act of July 22, 1974, P.L. 589, No. 205, 40 P.S. §§ 1171.1-1171.15.

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 Warner*, SC01-08-001 (2002); *In re Taylor*, SC07-11-015 (2008); *In re Kroope*, SC09-12-005 (2010); *In re Kletch*, SC15-04-022 (2015); *In re Halloran and GJH*, SC16-10-018 (2017). 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 Bleier was a licensed resident insurance producer and Steel City was a licensed resident insurance agency. [OTSC ¶¶ 1–5]. Bleier was the qualifying active officer for Steel City and was responsible for managing the agency, including exercising control and authority over its bank accounts. [OTSC ¶¶ 6–7].

In 2014, four insurance policies lapsed for three commercial insureds when the respondents misappropriated the premiums paid to Bleier and his agency acting as a broker for the policies. [OTSC ¶¶ 8–15]. The respondents failed to respond to telephone messages from the servicing agency. [OTSC ¶ 11]. The servicing agency was forced to pay the premium payments to the companies to reinstate the four policies. [OTSC ¶¶ 12–13]. Neither Bleier nor Steel City has refunded the $7,887.07 to the servicing agency. [OTSC ¶¶ 13–15; Appendix A].

In April 2014, another commercial insured purchased a Millers Mutual commercial insurance package from the respondents and paid them $13,821.00 for the annual premium. [OTSC ¶¶ 17–19, 21]. In November 2014, the insured received notice of a nonpayment cancellation from Millers Mutual. [OTSC ¶ 19]. Unbeknownst to the insured, the respondents were paying Millers Mutual in installments instead of in full and were four months past due. [OTSC ¶¶ 20–21]. The insured presented proof to Millers Mutual that payment had been made in full in April, and Millers Mutual waived the $5,176.00 in premium which was owed for the balance of the policy term and terminated its agency agreement with Steel City. [OTSC ¶ 22–24]. The respondents misappropriated the $5,176.00 and have not reimbursed Millers Mutual for this amount. [OTSC ¶ 25–26].

In August 2014, another commercial applicant paid $7,875.00 to the respondents for a Millers Mutual property insurance policy but the respondents failed to remit the premium to the insurance company so no coverage existed. [OTSC ¶ 27–29; Appendix C]. Three months later, the insured discovered that the requested property insurance

coverage was not placed by the respondents. [OTSC ¶ 30]. The insured presented proof to Millers Mutual that payment had been made and Millers Mutual waived the $7,875.00. [OTSC ¶ 31–32]. The respondents misappropriated the $7,875.00 and have not reimbursed Millers Mutual for this amount. [OTSC ¶ 33–34].

The same insured also attempted to purchase an umbrella insurance policy in August 2014, paying the respondents $1,200.00. [OTSC ¶ 35–36; Appendix D]. The respondents did not remit the payment to an umbrella carrier and therefore no umbrella policy or coverage existed. [OTSC ¶ 37]. Three months later, the applicant discovered that the requested coverage was not placed. [OTSC ¶ 44]. The respondents misappropriated the $1,200.00 and have not reimbursed the applicant for this amount. [OTSC ¶ 38–40].

A different but related entity also attempted to purchase an umbrella insurance policy in September 2014, also paying the respondents $1,200.00. [OTSC ¶¶ 41–42; Appendix E]. The respondents did not remit the payment to an umbrella carrier and therefore no umbrella policy or coverage was placed for this entity. [OTSC ¶ 43]. Three months later, the applicant discovered that the requested coverage was not placed. [OTSC ¶ 44]. Just as for the related entity, the respondents misappropriated the $1,200.00 and have not reimbursed the applicant. [OTSC ¶¶ 45–46].

In December 2014, another commercial client met with Bleier to renew an umbrella insurance policy and paid $1,350.00 for the annual premium. [OTSC ¶¶ 47–50; Appendix F]. The respondents failed to remit the money to the carrier and the policy lapsed. [OTSC ¶ 51]. When the insured discovered that the umbrella coverage had lapsed, the insured obtained the coverage through another producer and contacted Bleier asking for a refund. [OTSC ¶ 52]. The respondents issued a refund check in the amount of $1,350.00 in February 2015 but the check was returned to the insured for non-sufficient

funds. [OTSC ¶ 53–54]; Appendix G]. Despite repeated demands, the respondents have not repaid the $1,350.00 taken from the insured. [OTSC ¶ 55–58].

Another commercial applicant met with Bleier in December 2015 to obtain general liability, workers' compensation, property and umbrella coverage for the business and made a down payment in the amount of $38,984.14. [OTSC ¶ 59–62; Appendix H]. The respondents were overseeing the financing of the balance of the premium through a premium finance company which would require monthly payments of $10,293.92. [OTSC ¶¶ 63–64, 66]. The respondents retained the down payment and did not transmit the payment to the premium finance company or the underwriters for the requested coverage. [OTSC ¶ 77]. The initial premium finance agreement submitted by the respondents to the finance company quoted an incorrect premium and was not accepted by the finance company. [OTSC ¶ 65]. A subsequent finance agreement submitted in January 2016 was not accepted because the account was in past due status and additional named insureds on the policy required an addendum to the finance agreement which was not supplied until February 2016. [OTSC ¶¶ 67–69]. The applicant never received any invoices for the monthly amounts due until obtaining a copy from another producer in the respondents' office. [OTSC ¶ 70]. The applicant paid the January payment to the premium finance company in February and the payments for February and March in early March. [OTSC ¶ 71–73]. The finance company received the payments but because it had no verification of down payment it did not process those payments and subsequently returned the finance agreement to the agent as unprocessed. [OTSC ¶¶ 73, 78]. On March 13, 2016, one of the applicant's employees was involved in a car accident resulting in a lawsuit being filed against the employee and applicant. [OTSC ¶ 74]. The applicant never received his package insurance policies from the respondents, was referred for collection by the underwriter and never received return of his down payment misappropriated by the respondents. [OTSC ¶¶ 75–77, 79–80].

In December 2015, Bleier was an agent for Farmers Insurance Group, authorized to apply premiums from customers to Farmers insurance policies and remit premium payments to the company. [OTSC ¶ 81]. The respondents collected a premium payment from a commercial customer totaling $6,230.00 and deposited the check into Steel City's bank account. [OTSC ¶¶ 82–83; Appendix I]. The payment was supposed to be for the customer's workers compensation policy, a commercial auto policy and a commercial retail policy but the respondents misappropriated the payment instead of remitting it to Farmers. [OTSC ¶ 82, 100, 102]. After Farmers confirmed that the customer had made the payment, it credited the payment to the customer's account and subsequently canceled Bleier's appointments with Farmers companies. [OTSC ¶ 98–99]. The respondents have not reimbursed the customer or Farmers for the misappropriated $6.230.00 premium payment. [OTSC ¶ 97, 100, 102]. In addition, the customer directed the respondents to add three trucks to its commercial policy and the respondents issued proof of insurance cards to the customer, but did not add the trucks to the policy as requested. [OTSC ¶ 84, 88; Appendix K].

Bleier also was an agent for Utica National Insurance Group ("Utica"). [OTSC ¶ 103]. In April 2016, the respondents collected a payment of $9,295.00 from a commercial applicant and deposited the check in Steel City's bank account. [OTSC ¶ 104–05; Appendix L]. The payment was supposed to be for a Utica business owner policy for the applicant. [OTSC ¶ 104]. The respondents set up the policy with Utica but did not remit the premium. [OTSC ¶ 107, 110, 113–14]. The customer began receiving letters from Utica regarding nonpayment on the business owner policy and when the customer contacted Bleier, the customer initially was informed that it was a mistake and not to worry about it. [OTSC ¶ 107]. Subsequently, Bleier did not return the customer's telephone calls. [OTSC ¶ 108]. Utica investigated the matter and determined that the actual premium only should have been $5,067.00 and that the customer paid the higher amount to the respondents. [OTSC ¶ 109, 111]. Utica credited the customer with payment

of the $5,067.00 and canceled the respondents' appointments with Utica companies. [OTSC ¶ 111-12]. The respondents misappropriated the entire $9,295.00 paid by the customer and neither remitted any amount to the company nor refunded any amount to the customer. [OTSC ¶ 110, 113–15].

In February 2016, the respondents collected a premium payment of $1,617.38 from an applicant for professional liability insurance and deposited the payment in Steel City's bank account. [OTSC ¶ 116-17; Appendix M]. The respondents gave the applicant a certificate of insurance purportedly indicating coverage through Ironshore Specialty Insurance Company ("Ironshore"). [OTSC ¶ 118]. However, the respondents never remitted any of the premium to Ironshore, and after confirming that the applicant paid the premium to the respondents, Ironshore credited the applicant for the $1,617.38 premium paid for the policy. [OTSC ¶ 119-20]. The respondents misappropriated this entire amount and have not refunded any amount to the company or the customer. [OTSC ¶ 121].

The Insurance Department made multiple attempts by mail to contact Bleier requesting a meeting and a response to the matters which ultimately resulted in the OTSC. [OTSC ¶ 123]. One such letter was on March 9, 2015, followed up with a letter on August 20, 2015 which gave Bleier 15 days to respond to the Department's written inquiry. Another such letter was sent on March 24, 2016, followed up with a letter on May 5, 2016 which gave Bleier 15 days to respond to the Department's inquiry. The respondents have failed to respond to any of the Department's inquiries.

Given these facts, the respondents collectively were charged with ninety-five distinct violations of the Insurance Department Act. In Counts 1–34, each respondent was charged with failing to timely remit premiums for a least 17 different insurance policies without refund to either the insureds or the insurers in violation of 40 P.S. § 310.11(4). In

Counts 35–74, each respondent was charged with 20 violations of 40 P.S. § 310.11(7), which prohibits fraudulent or dishonest practices, incompetence and untrustworthiness. These counts included three instances of creating proof of financial responsibility without coverage being in place and the 17 instances of failing to remit or refund the premiums received from clients. In Counts 75–91 each respondent was charged with failing to timely remit premiums for a least 17 different insurance policies without refund to either the insureds or the insurers, with the conduct charged to be in violation of 40 P.S. § 310.11(17) which prohibits fraud, forgery, dishonest acts or an act violating a fiduciary duty. For Counts 92 and 93, each respondent was charged with a demonstrated lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure in violation of 40 P.S. § 310.11(20). Finally, for Counts 94 and 95, Bleier individually is charged with twice violating 40 P.S. § 310.12(a) by failing to respond to the Department's inquiries, with a violation of this provision being subject to an administrative fine of no more than $100 per day pursuant to 40 P.S. § 310.12(b).

The admitted facts do not support an administrative fine under 40 P.S. § 310.12. The applicable statutory section reads in its entirety:

> **§ 310.12. Failure to respond or remit payment**
>
> **(a) Response.**–A licensee who fails to provide a written response to the department within 30 days of receipt of a written inquiry from the department or who fails to remit valid payment for all fees due and owing to the department shall, after notice from the department specifying the violation and advising of corrective action to be taken, correct the violation within 15 days of receipt of the notice.
>
> **(b) Correction.**–If a licensee fails to correct the violation within 15 days of receiving notice, the department may assess an administrative fine of no more than $100 per day per violation.

40 P.S § 310.12. Although failing to respond to a regulator's inquiry reflects upon a licensee's worthiness for licensure, this section by its terms does not make such failure by itself subject to sanction. First, unlike the 20 types of conduct listed in Section 310.11, Section 310.12 does not specifically prohibit the conduct of failing to respond to an

inquiry. Further, the section provides an administrative fine assessment as a sanction in accordance with the terms of the section. Finally, the sanction only applies after the Department notifies the licensee of the violation and the action required of the licensee, and allows 15 days following receipt to correct the deficiency.

When the facts do not establish that the Department supplied the required notice, grounds for the sanction have not been established. *In re Seals*, SC15-11-914 (2016); *In re Johnson*, SC15-11-001 (2016); *In re Ott*, SC15-11-002 (2016). Conversely, a letter informing the respondent that her failure to correct the "violation of insurance laws," (specifically "failure to report criminal conduct") within 15 days could subject her to the fine described in 40. P.S. § 310.12 is sufficient notice to impose an administrative fine. *In re Cyr*, SC16-04-008 (2016).

In the present case, unlike in *Cyr*, the admitted facts do not include that the Department supplied Bleier the notice required by 40 P.S. § 310.12. The facts include that the Department twice requested a meeting and response, and followed up each time with another letter giving notice that Bleier had 15 days to respond to the Department's inquiries. [OTSC ¶¶ 123–24]. However, missing from the admitted facts is whether the notice letter specified the violation to be addressed, advised of the corrective action to be taken, and advised that failure to correct the violation within 15 days of receipt could result in the administrative fine provided in 40 P.S. § 310.12(b). The notice letters may have included this information, but the notice letters were not appended to the OTSC and the admitted facts do not include that information. For this reason, the elements required to impose an administrative fine have not been established by the admitted facts and documents.

However, the analysis for the remaining 93 counts differs from the analysis under 40 P.S. § 310.12. Those counts address conduct specifically prohibited by 40 P.S. §

310.11. For each of the first 93 counts, the Commissioner has authority to impose remedial action against each respondent, including suspending or revoking insurance licenses as well as imposing a penalty of up to $5,000.00 per violation. 40 P.S. § 310.91(d)(1), (2). The Commissioner also may order each respondent to cease and desist and impose other conditions the Commissioner deems appropriate. 40 P.S. § 310.91(d)(3), (4). In the present case, the admitted facts support sanctions in Counts 1–93 against the respondents.

Misappropriating premium monies received in the course of business for 17 insurance policies while failing to remit the premiums to the insurance company or reimburse the insured or insurer violated 40 P.S. § 310.11(4). That subsection provides that a licensee shall not "[i]mproperly withhold, misappropriate or convert money or property received in the course of doing business." Each withholding and misappropriation of insurance premiums received in the course of business as a producer or agency violated this prohibition and subjects the respondents to liability for 17 counts each as set forth in Counts 1–34.

In addition, the same conduct, diverting premium payments from their intended and agreed-upon purpose, constituted fraudulent or dishonest practices demonstrating the respondents' untrustworthiness in violation of 40 P.S. § 310.11(7). That provision provides that a licensee shall not "[u]se fraudulent, coercive or dishonest practices or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere." The respondents' conduct, again in the business of insurance, violated this provision and subjects each of them to liability under 17 counts for the same conduct encompassed by Counts 1–34 plus a count for fabricating proof of financial responsibility insurance coverage that did not exist.[6] Each respondent is liable for 18 counts of violating 40 P.S. § 310.11(7) under Counts 35–72.

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[6] Although the Department included each of the three insurance cards as a separate count and technically

Also, the same 17 instances of misconduct contained in Counts 1-34 constituted violations of 40 P.S. § 310.11(17). That provision proscribes conduct constituting "fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty." In addition to being fraudulent and dishonest, the conduct breached the fiduciary duties the respondents owed to consumers and companies alike. The respondents were in a position of trust relative to the consumers with a basic duty to apply their payments towards the insurance coverage the consumers purchased. The same basic duty was owed to the companies, in that the premium payments were received on behalf of the insurers and belonged to the insurers. The money thus did not belong to the respondents but rather was held in trust with a duty towards both the insureds and insurers to apply the funds as intended. Breaching that basic duty caused monetary loss to both consumers and insurers as well as loss of coverage in some instances. Each respondent is liable for 17 counts of violating 40 P.S. § 310.11(17) under Counts 75–91.[7]

The respondents' collective conduct renders them liable as violating 40 P.S. § 310.11(20). That provision provides that a licensee shall not "[d]emonstrate a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure." The respondents' course of conduct included collecting premiums without forwarding them to the company, misappropriating the money, breaching the trust given the respondents by insureds and insurers, causing lack or lapse of coverage, causing insurers to credit the policy accounts for money the insurers did not receive, creating fraudulent proof of insurance and failing to respond to inquiries from insureds, insurers and the Insurance Department. This collective conduct demonstrates a

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each could constitute a separate violation, they will be considered together as one violation of 40 P.S. § 310.11(7) because they were issued together.

[7] Only 17 counts are encompassed by Counts 75–91, unlike Counts 1–34 and Counts 35-74, which contain a separate count for each respondent for each violation. Since 17 violations of a statutory provision could be included in a single count with each violation subject to sanction, the violations being contained in 17 counts instead of 34 makes no practical difference.

lack of trustworthiness and fitness necessary in the profession. Each respondent is liable for violating 40 P.S. § 310.11(20) as contained in Counts 92 and 93.

Liability under each of the 91 counts as found above results from the respondents' course of conduct in retaining the premium payments as well as conduct surrounding this misappropriation such as failing to respond and misrepresenting the status of insurance coverage. However, they are separately liable under each count because each statutory section proscribes certain aspects of the course of conduct. The misappropriation section proscribes withholding, converting or misappropriating money or property received in the course of business. The fiduciary duty section requires that received funds of others be held in trust and not mingled with those of the agent, regardless of whether the funds eventually are applied properly. The use of fraudulent and dishonest means to retain the premium payments violated 40 P.S. 310.11(7) even if the respondents had not succeeded in retaining the payments.

With the respondents liable for remedial action under each of the ninety-one counts, the appropriate action must be established.

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 violation subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. 310.91(d)(2). The actor may be ordered to cease and desist his conduct. 40 P.S. 310.91(d)(3). The Commissioner also may impose other appropriate conditions. 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 underlying course of conduct in the present case is of the most serious nature, and directly connected to the respondents' duties as an insurance producer. This seriousness is reflected in the penalties imposed. The respondents' infliction of financial harm on others evidences a moral turpitude which is antithetical to the trustworthiness required in the profession. By definition, producers have extensive personal contact with applicants and insureds. The applicants and insureds entrust financial and personal matters to the agent, and rely upon the agent's integrity. An agent who has recently inflicted financial harm upon others is incapable of the trust necessary in the profession. Simply put, the respondents at this time cannot be trusted with the pocketbooks, bank accounts and personal information of customers.

As additional aggravating factors, the course of conduct continued over a period of time and harmed many other individuals and entities. This was not an isolated lapse in judgment but a continuing pattern and practice of deceiving and stealing from others. The amount of money misappropriated is staggering, and the respondents have made no restitution to the victims. In some instances, the lack or lapse of coverage deprived

consumers of the peace of mind which insurance is designed to provide. The respondents' conduct was directly connected to Bleier's profession as a producer and Steel City's purpose as a corporate insurance agency.

No evidence exists to mitigate the seriousness of the violations. The respondents have not offered mitigating evidence or arguments.

The Department in its Order to Show Cause requested that the Commissioner revoke the respondents' insurance producer licenses, bar the respondents from future licensure as an insurance producer or insurance producer entity, bar the respondents from applying to renew any license previously held, impose a $5,000.00 fine per violation, impose an administrative fine of no more than $100 per day, order the respondent to cease and desist from violating insurance laws, and impose other appropriate conditions including supervision should a respondent ever become relicensed. In its motion for default judgment, the Department requested that the Commissioner enter default judgment against the respondents, deem all relevant facts in the OTSC admitted, admit the authenticity or appendices attached to the OTSC, order the respondents to cease and desist from such activities as alleged in the OTSC, revoke respondents' insurance licenses, impose on respondents a civil penalty of $5,000 per violation and grant such other relief as may be deemed appropriate by the Commissioner.

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.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
Mark Bleier and	:	40 P.S. §§ 310.11 (4), (7), (17) and (20);
3350 Millers Run Rd	:	310.12(a)
Cecil, PA 15321	:	
	:	
and	:	
	:	
Steel City Insurance, Inc.	:	
1352 High Oak Court	:	
Pittsburgh, PA 15241	:	
	:	
Respondents	:	Docket No. **SC17-03-004**

ORDER

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

1. Mark Bleier and Steel City Insurance, Inc. shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication. This shall include making restitution or reimbursement to all individuals and entities deprived of money by respondent's conduct as described in the foregoing adjudication. Upon request by the Pennsylvania Insurance Department, restitution shall be made through the Department and/or verification of any restitution payment shall be made to the Department.

2. All of the insurance licenses or certificates of qualification of Mark Bleier and Steel City Insurance, Inc. **ARE REVOKED** for a minimum of 20 years pursuant to 40 P.S. 310.91. Additionally, Mark Bleier and Steel City Insurance, Inc. are prohibited from applying for a license or certificate of qualification in this Commonwealth for a

minimum of 20 years. Mark Bleier and Steel City Insurance, Inc. also are prohibited from applying to renew any license or certificate of qualification previously held by either in this Commonwealth for a minimum of 20 years.

3. Mark Bleier and Steel City Insurance, Inc., jointly and severally, shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order a total of Ninety-One Thousand Dollars ($91,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: 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.

4. Should either respondent ever become licensed at any future date, such respondent's license may be suspended immediately 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. Mark Bleier and Steel City Insurance, 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 worthiness for an insurance license.

7. In the event that a respondent's 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 licenses shall be revoked.

8. This order is effective immediately.

TERESA D. MILLER
Insurance Commissioner