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INSURANCE DEPARTMENT  
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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : ALLEGED VIOLATIONS:  
: :  
**Robert O. Collins** : Sections of the Insurance Department  
6537 Deary Street : Act of 1921, P.L. 789, No. 285, *as*  
Pittsburgh, PA 15206 : *amended* (40 P.S. §§ 40 P.S. 310.11(4),  
: 310.11(7), 310.11(9), 310.11(17)  
Respondent : 310.11(19) and 310.11(20)).  
: :  
: Sections of the Insurance Department  
: Regulations (31 Pa. Code §§ )  
: :  
: Docket No. **SC17-02-017**

**ADJUDICATION AND ORDER**

AND NOW, this 1st day of November, 2017, Jessica K. Altman, Acting 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 27, 2017 directed to Robert O. Collins (“the respondent”). The OTSC alleged that Collins violated various provisions of the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that Collins, a licensed

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<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285 *as amended through* the Act of June 25, 1997, P.L. 349, No. 40, *repealed and partially reenacted by* the Act of December 3, 2002, P.L. 1183, No. 147.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: November 1, 2017

insurance agent, submitted a series of fraudulent applications for a variety of AFLAC insurance policies, committed criminal acts, failed to report the resulting criminal charges, and failed to report his change of address.

The OTSC advised Collins 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. Following the filing of the OTSC, a Presiding Officer was appointed and the appointment order was served on Collins by first class mail.

On March 29, 2017, the Administrative Hearings Office received the following response from Collins:

To whom it may concern,  
I Robert Collins am sending this notice as my formal Denial of the allegations here within these documents. As indicated by circling "deny" on page 16 and sending this written notice, I am denying said allegations.

On April 5, 2017, the Department filed a motion to have allegations and authenticity of documents deemed admitted or alternatively to compel filing of an answer more definite and certain. Collins did not respond to this motion and on April 18, 2017, the Presiding Officer issued an order granting the Department's motion that all the factual averments be deemed admitted and that all documents appended to the OTSC be deemed authentic and admitted into the record. The Presiding Officer also scheduled a prehearing telephone conference which both parties attended on June 8, 2017.

During the telephone conference, the parties discussed a possible amicable resolution of this case and on June 8, 2017, the Presiding Officer issued an order setting a July 8, 2017 deadline for either finalizing a consent order or filing a status report. After

several attempts to finalize an agreement, Department Counsel requested an additional telephone conference to determine the nature of additional proceedings in the case. The Presiding Officer on August 29, 2017 issued an order granting the request and scheduling a telephone conference on September 18, 2017 at 10:00 a.m. On that date and time Department counsel was available and ready to participate in the conference but Collins did not appear or otherwise provide an explanation for his failure to appear.

Thereafter on September 19, 2017, the Presiding Officer issued an order directing Collins to file a response showing cause why a judgment should not be entered against him based on the deemed admitted facts and authenticated documents submitted by the Department. The order advised Collins that his failure to respond by the October 6, 2017 deadline would result in a judgment based on the deemed admitted facts contained in the OTSC and the attached documents. Collins did not respond to the order and has not communicated with the Department since that time.

Accordingly, this adjudication and order is based solely on the deemed admitted facts contained in the OTSC as well as the attached documents. 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 Collins failed to respond to the September 19, 2017 Order. 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.”). 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<sup>2</sup> provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.<sup>3</sup> However, given that the respondent has failed to file anything other than a general denial, that he failed to appear for a prehearing telephone conference and that he did not respond to an order giving him the opportunity to present reasons why a judgment should not be entered based on the OTSC facts and documents 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

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<sup>2</sup> 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.*).

<sup>3</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 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.

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 order to show cause 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 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 files only a general denial, and fails to participate in subsequent proceedings, 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 all 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 and the attached documents.

The facts include that Collins was a licensed insurance producer during the relevant time. [OTSC ¶ 2]. In 2013, Collins entered into an associate's agreement with the American Life Insurance Company of Columbus (Aflac) to solicit applications for life insurance and other types of insurance policies and to service assigned Aflac policies. [OTSC ¶ 3]. Shortly thereafter, throughout 2014, Collins began a pattern of submitting error filled and fraudulent New Business Transmittals to Aflac for six different businesses.

In February 2014, Collins submitted four applications to Aflac to obtain accident, short-term disability and hospitalization insurance for two individuals who purportedly worked for TLC Daycare ("TLC"). [OTSC ¶¶ 4, 8]. Each of the applications appeared to have been completed and signed by both the policyholder and Collins. [OTSC ¶ 6]. However, the two individuals in question actually were former neighbors of Collins who never worked for TLC. [OTSC ¶¶ 5, 7].

Subsequently, from April through June 2014, Collins submitted five New Business Transmittals to Aflac for DTCA Consulting Services ("DTCA"). [OTSC ¶¶ 9, 14, 17, 21, 24]. Although the applications for accident, cancer and hospitalization insurance policies appeared to be signed by the policyholder and Collins, nine individuals identified as employees of DTCA did not work for the company. [OTSC ¶¶ 13, 16, 20, 23, 27]. Additionally, the applications contained other errors in describing the alleged employees. [OTSC ¶¶ 11–12, 15, 18–19, 22, 25–26]. No premiums were ever paid to Aflac for these

DTCA policies. [OTSC ¶ 29].

During June and July 2014, Collins submitted New Business Transmittals to Aflac for Rashod's Delivery Service ("Rashod's") for twelve accident, cancer, hospitalization and short-term disability insurance policies to cover four employees. [OTSC ¶¶ 31–32]. Three of the four individuals identified as Rashod's employees never worked for the company. [OTSC ¶¶ 35]. Additionally, the applications contained incorrect addresses for two of the individuals. [OTSC ¶ 33]. Again, all the applications appeared to have been completed and signed by the policyholder and Collins. [OTSC ¶ 36].

Also in June and July, Collins submitted five New Business Transmittals to Aflac for Perfectly Put Together, LLC ("PPT"). [OTSC ¶¶ 38–40]. The Transmittals included applications for accident, hospitalization and cancer insurance for three individuals who allegedly worked for PPT, even though the owner of PPT was not conducting business at the time of the applications. [OTSC ¶¶ 38–42]. One individual owned PPT but the other two individuals had never been employed by PPT. [OTSC ¶ 42]. All three individuals named in the applications are the respondent's cousins. [OTSC ¶ 43]. Collins forged the signature of PPT's owner on three of the applications submitted to Aflac. [OTSC ¶ 47]. Additionally, the applications misspelled the name of PPT's owner and gave an incorrect date of her birth. [OTSC ¶ 41].

From July to September 2014, Collins submitted six New Business Transmittals to Aflac for Oakland Sunshine Daycare ("OSD"). [OTSC ¶¶ 48, 51, 54]. All together the Transmittals included applications for eighteen various types of insurance policies including accident, life, short-term disability, cancer and hospitalization for six different individuals. [OTSC ¶¶ 48, 51, 54]. Collins collected a total of \$803.00 in premiums for these policies. [OTSC ¶¶ 49, 52, 55, 57]. Although he did not provide a receipt to any of the six individuals at the time of payment, Collins assured them that he would send each

of them an electronic receipt. [OTSC ¶¶ 49, 52, 55]. Collins did not send any electronic receipts and did not transmit the premiums to Aflac, causing all the policies to cancel. [OTSC ¶¶ 49–50, 52–53, 55]. As of the date that the Department filed the OTSC, Collins had not submitted the premiums to Aflac and had not refunded any of the premium paid by the six individuals. [OTSC ¶ 50, 56].

Collins continued sending fraudulent applications to Aflac in November 2014, when he submitted one New Business Transmittal to Aflac for J&J Transit (“J&J”) for eight accident, cancer, hospitalization and short-term disability insurance policies for three individuals listed as J&J employees. [OTSC ¶ 58]. At least one of the individuals had never been employed by J&J and knew Collins only as her son’s football coach. [OTSC ¶ 60]. Collins forged the signature of that individual on two separate applications for insurance policies submitted to Aflac. [OTSC ¶ 64].

In addition to submitting fraudulent and erroneous insurance policy applications to Aflac, Collins also failed to comply with the requirement to inform the Department of his retail theft charges in October 2016. [OTSC ¶¶ 70-73]. Finally, he failed to inform the Department of his correct business and residential address when those addresses changed. [OTSC ¶¶ 67–69].

The respondent’s activities described in paragraphs 4 through 73 of the OTSC violated various provisions of the Insurance Department Act and the Department charged Collins with seventy-two distinct violations: (1) Counts I–VI: Six times Collins obtained premium payments and failed to remit the money to Aflac, thus improperly withholding, misappropriating or converting money received in the course of doing business in violation of 40 P.S. § 310.11(4); (2) Counts VII–XXXV: Collins submitted New Business Transmittals and applications for policies for at least 17 individuals who were not employed by the companies for which the policies were submitted, thus using fraudulent,



coercive or dishonest practices or untrustworthiness or financial irresponsibility in the conduct of doing business in the Commonwealth in violation of 40 P.S. § 310.11(7); Counts XXXVI–XL: Five times Collins submitted applications without approval and with forged signatures for at least two individuals in violation of 40 P.S. § 310.11(9) which prohibits forging another person’s name on an application for insurance; Counts XLI–LXIX: Collins also violated 40 P.S. § 310.11(17) which prohibits committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty when he submitted New Business Transmittals and applications for seventeen individuals who were not employees of the companies under which the applications were submitted and when he failed six times to remit premium payments totaling \$803.00; Count LXX: Collins violated 40 P.S. 10.11(19) when he failed to notify the Department within 30 days of a change to his business and residential address; Count LXXI: Collins violated 40 P.S. § 310.11(20) with all these activities that demonstrated a lack of general fitness, competence or reliability sufficient to satisfy the Department that he is worthy of licensure; and Count LXXII: Collins faced criminal charges for shoplifting on October 27, 2016, but failed to report the charges in violation of 40 P.S. § 310.78(b).

For each of these seventy-two 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 Collins. With his actions, Collins also demonstrated that he is not worthy of licensure under 40 P.S. § 310.11(1) and 310.11(20). With Collins liable for remedial action under each of these charges, the appropriate 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). Each of the underlying actions in the present case directly are connected to the respondent's duties as an insurance agent. Collins's submission of inaccurate, fraudulent and forged insurance policy applications is of the most serious nature, and directly connected to Collins's duties as an insurance agent. The Commissioner has consistently found deception of any kind to be among the most serious of violations. This seriousness is reflected in the penalties imposed. Collins also inflicted financial harm by retaining insurance policy premium payments, evidencing a moral turpitude which is antithetical to the trustworthiness required in the profession.

By definition, agents and brokers 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, Collins at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers. The harm inflicted by Collins involves more than the loss of premium payments. By allowing at least six policies to lapse, Collins deprived at least six policyholders of the security and peace of mind which insurance provides. The respondent took far more than money.

In addition, the respondent has shown a lack of respect for the Department by refusing to comply with regulations requiring disclosure of criminal charges, to provide information about his change of address and to participate in these proceedings in any meaningful way. Taken all together, these violations of the Pennsylvania Insurance Laws demonstrate that the respondent is not worthy of licensure at this time.

No evidence exists to mitigate the seriousness of the violations. Collins did not offer mitigating evidence or arguments. Insurance producers are held to a high degree of professionalism and must exercise good judgment. *See Pennsylvania Insurance Department v. Ciervo*, 353 A.2d 900 (Pa. Cmwlth. 1976) and *In re: Gus R. Grant*, AG00-03-005 (2000). Collins fell far below this standard in 2014 and has not shown the necessary trustworthiness, professionalism or good judgment required of insurance producers.

The Department in its Order to Show Cause requests that the Commissioner revoke or suspend the respondent's insurance producer license, bar respondent from future licensure as an insurance producer, or from applying to renew any insurance producer license previously held by Collins in this Commonwealth and impose a civil penalty of \$5,000.00 per violation.

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 requires that an insurance producer refrain from committing fraud or other dishonest practices.
  
4. Unworthiness to hold a license may also be established by a producer's failure to comply with the law, which requires a producer to notify the Insurance Department of any criminal charges or a change of address.
  
5. 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.
  
6. Producers are held to a high degree of professionalism and must act with honesty and good judgment.
  
7. Producers on the front line dealing with the insurance-buying public must avoid conduct demonstrating a disregard for regulations which protect those consumers.

8. Robert O. Collins, by his conduct, demonstrates current unworthiness to hold an insurance license.

9. 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:	:	ALLEGED VIOLATIONS:
	:	
<b>Robert O. Collins</b>	:	Sections of the Insurance
6537 Deary Street	:	Department Act of 1921, P.L.
Pittsburgh, PA 15206	:	789, No. 285, <i>as amended</i> (40
	:	P.S. §§ 40 P.S. 310.11(4),
Respondent	:	310.11(7), 310.11(9), 310.11(17)
	:	310.11(19) and 310.11(20)).
	:	
	:	Sections of the Insurance
	:	Department Regulations (31 Pa.
	:	Code §§ )
	:	
	:	Docket No. <b>SC17-02-017</b>

**ORDER**

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

1. Robert O. Collins shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Robert O. Collins **ARE REVOKED** for a minimum of ten (10) years pursuant to 40 P.S. 310.91 for each of Counts I through LXIX, with these revocations to run concurrently with each other, and for a minimum of five (5) years for each of Counts LXX through LXXII, with these revocations to run concurrently with each other and consecutively with the revocation for Counts I through LXIX, for a total minimum period of fifteen (15) years. Additionally, Robert O. Collins is prohibited from applying for a certificate of qualification to act as a

producer in this Commonwealth for a minimum of fifteen (15) years. Robert O. Collins is also prohibited from applying to renew any certificate of qualification previously held by him in this Commonwealth for a minimum of fifteen (15) years.

3. Robert O. Collins shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

a. \$12,000.00 (\$2,000.00 x 6 incidents of collecting but failing to remit premium payments for six individuals);

b. \$17,000.00 (\$1,000.00 x 17 submissions of fraudulent applications for individuals not employed by six entities);

c. \$5,000.00 (\$2,500.00 x 2 submissions of applications with forged signatures);

d. \$500.00 (failure to inform Department of a change in address); and

e. \$500.00 (failure to report criminal charges).

for a total of thirty-five thousand dollars (\$35,000.00). 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.

  
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JESSICA K. ALTMAN  
Acting Insurance Commissioner