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ADMINISTRATIVE OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : ALLEGED VIOLATIONS:  
:  
**Michael Lamboy** : Sections 310.11(2), (7), (8), (17), (20) and  
1758 Pacific Street : 310.78(a) of the Insurance Department  
Brooklyn, New York 11233-3506 : Act of 1921, P.L. 789, No. 285, *as*  
:  
Respondent : *amended* (40 P.S. §§ 40 P.S. 310.11(2),  
:  
: (7), (8), (17), (20) and 310.78(a).  
:  
: Docket No. SC15-05-002

ADJUDICATION AND ORDER

AND NOW, this 15<sup>th</sup> day of September, 2015, 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 June 10, 2015 directed to Michael Lamboy ("Lamboy" or "the respondent"). The OTSC alleged that Lamboy violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that Lamboy, a licensed insurance producer, as a financial institution's employee withdrew customers' funds without their consent, had his producer's license revoked by multiple other jurisdictions and failed to report the revocations and respond to the Pennsylvania Insurance Department.

The OTSC advised Lamboy to file an answer in accordance with applicable

<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 40 P.S. 310.11(2), (7), (8), (17), (20) and 310.78(a).

DATE MAILED: September 15, 2015

regulations (1 Pa. Code § 35.37), and further advised him that the answer must specifically admit or deny each of the factual allegations made in the OTSC. The respondent was advised to set forth the facts and state concisely the matters of law upon which he relies. He further was advised of the consequences of failing to answer the OTSC. Following the filing of the OTSC, a presiding officer was appointed and notice of the action was published in the Pennsylvania Bulletin.

Lamboy failed to answer the Department's order to show cause or otherwise respond to the Administrative Hearings Office. On August 12, 2015, the Department filed a motion for default judgment and served Lamboy 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. The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter.

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

#### DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since Lamboy failed to answer the order to show cause or motion for default judgment. The order to show cause and motion advised as to the consequences of the failure to respond;<sup>2</sup> however, because of the language in the penalty provisions of applicable statutes, an

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<sup>2</sup> The OTSC warned the respondent that failure to answer in writing would result in the factual allegations being deemed admitted and that the Commissioner could enter an order imposing penalties.

analysis of the Commissioner's ability to impose penalties absent an evidentiary hearing is required.

There are no factual disputes in the present matter. All factual averments in the OTSC are deemed to be admitted under 1 Pa. Code § 35.37.

Under general rules of administrative procedure, a final order may be entered without hearing for an insufficient answer to the OTSC unless otherwise provided by statute. *See* 1 Pa. Code § 35.37 ("Mere general denials . . . will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings."). A respondent failing to file an answer within the time allowed shall be deemed in default. *Id.* Department regulations do not limit the Commissioner's ability to order a default judgment without a hearing, so any limitation must come, if at all, from a statute.

In order for an adjudication by a Commonwealth agency to be valid, a party must have a "reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. § 504 (Administrative Agency Law). Similarly, the statute specifically applicable to the present case<sup>3</sup> provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.<sup>4</sup> However, given that the respondent has not

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<sup>3</sup> Insurance Department Act, Act of May 17, 1921, P.L. 789 as amended (40 P.S. §§ 1 *et seq.*).

<sup>4</sup> The Insurance Department Act section mandates written notice of the nature of the alleged violations and requires that a hearing be fixed at least ten (10) days thereafter, and further provides that:

After the hearing or upon failure of the person to appear at the hearing, if a violation of this act is found, the commissioner may, in addition to any penalty which may be imposed by a court, impose any combination of the following deemed appropriate: . . .

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

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

While no court directly has addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Insurance Department Act, the caselaw supports such power. For example, in *United Healthcare Benefits Trust v. Insurance Commissioner*, 620 A.2d 81 (Pa. Cmwlth. 1993), the Court affirmed the Commissioner's grant of summary judgment for civil penalties despite the language contained in the applicable statutes which seemed to require a hearing. Also, the Court specifically has upheld a decision in which the Commissioner granted default judgment for an Unfair Insurance Practices Act (UIPA) 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 Chappel*, SC14-10-024 (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 his opportunity to be heard. When a respondent in an enforcement action is served with an order to show cause detailing the nature of the charges against him as well as the consequences of failing to respond, yet fails to answer the allegations or to answer a subsequent motion for default judgment, the Commissioner adopts the Commonwealth Court's reasoning that the respondent had an opportunity to be heard but has rejected the opportunity.

Additionally, there are no factual matters to address at a hearing. Since the factual allegations of the OTSC are deemed admitted, the determination by the Commissioner is a legal rather than a factual one. A hearing is not necessary for this type of determination. *See Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987); *United Healthcare, supra*. The Commissioner adjudicates the present case based upon the undisputed, admitted facts as alleged in the OTSC.

The facts include that Lamboy was a licensed non-resident insurance producer. [OTSC ¶ 1]. He was employed by Chase Investment Services Corporation and J.P. Morgan Chase Bank. [OTSC ¶ 4]. In 2012, the Financial Industry Regulatory Authority (FINRA) brought a regulatory action against Lamboy alleging a violation of FINRA's rules by converting approximately \$1,860 from three customers' bank accounts without permission. [OTSC ¶ 5]. FINRA obtained a default decision against him and permanently barred him from association with any FINRA member in any capacity. [OTSC ¶¶ 6-7].

In May 2013, South Dakota denied Lamboy's application for an insurance license due to his failure to disclose the FINRA action on his license application and for his failure to respond to South Dakota's requests for additional information and subsequently due to his lack of fitness and trustworthiness for his failure to report administrative action by another state on the application. [OTSC ¶¶ 8, 14]. Also in 2013, Kentucky, Connecticut, Virginia, Washington and Arkansas each revoked Lamboy's respective insurance licenses in those states for failure to report the FINRA action and/or other state actions, and in two instances also because of a failure to respond to the state agencies. [OTSC ¶¶ 9, 10, 11, 13 and 15]. Missouri refused to renew Lamboy's license due to his failure to disclose the FINRA, Connecticut, Kentucky, South Dakota and Virginia actions, and for making materially incorrect, misleading, incomplete or untrue statements on his application. [OTSC ¶ 12]. In 2014, Wyoming, New Hampshire, Texas, Delaware, Ohio and Kansas revoked Lamboy's licenses in those states for similar reasons for the other states' revocations in 2013. [OTSC ¶ 16, 17, 18, 19, 20 and 21].

Lamboy did not report any of the administrative actions against him to the Pennsylvania Insurance Department. [OTSC ¶ 22]. Beginning in May 2014, the Department attempted to contact Lamboy through mail, telephone and email but Lamboy failed to reply. [OTSC ¶¶ 23-28].

Lamboy was charged with six distinct violations of the Insurance Department Act: 1) revocation of insurance licenses by other government entities in violation of 40 P.S. § 310.11(8); 2) failing to report the administrative actions to the Pennsylvania Department in violation of 40 P.S. § 310.78(a); 3) fraudulent or dishonest practices, incompetence and untrustworthiness in violation of 40 P.S. § 310.11(7); 4) fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty in violation of 40 P.S. § 310,11(17); 5) demonstrated lack of worthiness to be an insurance agent pursuant to 40 P.S. §

310.11(20); and 6) violation of Pennsylvania insurance laws or regulations in 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 his licenses as well as imposing a penalty of up to \$5,000.00 per violation. 40 P.S. § 310.91.

Lamboy is liable for remedial action under count one (reciprocity). The revocation of his insurance licenses by Kentucky, Connecticut, Virginia, Washington, Arkansas, Wyoming, New Hampshire, Texas, Delaware, Ohio and Kansas constitutes a violation of 40 P.S. § 310.11(8), which prohibits a Pennsylvania licensee or applicant from having another government entity suspend or revoke a producer, financial services or equivalent license.

The respondent also is liable for remedial action under count two (failure to report). 40 P.S. § 310.78(a) requires a licensee to report to the Department any administrative action against the licensee in another jurisdiction or another agency in the Commonwealth within 30 days of final disposition. Lamboy failed to report any of the administrative actions against him and accordingly is liable under this count.

The respondent is liable under the third count (fraudulent or dishonest practices). By withdrawing funds from customers' bank accounts while an employee of the bank, Lamboy dishonestly defrauded the bank and its customers and violated 40 P.S. § 310.11(7).

The same conduct renders Lamboy liable under the fourth count (fraud or dishonest acts involving a breach of fiduciary duty). As an employee of the bank,

Lamboy was in a position of trust relative to the bank's customers and withdrawing their funds without the customers' consent violated 40 P.S. § 310.11(17).

Lamboy is liable under the fifth count (lack of worthiness). By all of his conduct in other states and Pennsylvania, the respondent has demonstrated a lack of general fitness, competence and reliability. Combined with his other conduct constituting separate violations of the statute, Lamboy's failure to respond to his profession's regulators/licensing authorities demonstrates a complete lack of professional fitness and reliability. This violates 40 P.S. § 310.11(20) and merits remedial action.

Finally, Lamboy is liable under count six (violation of laws, regulations, subpoenas and orders). The respondent's conduct violated five Pennsylvania statutory provisions as contained in the first five counts. The respondent is liable for violating 40 P.S. § 310.11(2).

For each of the six counts, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his licenses as well as imposing a penalty of up to \$5,000.00 per violation. 40 P.S. § 310.91. In the present case, the admitted facts support sanctions for each of the charges against the respondent. With the respondent liable for remedial action under each of these charges, the appropriate action must be established for each one.

## PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by the respondent's conduct. 40 P.S. § 310.91(d)(1). Each action violating a provision of the statute also subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. § 310.91(d)(2). The respondent may also be ordered to cease and desist from prohibited conduct. 40 P.S. § 310.91(d)(3). Finally, the Commissioner may impose any other conditions deemed appropriate. 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).

Michael Lamboy appears to have withdrawn from the insurance profession. In the South Dakota, Connecticut, Washington, Wyoming and New Hampshire actions, as well as in Pennsylvania, the respondent failed to respond to inquiries from the regulator and subsequently to the enforcement actions. The initial conduct precipitating the FINRA action, converting bank customer funds from the customers' accounts, was serious but apparently did not involve the business of insurance. However, Lamboy's failure to respond to the insurance regulator in multiple states including Pennsylvania evidences an abandonment of the insurance profession in addition to constituting violations of those states' insurance laws.

Lamboy compounded his initial conduct by failing to address it in all of the states, and by violating Pennsylvania law with multiple acts of omission. Cumulatively, the seriousness of his conduct has multiplied with each failure to act, culminating in his failure to respond to this enforcement action. Licensure provides a bulwark to protect the insurance buying public, and the respondent's repeated and consistent failure to respond

to licensing authorities has eroded this protection. Lamboy exhibited disdain towards the regulators and the respondent's duties as a licensee. The revocation orders by corresponding regulators in other states merit revocation in Pennsylvania as a violation of 40 P.S. § 310.11(8).

The respondent's failure to report the various state actions to the Pennsylvania regulator also breached the respondent's duties to the Commonwealth and to the public. Whether a conscious concealment, negligent nondisclosure or abandonment of the profession, the failure to disclose the actions hampered the Insurance Department's ability to regulate the profession and protect insurance consumers. This nondisclosure goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the licensing authority and the insurance buying public.

In addition, Lamboy's failures undermine the confidence placed by insurance consumers in the respondent as well as in the profession. Applicants and insureds entrust financial and personal matters to the producer, and rely upon the producer's integrity. The respondent's actions violated the laws of this Commonwealth and thus damaged the trust consumers place in their producers. The respondent's failure to comply with applicable laws and codes of conduct in multiple states is an aggravating factor, as is his failure to respond to this enforcement action.

The respondent did not appear to offer mitigating evidence or arguments and the only mitigating facts appear in the admitted averments of the OTSC. While Lamboy's initial conduct relative to the bank customers is serious, it did not involve Pennsylvania insurance consumers. Lamboy's course of conduct relative to Pennsylvania did not include an affirmative misrepresentation such as by disclaiming other enforcement actions on an application, although such misrepresentations were made in South Dakota, Kentucky, Missouri, Wyoming, New Hampshire and Ohio. The Department did not

assert any history of discipline in Pennsylvania. Other than the harm to Pennsylvania consumers and the profession generally, the respondent's charged and admitted conduct does not appear to have inflicted personal or financial harm on any particular Pennsylvania individual. A motivation or explanation for Lamboy's initial conduct and his subsequent conduct in a multitude of states remains a mystery, and thus is neither a mitigating nor aggravating factor. However, the cumulative national impact of the respondent's conduct is a substantial aggravating factor.

The Department in its Order to Show Cause requested revocation of the respondent's insurance producer licenses with a bar for future licensure, a civil penalty of \$5,000 for each violation, an order to cease and desist from violating laws of the Commonwealth and a 5-year minimum period of supervision should the respondent become relicensed. In its motion for default judgment, the Department requested: entry of default judgment; deeming facts and documents in the OTSC admitted and authentic; ordering the respondent to cease and desist from the activities alleged in the OTSC; revoking the respondent's insurance producer licenses; imposing a civil penalty of up to \$5,000 per violation; and granting other appropriate relief.

The motion for default judgment and deemed admission is GRANTED. Considering the facts in this matter, the applicable law, the seriousness of the conduct and the 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:  
: :  
: Sections 310.11(2), (7), (8), (17), (20) and  
**Michael Lamboy** : 310.78(a) of the Insurance Department  
1758 Pacific Street : Act of 1921, P.L. 789, No. 285, *as*  
Brooklyn, New York 11233-3506 : *amended* (40 P.S. §§ 40 P.S. 310.11(2),  
Respondent : (7), (8), (17), (20) and 310.78(a)).  
: :  
: Docket No. SC15-05-002

ORDER

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

1. Michael Lamboy shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses of Michael Lamboy **ARE REVOKED** for a minimum of five years pursuant to 40 P.S. 310.91 for each of Counts one, two, five and six, with these revocations to run **concurrently** with each other. The insurance licenses of Michael Lamboy **ARE REVOKED** for a minimum of five years for each of Counts three and four, with these revocations to run **concurrently** with each other but **consecutively** to the minimum period of revocation for Counts one, two, five and six for a total minimum period of revocation of **ten (10) years**. Additionally, Michael Lamboy is prohibited from applying for a license to act as an agent, broker or producer in this Commonwealth for a minimum of ten (10) years. Michael Lamboy is also prohibited from applying to renew any license previously held by him in this Commonwealth for a

minimum of ten (10) years.

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

- a. Count one: \$1,000
- b. Count two: \$5,000
- c. Count three: \$1,000
- d. Count four: \$1,000
- e. Count five: \$3,000
- f. Count six: \$5,000

for a total of Sixteen Thousand Dollars (\$16,000). 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 insurance license may be issued or renewed for the respondent until the civil penalty owed by him is paid in full.

4. 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.

5. Michael Lamboy shall have no right to prior notice of a suspension imposed pursuant to paragraph 4 of this order, but will be entitled to a hearing upon

written request received by the Department no later than thirty (30) days after the date the Department mailed to the respondent by certified mail, return receipt requested, notification of the suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of the respondent's written request.

6. At the hearing described in paragraph 5 of this order, the respondent shall have the burden of establishing that he is worthy of an insurance license.

7. In the event that a respondent's licenses are suspended pursuant to paragraph 4 of this order, and the respondent either fails to request a hearing within thirty (30) days or at the hearing fails to establish that the respondent is worthy of a license, the respondent's suspended licenses shall be revoked.

8. This order is effective immediately.



TERESA D. MILLER  
Insurance Commissioner