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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:
: :
Joseph Alexander Biles : Sections of the Insurance Department
1345 Perimeter Parkway : Act of 1921, P.L. 789, No. 285, *as*
Virginia Beach, Virginia 23454-5885 : *amended* (40 P.S. § 310.11(2), (20),
: 40 P.S. § 310.78(a)).
Respondent :
: :
: Docket No. SC14-01-006

ADJUDICATION AND ORDER

AND NOW, this 7th day of October, 2014, Michael F. Consedine, 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 February 11, 2014 directed to Joseph Alexander Biles (“the respondent”). On February 19, 2014 the Department filed an Amended Order to Show Cause to include a copy of the Virginia State Corporation Commission Order Revoking License. Upon learning of the respondent’s correct address the Department on July 15, 2014 filed and served a Second Amended Order to Show Cause.¹

¹ Except for the addition of an exhibit and a change in the respondent’s address, the Orders to Show Cause contain identical substantive content. Accordingly, for the purpose of this Adjudication and Order, all three Orders to Show Cause simply will be referenced as the OTSC.

The OTSC alleged that the respondent violated the Insurance Department Act.² Specifically, the OTSC alleged that on November 20, 2012, the Commonwealth of Virginia State Corporation Commission revoked the respondent's producer, personal lines license. The respondent, also a licensed Pennsylvania insurance producer, failed to inform the Pennsylvania Insurance Department ("Department") of either the underlying criminal charges or the Virginia administrative action.

The OTSC advised the respondent 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 the respondent by certified mail and received.

The respondent did not answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On September 4, 2014, the Department filed a motion for default judgment and served the respondent 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 and that the document was not returned to the Department as undeliverable. The respondent did not respond to the motion for default judgment nor make 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.

² 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.*).

DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since the respondent 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.

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

³ 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.

case⁴ provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.⁵ However, given that the respondent has not answered the order to show cause and given current case law, 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 case law 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. §§ 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.

⁴ 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.*).

⁵ 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.

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 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 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 the respondent was a licensed insurance producer and that the Commonwealth of Virginia State Corporation Commission ("Commission") revoked his personal lines producer license. [OTSC ¶ 3, Exhibit A]. The revocation occurred after an investigation revealed that the respondent had failed to disclose a pending criminal matter on his Virginia producer license application. [Motion for Default Judgment,

Exhibit A]. Although given notice of his right to a hearing, Biles did not respond or communicate with the Commission at any time. [OTSC Exhibit A]. Consequently, the Commission found that the respondent had violated Virginia law because he provided "materially incorrect, misleading, incomplete or untrue information in his license application" filed with the Virginia Commission. [*Id.*]. The respondent did not notify the Pennsylvania Insurance Department of either the criminal charge or the Virginia Administrative Order. OTSC ¶ 4.

For these actions, the Department charged the respondent with three distinct violations of the Insurance Department Act: 1) violating 40 P.S. § 310.10(2) which prohibits a producer from violating "the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state's insurance commissioner;" 2) violating 40 P.S. § 310.11(20) which prohibits a producer from "demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure;" and 3) violating 40 P.S. § 310.78 which requires a licensee to report to the Department any administrative action or criminal charges. This statutory provision also requires a licensee to provide the Department with copies of any documents pertaining to the administrative action or criminal charge. 40 P.S. § 310.78(b).

For each of these three charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his certificate of qualification or license as well as imposing a penalty of up to \$5,000.00 per violation. 40 P.S. § 310.91. In the present case, the admitted facts support sanctions for each of the charges against the respondent. With his actions, the respondent demonstrated that he is not worthy of licensure under 40 P.S. §§ 310.11(2), 310.11(20) and 310.78(a). With the respondent liable for remedial action under each of these charges, the appropriate 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 sections 310.11 and 310.78 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 is connected to the respondent's duties as an insurance agent.

In particular, the respondent's misrepresentation on his Virginia license application, goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance buying public. Additionally, the respondent's failure to respond to the Virginia Commission's Order and his failure to report to Pennsylvania either the criminal charge or the Virginia administrative action violated Pennsylvania law. These actions demonstrate a disregard for both the respondent's obligations to his clients and to the regulators.

If he is dishonest with regulators, then the respondent cannot be entrusted with the welfare of individuals he purports to serve. By definition, 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 demonstrated dishonesty towards the regulators of his profession 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 his customers. No evidence exists to mitigate the seriousness of the violations because Biles has not responded to either the Order to Show Cause or the Motion for Default Judgment.

The Department in its Order to Show Cause and Motion for Default judgment requests that the Commissioner impose a \$5,000.00 fine per violation, revoke all licenses and prohibit the respondent from future licensure for a minimum period of five years. The Department also asks that the respondent be barred from future licensing until all the terms of the Commissioner's Order are fulfilled and, if ever relicensed, that any such licenses be subject to supervision for a minimum period of at least five years from the date of any such future licensure.

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

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the parties and subject matter of these proceedings.

2. The Department may revoke or suspend a certificate or license upon finding that an insurance producer has engaged in conduct which would disqualify him from initial issuance of a certificate or a license.

3. Unworthiness to hold a license may be established by a producer's failure to comply with the law which requires a respondent to comply with both the laws of the Commonwealth and any order of another state's Commissioner.

4. If unworthiness is established, the Commissioner may exercise discretion to impose remedial action in light of the producer's conduct as well as mitigating and aggravating factors.

5. Producers on the front line dealing with the insurance-buying public must avoid conduct demonstrating a disregard for regulations which protect those consumers.

6. Joseph Alexander Biles by his conduct demonstrates current unworthiness to hold an insurance license.

7. If any of the foregoing Conclusions of Law should be held to constitute Findings of Fact, the ones so found are incorporated therein by reference.

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IN RE:	: ALLEGED VIOLATIONS:
	:
Joseph Alexander Biles	: Sections of the Insurance
1345 Perimeter Parkway	: Department Act of 1921, P.L.
Virginia Beach, Virginia 23454-5885	: 789, No. 285, <i>as amended</i> (40
	: P.S. § 310.11(2), (20),
Respondent	: 40 P.S. § 310.78(a).
	:
	:
	: Docket No. SC14-01-006

ORDER

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

1. All of the insurance licenses or certificates of qualification of Joseph Alexander Biles **ARE REVOKED** for a minimum of five (5) years pursuant to 40 P.S. 310.91 for each of Counts one through three with these revocations to run **concurrently** with each other for a total minimum period of **five (5) years**. Additionally, Joseph Alexander Biles is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of **five (5) years**. Joseph Alexander Biles is also prohibited from applying to renew any certificate of qualification previously held by him in this Commonwealth for a minimum of **five (5) years or until all the terms of this Order are fulfilled**. In the event that Joseph Alexander Biles becomes relicensed at any future date, any such license will be subject to supervision for a minimum period of

at least five (5) years from the date of any such future licensure.

2. Joseph Alexander Biles shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

- a. Count one: \$2,000.00
- b. Count two: \$1,000.00
- c. Count three: \$4,000.00

for a total of seven thousand dollars (\$7,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: April Phelps, 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.

3. This order is effective immediately.


MICHAEL F. CONSEDINE
Insurance Commissioner