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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:
: :
Michael D. Newton, Jr. : Section 604 of the Insurance Department
314 Hays Avenue, Apt 2 : Act of 1921, P.L. 789, No. 285, *as*
Pittsburgh, PA 15210 : *amended* (40 P.S. § 234).
: :
Respondent : Sections 37.46, 37.47 and 37.48 of the
: Insurance Department Regulations (31 Pa.
: Code §§ 37.46, 37.47 and 37.48)
: :
: Docket No. SC04-07-005

ADJUDICATION AND ORDER

AND NOW, this 22nd 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 July 7, 2004 directed to Michael D. Newton, Jr. ("Newton" or "the respondent"). The OTSC alleged that Newton violated the Agents and Brokers article of the Insurance Department Act,¹ the Unfair Insurance Practices Act

¹ Act of May 17, 1921, P.L. 789, No 285, Article VI, *repealed*, Act of December 6, 2002, P.L. 1183, No. 147, effective in 180 days. Essentially all of Newton's conduct at issue took place prior to the effective date of Act 147 and accordingly is governed by the repealed sections (formerly 40 P.S. §§ 234, 279). Act 147 reenacted those sections in material respect. See 40 P.S. §§ 310.6, 310.91.

DATE MAILED: November 22, 2004

("UIPA")² and Department regulations.³ Specifically, the OTSC alleged that Newton, a licensed insurance agent, on multiple occasions accepted applications for insurance but failed to remit premium payments and that he also made misrepresentations about the status of purported insurance policies. Count I alleged violations of the Insurance Department Act while Count II asserted that Newton violated the UIPA.

The OTSC advised Newton 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. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on Newton by first class mail.

On July 26, 2004, counsel entered an appearance for Newton and requested a continuance to prepare a defense and explore the potential for settlement. The request was not opposed by the Department and the respondent was granted until August 19, 2004 to respond to the OTSC. On August 16, 2003, counsel for the respondent filed a motion to withdraw from representation because of irreconcilable differences with his client. On August 20, 2004, the Department responded to the motion and did not object to withdrawal of counsel except to the extent that it would delay the progression of the case.

On August 23, 2004, the presiding officer granted the withdrawal motion and *sua sponte* allowed the respondent until August 31, 2004 to answer the averments in the OTSC. That order also conspicuously warned Newton that failure to answer the

² Act of July 22, 1974, P.L. 589, No. 205 (40 P.S. §§ 1171.1-11171.15).

³ 31 Pa. Code §§ 37.46, 37.47 and 37.48.

averments in the OTSC by that date would cause the averments to be deemed admitted, the respondent to be in default and this matter to be heard on briefs unless the Department requested an evidentiary hearing. When Newton failed to answer the OTSC and the Department did not request a hearing, a briefing schedule was established. Only the Department filed a brief and this matter is now ready for adjudication. This adjudication and order addresses the Department's prayers for relief in the OTSC. Factual findings and some legal conclusions are contained within the body of this adjudication.

DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, because Newton failed to answer the order to show cause or respond to the presiding officer's directive. The OTSC and the order advised as to the consequences of the failure to respond;⁴ 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

⁴ 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. The order informed Newton that if he did not answer the OTSC's averments, the averments would be deemed admitted, the respondent would be deemed in default and the matter would be decided on briefs.

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 statutes specifically applicable to the present matter provide for hearing procedures prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91; former 40 P.S. § 279; 40 P.S. § 1171.8.⁵ However, given that the respondent has not answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

The Commonwealth Court specifically upheld a decision in which the Commissioner granted default judgment for a UIPA violation. *Zimmerman v. Foster*, 618 A.2d 1105 (Pa. Cmwlth. 1992). 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. However, *Zimmerman* and other 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 2 Pa.C.S. § 504 and 40 P.S. § 47.⁶

In a case involving another agency, the Commonwealth Court upheld summary judgment imposing discipline issued by a commission despite the fact that the respondent

⁵ The applicable statutes each mandate: 1) written notice of the nature of the alleged violations; 2) that a hearing be fixed upon specified notice; and 3) procedures applicable to the hearing. 40 P.S. § 310.91; former 40 P.S. § 279; 40 P.S. § 1171.8.

⁶ The operative language concerning hearing procedures was identical in material respects to the language in the other Insurance Department Act sections.

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 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 and the substantive statutes 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 this 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 respond to an order directing the respondent to answer the OTSC, 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. An evidentiary 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*. Thus, in the present case, the alleged violations of the Insurance Department Act and UIPA do not require an evidentiary hearing. The Commissioner adjudicates the present case based upon the undisputed, admitted facts as alleged in the OTSC.

The facts include that Newton has been a resident insurance agent licensed by the Department. OTSC ¶ 2. He was employed by or otherwise associated with the J. Catherine Newton Agency ("the Agency"). OTSC ¶ 3. On multiple occasions, Newton took applications for insurance and failed to forward those applications to the insurance carriers, failed to remit down payment and premium payments to the insurance carriers, and repeatedly made misrepresentations to consumers concerning the status of applications, policies and premium payments. OTSC ¶ 4. This conduct took place over a period of at least two and a half years. OTSC ¶¶ 4a-4s. The nineteen specific courses of conduct which came to the Department's attention and included in its order to show cause are as follows:

On or about March 19, 2001, Newton met with Embra Askew at the Agency and accepted \$131 for a down payment for an automobile insurance policy purportedly placed with Superior/IGF Insurance Company. Newton gave Askew a Financial Responsibility Card. Askew never received a policy or bill and made no other payments. On a number of occasions, Askew asked Newton why she wasn't getting a policy or bills, and Newton told her that she had insurance. On January 19, 2002, Askew was involved in an automobile accident. After filing a claim with Superior/IGF, she was told that there was no record of her being insured. Although Askew received a check from the Agency in the amount of \$131 as a refund of her down payment, she incurred approximately \$455 in medical bills from the accident, and approximately \$4,579.09 in charges for

towing, storing and the repair of her automobile. She also has been pursued by collections agents for the State Farm Insurance Company for the \$4,578.09 State Farm Insurance Company paid to repair the automobile that Askew struck. OTSC ¶ 4a.

On or about November 11, 2002, Joseph Novi went to the Agency and met with Newton regarding obtaining a lower rate than offered by his current insurer, Progressive Casualty Insurance Company ("Progressive"). Newton accepted \$128 from Novi for a policy purportedly placed with Capital Insurance Company ("Capital Insurance"). Newton gave Novi a Financial Responsibility Card and Binder. In December of 2002, Novi called Newton because he did not get a Capital Insurance policy and Newton told him the application was rejected because of bad credit. Capital Insurance never received Novi's application or down payment. OTSC ¶ 4b.

On or about December 6, 2002, Newton met with Brian Wilkins at the Agency and accepted \$371 for a policy purportedly placed with Capital Insurance. Newton gave Wilkins a Financial Responsibility Card and Binder. When Wilkins didn't get a policy, he assumed he was denied insurance and returned the car. Although the \$371 was eventually returned to him by the Agency, it was never forwarded to Capital Insurance. OTSC ¶ 4c.

On or about February 12, 2003, Newton met with Robert Santoriello at the Agency and accepted \$378 for a down payment for a policy purportedly placed with Capital Insurance. Newton gave Wilkins a Temporary Financial Responsibility Card and Binder. In March of 2003, Santoriello went back to the Agency and got another Temporary Financial Responsibility Card. In May of 2003, Santoriello went back to the Agency and asked why he had not received a

policy and was told that Newton no longer worked at the Agency and that any problems he had with Newton "were between him and Newton." OTSC ¶ 4d.

On or about March 23, 2003, Newton met with Lauren Ransom at the Agency and accepted \$270 from Ransom for a policy purportedly placed with Cincinnati Equitable Insurance Company. Newton gave Ransom a Financial Responsibility Card, and a receipt on an Agency business card. When she did not get a policy she called Newton, who told her that she was covered. Between March and August of 2003, Ransom's boyfriend made a total of \$1,610 in premium payments to Newton. At the end of September 2003, Ransom received an unsigned Progressive Application in her name in the mail. Ransom called Newton, who told her she had been placed with Progressive all along and to "forget about Cincinnati." Ransom called Progressive and asked if there was a policy in her name, and was told that they just received an uploaded application from the Agency. Cincinnati Equitable Insurance Company does not hold a Certificate of Authority to transact the business of insurance in Pennsylvania, and neither Newton nor Janine Catherine Newton were ever appointed by the Cincinnati Equitable Insurance Company. OTSC ¶ 4e.

On or about April 3, 2003, Newton met with Gloria O'Brien at the Agency and accepted \$33.30 for a policy purportedly placed with Met Life Home & Auto Insurance Company ("Met Life"). O'Brien was subsequently told by Met Life that neither the application nor the payment was received. Met Life placed her with another agent. O'Brien subsequently stopped payment on the check. OTSC ¶ 4f.

On or about July 2, 2003, Newton met with John Chapman at the Agency, and accepted payments totaling \$508 from Chapman, which were never forwarded

to Capital Insurance, but instead deposited into the Agency account. Although the Agency subsequently refunded \$347, Chapman is still due \$161. OTSC ¶ 4g.

On or about April 15, 2003, Newton met with Steven Turner, president of ABC Cleaning, Incorporated ("ABC") at the Agency regarding a commercial bond. Newton said he would place the bond with CNA Surety and the premium would be \$570. Turner attempted to give Newton a company check for the premium but Newton insisted on cash. Turner refused and they eventually agreed on a money order. Newton was told that without the bond, ABC couldn't pursue contracts. After not receiving the bond, Turner and/or other ABC employees called or visited the Agency. Newton told them that "it takes time" and "don't worry you're covered." An ABC employee called CNA and was told that no bond had ever been placed. CNA Surety does not hold a Certificate of Authority to transact the business of insurance in Pennsylvania. Neither Newton nor the Agency were ever appointed with CNA Surety. OTSC ¶ 4h.

On or about April 21, 2003, Newton met with Raymond Schoenberger at the Agency about automobile insurance. Newton completed a quote with Capital Insurance at \$1,059 with a down payment of \$295. Although Newton did not collect any money from Schoenberger, Newton gave Schoenberger a Capital Insurance Financial Responsibility Card and Binder. Schoenberger thought he had insurance through Capital Insurance, and called Capital Insurance to report a claim on August 5, 2003. He was told that Capital Insurance had no record of receiving an application or payment for his policy. After receiving a copy of the Financial Responsibility Card and Binder, Capital Insurance issued the policy with an effective date of June 10, 2003 and paid the claim. OTSC ¶ 4i.

On or about May 25, 2003, Newton met with Marilyn Rush at the Agency

to obtain an automobile insurance policy for herself and her daughter. Rush was given a Met Life Financial Responsibility Card. In August of 2003, Rush's premium check was returned to her by Met Life, which indicated that they had no record of Rush or her daughter. OTSC ¶ 4j.

Nia Ellis had an automobile insurance policy through the Agency and Newton with Capital Insurance. In July of 2003, she received a cancellation notice from Capital for non-payment. On or about July 26, 2003, Ellis went to the Agency and gave Newton \$177 in cash to keep the policy from canceling. Newton gave her a handwritten dated receipt on the back of an Agency business card. In August of 2003, Ellis called Capital Insurance to confirm her policy was still in force and was told that the policy canceled on August 11, 2003, for non-payment. Ellis sent Capital Insurance a copy of the receipt and the policy was reinstated. Ellis received a check from the Agency in the amount of \$177 in October of 2003. OTSC ¶ 4k.

In December 2003, Matt Galbraith called the Agency and spoke to Newton regarding commercial automobile insurance for his business. On or about December 13, 2003, Galbraith signed insurance documents and gave Newton a check in the amount of \$1,218.50 for the insurance. On or about December 14, 2003, Galbraith received a copy of an ACORD Insurance Binder (PA Assigned Risk Plan) via facsimile. In early January 2004, when he hadn't received a policy, Galbraith called the Agency and spoke to Newton's sister who told him Newton quit and no longer works there. The PA Assigned Risk plan never received the application. OTSC ¶ 4l.

On or about September 6, 2002, Glen A. Willard met with Newton at the Agency in regard to liability and workers compensation insurance for his

contracting business. Willard paid Newton a total of \$1,514.68 in the form of 2 checks. Newton told Willard to leave the payee line of the checks blank. On November 11, 2002, Willard received an ACORD Binder from Newton via facsimile, which stated that he was insured through the Whitehall Insurance Company and the State Workers Insurance Fund (SWIF). In October 2002, and again in April 2003, one of Willard's employees suffered on the job injuries. Because Willard did not have a policy, he sent the employees' bills to Newton who did nothing with them. Willard's employee told him that the bills had gone unpaid and that the employee was getting collection notices. In February of 2004, after many unanswered calls to the Agency, Willard spoke to Janine Catherine Newton, who told him that his premiums were "stolen" and no coverage was ever placed. Willard paid \$1,039.58 in medical bills for his employee. OTSC ¶ 4m.

On or about March 31, 2003, Willard met with Newton regarding motorcycle insurance. Willard gave Newton a check in the amount of \$419.68. Willard again left the payee line blank at Newton's direction. On April 9, 2003, Newton faxed him a Foremost Insurance Company Financial Responsibility Card for the motorcycle. The coverage was never placed. Willard subsequently received a check in the amount of \$627.68 from the Agency. Neither Newton nor the Agency was appointed with the Foremost Insurance Company. OTSC ¶ 4n.

In October of 2002, Cindy Stillwagon and her husband went to the Agency for homeowners insurance and met with Newton. Newton completed a MetLife binder for the coverage, and told the couple that the premium would be \$741 for the year, which the Stillwagons paid in full with their credit card. In May of 2003, she got a letter from her mortgage company advising her that her policy was to cancel on May 27, 2003. Newton informed her several times that she had insurance. Met Life advised Stillwagon that they received only the \$396 down

payment for the policy. OTSC ¶ 4o.

On or about March 12, 2003, Shelly Frinsco met with Newton at the Agency regarding automobile insurance. Frinsco gave Newton a down payment of \$182 and was told that Newton would place her with Capital Insurance. Frinsco paid Newton two additional checks for \$96 and \$104. In April 2003, she received an invoice for \$142 from Capital Insurance and a notice telling her the policy would cancel for nonpayment. She took them to Newton, who told her not to worry about it. Capital Insurance subsequently told Frinsco that only the initial \$182 down payment was received. The Agency subsequently reimbursed her \$200. OTSC ¶ 4p.

On or about April 7, 2003, Billie Jo Lindeman met with Newton at the Agency regarding automobile insurance. Newton said he would place her with Capital Insurance, and Lindeman gave Newton check in the amount of \$267. Lindeman called Newton when she didn't receive a policy from Capital Insurance. On or about May 21, 2003, Lindeman went to the Agency and Newton told her to make another check payable to him as he had already paid Capital Insurance for her. Lindeman gave Newton another check in the amount of \$401, and Newton gave her a Capital Insurance Financial Responsibility Card. On July 17, 2003, Lindeman issued another check in the amount of \$236.37 directly to Newton. All checks were endorsed and cashed by Newton. The policy was never placed, and as a result of the break in coverage, PennDOT suspended the registrations for her two vehicles. In April of 2004, the Agency issued a check to Lindeman in the amount of \$879.93 for the policy that was never placed. OTSC ¶ 4q.

On or about April 25, 2003, Lindeman met with Newton because she was considering buying a house. Newton completed paperwork, but Lindeman did not

sign an application. She gave Newton a check for \$415.70 down payment, but made it clear to Newton not to submit the paperwork until she contacted him. On April 8, 2003, Lindeman went to the Agency to see Newton and told him she decided not to buy the house. Newton told her he'd already sent the application to Personal Surplus Lines, Inc. and the house was insured through Lloyds of London. She told Newton she wanted her money refunded, but Newton said it was too late. OTSC ¶ 4r.

On or about June 26, 2003, David Zusinas met with Newton at the Agency about auto insurance. Newton said he would place him with Bristol West Insurance Company, and prepared an ACORD binder showing a \$500.00 deductible. Newton gave Zusinas and Bristol West an incorrect premium amount, an incorrect physical damage coverage deductible, and incorrect information regarding a prior carrier. As a result, the premium was higher than Zusinas expected, and Zusinas was forced to go to another agent who canceled the policy. OTSC ¶ 4s.

From these circumstances, it easily is inferred that Newton retained or converted monies intended as premium payments by at least fifteen of the nineteen consumers identified in this case. In one instance payment on the check was stopped by the applicant; three other applicants received partial return of their premium; and two other applicants received full return of the premium they previously had paid. All of these applicants were deprived of their money permanently or for a period of time, and for all except the stopped check the respondent enjoyed the benefit of the monies.

Each of the nineteen courses of conduct involved misrepresentations by Newton concerning the status of coverage, the processing of application materials, the disposition of monies received and/or the ability of companies to write policies in Pennsylvania.

Newton's handling of these cases resulted in a failure or loss of coverage in at least fifteen of them. Three individuals suffered claim losses at a time when coverage was not in place. One had her vehicle registration suspended. At least two suffered financial harm when claims were not covered. In other cases, companies were forced to assume coverage when they had not been receiving premium payments, and in at least one instance was forced to cover an intervening loss.

The Department charged Newton with violating the Insurance Department Act and the UIPA. Under the Insurance Department Act, he was charged with demonstrating a lack of worthiness to be an insurance agent. For the UIPA, he was charged with committing unfair or deceptive practices pursuant to 40 P.S. §§ 1171.4, 1171.5(a)(2) and 1171.5(a)(12).

For each of these charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his certificate of qualification. Section 639 of the Insurance Department Act (Former 40 P.S. § 279) provided for the imposition of these remedial actions "upon satisfactory evidence of such conduct that would disqualify the agent or broker from initial issuance of a certificate of qualification under section 604 . . ." Former 40 P.S. § 279(a). Section 604⁷ authorizes the issuance of a certificate of qualification for an insurance agent when the Insurance Department "is satisfied that the applicant is worthy" of such certification. Furthermore, "[o]nce a certificate is issued, the certificate holder is presumed worthy to secure additional specific lines of authority under the certificate unless the department files an action to suspend or revoke or refuse to renew the certificate pursuant to section 639." Former 40 P.S. § 234.

In other words, under the repealed sections applicable to Newton's conduct prior

⁷ Former 40 P.S. § 234.

to June 2003, penalties not only may be imposed for violating specific provisions;⁸ they may be imposed if the agent or broker is determined to be untrustworthy or professionally unfit. Since Act 147 of 2002 became effective on June 4, 2003, specifically-prohibited acts have included conduct demonstrating “a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.” 40 P.S. § 310.11(20). Also, a licensee is prohibited from using “fraudulent, coercive or dishonest practices or [demonstrating] incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere.” 40 P.S. § 310.11(7). Thus, under both the former and current statute, a licensee is subject to sanctions for conduct evidencing unworthiness. In the present case, the admitted facts support sanctions for the first count (worthiness).

Newton has demonstrated that he is extraordinarily unworthy of licensure. By collecting premiums without forwarding them to the company, failing to submit applications, writing applications for unlicensed entities, retaining monies intended to purchase insurance and misrepresenting the status of applications and policies, Newton demonstrated a complete lack of trustworthiness necessary in the profession. Newton’s failure to submit applications and remit funds demonstrates that he cannot be trusted with the financial affairs of consumers and companies alike. He therefore is unfit to hold an insurance license.

In addition, Newton is liable under the second count for violating the UIPA. Each time he led the consumer to believe an application and down payment was being submitted, he committed a deceptive, untrue, misleading and fraudulent act proscribed by

⁸ See, e.g., former 40 P.S. §§ 253 (dealing with unlicensed entity), 271 (unlicensed activity), 272 (larceny), 273 (breaching fiduciary duty).

Section 4, Section 5(a)(2) and Section 5(a)(12) of the UIPA.⁹ In addition, each time he misrepresented the status of an application, policy or insurer, he similarly violated the act. The UIPA allows the Commissioner, upon a finding that the act has been violated, to order that the licensee cease and desist from the violation. 40 P.S. § 1171.9. For violations of Section 5, the Commissioner may suspend or revoke the person's license. *Id.*

With Newton liable for remedial action under each of the two counts, the appropriate action must be established for each count.

⁹ "No person shall engage in this state in any trade practice which is defined or determined to be . . . an unfair or deceptive act or practice in the business of insurance pursuant to this act." 40 P.S. § 1171.4. Unfair or deceptive acts or practices includes "[m]aking, issuing publishing or circulating in any manner an advertisement, announcement, or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading." 40 P.S. § 1171.5(a)(2). Unfair or deceptive acts also includes "[m]aking false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurers, agent, broker or individual. 40 P.S. § 1171.5(a)(12).

PENALTIES

As previously discussed, the Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act and the UIPA, including those provisions violated by Newton's conduct. Further, each action violating certain provisions of the Insurance Department Act subjects the actor to a maximum five thousand dollar civil penalty. Former 40 P.S. § 279(a)(2); 40 P.S. § 310.91(d)(2).

A Commissioner is given broad discretion in imposing penalties. *Termini v. Department of Insurance*, 612 A.2d 1094 (Pa. Cmwlth. 1992); *Judson v. Insurance Department*, 665 A.2d at 523, 528 (Pa. Cmwlth. 1995). The underlying course of conduct in the present case is of the most egregious nature, and directly connected to Newton's duties as an insurance agent. This seriousness is reflected in the penalties imposed. Newton's infliction of financial and other harm on others evidences a moral turpitude which is antithetical to the trustworthiness required in the profession. By definition, insurance producers have extensive personal contact with applicants and insureds. The applicants and insureds entrust financial and personal matters to the producer, and rely upon the producer's integrity. An agent who has recently inflicted financial harm upon others is incapable of the trust necessary in the profession. Simply put, Newton at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers.

Further, each time Newton allowed an innocent applicant or insured to be without insurance unknowingly, he callously disregarded basic standards of conduct required of producers. Even had he not retained the premium payments for himself, failure to apply the payments properly establishes a lack of diligence towards those Newton purported to serve. The conduct also demonstrated an indifference to the insurers' interest in writing business and receiving premiums for new and existing business.

The harm inflicted by Newton involves more than the loss of premium payments paid by consumers and expected by the companies. By allowing at least one policy to lapse and by failing to submit numerous applications, Newton deprived applicants and policyholders of the security and peace of mind which insurance provides. At least one consumer's vehicle registration was suspended. At least three suffered uncovered claim losses. Medical bills remain unreimbursed. At least one consumer was being pursued for collection of outstanding bills. At least three times a company was forced to provide coverage for a period when the company received no premiums. All of these costs cannot be measured in dollars. The respondent took far more than money.

No evidence exists to mitigate the seriousness of the violations. Newton did not offer mitigating evidence or arguments.

The Department in its Order to Show Cause requested a cease and desist order, revocation of the respondent's licenses and the maximum civil penalty for each violation. In its brief, the Department proposed a civil penalty of no less than two thousand dollars per consumer. Given that multiple violations occurred with each consumer, and given the egregiousness of the conduct and the total circumstances, the proposal is lenient.

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
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IN RE: : ALLEGED VIOLATIONS:
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Respondent : Sections 37.46, 37.47 and 37.48 of the
: Insurance Department Regulations (31 Pa.
: Code §§ 37.46, 37.47 and 37.48)
: :
: Docket No. **SC04-07-005**

ORDER

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

1. Michael D. Newton, Jr. shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication. This shall include that Newton shall pay restitution to any consumer, other person or company suffering financial harm as a result of Newton's actions. Such restitution shall be paid within thirty (30) days after the Pennsylvania Insurance Department notifies Michael D. Newton, Jr. of the amount and recipient of any such restitution. The restitution shall be paid through the Pennsylvania Insurance Department as described in paragraph 3 of this order. In addition to other restrictions on licensure of Michael D. Newton, Jr., no certificate of qualification or other insurance license may be issued or renewed until the said restitution is paid in full.

2. All of the insurance licenses or certificates of qualification of Michael D. Newton, Jr. **ARE REVOKED** for a minimum of twenty (20) years for each of Counts I

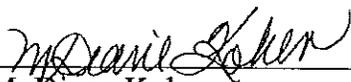
and II, with these revocations to run **concurrently** with each other. Additionally, Michael D. Newton, Jr. is prohibited from applying for a certificate of qualification to act as an agent, broker or producer in this Commonwealth for a minimum of twenty (20) years. Michael D. Newton, Jr. is also prohibited from applying to renew any certificate of qualification previously held by him in this Commonwealth for a minimum of twenty (20) years.

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

Count one (Insurance Department Act): \$5,000.00 for each of nineteen consumers harmed by the respondent's conduct.

for a total of Ninety-Five Thousand Dollars (\$95,000.00). 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. 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.



M. Diane Koken
Insurance Commissioner