BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	: ALLEGED VIOLATIONS:
Aisah Johnson 92 A Florence Avenue Sharon Hill, PA 19079 Respondent	: Sections 310.11(2), (4), (5), (7), (8), (17), (18) and (20); 310.12(a); 310.78(b) of the Insurance Department Act of 1921, P.L. 789, No. 285, *as amended* (40 P.S. §§ 310.11(2), (4), (5), (7), (8), (17), (18) and (20); 310.12(a); 310.78(b)). : : 31 Pa. Code §§ 67a.2(c), (g) and (h)) : : Docket No. **SC15-11-001**

ADJUDICATION AND ORDER

AND NOW, this 17th day of May, 2016, Teresa D. Miller, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order.

HISTORY

This case began when the Pennsylvania Insurance Department ("Department") filed an order to show cause ("OTSC") on November 4, 2015 directed to Aisah Johnson ("the respondent"). The OTSC alleged that the respondent violated the Insurance Department Act[1] and Department regulations.[2] Specifically, the OTSC alleged that the respondent, a licensed insurance producer, engaged in three courses of conduct in 2014

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[1] Act of May 17, 1921, P.L. 789, No 285, 40 P.S. §§ 310.11(2), (4), (5), (7), (8), (17), (18) and (20); 310.12(a); 310.78(b).

[2] 31 Pa. Code §§ 67a.2(c), (g) and (h).

DATE MAILED: May 17, 2016

and 2015 which violated insurance laws and regulations: 1) accepting a premium from an applicant, failing to procure coverage for the applicant, and subsequently falsifying documents and misrepresenting the existence of coverage; 2) accepting a premium for a commercial coverage applicant, failing to procure coverage for the applicant, and subsequently creating fraudulent and incorrect coverage documentation purportedly for insurance entities with which the respondent had no relationship; 3) being sanctioned three times by the Assigned Risk Plan in 2014 and 2015 for various actions and inactions, ultimately resulting in the revocation of her certification as an Assigned Risk Plan broker, without reporting any of the sanctions to the Insurance Department. The OTSC alleged that these courses of conduct constituted 13 violations of laws and regulations as contained in a like number of counts.

The OTSC advised the respondent to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised her 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 she relies. She further was advised of the consequences of failing to answer the OTSC.[3] Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on the respondent by certified mail which was returned by the postal service as unclaimed.

The respondent failed to answer the OTSC or otherwise respond to the Administrative Hearings Office. On March 23, 2016, the Department filed a motion for default judgment and certified that it served the respondent by first class mail. The motion reiterated the factual allegations contained in the OTSC and the 13 alleged violations. The motion also declared that the OTSC was mailed to the respondent to her

[3] The OTSC warned the respondent that failure to answer in writing would result in the factual allegations being deemed admitted and that the Commissioner would enter an order imposing penalties.

last known home address as kept on file in the Department, with a certified mailing returned as unclaimed but with the first class mailing not returned as undeliverable. Notice of the OTSC also was published in the Pennsylvania Bulletin on November 21, 2015.[4] The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing or communication with the hearings office in this matter.

This adjudication and order addresses the motion for default judgment and the order to show cause. Factual findings and legal conclusions are contained within the body of this adjudication.

DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since the respondent failed to answer the order to show cause or motion for default judgment. The order to show cause advised that failure to respond would result in the factual allegations being deemed admitted and that the Commissioner would enter an order imposing penalties. The unanswered motion explicitly requested such an order. However, because of the language in the penalty provisions of applicable statutes, this adjudication first will analyze an agency's authority to impose penalties absent an evidentiary hearing.

There are no factual disputes in the present matter to address at hearing. 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

[4] 45 Pa. Bull. 6768 (November 21, 2015).

complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings."). A respondent failing to file an answer within the time allowed shall be deemed in default. *Id.* Department regulations do not limit the Commissioner's ability to order a default judgment without a hearing, so any limitation must come, if at all, from a statute.

In order for an adjudication by a Commonwealth agency to be valid, a party must have a "reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. § 504 (Administrative Agency Law). Similarly, the statute specifically applicable to the present case[5] provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.[6] 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

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

[6] 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. The section then lists available penalties.

for an Unfair Insurance Practices Act (UIPA)[7] 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 treated as an order to show cause). The Court upheld the summary judgment since deemed admission of the factual averments presented no factual issues to be resolved at hearing.

The Commissioner consistently has applied the reasoning of *United Healthcare* and similar cases when the respondent does not answer the order to show cause and a motion for default judgment. *See In re Phelps*, P95-09-007 (1997); *In re Crimboli*, SC99-04-015 (1999); *In re Young*, SC98-08-027 (2000); *In re Jennings*, SC99-10-001 (2001); *In re Warner*, SC01-08-001 (2002); *In re Taylor*, SC07-11-015 (2008); *In re Kroope*, SC09-12-005 (2010); *In re Kletch*, SC15-04-022 (2015). 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 the 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 her 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

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

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 are extensive, and are set forth in 57 numbered paragraphs in the OTSC. The respondent was a licensed residence insurance producer residing in Sharon Hill, Pennsylvania. [OTSC ¶¶ 1, 2]. In 2014, Ms. Johnson was acting as an agent for Main Street Insurance. [OTSC ¶ 3].

In May 2014, as a Main Street Insurance agent, the respondent sold a fraudulent physical damage only policy to a gentleman named Mohamed Pervez and accepted premium payments from him. [OTSC ¶¶ 3, 4]. The receipts issued to Mr. Pervez listed "American Southern Nsur" as the insurance company. [OTSC ¶ 4]. Ms. Johnson did not provide Mr. Pervez with any proof of insurance. [*Id.*].

On August 17, 2014, Mr. Pervez was involved in an automobile accident. [OTSC ¶ 5]. The next day, he went to the respondent's office to report the claim and he paid his premium payments for the months of August and September. [OTSC ¶ 6]. The respondent then issued Mr. Pervez a fraudulent American Southern binder and insurance card listing MSI as the agency and herself as the authorized representative. [OTSC ¶¶ 8, 14]. Mr. Pervez requested copies of the original insurance documents but Ms. Johnson told him that the paperwork needed to be redone. [OTSC ¶ 8].

When Mr. Pervez contacted American Southern, the company had no record of a policy for him. [OTSC ¶ 9]. Further, the policy number on the insurance card was not in the format used by American Southern, and the NAIC company number on the card belonged to Adriatic Insurance Company, not American Southern. [OTSC ¶¶ 11, 12].

After receiving a complaint from American Southern about the fraudulent insurance documents, the Insurance Department sent an inquiry about the complaint to Ms. Johnson. [OTSC ¶¶ 16, 17]. The respondent faxed an incomplete response to the inquiry which also misrepresented that the Pervez policy was canceled for non-payment on August 9, 2014 and that the insurance card was processed in error and should have listed "Adriatic Insurance" as the company. [OTSC ¶ 18]. Throughout September and October 2014, the Department made additional requests for information but the respondent did not provide the requested information and documentation. [OTSC ¶¶ 19, 20].

When investigators from the Department interviewed the respondent on November 3, 2014, she claimed that an underwriter from Trinity (an insurance wholesaler) told her that policies for Mr. Pervez and others would be issued through American Southern. [OTSC ¶ 23, 24]. However, the respondent did not have binding authority with Trinity, and Trinity never suggested to Ms. Johnson that she could issue binders or that American Southern could provide insurance of the type provided Mr. Pervez. [OTSC ¶¶ 13, 25]. Also, neither the respondent nor MSI had binding authority with American Southern or any other relationship with the company. [OTSC ¶ 15].

Thus, the respondent twice received premium monies from Mr. Pervez without procuring valid insurance coverage in each instance. She fabricated insurance documents, and misrepresented her activities and existence of coverage to Mr. Pervez and the

Department. Additionally, she did not cooperate with the Department in its investigation and requests for information.

Around the same time as her dealings with Mr. Pervez, the respondent on behalf of MSI was responsible for the commercial property and liability insurance coverage for a property in Darby, Pennsylvania. [OTSC ¶¶ 26–28]. The insureds were to be the Reconciliation and Liberty Bible Church of America, Inc. and an individual. [OTSC ¶ 27]. On March 31, 2014, the respondent generated an invoice in the amount of $1,532 to renew insurance coverage for the property. [OTSC ¶¶ 28, 29]. On April 8, 2014, the mortgage company East Coast Financial ("ECF") paid this amount for the coverage. [OTSC ¶ 29].

However, although the respondent sent ECF a number of documents indicating that insurance coverage was in effect, Ms. Johnson failed to provide ECF with valid proof of insurance for the mortgaged property despite ECF's numerous requests. [OTSC ¶¶ 30, 31]. Finally, in September 2014, MSI sent ECF a renewal invoice along with a Certificate of Liability Insurance and an Evidence of Commercial Property Insurance signed by the respondent. [OTSC ¶¶ 32, 34]. These documents listed Mesa Underwriters as the insurance company, MSI as the agency and Ms. Johnson as the authorized agent. [OTSC ¶ 33].

When ECF contacted Mesa, the company had no record of the policy. [OTSC ¶ 35]. Further, the policy numbers on the proof of insurance documents did not match Mesa's policy numbering format. [OTSC ¶ 36]. In fact, Mesa Underwriters does not have any relationship with Ms. Johnson or MSI and neither was authorized to bind coverage for the company. [OTSC ¶ 37].

On September 30, 2014, MSI sent ECF a fraudulent insurance binder listing Tapco Underwriters, Inc. as the insurance company, Main Street Business Center, LLC as the agency, and the respondent as the agent. [OTSC ¶ 38]. The binder contained a different address than the covered property, and a May 21, 2014 effective date which was approximately two months after the policy was purchased. [OTSC ¶¶ 39, 41]. The Tapco coverage was never bound and canceled due to non-payment because Ms. Johnson had not remitted the premium payment. [OTSC ¶ 42, 43].

Thus, similarly to her dealings with Mr. Pervez and his putative insurers, the respondent received premium monies from a putative insured without procuring valid insurance coverage or remitting the premium monies. She also similarly fabricated insurance documents, misrepresented the existence of coverage and misrepresented what action she took on behalf of the client.

The respondent, in addition to her activities involving insureds in the regular market, also acted as a certified producer with the Pennsylvania Assigned Risk Plan in 2014 and 2015. [OTSC ¶¶ 44–56]. The Assigned Risk Plan charged Ms. Johnson with multiple violations of the Plan's rules and procedures including accepting cash from applicants, submitting incorrect forms, failing to mail applications and application retractions timely, soliciting tips from commercial applicants and submitting applications with deficiencies. [OTSC ¶ 45]. Following a hearing on the charges, the Plan's Governing Committee found that Ms. Johnson's activities constituted a general business practice that violated Plan rules and procedures. [OTSC ¶ 46].

The Governing Committee ordered that Ms. Johnson correct outstanding violations and take an online course on producer procedures. [OTSC ¶ 47]. The Governing Committee also ordered that her certification be monitored for six months. [*Id.*]. The respondent failed to report the Plan's action against her to the Insurance

Department within 30 days. [OTSC ¶ 48]. Nor did the respondent appeal the Governing Committee's decision to the Insurance Commissioner. [Official Notice].[8]

On February 20, 2015, a second hearing was held on charges that Ms. Johnson committed additional violations of Plan rules and procedures. [OTSC ¶ 49]. While the decision was pending, three additional applicants telephoned the Plan inquiring about their insurance coverage. [OTSC ¶ 50]. Those applicants had paid their premium deposit in cash, but the Plan had not received any of the applications, supporting documentation or premium deposits. [OTSC ¶ 51]. As a result, the Plan summarily suspended Ms. Johnson's certification as an Assigned Risk Plan producer. [OTSC ¶ 52]. She failed to report this suspension to the Insurance Department within 30 days. [OTSC ¶ 53]. She also did not appeal this decision to the Insurance Commissioner. [Official Notice].

On March 6, 2015, a hearing was held relative to the three applicants, and the Plan's Governing Committee found that Ms. Johnson's activities constituted a general business practice that violates Plan rules and procedures. [OTSC ¶¶ 54, 55]. The Governing Committee revoked Ms. Johnson's certification for 12 months and imposed conditions for reapplication and reinstatement. [OTSC ¶ 56]. The respondent neither appealed the decision nor reported the action to the Insurance Department. [Official Notice; OTSC ¶ 57].

The respondent was charged with thirteen distinct violations of the Insurance Department Act: 1) improperly withholding, misappropriating or converting money in violation of 40 P.S. § 310.11(4); 2) intentionally misrepresenting the terms of an insurance contract or application in violation of 40 P.S. § 310.11(5); 3) committing fraudulent or dishonest practices and demonstrating incompetence or untrustworthiness in

[8] A Governing Committee decision is appealable to the Insurance Commissioner within 20 days from the date of the decision. Pennsylvania Assigned Risk Plan Manual § 64.E.

violation of 40 P.S. § 310.11(7); 4) having a license suspended or revoked by another governmental agency in violation of 40 P.S. § 310.11(8); 5) committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty in violation of 40 P.S. § 310.11(17); 6) transferring insurance coverage to another insurer without the consent of the insured in violation of 40 P.S. § 310.11(18); 7) failing to respond in violation of 40 P.S. § 310.11(4); 8) failing to report administrative action by another governmental agency in violation of 40 P.S. § 310.11(4); 9) accepting cash premium payments in violation of 31 Pa. Code § 67a.2(g); 10) accepting referral or other fees in violation of 31 Pa. Code § 67a.2(h); 11) violating Assigned Risk Plan Rules in violation of 31 Pa. Code § 67a.2(h); 12) demonstrating 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); and 13) violating insurance laws, itself a violation of 40 P.S. § 310.11(2).

For each of the counts, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of her 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 the 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 nine of the thirteen counts against the respondent.

By failing to apply premium deposit payments made by Mr. Pervez, East Coast Financial and three Assigned Risk Plan applicants toward their respective coverages, the respondent in each instance violated 40 P.S. § 310.11(4) as set forth in count one. That provision requires that a licensee shall not "[i]mproperly withhold, misappropriate or convert money or property received in the course of doing business." Whatever Ms. Johnson did with the money received from these five applicants, it was withheld

improperly from its intended purpose of providing insurance coverage. The respondent is liable under count one.

The respondent is liable under count two, misrepresenting the terms of an insurance contract or application in violation of 40 P.S. § 310.11(5). That provision prohibits "[i]ntentionally misrepresent[ing] the terms of an actual or proposed insurance contract or application for insurance." Both for Mr. Pervez and Liberty Bible Church of America, Ms. Johnson represented in writing that her respective clients had insurance contracts with companies which in fact were not providing coverage. These misrepresentations subject the respondent to liability under count two.

Ms. Johnson is subject to sanction in count three for violating 40 P.S. § 310.11(7). That provision proscribes using "fraudulent, coercive or dishonest practices or demonstrat[ing] incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere." The respondent's conduct relative to Mr. Pervez, the church and its mortgagee, and the Assigned Risk applicants demonstrated incompetence, untrustworthiness and financial irresponsibility in the core functions of her insurance business. With Mr. Pervez and ECF, the admitted facts also establish fraudulent and dishonest practices because the respondent lied about the nature and existence of purported coverage and generated fake documents. The respondent is liable under this count.

However, the respondent is not liable under count four, 40 P.S. § 310.11(8). That provision provides that a licensee shall not "[h]ave an insurance producer license or other financial services license, or its equivalent, denied, suspended or revoked by a governmental entity." The Assigned Risk Plan's Governing Committee suspended and then revoked the respondent's certification to act as a producer in the plan, and this certification is the equivalent of an insurance license for conducting assigned risk

business. However, the plan is not a governmental agency. The plan was established by Section 1741 of the Motor Vehicle Financial Responsibility Law, 40 Pa.C.S. § 1741.[9] Although established pursuant to statute and organized initially by the Insurance Department, the Assigned Risk Plan is a private entity and not a state agency. *The Professional Ins. Agents Ass'n of PA., MD., and DE., Inc. v. Chronister*, 625 A.2d 1314 (Pa. Cmwlth. 1993), *aff'd sub nom. Professional Ins. Agents Ass'n v. Maleski*, 652 A.2d 293 (Pa. 1994). "The Plan is a private entity . . .. As stated *supra*, the Plan is an unincorporated association of insurers, governed by a committee of individuals representing private insurance producers and companies." 625 A.2d at 1320. An element of 40 P.S. § 310.11(8) is licensure action by a governmental entity. That element is missing in the present case, and the respondent is not liable under count four.

In count five, the respondent is charged with a violation of 40 P.S. § 310.11(17). That provision prohibits "fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty." As discussed above for count three, Ms. Johnson's lies and fake documents constituted fraud and dishonest acts relative to her private market clients. Additionally, her actions including receipt of the premium deposits were in a fiduciary capacity both for her clients and the companies. The respondent is liable under count five.

The respondent is not liable under count six, alleging a violation of 40 P.S. § 310.11(18). That subsection provides that a licensee shall not "[t]ransfer insurance coverage to an insurer other than the insurer expressly chosen by the insured without the consent of the insured." This provision proscribes the practice of one type of "churning" in which a producer terminates a policy and replaces it with a new one, often benefitting the producer with a commission or otherwise, and sometimes causing detriment to a

[9] "The Insurance Department shall, after consultation with the insurers licensed to write motor vehicle liability insurance in this Commonwealth, adopt a reasonable Assigned Risk Plan for the equitable apportionment among those insurers of applicants for motor vehicle liability insurance who are entitled to, but are unable to, procure insurance through ordinary methods. When the plan has been adopted, all motor vehicle liability insurers shall subscribe thereto and shall participate in the plan. . . ."

consumer who did not consent to the transfer of coverage.[10] In the respondent's case, there was no transfer of insurance coverage for either Mr. Pervez or the church because no policy was written initially. Further, the admitted facts do not include that Mr. Pervez, the church or ECF on behalf of the church did not choose the respective ultimate carriers or did not consent to placement with those carriers. Thus, none of the elements of 40 P.S. § 310(18) were established and no liability will be found under count six.

The admitted facts also do not support separate sanctions for not immediately responding to the Department's requests for information and documents in September and October 2014 as charged in count seven. 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.
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> **(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 inquiries 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. Finally, the sanction only applies after the Department notifies the licensee of the action required of the licensee and allows 15 days following receipt to correct the deficiency. In

[10] Another type of churning is the practice of misrepresenting or incompletely comparing insurance contracts for the purpose of inducing an insured to lapse, forfeit or surrender his insurance coverage in favor of a new contract through the producer which insures against similar risks. This practice is prohibited by a separate statutory section which also makes the practice a criminal offense. 40 P.S. § 310.48.

the present case, the admitted facts do not include that the Department supplied the required notice. In a recent enforcement action with similar relevant facts as the present one, the licensee was held not to be liable under Section 310.12 for not responding to Departmental inquiries. *In re: Seals*, SC15-11-014 (2016). In the present case, the elements required to impose a sanction have not been established by the admitted facts and the respondent is not liable for violating 40 P.S. § 310.12 as contained in count seven.

Count eight charges the respondent with violating 40 P.S. § 310.78(a). That section provides that "[a] licensee shall report to the department any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this Commonwealth within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents." The admitted facts in the present case include that the Assigned Risk Plan's enforcement actions against Ms. Johnson were not reported to the Department. However, as discussed for count four, the Pennsylvania Assigned Risk Plan is not a governmental agency. Nor is it in another jurisdiction. The respondent is not liable under count eight.

Counts nine through eleven assert violations of Department regulations which provide consumer protections to Assigned Risk Plan applicants and insureds. These protections are contained in 31 Pa. Code § 67a.2.

In count nine, the respondent is charged with violating 31 Pa. Code § 67a.2(c) which provides:

> (c) Upon completion of the original application, premium moneys from the applicant to the producer of record shall be in the form of a money order, cashier's check, certified check, personal check or other method approved by the Insurance Commissioner, made payable to the "Pennsylvania Assigned Risk Plan." The producer of record may not accept cash.

31 Pa. Code 67a.2(c). Ms. Johnson accepted cash from applicants and submitted incorrect forms of payment to the Plan, and accordingly violated this subsection. [OTSC ¶ 45(a)].

Count ten charges violation of 31 Pa. Code § 67a.2(g) which provides:

> (g) A producer may not charge referral fees or other fees for placing or servicing any coverage in the Assigned Risk Plan. A producer's remuneration shall be limited to the method of compensation established by the Assigned Risk Plan rules.

31 Pa. Code § 67a.2(g). Ms. Johnson solicited tips from commercial applicants in violation of this subsection. [OTSC ¶ 45(c)].

Plan Rules also prohibit receiving cash and additional fees, and prescribe the proper form of payment to the Plan. Pennsylvania Assigned Risk Plan Manual §§ 8.C, 15.F, 23.C, 29.F, 37.C and 42.F. The reasons for these requirements are obvious, and suggested by the title of the applicable regulation: "Consumer Protections." This method of payment prevents the producer from charging unauthorized extra fees and promotes the prompt transmission of payment to the Plan resulting in prompt coverage. The Commissioner and the courts long have recognized this purpose behind the rules and regulations. *See Seidman v. Insurance Commissioner*, 532 A.2d 917, 921 (Pa. Cmwlth. 1987) ("As the Commissioner noted, the purpose of both Section 11(c) of the Plan and 31 Pa. Code § 33.29(d)[11] is to protect against the diversion or commingling of the premiums and to avoid any incentive for a producer to delay remittance.") The Court further explained:

> There are important public policy reasons behind Section 11(c) of the Plan and 33 [sic] Pa. Code § 33.29(d). First of all they are designed to prevent a producer from retaining a cash premium deposit or failing to remit such deposit immediately, thus needlessly delaying coverage. The exclusion of cash as an accepted form of payment protects the public against those producers who might charge an amount greater than the actual premium

[11] These provisions were the predecessor sections to those at issue in the present action and were substantially identical to the current sections.

> and retain the difference. Section 11(c) of the Plan and 31 Pa. Code § 33.29(d) ensure protection of (1) the applicant from unscrupulous producers and (2) the general public by encouraging prompt remittance and reducing the number of uninsured motorists.

532 A.2d at 922. *See also*, *Triggiani/PARP*, P07-12-002 (2008) (producer sanctioned for accepting improper form of premium deposit payment from applicants).

By accepting cash and soliciting tips from applicants, Ms. Johnson is subject to sanctions under counts nine and ten. Her conduct relative to the assigned risk premium payments by applicants violated 31 Pa. Code §§ 67a.2(c) and (g) as well as Plan rules.

In addition to this conduct violating Plan rules, Ms. Johnson violated other Plan rules as determined by the Governing Committee. The violation of Plan rules also violates the Insurance Department Act through a regulatory provision as contained in count eleven: 31 Pa. Code § 67a.2(h). That provision provides:

> (h) Producers shall comply with the Assigned Risk Plan rules. Violation of the Assigned Risk Plan rules may be construed to be a violation of section 604 of The Insurance Department Act of 1921 (40 P. S. § 234).

31 Pa. Code §67a.2(h). The Insurance Department Act section, now repealed, required that a licensee be worthy of licensure. That requirement is now contained in 40 P.S. § 310.11(20). Ms. Johnson's established violation of Plan rules violated both the Department regulation and Insurance Department Act, and her conduct is subject to sanctions under count eleven.

The respondent's courses of conduct also constituted a violation of 40 P.S. § 310.11(20) as contained in count twelve. That subsection 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 respondent's course of conduct included collecting premiums without forwarding them to a company, creating false documents and misrepresenting her actions and the status of coverage. This serious

conduct took place over time and with multiple applicants, demonstrating a lack of trustworthiness necessary in the profession. The respondent's conduct demonstrates that she cannot be trusted with the financial affairs of consumers and companies alike. She is therefore unfit to hold an insurance license and is liable under count twelve.

Finally, the respondent is liable under count thirteen, a violation of 40 P.S. § 310.11(2). That section requires that a licensee not "violate the insurance laws or regulations." As set forth in the previous counts, Ms. Johnson's conduct violated numerous insurance laws and regulations, subjecting her to sanctions under those provisions. She also is liable under 40 P.S. § 310.11(2) as contained in count thirteen.

Thus, the respondent is liable under nine of the thirteen counts: count one (failure to apply premium); count two (misrepresenting insurance contract terms); count three (fraud, dishonesty and untrustworthiness in the business of insurance); count five (breach of fiduciary duty); count nine (accepting cash from assigned risk applicants); count ten (soliciting extra fee from assigned risk applicants); count eleven (violating Assigned Risk Plan rules); count twelve (demonstrated unfitness, reliability and worthiness); and count thirteen (violation of insurance laws and regulations). She is not liable under four of the counts: count four (licensure action by another government entity); count six (churning); count seven (responding to Department inquiry); and count eight (failure to report governmental administrative action).

Liability under each of the nine counts results from the respondent's courses of conduct relating to Mr. Pervez, the church and its mortgagee and the assigned risk applicants. However, she is separately liable under each count because each statutory or regulatory section proscribes certain aspects of the course of conduct such as retention of premium, failure to submit the application, fraudulent representations, fraudulent

documents, breaching a fiduciary duty, accepting cash, accepting tips and violating insurance laws and regulations as well as Assigned Risk Plan rules.

With the respondent liable for remedial action under nine of the thirteen counts, the appropriate action must be established for each count.

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(d)(1). Each action violating the Act 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 or her 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 a serious nature, and directly connected to the respondent's duties as an insurance producer. This seriousness is reflected in the penalties imposed.

Retention of premiums and failure to apply for the insurance is serious in itself, breaching Ms. Johnson's obligations both to the consumers and the companies. Consumers in each instance were bare of the insurance coverage they believed they had purchased. Mr. Pervez sustained an automobile accident without the insurance he supposedly purchased. The respondent's infliction of financial harm on others evidences 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, the respondent at this time cannot be trusted with the pocketbooks, bank accounts and personal information of her customers.

To make things worse, the respondent concealed her malfeasance through the creation of fake documents and lies about the actions she took or would take on behalf of the consumers and the companies. This concealment goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance-buying public.

Although the respondent's conduct relative to the assigned risk applicants already has been sanctioned by the Plan, those sanctions were limited to her certification as an assigned risk producer. Her conduct relative to her assigned risk business will be separately sanctioned as an insurance producer because it reflects on her fitness in the profession generally. Assigned risk consumers are particularly vulnerable because the assigned risk market by definition is the market of last resort. The Department promulgated special consumer protection regulations for producers participating in that market, and Ms. Johnson violated those very provisions. However, the fact that she already has been sanctioned by the Assigned Risk Plan will be taken into consideration in imposing the penalty for that conduct herein.

An additional aggravating factor relative to her conduct surrounding the Pervez and church applications is the respondent's minimal cooperation with the Insurance Department. Although her failure to respond to the Department's requests for information and documents will not result in penalties, it is an aggravating factor relative to the other violations which the Department was attempting to investigate. She also appeared to be less than candid when she did respond to the Department, giving sometimes contradictory and false answers. [OTSC ¶¶ 7, 18, 22–25]. Aggravating factors also include that the respondent's conduct directly involved the business of insurance and her actions directly inflicted financial harm on consumers and companies.

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

The Department in its Order to Show Cause requested that the Commissioner revoke the respondent's insurance producer's license(s), bar the respondent from future licensure as an insurance producer, bar the respondent from applying to renew any license previously held by her, impose a $5,000.00 fine per violation, order the respondent to cease and desist from violating insurance laws, and impose other appropriate conditions including supervision should the respondent ever become relicensed. In its motion for default judgment, the Department requested similar relief.

Many aspects of the respondent's three courses of conduct overlap among the nine counts for which she is liable. However, with one exception, each count contains an element or aspect of her conduct unique to that count. Accordingly, she will be sanctioned for eight of the counts although some are combined for the purpose of imposing penalties. The exception is count thirteen (violation of insurance laws and regulations). Penalties are being imposed for the specific statutes and regulations the respondent violated, and no separate penalty will be imposed for this count.

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:
Aisah Johnson 92 A Florence Avenue Sharon Hill, PA 19079	: Sections 310.11(2), (4), (5), (7), (8), (17), (18) and (20); 310.12(a); 310.78(b) of the Insurance Department Act of 1921, P.L. 789, No. 285, *as amended* (40 P.S. §§ 310.11(2), (4), (5), (7), (8), (17), (18) and (20); 310.12(a); 310.78(b)).
Respondent	: 31 Pa. Code §§ 67a.2(c), (g) and (h))
	: Docket No. **SC15-11-001**

ORDER

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

1. The Pennsylvania Insurance Department's Motion for Default Judgment is **GRANTED.** All facts in the Order to Show Cause are **DEEMED ADMITTED.** Aisah Johnson is found to have engaged in prohibited conduct as set forth in counts one, two, three, five, nine, ten, eleven, twelve and thirteen in the Department's Order to Show Cause.

2. Aisah Johnson shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

3. All of the insurance producer licenses of Aisah Johnson **ARE REVOKED** for a minimum of five (5) years for count one. All of the insurance producer licenses of

Aisah Johnson **ARE REVOKED** for a minimum of five (5) years for count two. All of the insurance producer licenses of Aisah Johnson **ARE REVOKED** for a minimum of five (5) years for counts three and five together. All of the insurance producer licenses of Aisah Johnson **ARE REVOKED** for a minimum of two (2) years for counts nine, ten and eleven together. All of the insurance producer licenses of Aisah Johnson **ARE REVOKED** for a minimum of five (5) years for count twelve. These revocations shall run **concurrently** with each other for a **total minimum period of revocation of FIVE (5) years.** Additionally, Aisah Johnson is prohibited from applying for a license or certificate of qualification in this Commonwealth for a minimum of five (5) years. Aisah Johnson also is prohibited from applying to renew any license previously held by her in this Commonwealth for a minimum of five (5) years.

4. Aisah Johnson shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows:

a. Count one: $5,000.00
b. Count two: $5,000.00
c. Counts three and five combined: $4,000.00
d. Counts nine, ten and eleven combined: $1,000.00
e. Count twelve: $3,000.00

for a total of Eighteen Thousand Dollars ($18,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Administrative Assistant, Bureau of 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.

5. Should the respondent ever become licensed at any future date, the

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

6. Aisah Johnson 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.

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

8. In the event that the respondent's licenses are suspended pursuant to paragraph 5 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.

9. This order is effective immediately.

TERESA D. MILLER
Insurance Commissioner