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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:
: 40 P.S. § 310.11(9)
James Alfred Jones : 40 P.S. § 310.11(3)
c/o Elliot A. Strokoff, Esquire : 40 P.S. § 310.3(a)
Strokoff & Cowden, P.C. : 40 P.S. § 310.11(20)
132 State Street :
Harrisburg, PA 17101 :
Respondent :
: Docket No. **SC16-01-005**

ADJUDICATION AND ORDER

AND NOW, this 11th day of July, 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 January 29, 2016 directed to James Alfred Jones (“the respondent”) and served on him at 128 Rosedale, Hershey, PA 17033, his address of record. The OTSC charged Jones with violating several sections of the Insurance Department Act.¹ Specifically, the OTSC charged that Jones, a licensed insurance

¹ Act of May 17, 1921, P.L. 789, No 285 *as amended through* the Act of June 25, 1997, P.L. 349, No. 40, *repealed and partially reenacted by* the Act of December 3, 2002, P.L. 1183, No. 147.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 11, 2017

producer, falsely informed his employer that he had life and annuity authority, that he presented a falsified license to his employer and that he then solicited and sold life insurance policies without authority to do so. The OTSC also charged that with these actions Jones demonstrated incompetence, untrustworthiness and general unfitness in the course of doing business in the Commonwealth. As a result, the Department requested that the respondent's insurance producer license be revoked, that he be barred from future licensure, and that he pay a civil penalty of \$5,000.00 per violation. The Department also requested a cease and desist order and other appropriate relief.

The OTSC advised Jones 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 within thirty days of the filing of the OTSC. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on Jones by first class mail to 128 Rosedale, Hershey, PA 17033. A return receipt card with the signature "James A. Jones" advised the Administrative Hearings Office that the order was received at 128 Rosedale, Hershey, PA 17033. [Docket Exhibit 2].

Jones did not answer the OTSC within thirty days or otherwise respond to the Administrative Hearings Office. On March 23, 2016, the Department filed a motion for default judgment and served Jones in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent to his last known home address as kept on file in the Department and that the document was not returned to the Department as undeliverable.

Prior to issuance of a decision on the motion for default judgment, on April 1, 2016,

the Administrative Hearings Office received a letter from Jones in which he stated that he had received, by hand delivery, a copy of the motion for default judgment. He also asserted that he had not received any previous communications from the Pennsylvania Insurance Department because the Department had not used his correct address at “Post Office Box 982, Hershey, PA 17033.” Jones objected to the motion for default judgment and asked to be provided with previous documents “related to the matter.” [Docket Exhibit 5].

Thereafter, the Presiding Officer issued an order deferring a decision on the motion for default judgment, pending Jones’s compliance with the Order’s directives that he file an answer to the OTSC by April 29, 2016. The Order was served by certified and first class mail to Jones at his newly provided address. On April 29, 2016, the Administrative Hearings Office received another letter from Jones complaining of the Department’s use of an incorrect address and objecting again to the charges brought by the Department. He reiterated his request for “full documentation and complete correspondence” so that he could provide information to his attorney and “properly prepare responses to any alleged violations.” [Docket Exhibit 9].

After a May 6, 2016 telephone conference with both parties, the Presiding Officer issued another Order directing the Department to serve the OTSC again at both the mailing and email addresses provided by Jones during the conference. Again she deferred a decision on the motion for default judgment pending Jones’s compliance with the OTSC. As directed, the Department served another copy of the OTSC to Jones on May 9, 2016. On May 31, 2016 the Administrative Hearings Office received correspondence from Jones which included a document styled as an Answer to the OTSC in which he stated the following:

I deny all 5 Counts (1 through 5) related to the Pennsylvania Statutes and the Factual Allegations with the exception of #2.
Transamerica Insurance Company did not properly represent my information to the Pennsylvania Insurance Department.

In addition, I am requesting that all 5 Counts be dismissed because of the illegal and untruthful manner in which the Pennsylvania Insurance Department Investigators dealt with me throughout their investigation and interviews. The Investigators did not inform me of my legal rights and they did not allow me to be represented by legal counsel when they interviewed me under false pretenses.

I have been a Resident Insurance Producer since 2005 without any complaints or previous issues.

I look forward to the opportunity to discuss these matters with you further.

[Docket Exhibit 13].

Upon receipt of this document, the Presiding Officer on June 1, 2016 issued an order scheduling a hearing on July 20, 2016 and a prehearing telephone conference on July 6, 2016. During the July 6, 2016 prehearing telephone conference, Jones provided to Department Counsel the name and contact information for an attorney who Jones said was representing him. [N.T.A. 12].²

On July 15, 2016, Jones requested a continuance of the hearing alleging a conflict with his attorney's travel schedule. That same date, the Presiding Officer issued an order granting the unopposed continuance request, directing Jones to have his counsel enter an appearance on or before August 5, 2016, advising him that if counsel failed to enter an appearance by that date it would be presumed that Jones had elected to proceed without counsel and informing him that no further continuances would be granted except for good cause. The Order also advised Jones that lack of counsel would not constitute good cause for a continuance. [N.T.A. 12-13]. The hearing was rescheduled to September 14, 2016.

Neither Jones, nor any counsel on his behalf, communicated with the Administrative Hearings Office until September 13, 2016, one day before the rescheduled hearing when

² Notes of Testimony from the September 14, 2016 Hearing for which Jones failed to appear are designated as "N.T.A" and Notes of Testimony from the January 31, 2017 hearing are designated as "N.T."

Jones requested another continuance of his hearing.³ In this request, Jones alleged that his employer had informed him that he was not permitted to take leave for the hearing. He also expressed his hope that his counsel and Department counsel could “work out an arrangement” so that a hearing would be unnecessary. [Docket Exhibit 20]. In its objection to the request, the Department noted that Jones had been given multiple opportunities to participate in the proceedings, that he had failed to file a compliant answer to the OTSC, and that he had been granted ample time to secure counsel for the hearing. Furthermore, the Department objected because Jones had failed to comply with the August 5, 2016 Order directing counsel to enter an appearance. The Department also asked that its motion for default judgment be referred to the Commissioner for decision.

After considering the request for continuance filed by Jones, and the Department’s objections and considering the lateness of the request for continuance, the length of time since notice of the hearing had been served on July 15, 2016, and that no counsel had entered an appearance, the Presiding Officer issued an Order denying the request for continuance. The Order also advised Jones that his failure to appear for the hearing would result in reinstatement of the motion for default judgment and might result in a default judgment. [Docket Exhibit 22]. The Order immediately was transmitted to all parties at the email addresses provided to the Administrative Hearings Office. [*Id.*].

The hearing was held as scheduled on September 14, 2016 but Jones failed to appear. [N.T.A. 14]. Department counsel attended and moved that its motion for default judgment be reinstated and referred to the Commissioner for decision. [N.T.A. 15]. The Presiding Officer granted the request. [N.T.A. 16].

³ The email heading indicates that the request for continuance was sent at 7:48 PM September 12, 2016. [Docket Exhibit 20]. Thus it was not received by the Administrative Hearings Office until the next morning.

The day after the hearing, Jones sent an email to Department Counsel stating that his new counsel intended to discuss the case with Department Counsel and that he looked forward to “working together to resolve these matters.” [Docket Exhibit 26]. When this correspondence between Jones and Department counsel came to the attention of the Presiding Officer, she sent a letter to both counsel deferring her referral of the motion for default judgment to the Commissioner until September 21, 2016. [*Id.*].

Counsel for Jones entered his appearance on September 20, 2016. On the same date he sent a letter to the Presiding Officer asking that the referral of the motion for default judgment be delayed an additional thirty days to give him time to work with Department Counsel towards a resolution. He also expressed his intention to file an answer to the OTSC and asked that the matter proceed to hearing in the event that he could not resolve the matter with the Department. In order to give both counsel time to continue settlement discussions, the Presiding Officer delayed referral of the motion for default judgment until October 21, 2016. She advised counsel that no further pleadings were required.

Nevertheless, Respondent’s counsel on October 21, 2016 filed an answer in opposition to the motion for default judgment and requested a hearing. After considering all circumstances of the case, the Presiding Officer issued an order denying the Department’s motion for default judgment and scheduling a hearing for January 31, 2017. The hearing was held as scheduled, attended by counsel and witnesses for the Department along with the respondent and his counsel. At the conclusion of the hearing, the parties reserved the right to file briefs and the Department filed a timely brief. The respondent elected not to file a brief prior to expiration of the briefing deadline. The case now stands ready for adjudication.

FINDINGS OF FACT

1. The Respondent, James Alfred Jones is a licensed resident insurance producer in Pennsylvania whose current address is 128 Rosedale, Hershey, Pennsylvania 17033. [N.T. 181; OTSC ¶ 1].
2. Jones took one examination and applied for an insurance producer license in 2005 when he began employment with PacifiCare. [N.T. 182, 206].
3. The license issued to Jones on June 9, 2005 authorized him only to sell accident and health insurance policies. [N.T. 21, 30; Exhibit D3].
4. This authority does not permit Jones to sell, solicit and negotiate the sale of life insurance products. [*Id.*].
5. Jones never applied for or took the examination required for licensure to sell, solicit and negotiate the sale of life insurance products. [N.T. 22, 25–26, 28; Exhibits D1 and D2].
6. PacifiCare was a healthcare company which offered health, accident, and life insurance products as well as annuities and healthcare spending accounts. [N.T. 182–183].
7. When PacifiCare was acquired by United Health group, Jones continued his employment with the company. [N.T. 183–184].
8. During these years, Jones was licensed by the Pennsylvania Insurance Department as a resident producer with authority to sell accident and health lines of insurance. [N.T. 18, 20; Exhibits D1 and D2].

9. Jones worked as an account executive for the company's Pennsylvania operations. [N.T. 182].

10. Even though the company marketed life insurance policies, as well as health insurance products, Jones sold only health insurance policies. [N.T. 210–211].

11. When Jones applied for a position with Transamerica Premier Life Insurance (“Transamerica”), he stated in his application that he was qualified to sell life and health insurance products in Pennsylvania. [N.T. 65; Exhibit D6].

12. Transamerica hired Jones as an insurance agent in a “fast track program” with the goal of promoting him to the position of sales manager. [N.T. 82–83].

13. The company requires all sales managers to be licensed as an insurance producer. [N.T. 83].

14. Jones first presented his Pennsylvania Insurance Department license to Transamerica in 2013 which showed authority only for accident and health insurance policies. [N.T. 65, 80; 187].

15. When Transamerica informed Jones that the license did not reflect authority for life insurance lines, Jones said he would contact the Insurance Department and “get that fixed.” [N.T. 66, 81,].

16. Subsequently Jones presented Transamerica with a Pennsylvania Insurance producer license dated December 11, 2013 showing authority to sell both life and health insurance policies. [N.T. 66–67; Exhibit D5].

17. This license Jones presented to Transamerica showing authority to sell both

life and health insurance policies did not conform to the format of licenses issued by the Department. [N.T. 34; Exhibits D4 and D5].

18. Licenses issued by the Department and printed by a licensee all have the same format. [N.T. 30; Exhibit D4].

19. After making inquiries with the Department, Transamerica confirmed that Jones did not have authority to sell life insurance policies and the license presented by Jones “was not actually real.” [N.T. 67; Exhibit D7].

20. While employed by Transamerica, Jones received training from a sales manager and made insurance sales calls, during which he signed disclosure statements and various application forms for life insurance policies. [N.T. 69; Exhibits D7 and D8].

21. Transamerica pays a training salary, but not commissions, to newly hired insurance producers. [N.T. 87].

22. Transamerica insurance producers receive a sales commission only when a policy is issued. [N.T. 86].

23. When a consumer applies for an insurance policy from Transamerica, the insurance producer completes the application on a computer, provides a disclosure statement and signs the application forms. [N.T. 96].

24. When Transamerica learned that Jones did not have a license to sell life insurance, the company rescinded, rewrote or canceled all the policies associated with the applications containing Jones’s electronic signature as the writing agent. [N.T. 97].

25. On January 7, 2014 Jones met with an Insurance Department investigator and informed her that he was licensed in accident, health, life and fixed annuities. [N.T. 114].

26. Jones acknowledged that his current renewal did not reflect life and fixed annuities authority. [N.T. 115].

27. Jones also told the investigator that he had met with various individuals in the Department to resolve the issue of his authority but Department records showed no evidence of these meetings in the sign-in logs maintained by the Department since 2013. [N.T. 115].

28. When the investigator showed Jones the licenses showing a discrepancy in authority he initially denied altering his license. [N.T. 116].

29. After further questioning, Jones told the investigator that when he lost his position with United Healthcare, a friend had altered the license to make Jones more attractive to prospective employers. [N.T. 117–118].

30. The investigator confirmed with the Department's testing vendor that Jones had not ever tested for the life and fixed annuities authority. [N.T. 118–119].

31. The day after the January 7, 2014 meeting between Jones and the Department investigator, Transamerica terminated Jones's employment with the company. [N.T. 217].

32. Additional factual findings contained in the discussion section of this adjudication are incorporated herein.

33. Should any factual finding be deemed a conclusion of law, the finding shall be incorporated therein.

DISCUSSION

The Insurance Department Act⁴ prohibits a licensed insurance producer from committing fraud, using fraudulent or dishonest practices, or demonstrating incompetence or untrustworthiness in conducting the business of insurance in Pennsylvania. 40 P.S. §§ 310.11(7) and 310.11(20).⁵ The Act also requires that “a person shall not sell, solicit or negotiate a contract of insurance in this Commonwealth unless the person is licensed as an insurance producer for the line of authority under which the contract is issued.” 40 P.S. § 310.3(a).

The Department has charged Jones with violating 40 P.S. § 310.11(7) by presenting a fabricated insurance license to his employer. [OTSC ¶¶ 8–10, 24–27]. No dispute exists that Jones violated this provision because he conceded during the hearing in this case that he gave a fraudulent license to Transamerica. [N.T. 215]. Jones claimed that he believed he had life and annuity authority and, through his testimony, seemed to ask that this behavior be excused because of this belief. [N.T. 190]. He also seemed to ask that his actions be excused because he did not alter the license himself and did not know it had been modified at the time he presented it to Transamerica. [N.T. 215].

This testimony simply is not credible. Jones acknowledged that he took only one examination prior to becoming licensed as an insurance producer. [N.T.206]. Yet, Jones maintained that he believed he had authority to sell the full range of products sold by his

⁴ 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.*)

⁵ The Act also directs a licensee not to “[f]orge another person’s name on an application for insurance or on any document related to an insurance or financial service transaction.” 40 P.S. § 310.11(9). Although the OTSC charges Jones with a violation of this section, no evidence exists to support a claim that Jones forged anyone’s name on any documents. His use of an invalid license violates 40 P.S. § 310.11(17) which encompasses actions for which Jones will be found liable. Thus this adjudication will not include any discussion of nor separate penalty for a violation of 40 P.S. § 310.11(9).

first employer, which included life and annuities. [N.T. 183]. However, under cross-examination, Jones initially said that he did not remember which exam he took to become a licensed insurance producer but expressed his belief that it was for “life and health.” [N.T. 206]. He then asserted that he thought it was for “accident and life.” [*Id.*]. Jones said he did not keep any documentation showing which exam he had taken. [*Id.*]. Jones also said he never verified the lines of authority on the license because he only sold health insurance policies that were issued by the employer for whom he worked prior to being hired by Transamerica. [N.T. 208, 210–211]. Jones said he had no need to verify the lines of authority on his license until “it was questioned.” [N.T. 208].

Jones acknowledged that when he first presented his insurance license to Transamerica, the company informed him that the license included authority only for accident and health insurance products. [N.T. 187]. Jones claimed that he believed the licensing information was incorrect and he went to the Department web site which confirmed that he had authority only for accident and health insurance products. [N.T. 187]. Jones alleged that he then telephoned the Department twice and that he met with two different people in the Department in both November and December, 2013. [N.T. 188–189]. Jones testified further that he went to the Department office in Strawberry Square but he could not remember the names of the individuals with whom he spoke. [N.T. 189].

Jones also testified that he discussed the issue with colleagues who worked for his former employer, United Healthcare. [N.T. 191]. Jones testified that one of those colleagues in the credentialing department gave him a copy of his license showing the life and annuities lines of authority. [N.T. 192; Exhibit D5]. Jones then presented that license to Transamerica. [N.T. 192; Exhibit D5]. During the hearing, Jones refused to identify the individual at United Health Group who allegedly provided him with the falsified license. [N.T. 212–214; Exhibit D5]. He confirmed that the individual who provided it to him had admitted that the document “wasn’t valid.” [N.T. 215]. Jones denied knowing the invalidity

at the time it was given to him. [*Id.*]. Jones said he only learned of the invalidity when it was brought to his attention in January 2104, the day before he met with the Department investigator. [N.T. 215–216].

A department investigation conducted by Kathleen Butler confirmed that Jones had taken only one examination for authority. [N.T. 107]. Butler verified this information with the Department’s testing vendor and learned that the company records reflected that Jones had only tested for accident and health insurance authority. [N.T. 118–119]. Butler told Jones she planned to contact Transamerica with this information. [N.T. 118].

As part of her investigation, Butler also interviewed Jones. She first contacted Jones when she learned of a January 2, 2014 telephone call from him to the Department asserting that he had been to the Department three times, and had applied for the life and fixed annuities authority. [N.T. 111]. When Butler showed Jones a copy of his license without life and fixed annuities, and a copy of the one showing those two additional lines of authority, she questioned him about the discrepancies. [N.T. 116]. Jones responded by saying “Well, if it’s altered, I didn’t do it.” [N.T. 116].

Jones ultimately acknowledged to Butler that he had not tested for life and fixed annuities authority and that he had presented an altered license to Transamerica. [N.T. 117]. He explained that his actions were related to the loss of his job and his desire to make himself more attractive to prospective employers. [*Id.*]. Jones told Butler that a friend at United Healthcare had prepared the altered license for him because Jones did not have the technological skills to alter it himself. [N.T. 118].

She described how Jones told her that he was licensed in accident, health, life and fixed annuities but that his last two license renewals had not reflected all these authorities. [N.T. 114–115]. He also told Butler that he had visited the Department but could not tell

her the name of anyone with whom he had spoken and could not remember any dates. [N.T. 115]. Butler investigated these statements and did not find the respondent's name on any of the sign-in logs from July 2013 to the time of her interview with him. [N.T. 115–116].

In short, all the evidence presented in this case confirms that Jones violated 40 P.S. § 310.11(7) when he presented an altered license showing authority for the sale of life and annuities insurance products for which he had no authority. Evidence also established that he falsified information on his job application by claiming authority to sell life insurance products. [Exhibit D6]. Jones denied knowing that he did not have authority to sell life insurance and annuities products when he applied for the position at Transamerica. [N.T. 187, 190]. Jones also denied knowing the license was altered at the time he presented it to Transamerica. [N.T. 215]. Even if these denials were credible, the respondent's alleged lack of knowledge about his license and his authority to sell certain lines of insurance products demonstrates a level of incompetence that makes him unworthy of licensure. His alleged lack of knowledge about the type of license he had also demonstrates irresponsibility in the conduct of his business. Jones is liable under both 40 P.S. § 310.11(7) and 40 P.S. § 310.11(20).

The Department also has charged Jones with violating 40 P.S. § 310.3(a) for selling, soliciting or negotiating twelve contracts of life insurance policies for which he did not have authority. In support of this charge, the Department presented a compilation of twelve life insurance policy forms marked for identification as D8. The collection consisted of more than 60 pages of various policy application pages, disclosure statements and authorization forms.⁶ In each set of application forms, the electronic signature, "James A. Jones" appears on signature lines variously designated as the "writing agent," "Agent,"

⁶ Nine different individuals signed the forms as applicants for the Transamerica policies. Three of the individuals appear to have signed documents associated with more than one policy. [D8].

“licensed producer,” “witnessing agent,” or “producer.” [Exhibit D8].

Jones objected to the admission of these application forms on the basis that they constitute hearsay that does not fit into the business record exception. The Presiding Officer deferred a decision on the objection pending this adjudication.

“It has long been established in this Commonwealth that hearsay evidence, *properly objected to*, is not competent evidence to support a finding of the [administrative agency], whether or not corroborated by other evidence.” *Skotnicki v. Ins. Dep't*, 146 A.3d 271 (Pa. Cmwlth. 2016); *Myers v. Unemployment Comp. Bd. of Review*, 625 A.2d 622, 625 (Pa. 1993); *see also Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976). Pa.R.E. 803(6) includes an exception to the rule against admissibility of hearsay for records of a regularly conducted activity (which includes a memorandum, report, or data compilation in any form), otherwise known as the business records exception, providing that the records meet the following criteria:

(A) the record was made at or near the time by--or from information transmitted by--someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a 'business', which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;(C) making the record was a regular practice of that activity;(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and (E) neither the source of information nor other circumstances indicate a lack of trustworthiness.

Pa. R.E. 803(6). The Commonwealth Court has held that testimony of the actual preparer or custodian of documents is not required if “a qualifying witness can provide sufficient information relating to the preparation and maintenance of the records to justify the presumption of trustworthiness for the business records exception” *R.A. Freudig Associates v. Commonwealth, Ins. Dep't*, 532 A.2d 509, 512 (Pa. Cmwlth. 1987); quoting

In re Indyk's Estate, 413 A.2d 371 (Pa. 1979). See also *Koken v. Colonial Assur. Co.*, 885 A.2d 1078, 1094 (Pa. Cmwlth. 2006).

Although the Department did not present the testimony of a custodian of the Transamerica policy application forms, it did present the testimony of Sait Onal, a managing director for the Transamerica central office. Onal provided a detailed description of the application process and the role of a Transamerica agent in that process. [N.T. 95]. He explained how, in order to complete an application, “the agent signs into his own unique password”, which opens an electronic application form into which an agent types answers provided by a customer. [*Id.*]. The agent then signs and provides a handwritten disclosure statement to the client and makes a copy for the company’s home office. [*Id.*]. Various application forms are then signed by the agent. [*Id.*].

He explained further that only the agent who completes the application, signs it. [N.T. 72, 96].⁷ Each application is tracked by the agent’s assigned number. [N.T. 72]. He verified that Jones, as a Transamerica employee, had been assigned Agent Number CF07426. [N.T. 73–74]. He confirmed that this Agent Number appeared on various life insurance policy application documents for twelve applications presented to the company. [N.T. 74–75]. Furthermore, Jones acknowledged that his was the electronic signature appearing on the various Transamerica life insurance policy applications obtained by the Department investigator. [N.T. 218]. The exhibit marked D8 for identification purposes is admitted and will be considered when determining the penalty in this case.

⁷ The Department also presented a chart titled “Applications Written by James Jones” to Onal but he did not recognize the document. He recognized that the agent number was one assigned to Jones and that the policy numbers appeared to be the type issued by his company. [N.T. 73–74]. However, he only first saw the chart a week before the hearing and did not verify the accuracy of the information on the chart which had been created by another individual at Transamerica. [N.T. 79]. After considering the hearsay object presented by Jones’s counsel and arguments made by both counsel, the Presiding Officer denied the Department’s request to admit this exhibit into evidence. [N.T. 98–102].

With his testimony Jones appeared to suggest that his actions be excused because he only acted as a trainee at the direction of his supervisor, Roger Cooper. [N.T.219–226]. He denied taking any part in submitting the applications and denied knowing why his signature was on the applications. [N.T. 219]. He confirmed signing disclosure statements but maintained he only did so at “other managers’ direction.” [N.T. 219; 225]. He said when he questioned why he was told to sign the disclosure statements, he was told that “it’s part of the training.” [N.T. 221, 226]. Jones said he did not feel comfortable signing the documents but was informed “these wouldn’t go anywhere.” [N.T. 222].

Jones confirmed that he was hired to be a sales manager but claimed he was not expected actually to make sales calls. [N.T. 192–193]. Jones also confirmed that Transamerica only paid him a salary but that he expected after his training ended that he was going to earn commissions from sales made by the agents he managed. [N.T. 196–197]. He denied soliciting anyone to purchase life insurance or annuities. [N.T. 197]. Jones testified further that he only met with prospective insureds with a trainer named Roger Cooper, or another individual named Mike. [N.T. 198, 204]. He described his participation as limited to filling out some disclosure forms as part of his training. [N.T. 198–202]. He denied completing any applications on his own and said he only signed documents at Cooper’s direction. [N.T. 203].

Jones denied knowing that any of these documents resulted in issuance of policies. [*Id.*]. He said the training did not include information about how to submit the applications. [N.T. 224]. Jones testified further that he did not have any reason to follow up to determine if any of the applicants identified in Exhibit D8 received policies. [N.T. 225]. Jones did not believe he had any responsibility for the twelve applications identified by the Department. [N.T. 228].

Jones argued that the records in Exhibit D8 do not establish that he solicited or sold

any insurance policies. [N.T. 128]. He was simply in training, learning about filling out the right forms. [N.T. 127]. Jones presented a witness, Nancy Bell, in an effort to bolster his testimony that he did not sell, solicit or negotiate life insurance contracts. Rather, he participated only in training exercises when he completed application documents. Ms. Bell a former co-worker, testified and described her part-time work for Jones during “call nights” for Transamerica. [N.T. 159]. During the call nights she made telephone calls to individuals from a list supplied to her by Transamerica. [N.T. 159]. Her goal was to make appointments for the respondent’s agents. [*Id.*]. She often worked alone although Jones stopped by to check on her progress, and sometimes to bring her a meal. [N.T. 161–162]. Jones was responsible for three agents. [N.T. 162]. She did not make any appointments for Jones. [N.T. 165].

Ms. Bell testified further that she also met a man named “Roger” who appeared to be supervising Jones. [N.T. 162–163]. She observed Roger showing Jones how to fill out forms. [N.T. 163]. Roger asked her about purchasing a Transamerica life insurance policy and she filled out an application even though she did not want to buy the expensive policy. [N.T. 164]. She told Roger she was not interested in purchasing the policy and Roger said he “wanted to write up a policy to show James how to do it.” [N.T. 165].

Ms. Bell acknowledged signing an application for a life insurance policy but did not pay any premium. [N.T. 171–172]. She never saw a copy of the application. [*Id.*]. She thought the application was just for training purposes. [N.T. 172]. She said only Roger worked with her on the policy, and she denied that Jones had written it. [N.T. 175]. She denied receiving or seeing the disclosure form signed by Jones. [N.T. 175–176]. She denied having any contact with Jones thereafter. [N.T. 178]. She never received any paperwork concerning the policy. [N.T. 179]. Ms. Bell stopped working for Transamerica when Jones left. [N.T. 173]. She did not ask him why he left and he never explained it to her. [*Id.*].

Neither the testimony of Ms. Bell nor Jones provides any basis to minimize or excuse his involvement in completing twelve life insurance policy applications. At a minimum, the training activities were designed to give Jones the tools to negotiate, solicit and sell life insurance products for which he had no authority. Even if he did not solicit, sell or negotiate any life insurance policies on his own during the training period, he admittedly participated with his trainer during these activities. He signed forms certifying his status as, among other things, a writing agent. [Exhibit D8]. Transamerica assigned him an agent number so that he could write life insurance policies.

Furthermore, Jones signed disclosure forms which included the following language:

I certify that the illustration I displayed on the computer screen has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.

Exhibit D8]. At a minimum, Jones certified that he was involved in providing information pertinent to the sale of life insurance policies. Jones is liable for violating 40 P.S. 310.3(a).

Insurance producers may not demonstrate a lack of “general fitness, competence and reliability sufficient to satisfy the Department that the applicant is worthy of licensure.” 40 P.S. § 310.11(20). All of the respondent’s actions in this case establish that he falls far short of the standard for fitness, competence and reliability required of an insurance producer. Jones is liable for failing to comply with 40 P.S. § 310.11(20).

When a licensee violates provisions of the Act, it remains only to determine appropriate penalties and corrective action.

PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by Jones. The Commissioner may order suspension or revocation of the producer's license, and may order the respondent to cease and desist from each violation.⁸ Each act constituting a violation subjects the actor to a maximum five thousand dollar civil penalty.⁹

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). Jones's fraudulent use of a falsified license, and his participation in training for the selling, soliciting or negotiating a contract for life insurance policies are of the most serious nature. Even more troubling is the respondent's unwillingness to accept responsibility for his actions. Instead he blamed an unnamed former colleague for the altering of his license, blamed the Department for inaccurate records concerning his authority and argued that his training activities did not violate the law. These defenses demonstrate an extraordinary lack of the honesty and professionalism that is required in the insurance industry. The Commissioner has consistently found deception of any kind to be among the most serious of violations. When the deception goes to the heart of the insurance business it becomes even more egregious.

In all events, the overriding consideration is protection of the insurance consumer, industry and profession. "The Commissioner has the duty to protect the public from unworthy agents and also to maintain the appearance of worthiness among agents."

⁸ 40 P.S. § 310.91(d).

⁹ [*Id.*]

Romano v. Pennsylvania Insurance Commissioner, 404 A.2d 758, 760 (Pa. Cmwlth. 1979). This consideration is separate from the likelihood that Jones would engage in similar activity again, but rather whether he could command the trust necessary in the profession.

The Commissioner has the discretion under 40 P.S. § 279 to consider mitigating factors in fashioning remedial action. The statute “expressly provides for the consideration of mitigating circumstances” even if a prima facie case of unfitness has been established. *In re Friedman*, 457 A.2d 983, 989 (Pa. Cmwlth. 1983); *See also Romano v. Pennsylvania Insurance Commissioner*, 404 A.2d 758, 759-60 (Pa. Cmwlth. 1979) (the statute permits “the Commissioner discretion” to consider her responsibilities as well as the agent’s circumstances.). Accordingly, both aggravating and mitigating circumstances are considered in imposing penalties.

Aggravating factors in this case include multiple layers of deception. Jones first demonstrated dishonesty when he obtained employment with Transamerica under false pretenses. Although he knew, or should have known that he had no authority to sell life insurance products, he asserted such authority in his employment application. [Exhibit D6]. He compounded this deceit by subsequently providing his employer with a falsified license. When confronted with the inaccuracy, he claimed that the Department had made a mistake.

In addition to misleading his employer at these various times, Jones also demonstrated a willingness to mislead the Insurance Department. His false statements to the Department investigator about his alleged life and annuities authority, his false claim about testing for that authority and his refusal to acknowledge any involvement in the fabrication of his license go to the heart of the requirement that insurance agents be trustworthy and reliable in their work with the insurance buying public. If a producer is dishonest with the regulator, then he cannot be entrusted with the welfare of individuals he purports to serve. Applicants and insureds entrust financial and personal matters to the

producer. They must be able to rely upon the producer's integrity. Jones has not demonstrated such reliability.

Furthermore, the degree to which an insurance producer accepts responsibility for his actions is a mitigating or aggravating factor. In this case, Jones showed no remorse for his activities. Although he acknowledged that it is "wrong to lie," Jones never accepted responsibility for his part in presenting an altered license to his employer. [N.T. 214]. He refused to identify the individual who allegedly altered it for him. [*Id.*]. He continued to deny knowing the license was fraudulent when he presented it to Transamerica. [N.T. 215]. He continued to excuse all his activities at Transamerica as just training exercises. He never acknowledged that he was learning to sell products for which he had no authority. This failure to take responsibility for his actions constitutes an additional aggravating factor in computing penalties applicable to Jones.

The only mitigating circumstance is that the evidence shows no history of complaints against Jones by insurance consumers or the industry. However, 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). Jones has fallen far below this standard and has not shown such professionalism or good judgment.

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 her 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 obtain a license from the Department reflecting the lines of authority for the types of insurance for which he intends to act as an insurance producer.

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 exercise 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. James Alfred Jones 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:
	:	40 P.S. § 310.11(9)
James Alfred Jones	:	40 P.S. § 310.11(3)
c/o Elliot A. Strokoff, Esquire	:	40 P.S. § 310.3(a)
Strokoff & Cowden, P.C.	:	40 P.S. § 310.11(20)
132 State Street	:	
Harrisburg, PA 17101	:	
	:	
Respondent	:	
	:	Docket No. SC16-01-005

ORDER

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

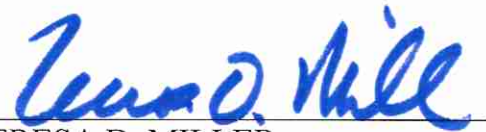
1. James Alfred Jones shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.
2. All of the insurance licenses or certificates of qualification of James Alfred Jones **ARE REVOKED** for a minimum of ten (10) years pursuant to 40 P.S. 310.91 for each of Counts I, II, IV and V with these revocations to run concurrently with each other for a total minimum period of ten (10) years. Additionally, James Alfred Jones is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of ten (10) years. James Alfred Jones 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. James Alfred Jones shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows:

- a. Count I: \$6,000.00
- b. Counts II, IV and V: \$6,000.00

for a total of Twelve Thousand dollars (\$12,000). 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
Insurance Commissioner