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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:
	:	
<b>Gerald Wayne Snyder, Jr.</b>	:	40 P.S. §§ 310.11(1), (15), (20) and
528 Mahoning St.	:	§ 310.78(b)
Milton, PA 17847	:	
	:	
Respondent	:	Docket No. SC16-09-012

**ADJUDICATION AND ORDER**

AND NOW, this 7<sup>th</sup> day of December, 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 September 27, 2016 directed to Gerald Wayne Snyder, Jr. ("Snyder" or "the respondent"). The OTSC alleged that Snyder violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that Snyder, a licensed insurance producer, provided false information to the department on his license application, committed misdemeanors that involved the misuse or theft of others' money and failed to report criminal charges to the Department within 30 days of being charged. The OTSC also alleged that the respondent by his conduct demonstrated that he was unworthy of licensure.

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<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 310.11(1), (15), (20) and S 310.78(b).

DATE MAILED: December 7, 2016

The OTSC advised Snyder 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 Snyder by certified mail and by first class mail. The certified mailing was returned by the post office as “unclaimed” but the first class mailing was not returned by the post office as undeliverable. Notice of the OTSC was published in the Pennsylvania Bulletin on October 8, 2016. 46 Pa. Bull. 6401 (October 8, 2016).

Snyder failed to answer the Department’s Order to Show Cause or otherwise respond to the Administrative Hearings Office. On October 31, 2016, the Department filed a motion for default judgment and served Snyder in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent by both certified mail and first class mail and that although the certified mailing was returned as “unclaimed,” the first class mailing was not returned to the Department as undeliverable and the Department received no other indication that the respondent did not receive the OTSC. The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing or communication 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 Snyder failed to answer the order to show cause or motion for default judgment. The order to show cause and motion advised as to the consequences of the failure to respond;<sup>2</sup> however, because of the language in the penalty provisions of applicable statutes, an analysis of the Commissioner's ability to impose penalties absent an evidentiary hearing is required.

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

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

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

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



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 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)<sup>5</sup> 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

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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.

<sup>5</sup> Act of July 22, 1974, P.L. 589, No. 205, 40 P.S. §§ 1171.1-1171.15.

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 Snyder is a licensed insurance producer maintaining an address in Milton, Pennsylvania. [OTSC ¶¶ 1, 2]. On or about July 27, 2009, he was convicted of a third degree misdemeanor in one count of passing a bad check (18 Pa.C.S. § 4105(a)(1)) and sentenced to probation, costs and \$200.00 restitution. [OTSC ¶ 3; Appendix A]. On or about October 5, 2009, he was convicted of a first degree misdemeanor in one count of passing a bad check and was sentenced to probation, costs, a fine of \$100 and \$296.32 restitution. [OTSC ¶ 4; Appendix B].

On or about May 22, 2015, the respondent submitted a license application form and provided false information regarding criminal convictions by answering “no” to the question as to whether he ever had been convicted of a misdemeanor or felony. [OTSC ¶ 5].

In September 2015, the respondent was charged with a first degree misdemeanor for a bad check (18 Pa.C.S. § 4105(a)(1)) as well as a first degree misdemeanor for theft by deception (18 Pa.C.S. § 3922(a)(3)) by obtaining or withholding property with the bad check.<sup>6</sup> [OTSC ¶ 6; Appendix C]. Snyder did not report these charges to the Department. [OTSC ¶ 7]. On approximately March 17, 2016, he was convicted of the bad check charge, and failed to report the conviction to the Department. [OTSC ¶¶ 8, 9].

The respondent similarly was charged in April 2016 with misdemeanor counts of using a bad check and theft by deception. [OTSC ¶ 10; Appendix D]. According to the charging documents, Snyder paid two months of rent with a check from an account with insufficient funds. [Appendix D]. The respondent failed to report the charges to the Department. [OTSC ¶ 11]. The disposition of those charges is unknown.

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<sup>6</sup> The averment in the OTSC recites that the theft by deception charge is graded as a felony, but the criminal complaint lists the charge as a first degree misdemeanor. [OTSC ¶ 6; Appendix C]. This conflict between the deemed admissions is resolved in favor of the charging document itself.

Based upon these facts, Snyder is charged with four distinct violations of the Insurance Department Act: 1) providing incorrect, misleading or false information to the Department in a license application in violation of 40 P.S. § 310.11(1); 2) committing a misdemeanor that involves the misuse or theft of money or property belonging to another person in violation of 40 P.S. § 310.11(15); 3) demonstrating 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) failing to report being charged with criminal conduct in violation of 40 P.S. § 310.78(b).

For each of the counts, 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 for three of the four counts against the respondent.

By answering “no” to the question on his 2015 license application as to whether he ever had been convicted of a misdemeanor or felony, Snyder violated 40 P.S. § 310.11(1) as set forth in count one. That provision requires that an applicant for an insurance producer license shall not “[p]rovide incorrect, misleading, incomplete or false information to the department in a license application.” Snyder was convicted of a first degree misdemeanor and a third degree misdemeanor in 2009 for passing bad checks. On his license application, he denied ever having any misdemeanor convictions. The respondent is liable under count one.

However, given the available facts, liability is not established under count two. In that count, the respondent is alleged to have committed “a misdemeanor that involves the



misuse or theft of money or property belonging to another person” in violation of 40 P.S. § 310.11(15). As of the filing of the OTSC, the respondent had been convicted twice in 2009 and once in 2016 of passing checks with insufficient funds in his account in violation of 18 Pa.C.S. § 4105 (Bad Checks). Additional charges for another check were pending as of the filing of the OTSC.

Notably, the offense of Bad Checks is contained in Chapter 41 of the Crimes Code (Forgery and Fraudulent Practices). For the 2016 conviction and the pending charges, the respondent also was charged with violating 18 Pa.C.S. § 3922 (Theft by Deception), which is contained in Chapter 39 of the Crimes Code (Theft and Related Offenses). However, the 2016 conviction was for Bad Checks only, with the Theft by Deception charge presumably being pleaded away, withdrawn or dismissed. The same thing may or may not happen with the pending charges, but there is no conviction establishing guilt of either charge in the record. A conviction under 18 Pa.C.S. § 3922 would have established theft; the bare convictions under 18 Pa.C.S. § 4105 by themselves do not.

In some circumstances, passing a bad check may result in misuse or theft of money or property belonging to another person. Given that this adjudication is made on a motion for default judgment without an evidentiary hearing, the circumstances surrounding the bad checks are unknown. The convictions only establish that on three occasions, Snyder wrote checks knowing that his account had insufficient funds to cover them.<sup>7</sup> This is insufficient to establish liability under 40 P.S. § 310.11(15).

However, the failure to report misdemeanor bad check charges in 2015 and 2016 to the Department established liability as alleged in count four. By failing to report the

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<sup>7</sup> This may be contrasted with the recent case of a respondent who wrote a bad check for the down payment on a car, and additional facts adduced at hearing included that she kept the vehicle but did not make good on the check. *See In re Moore*, CW11-11-002 (2016). In addition, she was convicted by pleading guilty to 18 Pa.C.S. 3922 (Theft by Deception) graded as a felony. Any of these facts, were they part of the record in the present case, might have resulted in a violation of Section 310.11(15).



criminal charges against him in 2015 and in 2016, Snyder violated 40 P.S. § 310.78(b). 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. Snyder neither reported the two criminal charges in September 2015 nor the two charges in April 2016. The respondent is liable under this section.

Snyder also is liable for remedial action under count three (worthiness). 40 P.S. § 310.11(20) provides that a licensee shall not “[d]emonstrate a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.” The respondent’s course of conduct in writing the bad checks on multiple occasions, misrepresenting the existence of convictions to the Department and failing to report charges demonstrates a lack of trustworthiness necessary in the profession. Snyder’s personal failures in his financial affairs as well as failing his responsibilities to the insurance regulator demonstrate that he cannot be trusted with the financial affairs of consumers and companies alike. He is therefore currently unfit to hold an insurance license.

Liability under three of the four counts results from Snyder’s course of conduct relative to the bad checks. However, he is separately liable under each count because each statutory section proscribes certain aspects of the course of conduct, with the worthiness count encompassing all aspects. With Snyder liable for remedial action under three of the four counts, 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 Insurance Department Act, including those provisions violated by Snyder's conduct. 40 P.S. 310.91(d)(1). Each violation 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 related to the financial responsibility required in the insurance profession. The respondent's repeated criminal actions evidence an irresponsibility 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 agent, and rely upon the agent's integrity. A producer who has recently committed financial crimes to the detriment of other individuals and businesses is currently incapable of the trust necessary in the profession. Simply put, Snyder at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers.

In addition, the respondent misrepresenting his convictions to the Commonwealth's regulator and failing to report subsequent charges 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 an additional aggravating factor, the respondent did not participate in these proceedings. This demonstrates a lack of respect towards the regulator and of the charges brought against the respondent. Without the respondent's participation, it is impossible to determine whether Snyder tacitly acknowledges and accepts the charges against him or passively denies the charges by ignoring them. Lack of remorse or acceptance of responsibility is a substantial aggravating factor. *In re O'Dell*, SC04-09-041 (2007); *In re Burgunder*, SC10-08-017 (2010). Remorse and acceptance of responsibility mitigates the seriousness of the conduct. *In re Gottfried*, SC98-06-009 (1999); *In re Walters*, SC03-12-021 (2004). By not participating, Snyder lost the opportunity to explain his actions or otherwise mitigate the charges and instead demonstrates that he does not fully appreciate the importance of this matter.

Snyder did not offer mitigating evidence or arguments. However, some evidence of mitigation is evident from the record. The Department did not allege 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. In addition, the sentences imposed by the sentencing judge for each criminal offense recognized that the offenses were not of the most serious nature. For the two convictions with docket information, no incarceration was ordered and only one had a fine, in the amount of \$100.

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. In its motion for default judgment, the Department requested entry of default judgment without hearing, to deem all relevant facts in the OTSC as admitted and adjudicate this matter based upon the pleadings, to revoke the respondent's producers license and to impose upon the respondent a civil penalty for each of the four counts totaling \$20,000.

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>Gerald Wayne Snyder, Jr.</b>	: 40 P.S. §§ 310.11(1), (15), (20) and
528 Mahoning St.	: § 310.78(b)
Milton, PA 17847	: :
	: :
Respondent	: Docket No. <b>SC16-09-012</b>

**ORDER**

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

1. Gerald Wayne Snyder, Jr. shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.
  
2. All of the insurance licenses or certificates of qualification of Gerald Wayne Snyder, Jr. **ARE REVOKED** for a minimum of three (3) years pursuant to 40 P.S. 310.91 for each of counts one and three and four, with these revocations to run **concurrently** with each other. Additionally, Gerald Wayne Snyder, Jr. is prohibited from applying for a license or certificate of qualification in this Commonwealth for a minimum of three (3) years. Gerald Wayne Snyder, Jr. also is prohibited from applying to renew any license previously held by him in this Commonwealth for a minimum of three (3) years.
  
3. Gerald Wayne Snyder, Jr. shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows:

- a. Count one: \$500.00
- b. Count three: \$100.00
- c. Count four: \$200.00

for a total of Eight Hundred Dollars (\$800.00). 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.

4. 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 three (3) years from the date of any relicensure.

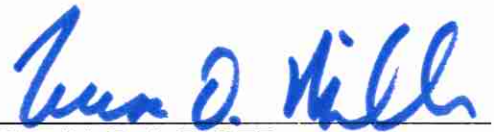
5. Gerald Wayne Snyder, Jr. shall have no right to prior notice of a suspension imposed pursuant to paragraph 4 of this order, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to the respondent by certified 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.

6. At the hearing described in paragraph 5 of this order, the respondent shall have the burden of establishing that he is worthy of an insurance license.



7. In the event that the respondent's licenses are suspended pursuant to paragraph 4 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.

8. This order is effective immediately.



TERESA D. MILLER  
Insurance Commissioner