

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : ALLEGED VIOLATIONS:
: :
Cassandra L. Ott : 40 P.S. §§ 310.11(2), (5), (6), (8), (20)
2374 N. Windsong Court, Apt. 204 : 40 P.S. § 310.12(a)
Virginia Beach, Virginia 23455-1864 : 40 P.S. § 310.78(a)
: :
Respondent : :
: Docket No. SC15-11-002

ADJUDICATION AND ORDER

AND NOW, this 26th day of February, 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 Cassandra L. Ott (“the respondent” or “Ott”). The OTSC alleged that the respondent violated various provisions of the Insurance Department Act.¹ Specifically, the OTSC alleged that nine state regulators revoked or suspended respondent’s license, that the respondent failed to notify the Department about any of these administrative actions, that the respondent

¹ Act of May 17, 1921, P.L. 789, No 285 as amended through the Act of June 25, 1997, P.L. 349, No. 40, repealed and partially reenacted by the Act of December 3, 2002, P.L. 1183, No. 147. (40 P.S. §§ 310.1 *et. seq.*).

DATE MAILED: February 26, 2016

failed to respond to Department inquiries, that the respondent demonstrated unworthiness and that the respondent violated the insurance laws with this conduct.

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. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on the respondent at her last known address by first class mail.²

The respondent failed to answer the Department's OTSC or otherwise respond to the Administrative Hearings Office. On January 13, 2016, the Department filed a motion for default judgment and served it in accordance with 1 Pa. Code Chapter 33. The motion declared that the Department mailed the OTSC by certified and first class mail to the respondent at her last known home address as kept on file in the Department. Both the OTSC and motion for default judgment were returned to the Department as undeliverable.³ The Department also published the OTSC in the Pennsylvania Bulletin on November 21, 2015.⁴

Although the OTSC was returned to the Department as undelivered, 31 Pa. Code § 37.43 provides that "notice of formal hearing sent to the last known address of the agent or broker shall constitute formal legal notice to the agent or broker." In addition to

² This mailing was returned to the Administrative Hearings Office as "undeliverable-unable to forward."

³ Prior to filing the OTSC, the Department attempted to contact the respondent by mail, telephone and email. [OTSC ¶¶ 14-18]. The respondent did not respond to any of these communication efforts. [OTSC ¶¶ 15-16, 18].

⁴ See *Alleged Violation of Insurance Laws; Cassandra L. Ott; Doc. No. SC15-11-002*, 45 Pa. Bull 6768 (November 21, 2015).

mailing the notice, the Department also published it in the Pennsylvania Bulletin. The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter.

This opinion and order addresses the motion for default judgment and 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, since the respondent failed to answer the OTSC or motion for default judgment. The OTSC and motion advised as to the consequences of the failure to respond,⁵ 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

⁵ 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.

not limit the Commissioner's ability to order a default judgment without 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 case⁶ provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.⁷ However, given that the respondent has not answered the OTSC and given current caselaw, 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 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.

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. §§

⁶ Insurance Department Act, Act of May 17, 1921, P.L. 789, No. 285 as amended by the Act of December 3, 2002, Act. No. 147 (40 P.S. §§ 310.1 *et seq.*).

⁷ 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 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.

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 OTSC). 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 OTSC and a motion for default judgment. See *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 Czmus*, SC09-05-009 (2009). 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 an opportunity to be heard.

In this case, the Department in an enforcement action has served an OTSC in accordance with regulation, relying on contact information provided by the respondent. The OTSC detailed the nature of the charges against her as well as the consequences of failing to respond. The respondent failed to provide updated address information, and failed to answer the OTSC allegations or to answer a subsequent motion for default judgment. Under these circumstances, 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 the respondent is a licensed non-resident insurance producer whose last known address is in Virginia Beach, Virginia. [OTSC ¶¶ 1 and 2]. On May 17, 2014, Metropolitan Property and Casualty Insurance Company terminated the respondent's appointment "for providing discounts to policies that customers were not eligible for, failing to properly rate drivers, providing inaccurate coverage information to insureds, and failing to properly document policies." [OTSC ¶ 3]. Thereafter, in September 2014, Kentucky revoked the respondent's license for "intentionally misrepresenting the terms of an insurance contract, life settlement contract, or application for insurance" for "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business" and because she did not respond to the regulator's attempts to contact her. [OTSC ¶ 4]. In March, 2015, Minnesota also revoked the respondent's license for "misrepresentations and fraudulent practices during the sale of insurance." [OTSC ¶ 7].

Subsequently in 2015, North Dakota, South Dakota, Washington, Virginia, Idaho, Arkansas and Indiana also revoked or suspended the respondent's license for various reasons including unworthiness, failure to report address changes, failure to report administrative actions and failure to respond to contact efforts. [OTSC ¶¶ 5, 6, 8-12]. The respondent did not notify the Pennsylvania Insurance Department about any of these administrative actions. [OTSC ¶ 13]. Additionally, the respondent failed to respond to mailings, telephone messages or email messages from the Department. [OTSC ¶¶ 14-18].

As a result, the Department has charged the respondent with seven distinct

violations of the Insurance Department Act: 1) having an insurance producer license revoked or suspended in violation of 40 P.S. § 310.11(8); 2) failing to report the administrative actions of other jurisdictions in violation of 40 P.S. § 310.78(1); 3) failing to respond to Department inquiries in violation of 40 P.S. § 310.12(a); 4) "intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance" in violation of 40 P.S. § 310.11(5); 5) committing unfair insurance practice or fraud in violation of 40 P.S. § 310.11(6); 6) demonstrating unworthiness in violation of 40 P.S. & 310.11(20); and 7) violating the insurance laws of the Commonwealth or other jurisdictions in violation of 40 P.S. § 310.11(2).

For violation of the statute, 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 six of the counts against the respondent.

Regulators in Arkansas, Idaho, Indiana, Kentucky, Minnesota, North Dakota, South Dakota, Virginia and Washington have suspended or revoked the respondent's license. The respondent's actions leading to these administrative actions violate 40 P.S. § 310.11(8) which provides that a licensee shall not have "an insurance producer license or other financial services license, or its equivalent, denied, suspended or revoked by a governmental entity." Ott in at least nine instances has violated 40 P.S. § 310.11(8) as described in Count one and is liable under this count.

Ott did not report any of the nine administrative actions against her license. With these failures she has in each instance violated the provisions of 40 P.S. § 310.78(a)

which requires a licensee to "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." The statute requires the report to include a copy of the order, consent order or other relevant legal documents. 40 P.S. § 310.78(a). By failing to report any of the nine administrative actions against her throughout 2014 and 2015, Ott in each instance violated 40 P.S. § 310.78(a) as set forth in Count two and is liable under this count.

In addition, regulators in Kentucky and Minnesota have found that the respondent intentionally misrepresented the terms of an insurance contract. In so doing, the respondent has violated 40 P.S. § 310.11(5) which prohibits a licensee from intentionally misrepresenting "the terms of an actual or proposed insurance contract or application for insurance." Ott has violated this statutory provision at least twice as charged in Count four and is liable under this count.

Furthermore, Kentucky and Minnesota regulators also found that the respondent committed an unfair insurance practice or fraud. The respondent's actions leading to these findings constitute violations of 40 P.S. § 310.11(6) which states that a licensee shall not admit to be "found to have committed any unfair insurance practice or fraud." Ott has violated this statutory provision at least twice as set out in Count five and is liable under this count.

In multiple jurisdictions the respondent has demonstrated that she is not currently worthy of holding an insurance license. The regulators in nine states have suspended or revoked Ott's licenses. Ott has failed to report these administrative actions to the Pennsylvania Insurance Department, has intentionally misrepresented the terms of insurance contracts, and has been found to have committed an unfair insurance practice or fraud by regulators in at least two states. 40 P.S. § 310.11(20) requires that a licensee

shall not demonstrate "a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure." As described in Count six, the respondent has violated 40 P.S. § 310.11(20) and is liable under this count.

By violating these insurance laws, the respondent violated the prohibition contained in 40 P.S. § 310.11(2). This provision provides that a licensee "shall not . . . [v]iolate the insurance laws or regulations of this Commonwealth." Ott violated the prohibitions in 40 P.S. § 310.11(8), 40 P.S. § 310.78(a), and 40 P.S. § 310.11(5), (6) (20). She thus is liable under Count seven.

However, the admitted facts in this case do not support imposing separate sanctions for Ott's failure to respond to the Department's letters and emails as charged in Count three. 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.

(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 inquiry 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 Section 310.11 which prohibits 20 types of conduct, 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 the present case, the OTSC does not include any information the Department supplied the

Section 310.12 required notice. In short, the elements required to impose a sanction under Count three have not been established by the admitted facts.

The elements of the other six charges are established by the admitted facts. With the respondent liable for remedial action under each of these charges, the appropriate remedial 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. Each action violating a provision specified in section 310.11 subjects the actor to a maximum five thousand dollar civil penalty. 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). Each of the underlying actions in the present case directly are connected to the respondent's duties as an insurance agent.

Ott committed nine separate violations of 40 P.S. § 310.11(8) when her license was revoked or suspended in Arkansas, Idaho, Indiana, Kentucky, Minnesota, North Dakota, South Dakota, Virginia and Washington. She also violated the worthiness provision by failing to perform her duties as an insurance producer which resulted in the nine revocations or suspensions of her license. She will be penalized for each of the nine administrative actions as well as for her conduct evidencing unworthiness to hold a license.

Additionally, Ott committed nine separate violations under the fail-to-report count (40 P.S. § 78(a)) by failing to report any of the administrative actions taken against her license in nine different states. With these failures, Ott also violated the worthiness provision by her disregard for regulators in numerous states. She will be penalized for each of the nine reporting failures and for her conduct evidencing unworthiness to hold a license.

Furthermore, Ott committed two separate violations of 40 P.S. § 310(5) by intentionally misrepresenting the terms of an insurance contract in Kentucky and Minnesota. She will be penalized for both of these actions which caused injuries to her customers, constituted unfair insurance practices or fraud and demonstrated unworthiness to hold a license.

However, Ott will not be separately penalized under the provision which prohibits violation of insurance laws because she is being sanctioned for violating four different provisions of the insurance law (40 P.S. § 310.11(8), 40 P.S. § 78(a), 40 P.S. § 310.11(5), and 40 P.S. 310.11(6)). Also, as previously discussed, Ott faces no independent liability for failing to respond to Department correspondence and attempted contacts by telephone and email, although this conduct constitutes an aggravating factor relative to the other violations and is part of the extensive course of conduct evidencing unworthiness of licensure.

The underlying course of conduct in the present case is of the most serious nature, directly connected to the respondent's duties as an insurance producer. This seriousness is reflected in the penalties imposed. 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.

In addition, the respondent's repeated failures to report the numerous administrative actions against her breached her duties to the Commonwealth and to the public. Whether a conscious concealment or a negligent nondisclosure, these failures to disclose the many administrative actions hampered the Pennsylvania Insurance Department's ability to regulate the profession and to protect insurance consumers. These concealments go to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance-buying public.

As additional aggravating factors, Ott did not respond to any of the Department's efforts to contact her. She did not provide contact information. She failed to appear in a number of proceedings against her in other jurisdictions and in these proceedings. These actions demonstrate the insured's lack of respect towards her profession and its regulatory systems.

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

The Department in its OTSC requested that the Commissioner revoke the respondent's insurance producer's license(s), bar her from future licensure as an insurance producer, bar her from applying to renew any license previously held by her, impose a \$5,000.00 fine per violation, order her to cease and desist from violating insurance laws, and impose other appropriate conditions including supervision for a minimum of five years should the respondent ever become relicensed.

In its motion for default judgment, the Department requested that the Commissioner deem all relevant facts in the OTSC admitted, admit as authentic the exhibits attached to the OTSC,⁸ enter default judgment against the respondent, order the respondent to cease and desist from the conduct alleged in the OTSC, revoke insurance producer licenses, impose a civil penalty up to \$5,000 per violation and grant further restitution and relief as appropriate.

Considering the facts in this matter, the applicable law, the seriousness of the conduct and the lack of mitigating circumstances, penalties are imposed as set forth in the accompanying order.

⁸ No exhibits were attached to the OTSC.

BEFORE THE INSURANCE COMMISSIONER
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IN RE:	: ALLEGED VIOLATIONS:
	:
Cassandra L. Ott	: 40 P.S. §§ 310.11(2), (5), (6), (8),
2374 N. Windsong Court, Apt. 204	: (20)
Virginia Beach, Virginia 23455-1864	: 40 P.S. § 310.12(a)
	: 40 P.S. § 310.78(a)
Respondent	:
	: Docket No. SC15-11-002

ORDER

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

1. Cassandra L. Ott shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Cassandra L. Ott **ARE REVOKED** for a minimum of ten (10) years pursuant to 40 P.S. 310.91 for each of Counts one and two, and four through six, with these revocations to run **concurrently** with each other for a total minimum period of ten (10) years. Additionally, Cassandra L. Ott is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of ten (10) years. Cassandra L. Ott is also prohibited from applying to renew any certificate of qualification previously held by her in this Commonwealth for a minimum of ten (10) years.

3. Cassandra L. Ott shall pay a civil penalty to the Commonwealth of

Pennsylvania within thirty (30) days of this order as follows:

- a. Count one (nine violations): \$5,000.00
- b. Count two (nine violations): \$5,000.00
- c. Count four and five collectively: \$3,000.00
- d. Count six: \$2,000.00

for a total of **fifteen thousand dollars (\$15,000.00)**. Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Administrative Assistant, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

4. No penalty is imposed for the violation of 40 P.S. § 310.11(2) (Count seven) or for the charge that Cassandra L. Ott violated 40 P.S. § 3310.12 (Count three).

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.

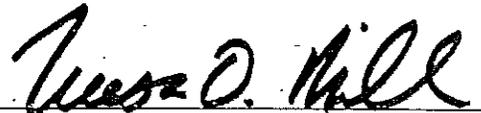
6. Cassandra L. Ott shall have no right to prior notice of a suspension imposed pursuant to paragraph 5 of this order, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to the respondent by certified mail, 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