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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

Joel Michael Riddell
3057 Brighton Street
Philadelphia, PA 19149

Respondent

: ALLEGED VIOLATIONS:

- : 63 P.S. § 1602.3(1)
- : 63 P.S. § 1605(a)
- : 63 P.S. § 1606(a)(3)
- : 63 P.S. § 1606(a)(5)
- : 63 P.S. § 1606(a)(12)
- : 63 P.S. § 1606(a)(13)

: Docket No. SC16-04-002

ADJUDICATION AND ORDER

AND NOW, this 24th day of June, 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 April 11, 2016 directed to Joel Michael Riddell (“Riddell” or “the respondent”). The OTSC alleged that Riddell violated Sections 2.3(1), 5(a) and 6(a)(3), (5), (12) and (13) of the Public Adjusters Act.¹ Specifically, the OTSC alleged that Riddell, a licensed public adjuster, used an unauthorized fictitious name and contract form, endorsed insureds’ names on an insurance claim check without their consent and failed to remit the insureds’ portion of an advance on the claim

¹ Act of December 20, 1983, P.L. 260, No. 72 as amended, 63 P.S. §§ 1602.3(1), 1605(a), 1606(a)(3), (5), (12) and (13).

DATE MAILED: June 24, 2016

settlement.

The OTSC advised Riddell 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 and the authenticity of attached exhibits. 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, including deemed admission of the alleged facts and authenticity of documents and the issuance of an order imposing penalties. Following the filing of the OTSC, a presiding officer was appointed. The appointment order was mailed to Riddell by certified mail to the two addresses for the respondent contained in the OTSC, both of which were returned by the postal service as unclaimed.

Riddell failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On May 27, 2016, the Department filed a motion for default judgment and served Riddell in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was served on the respondent by certified and first class mail to his last known address as kept on file in the Department and also to the address listed on his Pennsylvania Driver's license. At the time of the filing of the motion for default judgment, none of the first class or certified mailings had been returned to the Department as undeliverable and one of the certified mailings had been returned as unclaimed. Notice of the OTSC also was published in the Pennsylvania Bulletin on February 22, 2014 and September 13, 2014.² The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter.

² 46 Pa. Bull. 2144 (April 23, 2016).

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

DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since Riddell 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;³ 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.

³ The OTSC warned the respondent that failure to answer in writing would result in deemed admission of the alleged facts and authenticity of documents and that the Commissioner could enter an order imposing penalties.

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 case⁴ provides for a hearing procedure prior to certain penalties being imposed by the Commissioner.⁵ However, given that the respondent has not answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

While no court directly has addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Public Adjusters 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)⁶ 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

⁴ Act of December 20, 1983, P.L. 260, No. 72 as amended, 63 P.S. §§ 1601-1608.

⁵ "NOTICE AND HEARING.-- Before the Insurance Commissioner shall take any action as above set forth, he shall give written notice to the person accused of violating the law, stating specifically the nature of such alleged violation and fixing a time and place, at least ten days thereafter, when a hearing of the matter shall be held. After such hearing or upon failure of the accused to appear at such a hearing, the Insurance Commissioner shall impose such of the above penalties as he deems advisable. When the Insurance Commissioner shall have taken any actions as above set forth, the party aggrieved may appeal therefrom to the Commonwealth Court." 63 P.S. § 1606(c).

⁶ Act of July 22, 1974, P.L. 589, No. 205, 40 P.S. §§ 1171.1-1171.15.

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 Funari*, SC14-01-005 (2014) (public adjuster); *In re Kletch*, SC15-04-022 (2015). The Commissioner adopts this reasoning in the present case: the important aspects of 2 Pa.C.S. § 504 are notice and the *opportunity* to be heard. Default judgment is appropriate, despite language in applicable statutes which seems to require a hearing, when a respondent fails to take advantage of 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 Riddell was a licensed insurance public adjuster through January 31, 2016 when his license expired with no application for renewal pending. [OTSC ¶¶ 3, 4]. On or about March 6, 2014, the respondent entered into a public adjuster contract with Anthony and Karen Rotondo (“the Rotondos” or “the insureds”). [OTSC ¶ 5; Appendix A]. “Iron Shire Group” is designated at the top of each page of the contract packet. [OTSC ¶ 9; Appendix A]. Next to the Iron Shire Group designation is listed “Joel M Riddell” as the “Licensed Public Adjuster” together with his address, telephone and fax numbers, and an email address of JMRiddell@IronShireGroup.com. [Appendix A]. All references to the “Public Adjuster” or “Primary Public Adjuster” in the contract are filled in with “Joel M Riddle.” [*Id.*]. Riddle signed the contract documents in his own name and not in a representative capacity. [*Id.*].

The respondent did not notify the Insurance Department in writing prior to doing business as a public adjuster under the name “Iron Shire Group.” [OTSC ¶ 12; Appendix B]. Iron Shire Group does not have a public adjuster license as a business entity in Pennsylvania. [OTSC ¶ 13; Appendix B]. The respondent did not request approval from the Department to use the public adjuster contract form he used with the Rotondos, and there exists no record of any Department-approved form of public adjuster contract having been submitted by the respondent. [OTSC ¶ 14; Appendix C]. The contract form used by the respondent contains numerous edits from the approved public adjuster contract contained on the Department’s website, although none of the edits are substantive and almost all are formatting differences. [OTSC ¶ 15; Appendix A; Administrative Notice].

The contract between Riddell and the Rotondos lists the contingent fee to be charged by the respondent as ten percent of the amount paid by the insurer for the loss. [OTSC ¶ 16; Appendix A]. The contingent fee is “due from each draft or check issued by the insurance company in the percentage listed in the contract.” [Appendix A]. The only

other compensation or reimbursement to the respondent allowed by the contract are “extraordinary expenses above and beyond the normal cost of doing business, such as expert witness fees and expenses, engineer and inspection fees.” [OTSC ¶ 17; Appendix A]. Reimbursement for these extraordinary expenses must be agreed upon by the insureds in advance. [*Id.*].

Through the contract, the insureds retained the services of the respondent to assist in the adjustment of a claim for a March 5, 2014 loss at their insured property in Titusville, Pennsylvania. [OTSC ¶ 6]. The loss occurred when water discharged from a frozen pipe at the property. [*Id.*].

Riddell verbally reported the claim to the insurer, Liberty Mutual Insurance, on March 6, 2014. [OTSC ¶ 7]. At the respondent’s request, Liberty Mutual made an advance payment in the amount of \$10,000 by check dated March 17, 2014 payable to the respondent and the insureds. [OTSC ¶¶ 18, 19].

Knowing that it was wrong to do so, the respondent signed Anthony Rotondo’s name and Karen Rotondo’s initials on the back of the check and deposited the check into his bank account on March 28, 2014. [OTSC ¶¶ 20, 22]. The respondent did not have authorization from either insured to endorse the check on their behalf. [OTSC ¶ 21]. Riddle gave Anthony Rotondo a post-dated check in the amount of \$5,000 on March 28, 2014 and retained the remaining \$5,000 for himself. [OTSC ¶ 23-25]. He told Mr. Rotondo that he kept the \$5,000 for expenses but did not provide any receipts or other documentation to the Rotondos or the Department to substantiate the purported expenses. [OTSC ¶ 27]. The insureds never agreed to pay or reimburse the respondent any sum beyond the 10% contingent fee provided in the contract. [OTSC ¶ 28].

Based upon these facts, Riddell was charged with six distinct violations of the Public Adjusters Act: 1) doing business under a fictitious name without notice to the Department in violation of 63 P.S. § 1602.3(1); 2) using a public adjuster contract on a form not approved by the Department in violation of 63 P.S. § 1605(a); 3) misrepresenting the services offered or fees or commissions charged in violation of 63 P.S. § 1606(a)(3); 4) misappropriating, converting to his own use or improperly withholding of moneys held on behalf of another party to the contract pursuant to 63 P.S. § 1606(a)(5); 5) committing fraudulent practices pursuant to 63 P.S. § 1606(a)(12); and 6) demonstrating incompetence or untrustworthiness to transact the business of a public adjuster pursuant to 63 P.S. § 1606(a)(13).

For each of the counts for which liability is established, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his license for counts three through six,⁷ as well as imposing a penalty of up to \$5,000.00 per violation for all counts. 63 P.S. § 1606(a) and (b). Penalties not only may be imposed for violating specific conduct such as the misappropriation and fraud provisions; they may be imposed if the public adjuster is determined to be untrustworthy or incompetent. 63 P.S. § 1606(a)(13). In the present case, the admitted facts support sanctions in five of the six counts against the respondent.

The admitted facts do not establish liability under count one, doing business under a fictitious name without notifying Department. The applicable statutory section addresses the issuance and term of a public adjusters license, including that it shall be:

issued only in the name of the individual or business entity. If a licensee is doing business under a fictitious name other than the name appearing on the public adjuster license, the licensee is required to notify the department in writing prior to using the fictitious name

⁷ In the OTSC, the sixth count is labeled as "Count V," the same as the previous count. The sixth count is separately listed as an alleged violation in the caption and broken out as a separate count in the OTSC. Although labeled "Count V" in the OTSC it will be referred to as "count six" in this adjudication.

63 P.S. § 1602.3(1).

The obvious purpose of the notification requirement is to facilitate the Department's regulation of its licensees. A public adjuster who conducts his business under a fictitious name may not be personally identified in a consumer or company complaint to the Department, in a news story or in an advertisement. It is critical for the Department to monitor and investigate that the Department be able to associate a public adjusting entity's activities to the licensed individual or entity

In the present case, the respondent used the fictitious name "The Iron Shire Group" by placing it in the heading of each page of the contract and other documents, and by using it as the domain name for his business email address: JMRiddell@IronShireGroup.com. [OTSC ¶¶ 9, 10; Appendix A]. The admitted facts also include that the respondent did not notify the Department in writing prior to doing business as a public adjuster under that name. [OTSC ¶ 12]. The OTSC does not contain an averment that the respondent actually conducted business as a public adjuster under the fictitious name and thus there is no admitted fact to this effect. Whether Riddle conducted business under the fictitious name depends on whether the other admitted facts establish that he did so.

However, the other facts do not establish that the respondent actually was "doing business under a fictitious name," an element of the statutory requirement the respondent was charged with violating. Use of the name on Riddell's documents and for his email address undoubtedly was intended to lend his public adjusting business some cachet but that mere fact did not establish that he was doing business under that name. To the contrary, immediately next to the fictitious name on the documents was the respondent's own name, designated as "Licensed Public Adjuster" together with his mailing address, telephone number, fax number and email address. No contact information was supplied

specifically for "The Iron Shire Group." Joel M. Riddell was named as party to the contract, not The Iron Shire Group, and every one of his signatures was in an individual rather than a representative capacity. There is no evidence that Riddell advertised his public adjusting business as being performed by The Iron Shire Group or that clients believed they were contracting with, and serviced by, any person or entity other than Riddell himself. In short, all evidence points to Riddell doing business under his own name, not under a fictitious one despite the presence of the fictitious name in the heading of the documents.

The respondent may have intended to incorporate his sole proprietorship and use the fictitious name as the name of his business in the future. He indicated to a Department investigator "that he was the sole proprietor of The Iron Shire Group and that he started the corporation to protect himself." [OTSC ¶ 11]. However, there is no evidence that he actually formed a corporation, and the fictitious name used by the respondent does not designate corporate status.⁸

Thus, the record contains no evidence that Riddle was "doing business under a fictitious name other than the name appearing on the public adjuster license," i.e. his own name. The respondent is not liable for sanctions under count one.

On the other hand, the respondent is liable for using a public adjuster contract on a form not approved by the Department in violation of 63 P.S. § 1605(a) as contained in count two. The respondent neither submitted his forms for approval by the Department nor precisely used the pre-approved form appearing on the Department's website. Essentially all of Riddell's edits to the Department's form were for formatting and none of them changed substance. The format changes were such things as capitalization, type

⁸ A business corporation name must contain one of the following words (or an abbreviation in some cases): corporation, company, incorporated, limited, association, fund or syndicate. 15 Pa.C.S. § 203(a).

size and punctuation. However, not all of the changes were insignificant. For example, the pre-approved contract form contains four specific disclosures required by statute,⁹ to be acknowledged by the adjuster and the insured via initials next to each one. All four disclosures are boldfaced on the Department's form and the "three calendar days" the insured has to rescind the contract is set forth in all capital letters. The disclosures on the respondent's form are not in bold typeface and "three calendar days" is lowercase, lessening the conspicuousness and emphasis of important statutorily-required disclosures.¹⁰ Similarly, the Notice of Rescission uses a smaller font size for the statement, "I hereby rescind and cancel the contract." This makes it somewhat more difficult for the insureds to find, and thus sign to effect a rescission of the contract.

Although these changes and others to the pre-approved form are minor, and other edits are wholly insignificant, the fact remains that the respondent used a contract form not approved by the Department. He is liable under count two.

The respondent is liable under count three for misrepresenting the services offered or fees or commissions charged in violation of 63 P.S. § 1606(a)(3). Riddell withheld \$4,000 purportedly for expenses without prior approval by the insureds. The contract allows reimbursement to an adjuster for "extraordinary expenses above and beyond the normal cost of doing business, such as expert witness fees and expenses, engineer and inspection fees." However, there is no evidence that such expenses would have been incurred or required for a simple frozen pipe water damage claim, let alone early in the claim process when the advance \$10,000 check was issued by the company eleven days after the claim was reported. The only logical inference from these circumstances is that

⁹ 40 P.S. § 1605(a)(4)(A.2).

¹⁰ The statute does not require the disclosures to be formatted in any particular manner, and highlighting examples of the respondent's edits is not meant to suggest that the Department would have disapproved the respondent's form had it been submitted. The form is substantially the same as the pre-approved form, and contains no substantive changes.

Riddell misrepresented the existence of expenses for the services of others. He is liable under count three.

Riddell is liable for remedial action under count four (misappropriation). He retained \$4,000 above the \$1,000 commission to which he was entitled. That money belonged to his clients. His retention of the claim proceeds harmed his clients, who could have used those funds to remediate their loss. Misappropriation of that money constitutes the precise conduct proscribed by 63 P.S. § 1606(a)(5). The respondent is liable under the fourth count.

Riddell is liable under count five for violating the proscription on fraudulent practices when he endorsed the claim check with his clients' signatures without their knowledge or consent. By representing via the false signatures that his clients signed off on the check, he defrauded not only his clients, but the insurance carrier and financial institution. He thus violated 63 P.S. § 1606(a)(12) which prohibits fraudulent practices. He is liable under the fifth count.

Finally, by his course of conduct, Riddell demonstrated untrustworthiness to transact the business of a public adjuster and defeated his central obligation to his clients: to obtain payment for their loss. Riddell's failure to remit all of the advance insurance proceeds (less his commission) intended to compensate his clients for their loss, after promising to do so in his contract with them, demonstrates that he cannot be trusted with the financial affairs of consumers and companies alike. He violated 63 P.S. § 1606(a)(13) and is liable under count six.

The respondent's acts and omissions in his dealings with the Rotondos overlap among counts two through six. However, each count addresses a different specific aspect of the respondent's course of conduct. Count six, untrustworthiness, incorporates the

respondent's entire course of conduct contained in the other counts, and this total course of conduct establishes separate liability under 63 P.S. § 1606(a)(13). *In re Funari*, SC14-01-005 (2014). With Riddell liable for remedial action under five of the six counts in which he was charged, the appropriate action must be established for each count.

PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Public Adjusters Act, including those provisions violated by Riddell's conduct in counts three, four and five. 63 P.S. § 1606(a). Each action violating the Act, which includes the conduct in all four counts, subjects the actor to a maximum five thousand dollar civil penalty. 63 P.S. § 1606(b).

A Commissioner is given broad discretion in imposing penalties against licensees. *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). Riddell's violations as contained in counts three, four and five are of the most serious nature, and directly connected to Riddell's duties as a public adjuster. This seriousness is reflected in the penalties imposed. Riddell's infliction of financial harm on others, even if a single instance, evidences a moral turpitude which is antithetical to the trustworthiness required in the profession. By definition, a public adjuster investigates and adjusts claims for insurance consumers who have suffered a loss, and advises them about their claims. 63 P.S. § 1601. Public adjusters thus work for and have personal contact with insureds, who rely upon the adjuster's integrity. An adjuster who has recently inflicted financial harm upon his own clients is incapable of the trust necessary in the profession. Simply put, Riddell at this time cannot be trusted with the money and personal information belonging to his customers.

The nature of the violation under count two (using an unapproved contract form) is not as serious. The substance of the respondent's form is the same as the Department's pre-approved form. Most of the respondent's edits are insignificant. There is no evidence of any harm to a consumer from use of the form.

No evidence exists to mitigate the seriousness of the violations, other than it being one course of conduct involving two clients and apparently being the first disciplinary action against the respondent.¹¹ Riddell, not appearing in these proceedings, did not offer mitigating evidence or arguments. An aggravating factor is that the conduct directly involved the business of public adjusting. Failure to respond in this disciplinary proceeding brought by the regulator of his profession is an additional aggravating factor.

The Department in its order to show cause requested a fine of not more than \$5,000 for each violation under each of the five counts under which the respondent has been found liable. For counts three through six, the Department sought revocation or suspension of the respondent's public adjusters license and a bar from future licensure or from applying to renew a license. In its motion for default judgment, the Department repeated these requests.

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.

¹¹ The Department did not allege prior complaints or disciplinary action against the respondent, and administrative notice is taken that no enforcement actions or consent orders were entered against the respondent until the present action.

BEFORE THE INSURANCE COMMISSIONER
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: 63 P.S. § 1606(a)(13)
: :
: Docket No. SC16-04-002

ORDER

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

1. All of the public adjuster licenses of Joel Michael Riddell **ARE REVOKED** for a minimum of five (5) years for each of counts three, four, five and six, with these minimum periods of revocation to run concurrently with each other. Additionally, Joel Michael Riddell is prohibited from applying for a license to act as a public adjuster in this Commonwealth for a minimum of five (5) years. Joel Michael Riddell is also prohibited from applying to renew any license previously held by him in this Commonwealth and issued by the Insurance Department for a minimum of five (5) years.

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

- a. Count two: \$100.00
- b. Count three: \$1,000.00

- c. Count four: \$3,000.00
- d. Count five: \$3,000.00
- e. Count six: \$3,000.00

for a total of Ten Thousand One Hundred Dollars (\$10,100). 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 public adjuster license or insurance license may be issued or renewed until the said civil penalty is paid in full.

- 3. This order is effective immediately.



TERESA D. MILLER
Insurance Commissioner