



**COMMONWEALTH OF PENNSYLVANIA
INSURANCE DEPARTMENT
ADMINISTRATIVE HEARINGS OFFICE**
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Harrisburg, PA 17102

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October 1, 2008

Thomas C. Helbig
9 Arlington Avenue
Carnegie, PA 15106

Jodi A. Frantz, Department Counsel
Pennsylvania Insurance Department
1341 Strawberry Square
Harrisburg, Pa 17120

RE: The Appeal of **Thomas C. Helbig**
Pennsylvania Insurance Department
Docket No. **SC08-07-013**

Dear Parties:

I am mailing this date an Adjudication and Order executed by Joel S. Ario, Insurance Commissioner.

Sincerely,

A handwritten signature in cursive script that reads "Jean Martin".

Jean Martin

Assistant Hearings Administrator

cc: James A. Johnson
Presiding Officer

Art McNulty
Chief Counsel

Attachment(s)

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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

IN RE:

Thomas C. Helbig
9 Arlington Avenue
Carnegie, PA 15106

Respondent

PENNSYLVANIA INSURANCE
DEPARTMENT

: ALLEGED VIOLATIONS:

:
: Sections 611-A(2), (4), (5-9), (17) and
: (20) of the Insurance Department Act of
: 1921, P.L. 789, No. 285, *as amended* (40
: P.S. §§ 310.11).

:
: Sections 37.46, 37.47 and 37.48 of the
: Insurance Department Regulations (31 Pa.
: Code §§ 37.46, 37.47 and 37.48)

:
: Docket No. **SC08-07-013**

ADJUDICATION AND ORDER

AND NOW, this 1st day of October, 2008, Joel Ario, 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 July 10, 2008 directed to Thomas C. Helbig (“Helbig” or “the respondent”). The OTSC alleged that Helbig violated the Insurance Department Act¹ and Department regulations.² Specifically, the OTSC alleged that Helbig, a licensed insurance agent, misappropriated monies received in his business, forged customer signatures, committed dishonest acts, charged unauthorized fees,

¹ Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 310.11.

² 31 Pa. Code §§ 37.46, 37.47 and 37.48.

DATE MAILED: October 1, 2008

misrepresented insurance products and otherwise demonstrated unworthiness to be in the business of insurance. The OTSC contained one hundred fifty-seven numbered averments, incorporated twenty-three documents, and asserted Helbig's misconduct in twelve counts against him.

The OTSC advised Helbig 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 documents attached to 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.

Helbig failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On August 19, 2008, the Department filed a motion for default judgment and served Helbig in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed by certified and first class mail 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. A copy of the certified receipt card shows that the OTSC was delivered and received on July 12, 2008. The respondent has not filed a response to the OTSC or 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 Helbig 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.

matter⁴ 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 caselaw, these hearing procedures are inapplicable.

While no court has directly addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Insurance Department Act, the caselaw supports such power. For example, in *United Healthcare Benefits Trust v. Insurance Commissioner*, 620 A.2d 81 (Pa. Cmwlth. 1993), the Court affirmed the Commissioner's grant of summary judgment for civil penalties despite the language contained in 2 Pa.C.S. § 504 and 40 P.S. § 47.⁶ 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.

⁴ Insurance Department Act, Act of May 17, 1921, P.L. 789 as amended (40 P.S. §§ 1-321).

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 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(d). The subsection then sets forth various penalties which may be imposed for violations.

Similarly, Article VI of the Insurance Department Act, also at issue in the present case, provides for enforcement of its provisions in accordance with the hearing procedures contained in the Administrative Agency Law. 40 P.S. § 625-10(c).

⁶ The operative language requiring a hearing is similar to that in 40 P.S. § 310.91 and the Administrative Agency Law.

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 Kozubal*, P93-08-13 (1997); *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 Sturman*, SC07-06-016 (2007). 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 during the relevant time period, Helbig was a licensed insurance producer as well as a licensed securities agent until the Pennsylvania Securities Commission revoked that license on July 8, 2008. [OTSC ¶¶ 1-3, 88; Exhibit W]. At various times, Helbig was employed by various producer agencies and financial services firms. [OTSC ¶¶ 4-8].

One of Helbig's clients in 2006 was Keith Marburger, who owned an annuity issued in 1998. [OTSC ¶ 9]. In May 2006, without the knowledge or consent of Mr. Marburger, Helbig caused a partial surrender of the annuity in the amount of \$10,000 and had the money deposited in Helbig's account. [OTSC ¶¶ 10-14]. He accomplished the partial surrender by forging Mr. Marburger's signature on the annuity withdrawal form submitted to American Skandia, the annuity's issuer. [OTSC ¶¶ 14, 16-17; Exhibit A]. In addition, Helbig had forged Mr. Marburger's name on American Skandia's Third Party Investment Advisor Declaration Form ("TPIAD Form"). [OTSC ¶¶ 21-23; Exhibit B].

When Mr. Marburger received notice of the partial surrender from American Skandia, he informed the company that he neither authorized the withdrawal nor signed the form, and the company ultimately reversed the transaction. [OTSC ¶¶ 15, 18]. Although Helbig told Mr. Marburger that his actions were designed to "expedite the process" of procuring an investment, at no time did Helbig invest the proceeds from the withdrawal for Mr. Marburger's benefit. [OTSC ¶¶ 19-20]. After Helbig was terminated by his employer in June 2006 for sales practices misconduct, he again forged Mr. Marburger signature to transfer the account to his new employer. [OTSC ¶¶ 4-5, 25-27; Exhibit C].

In a nearly identical fashion as he did with Mr. Marburger, Helbig in June 2006 caused \$9,800 to be deposited in his account by a partial surrender of an American Skandia annuity owned by Richard and Sylvia Smith. [OTSC ¶¶ 29-38]. His actions

included forging the Smiths' signatures on the withdrawal form. [OTSC ¶ 37-38]. Although Helbig did not forge the Smiths' signatures on the TPIAD Form as he did for Mr. Marburger, Helbig misrepresented to an Insurance Department investigator that the form authorized him to make the partial surrender of the Smiths' annuity. [OTSC ¶¶ 40-41; Exhibit E]. Just as he did with Mr. Marburger's account, Helbig transferred the Smiths' account to his new employer in late 2006 by forging their signatures on the dealer change form. [OTSC ¶ 42-43; Exhibit F]. American Skandia ultimately reversed the partial surrender of the Smiths' annuity. [OTSC ¶ 39].

Helbig also victimized an individual named Mary Gurcak while acting as her financial advisor. [OTSC ¶¶ 45-87]. Ms. Gurcak funded a USAllianz flexible premium deferred annuity through Helbig in part with a pension plan lump sum from her retirement from Bell Atlantic. [OTSC ¶¶ 47-50]. The initial funding of the annuity in 1997 was \$154,538.74 and in July 2001 the contract value was \$170,460.77. [OTSC ¶¶ 50-51; Exhibit G]. Ms. Gurcak in October 2001, acting on advice from Helbig, surrendered the USAllianz annuity for \$154,927.95 less a \$6,181.55 surrender charge and purchased a \$148,746.40 American Skandia annuity. [OTSC ¶¶ 52-56; Exhibit H].

Between November 2001 and January 2006, Ms. Gurcak was charged a total of \$14,294.13 in "advisory fees" by an asset allocation firm selected by Helbig to manage the American Skandia annuity. [OTSC ¶¶ 57-58]. Helbig received at least 50% of those fees. [OTSC ¶ 59]. In addition, pursuant to an advisory services agreement purportedly entered into by Ms. Gurcak, Helbig between July 2003 and March 2006 caused seven partial surrenders of the American Skandia annuity totaling \$47,000. [OTSC ¶¶ 60-65; Exhibits I-P]. Helbig deposited those withdrawals in his bank account. [OTSC ¶ 61]. Ms. Gurcak did not know that the withdrawals were for "advisory fees" but rather believed the monies were to be invested for her benefit. [OTSC ¶ 66].

In April 2006, Helbig caused the American Skandia annuity to be surrendered. [OTSC ¶ 68; Exhibit Q]. At that time, the value of the annuity was \$85,848.83. [OTSC ¶ 69; Exhibit R]. Helbig misrepresented to Ms. Gurcak that there would be no surrender charge associated with the transaction. [OTSC ¶ 71]. However, after a \$9,819.07 surrender charge and \$1,487.47 in recaptured credits were deducted, the net proceeds from the surrender were only \$74,542.30. [OTSC ¶ 70, 72-73]. These proceeds were used to purchase a Security Benefit annuity through PlanMember Securities Corporation. [OTSC ¶¶ 74, 76; Exhibit S].

Before transferring the net proceeds from the American Skandia annuity to the Security Benefit annuity, Helbig was required to complete an investment profile and suitability form for Ms. Gurcak. [OTSC ¶ 77]. This form, required by Financial Industry Regulatory Authority Rule 2310, effectuated the investment with PlanMember Securities Corporation and served as a disclosure document designed to allow PlanMember to evaluate the suitability of the transaction. [OTSC ¶¶ 78-79]. Helbig falsely indicated on the form that there would be no surrender charge associated with liquidating the American Skandia annuity and also that the annuity had been held for eight years. [OTSC ¶ 80; Exhibit T]. Helbig intentionally falsified the form to evade PlanMember's suitability analysis and to mislead Ms. Gurcak about the surrender charge. [OTSC ¶¶ 81-83]. He received a commission of \$2,251.33 for the sale of the Security Benefit annuity. [OTSC ¶ 75].

On July 8, 2008, the Pennsylvania Securities Commission revoked Helbig's registration as a securities agent and permanently barred him from engaging in securities transactions and related activities. [OTSC ¶¶ 88-89; Exhibit W]. The Commission also imposed administrative costs and a penalty totaling \$81,000. [Exhibit W]. The conduct relied upon by the Commission was similar in nature to the conduct in the present case. [Exhibit W].

For various aspects of Helbig's conduct, the Insurance Department charged Helbig with numerous distinct violations of the Insurance Department Act in twelve charges corresponding with subsections of 40 P.S. § 310.11 and other statutory provisions:

Count One—Improperly misappropriating money received in the course of business in violation of 40 P.S. § 310.11(4). Partial annuity surrenders for Mr. Marburger, the Smiths and Ms. Gurcak and deposit of the monies in Helbig's account.

Count Two—Forging another person's name on an application for insurance or on any document related to an insurance or financial service transaction in violation of 40 P.S. § 310.11(9). Three instances with Mr. Marburger and two with the Smiths.

Count Three—Committing fraud, forgery, dishonest acts or an act involving a breach of a fiduciary duty in violation of 40 P.S. § 310.11(17). Same conduct as in Count Two plus misrepresenting the surrender charge to Ms. Gurcak and PlanMember Security Corporation.

Counts Four and Five—Unfair financial planning practices (40 P.S. § 625-3) in violation of 40 P.S. § 310.11(2). Helbig's failure to disclose statutorily-required information to Ms. Gurcak and charging \$47,000 in additional fees violated 40 P.S. § 625-3(a), (b) and (c). These violations of insurance laws constitute violations of 40 P.S. § 310.11(2).

Count Six—Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance in violation of 40 P.S. § 310.11(5). Misrepresentations concerning the American Skandia annuity on the suitability form and to Ms. Gurcak.

Count Seven—Use of fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in violation of 40 P.S. § 310.11(7). Causing and appropriating the partial surrenders for the Marburger, Smith and Gurcak annuities, entering into an investment services advisory agreement with Ms. Gurcak which charged a \$2,500 minimum quarterly management fee, and causing the value of Ms. Gurcak's assets to plummet from \$154,538 in 1997 to \$87,834.39 in 2007.

Count Eight—Demonstration of a lack of general fitness, competence or reliability in violation of 40 P.S. § 310.11(20). Same conduct as Count Seven plus misleading Ms. Gurcak and PlanMember Security Corporation and violating 40 P.S. § 625-3.

Counts Nine, Ten and Eleven—Unfair insurance practice and fraud in violation of 40 P.S. § 1171.4 and 1171.5, and accordingly in violation of 40 P.S. § 310.11(6). Helbig's forgeries and misrepresentations violated several sections of the Unfair Insurance Practices Act⁷ ("UIPA") and thus violated 40 P.S. § 310.11(6) in each instance.

Count Twelve—Revocation of financial services license by Pennsylvania Securities Commission in violation of 40 P.S. § 310.11(8).

For each of the charges under the Insurance Department Act, the Commissioner has authority to impose remedial action against the respondent, including suspending or revoking his license, imposing a civil penalty not to exceed \$5,000.00, ordering him to cease and desist from the conduct and imposing additional conditions. 40 P.S. § 310.91. The UIPA authorizes an order to cease and desist, and for certain enumerated unfair acts or practices authorizes the suspension or revocation of the respondent's license. 40 P.S. § 1171.9. A civil monetary penalty under the UIPA may be imposed by a court but not by the Commissioner. *Id.*; 40 P.S. § 1171.11. For violations of Article VI of the Insurance Department Act, including unfair financial planning practices,⁸ the Commissioner may suspend or revoke the respondent's license, impose a civil penalty not to exceed \$5,000.00 and order the respondent to cease and desist from the conduct. 40 P.S. § 625-10.

The subsections of 40 P.S. § 310.11 Helbig is charged with violating, as well as the current remedial sections applicable to those violations, were not effective until June 1, 2003.⁹ Helbig is liable for remedial action for his conduct after that date as charged in the OTSC. Helbig's actions, including forging client signatures, misappropriating funds and making misrepresentations, involved three of his clients between July 2003 and the end of 2006.

⁷ Act of July 22, 1974, P.L. 589, No. 205 (40 P.S. §§ 1171.1-1171.15).

⁸ 40 P.S. § 625-3.

⁹ Act of December 3, 2002, P.L. 1183, No. 147 § 1 (effective in 180 days).

Misappropriating monies received in the course of business on nine occasions violated 40 P.S. § 310.11(4) (Count One). In addition, the same conduct constituted fraudulent or dishonest practices demonstrating Helbig's untrustworthiness in violation of 40 P.S. § 310.11(7) (Count Seven) as well as a lack of general fitness and reliability under 40 P.S. § 310.11(20) (Count Eight).

Forging client signatures on five occasions is conduct specifically proscribed by 40 P.S. § 310.11(9) (Count Two) and 40 P.S. § 310.11(17) (Count Three). Also, the forgeries were fraudulent and dishonest practices as proscribed by 40 P.S. § 310.11(7) (Count Seven). The conduct also demonstrated a lack of general fitness and reliability contemplated by 40 P.S. § 310.11(20) (Count Eight).

By misrepresenting the surrender charge of the American Skandia annuity to Ms. Gurcak and to PlanMember Security Corporation, Helbig violated several statutory provisions. The conduct constituted fraud and dishonest acts, violating 40 P.S. § 310.11(17) (Count Three). It also violated 40 P.S. § 310.11(5) (Count Six) because Helbig intentionally misrepresented the terms of an existing insurance contract. The conduct also violated the standard that a producer must demonstrate general fitness, competence and reliability. 40 P.S. § 310.11(20) (Count Eight).

Insurance producers holding themselves out to the public as financial advisers, investment advisers or other financial planners are subject to certain statutory requirements. 40 P.S. § 625-3. Helbig explicitly held himself out as such a financial adviser but did not comply with those requirements. By charging Ms. Gurcak at least \$47,000 to service her annuity, he ignored the requirement that a producer is prohibited from charging an additional fee for services customarily associated with the solicitation, negotiation or servicing of policies. 40 P.S. § 625-3(a). By failing to advise Ms. Gurcak

that he was an insurance producer receiving a commission from the sale of products and that she was under no obligation to purchase the annuities through him, he violated 40 P.S. § 625-3(b) and 40 P.S. § 625-3(c). Finally, by violating these insurance laws, he also violated 40 P.S. § 310.11(2), which prohibits violation of other insurance laws and regulations. Helbig is liable under Counts Four and Five.

In addition to being liable under Count Seven¹⁰ because of his forgeries and misappropriation of client funds, Helbig separately is liable under this count because of his dealings with Ms. Gurcak. Because of the exorbitant “management” fee for the annuities, the undisclosed surrender charges and his other dealings relative to her retirement fund, the value of her investment plummeted from over \$150,000 to less than \$90,000. Helbig’s dishonest conduct relative to Ms. Gurcak and her investments demonstrated a lack of competence and trustworthiness necessary in the profession.

As previously discussed, Helbig is liable under Count Eight because of his conduct falling under Counts One, Two and Three. 40 P.S. § 310.11(20) prohibits demonstrating “a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.” In addition to the violations under Counts One, Two and Three, the conduct establishing liability under Counts Four through Seven also demonstrates unworthiness for licensure.

Helbig’s conduct including the forgeries and misrepresentations renders him liable under Counts Nine, Ten and Eleven. Section 4 of the UIPA¹¹ proscribes generally practices which are unfair methods of competition or unfair or deceptive acts or practices in the business of insurance. Helbig’s course of conduct violated this section and

¹⁰ 40 P.S. § 310.11(7)—fraudulent/coercive/dishonest conduct or demonstrated incompetence/untrustworthiness

¹¹ 40 P.S. § 1171.4.

establishes liability under Count Nine. In addition, Section 5 of the UIPA¹² prohibits specific enumerated practices. Forging the Marburger and Smith signatures and misrepresenting the surrender charges to Ms. Gurcak constituted misrepresentations for the purpose of inducing the lapse, forfeiture, exchange, conversion or surrender of insurance policies. This practice violates 40 P.S. § 1171.5(a)(1)(vi). The misrepresentations also constitute statements or omissions which misrepresent the benefits, advantages, conditions or terms of any insurance policy to obtain a fee or commission, violations of both 40 P.S. § 1171.5(a)(1)(i) and 40 P.S. § 1171.5(a)(12). Helbig is liable under Count Ten. Finally, the commission of these unfair insurance practices constitutes a violation of 40 P.S. § 310.11(6). Helbig is liable under Counts Eleven.

40 P.S. § 310.11(8) prohibits a licensed producer from having a financial services license denied, suspended or revoked by a governmental entity. When the Securities Commission revoked Helbig's securities license, it rendered him in violation of the Insurance Department Act, and liable under Count Twelve.

With Helbig liable for remedial action under each of the twelve counts, the appropriate action must be established for each count.

¹² 40 P.S. § 1171.5.

PENALTIES

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). In the present case, suspension or revocation of Helbig's license is authorized by the violations of the Insurance Department Act, the financial planning provisions and Section 5 of the UIPA. Civil penalties are authorized by the Insurance Department Act and the financial planning provisions.

Helbig's failure to comply with the statutes applicable to his license reveals his lack of fitness for licensure and subjects him to other remedial action. The conduct took place over a period of years and involved multiple individuals. No evidence exists to mitigate the evidence of the violations committed by Helbig, who did not offer mitigating evidence or arguments.

The underlying course of conduct in the present case is of the most serious nature, and directly connected to Helbig's duties as an insurance producer. This seriousness is reflected in the penalties imposed. Helbig's infliction of financial harm on others evidences a moral turpitude which is antithetical to the trustworthiness required in the profession. 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 recently inflicted financial harm upon others is incapable of the trust necessary in the profession. Simply put, Helbig at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers.

The Department in its Order to Show Cause and in its motion for default judgment, requested revocation of Helbig's license, an order to cease and desist, the

maximum civil penalty of \$5,000 per violation and other appropriate relief. The total civil penalty requested by the Department is \$625,000. Of this total, \$200,000 represents penalties for violations of the UIPA,¹³ which as discussed above are not available in this administrative action. Although Helbig's violations were serious and numerous, many of them overlap or duplicate violations of different statutory provisions for the same conduct. The various statutory provisions are designed to protect consumers from different aspects of a producer's conduct which may present somewhat differing dangers to the public. However, consideration was given to the fact that in many instances, the same conduct resulted in multiple violations. The primary consideration in imposing remedial action always is the nature of the conduct and the danger and actual harm it presents to insurance consumers.

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

¹³ The Department requested \$50,000 for each six month period the unfair insurance practices continued, approximately thirty-six months. Two of the three counts involving unfair practices were for violations of the UIPA while the third was for violating the Insurance Department Act.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

Thomas C. Helbig
5035 Chestnut Street
Philadelphia, PA 19139

Respondent

: ALLEGED VIOLATIONS:

:
: Sections 611-A(2), (4), (5-9), (17) and
: (20)of the Insurance Department Act of
: 1921, P.L. 789, No. 285, *as amended*, (40
: P.S. §§ 310.11).

:
: Sections 37.46, 37.47 and 37.48 of the
: Insurance Department Regulations (31 Pa.
: Code §§ 37.46, 37.47 and 37.48)

Docket No. **SC08-07-013**

ORDER

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

1. Thomas C. Helbig shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Thomas C. Helbig **ARE REVOKED** as follows:

- a) a minimum of five (5) years for Counts One, Two and Three
- b) a minimum of five (5) years for Counts Four and Five
- c) a minimum of five (5) years for Counts Six, Ten (UIPA § 5) and Eleven
- d) a minimum of eight (8) years for Counts Seven and Eight
- e) a minimum of two (2) years for Count Twelve
- e) no revocation for Count Nine (UIPA § 4)

Such minimum periods of revocation to run CONSECUTIVELY for a total minimum period of revocation of twenty-five (25) years. Additionally Thomas C. Helbig is prohibited from applying for a license to act as insurance producer in this Commonwealth for a minimum of twenty-five (25) years. Thomas C. Helbig also is prohibited from applying to renew any insurance license previously held by him in this Commonwealth for a minimum of twenty-five (25) years.

3. Thomas C. Helbig shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

- a. Counts One, Two and Three (21 violations): \$21,000
- b. Counts Four and Five (45 violations): \$20,000
- c. Counts Six and Eleven (10 violations): \$5,000
- d. Counts Seven and Eight (24 violations): \$36,000
- e. Count Twelve (1 violation): \$500
- f. Counts Nine and Ten (UIPA violations): no civil penalty

for a total of Eighty-Two Thousand Five Hundred Dollars (\$82,500). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon L. Fraser, Office Manager, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

4. If he has not done so already, Thomas C. Helbig shall make restitution in the amount of \$47,000 to Mary C. Gurcak representing the partial surrenders of her American Skandia annuity between 2003 and 2006, or shall enter into a restitution agreement with Mary C. Gurcak, within **ninety (90) days** from the date of this Order.

Thomas C. Helbig shall provide proof of payment or restitution agreement to the Insurance Department directed to Sharon L. Fraser, Office Manager, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120.

5. This order is effective immediately.



Joel Ario
Insurance Commissioner