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INSURANCE DEPARTMENT

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DEPT. HEADQUARTERS

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
<b>Michael Francis Napadow and</b>	:	40 P.S. §§ 47, 1171.4 and 1171.5
<b>Nations Hazard Insurance Agency,</b>	:	
<b>d/b/a Nation's Hazard Insurance</b>	:	
<b>Company and "Hartford Casualty</b>	:	
<b>Insurance"</b>	:	
129 Centerfield Parkway	:	
West Dundee, IL 60118-9182	:	
and	:	
<b>"Hartford Casualty Insurance"</b>	:	
180 South Western Avenue, PMB 273	:	
Carpentersville, IL 60110	:	
	:	
Respondents	:	Docket No. SC04-08-041

**ADJUDICATION AND ORDER**

AND NOW, this 22<sup>nd</sup> day of November, 2004, M. Diane Koken, 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 September 8, 2004 directed to Michael Francis Napadow and Nations Hazard Insurance Agency, d/b/a Nation's Hazard Insurance Company and "Hartford Casualty Insurance" ("respondents"). The OTSC

DATE MAILED: November 22, 2004

alleged that respondents violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that respondents solicited, placed coverage for and collected premium from Pennsylvania consumers on behalf of an unlicensed entity.

The OTSC advised respondents to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised them that the answer must specifically admit or deny each of the factual allegations made in the OTSC. The respondents were advised to set forth the facts and state concisely the matters of law upon which they rely. The OTSC also advised the respondents of the consequences of failing to answer. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on respondents by first class mail.

The respondents failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On October 26, 2004, the Department filed a motion for default judgment and served respondents in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent to their last known business address as kept on file in the Department and that the document was not returned to the Department as undeliverable. The respondents have not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter.

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

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<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 47, 117.4 and 1171.5.

## DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing because respondents failed to answer the order to show cause or motion for default judgment. The order to show cause and motion advised as to the consequences of the failure to respond;<sup>2</sup> however, because of the language in the penalty provisions of applicable statutes, an analysis of the Commissioner's ability to impose penalties absent an evidentiary hearing is required.

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

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

In order for an adjudication by a Commonwealth agency to be valid, a party must have a "reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. § 504 (Administrative Agency Law). Similarly, the statute specifically applicable to the present

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<sup>2</sup> The OTSC warned the respondents 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.

matter<sup>3</sup> provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. See 40 P.S. § 47.<sup>4</sup> However, given that the respondents have not answered the order to show cause and given current case law, these hearing procedures are inapplicable.

While no court has directly addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Insurance Department Act, the case law 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 2 Pa.C.S. § 504 and 40 P.S. § 47. 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 the deemed admission of factual averments presented no factual issues to be resolved at hearing.

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<sup>3</sup> Insurance Department Act, Act of May 17, 1921, P.L. 789 as amended (40 P.S. §§ 1-321).

<sup>4</sup> Section 47 as amended simply requires a hearing in accordance with the procedures set out in the Administrative Agency Law. 2 Pa. C.S. § 101 *et seq.*

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 Kozubal*, P93-08-13 (1997); *In re Phelps*, P95-09-007 (1997); *In re Taylor*, SC96-11-034 (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). 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 respondents in an enforcement action are served with an order to show cause detailing the nature of the charges against them as well as the consequences of failing to respond, yet fail to answer the allegations or to answer a subsequent motion for default judgment, the Commissioner adopts the Commonwealth Court's reasoning that the respondents had an opportunity to be heard but have rejected the opportunity.

Additionally, no factual matters need be addressed 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 respondents conducted the business of insurance in Pennsylvania without ever possessing licenses to act either as agents, brokers, producers and/or companies in the Commonwealth. [OTSC ¶ 4]. Respondent Napadow, trading as the Nation's Hazard Insurance Company, has acted as an insurance company, collecting premiums, issuing policies and advertising insurance and insurance related products in the Commonwealth. [OTSC ¶ 5]. These respondents have never been licensed or

otherwise authorized to conduct insurance company business in Pennsylvania. [OTSC ¶¶ 4, 5]. Nevertheless, as unlicensed entities, they solicited and/or issued insurance certificates for errors and omissions coverage for home inspectors to at least four Pennsylvania residents. [OTSC ¶ 6]. Respondents continue to solicit and issue errors and omissions policies to consumers throughout the United States. [OTSC ¶ 19]. Respondent Napadow has also operated under the name "Hartford Casualty Insurance" which is not affiliated with the legitimate insurer, The Hartford Group. [OTSC ¶18]. "Hartford Casualty Insurance" employs a website which is actually registered to Napslo Holdings and Michael Napadow and which illegally uses The Hartford Group's registered trademark. [*Id.*].

Other states have taken action against the respondents for activities similar to those described above. On November 1, 2003, the State of Washington issued a consent order against Nation's Hazard Insurance Company for marketing fraudulent errors and omissions policies as well as general liability insurance policies to home inspectors and realtors. [OTSC ¶ 17]. Cease and Desists Orders have been issued against respondents in Illinois and Oregon. [OTSC ¶¶ 20, 21].

As a result of their activities, the respondents are charged with two distinct violations of the Insurance Department Act: 1) acting as an insurance company, association or exchange doing insurance business in Pennsylvania without the required certificate of authority and 2) negotiating or soliciting for the sale of insurance policies without the required certificate of authority, and collecting premiums and forwarding them to an unauthorized company. The Department also charges the respondents with violations of the Unfair Insurance Practices Act for making untrue and deceptive representations about their status in Pennsylvania and about the insurance products they sold. 40 P.S. §§ 1171.4 and 1171.5.

For each of these charges, the Commissioner has authority to impose remedial action against the respondents. Respondents are liable for remedial action under 40 P.S. § 47 for engaging in the business of insurance in a variety of ways without the proper certificates of authority. Respondents have also engaged in unfair and deceptive methods of competition and deceptive acts and practices as defined in 40 P.S. §§ 1171.4 and 1171.5.

Penalties may be imposed when any insurance company, association or exchange does insurance business within the Commonwealth without a certificate of authority. 40 P.S. § 47(a). Penalties may also be imposed on any person who negotiates or solicits any policy of insurance in the Commonwealth and who collects or forwards premium, and delivers policies on behalf of an unauthorized entity. 40 P.S. § 47(b).

Little discussion is required. The respondents, without licensure have solicited insurance policy applications, collected premiums, issued insurance contracts, and remitted premiums to an insurance company without a certificate of authority to transact insurance business in Pennsylvania. Any insurance entity "doing an insurance business within this Commonwealth without a certificate of authority as required by [the Insurance Department Act] shall be required to pay a civil penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each offense . . . . 40 P.S. § 47(a). Any person "negotiating or soliciting any policy of insurance. . .collecting or forwarding premiums. . .for any company. . .to which a certificate of authority has not been granted . . .shall be required to pay a civil penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each offense. 40 P.S. § 47(b).

Furthermore, the respondents have held themselves out as doing legitimate business in Pennsylvania, selling real errors and omissions policies. They have also set

out to deceive home inspectors into believing that an entity called "Hartford Casualty Insurance" is affiliated with the legitimate insurer, The Hartford Group. It is not. Respondents' illegal use of The Hartford Group's registered trademark on a website registered to Napslo Holdings and Michael Napadow is egregiously deceptive. These actions constitute violations of the Unfair Insurance Practices Act and subject the respondents to the penalties found therein. 40 P.S. § 1171.9, 1171.11(1) and 1171.11(2).

A Commissioner is given broad discretion in imposing penalties for violations. *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). In determining the appropriate penalty for the respondents in the case the Commissioner has considered the nature of the offenses, the aggravating factors and the lack of mitigating factors. Also determinative is the respondents' flagrant lack of regard for the laws of several states, and their failure to respond in Pennsylvania when given an opportunity to explain, clarify or correct their conduct as alleged in these proceedings. No facts mitigate the seriousness of the violations in the present case. To the contrary, this case presents substantial aggravating factors.

Extremely troubling is the respondents' total disregard for law and authority. The respondents have ignored Pennsylvania statutes requiring certificates of authority for participating in the insurance business in the Commonwealth and have practiced a variety of deceptive practices on unsuspecting insurance buyers in Pennsylvania. When the respondents in this case chose to profit from Pennsylvania consumers, they elected to sell their products in a regulated marketplace. Each consumer justifiably expects that the seller has complied with the laws regulating the marketplace. Each consumer buying an insurance product pays for the promise of future security, and depends on the regulator to monitor the future solvency of the entity making the promise. Each consumer also depends on the regulator to monitor products and practices.



Licensure is the essential bulwark between honest, legal and professionally competent activity and fraudulent activity. Through licensure, the Commissioner verifies that the applicant conforms to protective laws and regulations. 40 P.S. § 46(a). A licensee subjects itself to continuing compliance with all requirements. [*Id.*]. Licensure is the mechanism by which the regulator monitors products, practices and solvency of insurers profiting from Pennsylvania consumers. The Commissioner has consistently found unlicensed activity to be among the most serious of violations. See *International Water Safety Foundation et al.* SC02-12-027 (2003); *In re Abate*, P92-12-18 (1999); *In re Kozubal*, P93-08-13 (1997).

The Department in its Motion for default judgment requested imposition of a civil penalty of the maximum allowable for each offense for each respondent: ten thousand dollars (\$10,000.00) for each of the ten (10) violations by respondent Napadow subject to the penalties listed in 40 P.S. § 47; ten thousand (\$10,000.00) for each of the six (6) violations by respondent Nation's Hazard subject to the penalties listed in 40 P.S. § 47; and ten thousand (\$10,000.00) for the one (1) violation by Napadow and Hartford Casualty jointly acting in violation of the act and subject to the penalty listed in 40 P.S. § 47. Considering the nature of the offenses, the aggravating factors and the lack of mitigating factors, the Department's requested maximum civil penalties under 40 P.S. § 47 will be imposed for all offenses.

Additionally, although the Department did not charge respondents with a specific number of violations of 40 P.S. § 1171.5, it is clear from the OTSC that respondents intentionally presented untrue, deceptive and misleading insurance information to at least four Pennsylvania residents. Thus a five thousand dollar (\$5,000.00) will be imposed on each respondent for each of the four known violations of 40 P.S. § 1171.5. The Department also sought a cease and desist order and restitution under 40 P.S. § 1171.4. Each of these requests will also be granted.

The facts in this case, the applicable law, the seriousness of the conduct, the aggravating circumstances and lack of mitigation, all lead to the penalties imposed in the accompanying order.

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
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IN RE: : ALLEGED VIOLATIONS:  
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180 South Western Avenue, PMB 273 : :  
Carpentersville, IL 60110 : :  
: :  
Respondents : Docket No. SC04-08-041

ORDER

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

1. Michael Francis Napadow and Nations Hazard Insurance Agency, d/b/a Nation's Hazard Insurance Company and "Hartford Casualty Insurance" shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. Michael Francis Napadow and Nations Hazard Insurance Agency, d/b/a Nation's Hazard Insurance Company and "Hartford Casualty Insurance" shall pay a civil

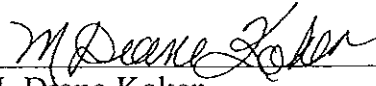
penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

- a. Michael Francis Napadow: \$120,000.00
- b. Nation's Hazard: \$ 80,000.00
- c. Michael Francis Napadow and Hartford Casualty Insurance jointly and severally: \$ 30,000.00

Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Harbert, Administrative Assistant, Bureau of Enforcement, 1321 Strawberry Square, Harrisburg, Pennsylvania 17120.

3. Michael Francis Napadow and Nations Hazard Insurance Agency, d/b/a Nation's Hazard Insurance Company and "Hartford Casualty Insurance" shall also pay restitution in full to any and all Pennsylvania residents from whom they solicited and accepted premium payments.

4. This order is effective immediately.

  
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M. Drane Koken  
Insurance Commissioner