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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
<b>Ismael Baliar Seals</b>	:	Sections 310.11(2), (20); 310.12(a);
350 E. Willow Grove Avenue, Apt. 318	:	310.78(b) of the Insurance Department
Philadelphia, PA 19118	:	Act of 1921, P.L. 789, No. 285, <i>as</i>
	:	<i>amended</i> (40 P.S. §§ 310.11(2), (20);
Respondent	:	310.12(a); 310.78(b))
	:	
	:	Docket No. SC15-11-014

**ADJUDICATION AND ORDER**

AND NOW, this 12th 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 13, 2015 directed to Ismael Baliar Seals ("Seals" or "the respondent"). The OTSC alleged that Seals violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that Seals, a licensed insurance producer, failed to report criminal charges to the Insurance Department, failed to report final disposition of the charges, failed to respond to Department inquiries, demonstrated a lack of fitness, competence or reliability and violated insurance laws by this conduct.

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

<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 40 P.S. 310.11(2), (20); 310.12(a); 310.78(b).

DATE MAILED: February 12, 2016

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.

Seals failed to answer the Department's order to show cause or otherwise respond to the Administrative Hearings Office. On January 13, 2016, the Department filed a motion for default judgment and served Seals in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent to his last known home address as kept on file in the Department. A certified mailing containing the OTSC was returned to the Insurance Department marked as "unclaimed" by the United States Post Office but a mailing of the OTSC by regular mail was not returned by the Post Office as undeliverable. Notice of the OTSC also was published in the Pennsylvania Bulletin on November 28, 2015. The respondent has not filed a response to the OTSC or the motion for default judgment, nor made any other filing in this matter.

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

#### DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since Seals failed to answer the order to show cause or motion for default judgment. The order to show cause and motion advised as to the consequences of the failure to respond;<sup>2</sup>

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

however, because of the language in the penalty provisions of applicable statutes, an analysis of the Commissioner's ability to impose penalties absent an evidentiary hearing is required.

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

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

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

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

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

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

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

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

While no court directly has addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Insurance Department Act, the caselaw supports such power. For example, in *United Healthcare Benefits Trust v. Insurance Commissioner*, 620 A.2d 81 (Pa. Cmwlth. 1993), the Court affirmed the Commissioner's grant of summary judgment for civil penalties despite the language contained in the applicable statutes which seemed to require a hearing. Also, the Court specifically has upheld a decision in which the Commissioner granted default judgment for an Unfair Insurance Practices Act (UIPA) violation. *Zimmerman v. Foster*, 618 A.2d 1105 (Pa. Cmwlth. 1992).

In a case involving another agency, the Commonwealth Court upheld summary judgment imposing discipline issued by a commission despite the fact that the respondent had requested a hearing. *Kinniry v. Professional Standards and Practices Commission*, 678 A.2d 1230 (Pa. Cmwlth. 1996). In *Kinniry*, the applicable statute (24 P.S. §§ 2070.5(11), 2070.13) provided for a hearing procedure before discipline was imposed. However, the respondent's attorney merely requested a hearing without answering the specific factual averments in the charges against the respondent (which charges were treated as an order to show cause). The Court upheld the summary judgment since deemed admission of the factual averments presented no factual issues to be resolved at hearing.

The Commissioner consistently has applied the reasoning of *United Healthcare* and similar cases when the respondent does not answer the order to show cause and a motion for default judgment. See *In re Phelps*, P95-09-007 (1997); *In re Crimboli*, SC99-04-015 (1999); *In re Young*, SC98-08-027 (2000); *In re Jennings*, SC99-10-001 (2001);

*In re Warner*, SC01-08-001 (2002); *In re Taylor*, SC07-11-015 (2008); *In re Kroope*, SC09-12-005 (2010); *In re 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 Seals was a licensed resident insurance producer residing in Philadelphia. [OTSC ¶¶ 1-2]. On August 4, 2014, he was charged with one felony count of aggravated assault, three misdemeanor counts of simple assault, two misdemeanor counts of endangering the welfare of children, two misdemeanor counts of unsworn falsification to authorities, one misdemeanor count of tampering with a public record, one misdemeanor count of conspiracy to commit unsworn falsification, one misdemeanor count of retaliation, and one misdemeanor count of person to report suspected child abuse. [OTSC ¶ 3]. Seals failed to report any information about the criminal charges to the Insurance Department. [OTSC ¶ 4].

On April 30, 2015, the respondent pled guilty to two misdemeanor counts of simple assault, two misdemeanor counts of endangering the welfare of children, one misdemeanor count of unsworn falsification to authorities and one misdemeanor count of conspiracy to commit unsworn falsification to authorities. [OTSC ¶ 5]. He subsequently failed to report the final disposition of his criminal convictions to the Department within 30 days. [OTSC ¶ 6].

On May 28, 2015, an investigator for the Department left voicemail messages for Seals at the respondent's home and business telephone numbers, but the respondent failed to return either of the investigator's calls. [OTSC ¶¶ 7-8]. On May 29 and June 29, 2015, the Department mailed letters to the respondent's mailing address requesting that he contact the Department within 30 days, but the respondent failed to respond to either inquiry. [OTSC ¶9-10].

On August 6, 2015, an investigator for the Department left a voicemail message for the respondent at his home telephone number. [OTSC ¶ 11]. Later that day, Seals returned the investigator's call and left an angry voicemail message swearing and threatening physical harm towards the investigator. [OTSC ¶ 12]. Capitol Police were notified and filed criminal charges against the respondent for harassment and terroristic threats. [OTSC ¶ 13]. Seals failed to report any information about these charges to the Insurance Department within 30 days. [OTSC ¶ 14].

Seals was charged with four distinct violations of the Insurance Department Act: 1) failure to report criminal conduct in violation of 40 P.S. § 310.78(b); 2) failure to provide a written response to the Department within 30 days of receipt of a written inquiry from the Department in violation of 40 P.S. § 310.12(a); 3) demonstrated lack of general fitness, competence or reliability sufficient to satisfy the department that the

licensee is worthy of licensure in violation of 40 P.S. § 310.11(20); and 4) violation of insurance laws, a 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 his 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 three of the counts against the respondent.

By failing to report the criminal charges against him in 2014 and the charges in 2015, and by failing to report his guilty plea convictions in 2015, Seals in each instance violated 40 P.S. § 310.78(b) as set forth in count one. That provision requires that “[w]ithin 30 days of being charged with criminal conduct, a licensee shall report the charges to the department” and also requires that the licensee supply the Department with copies of the charging document, pretrial orders and final disposition within 30 days. Seals did not report the numerous criminal charges in August 2014, or the guilty plea disposition of those charges in April 2015. Nor did he report the 2015 charges resulting from his threatening voicemail to the Department investigator.

In addition, Seals violated 40 P.S. § 310.11(20) as contained in count three, which requires general fitness, competence and reliability demonstrating worthiness of licensure. The respondent’s course of conduct included violent and dishonest criminal activity as well as failure to report and respond to the Department. His course of conduct demonstrated a lack of fitness to be licensed as a professional insurance agent.

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.” Seals violated the prohibitions 40 P.S. § 310.78(b) and 40 P.S. § 310.11(20). He thus is liable under count four.

However, the admitted facts do not support separate sanctions for not responding to the Department’s two written inquiries in June and July 2015 as charged in count two. 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 the 20 types of conduct listed in Section 310.11, 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 admitted facts do not include that the Department supplied the required notice. For this reason, the elements required to impose a sanction have not been established by the admitted facts.

The elements of the other three 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(d)(1). Each action violating the Act subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. 310.91(d)(2). The actor may be ordered to cease and desist his conduct. 40 P.S. 310.91(d)(3). The Commissioner also may impose other appropriate conditions. 40 P.S. 310.91(d)(4).

A Commissioner is given broad discretion in imposing penalties. *Termini v. Department of Insurance*, 612 A.2d 1094 (Pa. Cmwlth. 1992); *Judson v. Insurance Department*, 665 A.2d at 523, 528 (Pa. Cmwlth. 1995). The underlying course of conduct in the present case is of a serious nature, with some of the conduct directly connected to the respondent's duties as a licensed insurance producer to abide by the regulations which govern his profession.

Seals committed three separate violations under the fail-to-report count (40 P.S. § 310.78(b): 1) failing to report the initial charges in 2014; 2) failing to report the guilty plea convictions; and 3) failing to report the 2015 charges following his profane and threatening voicemail to the Department's investigator. The respondent violated the worthiness provision by his violent and dishonest criminal conduct, his failure to report that conduct and his disregard towards the regulator of his profession. Seals will be penalized for each of the three reporting failures and for his conduct evidencing unworthiness to hold a license.

However, Seals will not be separately penalized under the provision which prohibits violation of insurance laws because he is being sanctioned for violating those two provisions (40 P.S. §§ 310.78(a) and 310.11(20)). Also, as previously discussed, Seals faces no independent liability for failing to respond to Department inquiries, although this conduct constitutes an aggravating factor relative to the other violations and is part of the course of conduct evidencing unworthiness.

The nature of the respondent's conduct is serious. The underlying criminal convictions involved violence against other persons, endangerment of children and deception of authorities. 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. A producer who has recently inflicted personal harm upon others and deceived authorities is incapable of the trust necessary in the profession. Simply put, Seals at this time cannot be trusted with the pocketbooks, bank accounts, personal information and personal security of his customers.

In addition, the respondent's failure to report the charges and convictions to the Commonwealth's regulator also breached the respondent's duties to the Commonwealth and to the public. Whether a conscious concealment or a negligent nondisclosure, the failure to disclose the charges and convictions hampered the Insurance Department's ability to regulate the profession and protect insurance consumers. This concealment goes 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, Seals did not respond to the Department's written inquiries and responded to the investigator's telephone message in August 2015

by leaving an angry and profane voicemail message threatening physical harm towards the investigator. In addition, the respondent has not appeared in these disciplinary proceedings, further evidencing a lack of respect towards his profession and its regulatory system.

Little evidence exists to mitigate the seriousness of the violations. Seals did not offer mitigating evidence or arguments. However, 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. Also, without minimizing the seriousness of the respondent's criminal conduct underlying this case, the criminal conduct did not involve the business of insurance and there exists no evidence that the conduct directly inflicted financial or personal harm upon insurance consumers.

The Department in its Order to Show Cause requested that the Commissioner revoke the respondent's insurance producer's license(s), bar the respondent from future licensure as an insurance producer, bar the respondent from applying to renew any license previously held by him, impose a \$5,000.00 fine per violation, order the respondent to cease and desist from violating insurance laws, and impose other appropriate conditions including supervision should the respondent ever become relicensed. In its motion for default judgment, the Department requested that the Commissioner enter default judgment against the respondent, deem all relevant facts in the OTSC admitted, admit as authentic the exhibits attached to the OTSC,<sup>5</sup> 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.

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<sup>5</sup> No exhibits were attached to the OTSC.

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  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	:
<b>Ismael Baliar Seals</b>	:	Sections 310.11(2), (20); 310.12(a);
350 E. Willow Grove Avenue, Apt. 318	:	310.78(b) of the Insurance Department
Philadelphia, PA 19118	:	Act of 1921, P.L. 789, No. 285, <i>as</i>
	:	<i>amended</i> (40 P.S. §§ 310.11(2), (20);
Respondent	:	310.12(a); 310.78(b))
	:	:
	:	Docket No. <b>SC15-11-014</b>

**ORDER**

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

1. Ismael Baliar Seals shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Ismael Baliar Seals **ARE REVOKED** for a minimum of 5 years pursuant to 40 P.S. 310.91 for each of three violations of 40 P.S. § 310.78(b) (count one), with these revocations to run **concurrently** with each other. All of the insurance licenses or certificates of qualification of Ismael Baliar Seals **ARE REVOKED** for a minimum of 5 years pursuant to 40 P.S. 310.91 for the violation of 40 P.S. § 310.11(20) (count three), with this revocation to run **consecutively** to the other revocations for a **total minimum period of ten (10) years**. Additionally, Ismael Baliar Seals is prohibited from applying for a license or certificate of qualification in this Commonwealth for a minimum of ten (10) years. Ismael Baliar

Seals also is prohibited from applying to renew any license or certificate of qualification previously held by him in this Commonwealth for a minimum of ten (10) years.

3. No penalty is imposed for the violation of 40 P.S. § 310.11(2) (count two) or for the charge that Ismael Baliar Seals violated 40 P.S. § 310.12 (count four).

4. Ismael Baliar Seals shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

- a. Count one (three violations, \$2,000.00 per violation): \$6,000.00
- b. Count three: \$3,000.00

for a total of Nine Thousand Dollars (\$9,000.00). 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 certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

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. Ismael Baliar Seals 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 he 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.



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TERESA D. MILLER  
Insurance Commissioner