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ADMINISTRATIVE OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

<p>IN RE:</p> <p>Richard Alan Kroope 1036 Linden Street Bethlehem, PA 18018</p> <p>Respondent</p>	<p>: ALLEGED VIOLATIONS:</p> <p>:</p> <p>: Sections 611-A(1), (2), (3), (7), (13), and (20) of the Insurance Department Act of 1921, P.L. 789, No. 285, <i>as</i> amended (40 P.S. §§ 310.11(1), (3), (7), (13) and (20)).</p> <p>:</p> <p>: 31 Pa. Code §§ 37.46 and 37.47</p> <p>:</p> <p>: Docket No. SC09-12-005</p>
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ADJUDICATION AND ORDER

AND NOW, this 17th day of February, 2010, 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 December 2, 2009 directed to Richard Alan Kroope ("Kroope" or "the respondent"). The OTSC alleged that Kroope violated the Insurance Department Act¹ and Department regulations.² Specifically, the OTSC alleged that Kroope, a licensed insurance agent, failed to pay state income tax for calendar years 1999 through 2006 and provided incorrect, misleading, incomplete or false information

¹ Act of May 17, 1921, P.L. 789, No 285, 40 P.S. § 310.11(1), (3), (7), (13) and (20).
² 31 Pa. Code §§ 37.46 and 37.47.

DATE MAILED: February 17, 2010

on several license applications and renewals; used fraudulent, coercive or dishonest practices and demonstrated incompetence, untrustworthiness, financial irresponsibility and a lack of general fitness, competence and reliability.

The OTSC advised Kroope to file an answer in accordance with the applicable regulation (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.

Kroope failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On January 7, 2010, the Department filed a motion for default judgment and served Kroope 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 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 Kroope 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

³ The OTSC warned the respondent that failure to answer in writing would result in the factual allegations

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 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

being deemed admitted and that the Commissioner could enter an order imposing penalties.

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

⁵ This 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.

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 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 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 Kroope is a licensed insurance agent who maintains a residential address at 1036 Linden Street, Bethlehem, Pennsylvania. [OTSC ¶ 1]. His current license expires on June 27, 1010. [OTSC ¶ 2]. Kroope did not pay the personal income tax due to the Commonwealth of Pennsylvania for tax years 1999 through 2006 for a total of \$151,376.59 owing in back taxes and penalties. [OTSC ¶¶ 3, 4; Exhibits B, C and D]. Despite his failure to pay the taxes, on three separate license renewal applications, Kroope alleged that he paid state income taxes. [OTSC ¶¶ 8 through 16; Exhibit A]. Although the Insurance Department repeatedly asked for documentary confirmation that he paid the Pennsylvania state income tax, Kroope failed to provide such proof. [OTSC ¶ 18].

As a result of these actions, the Insurance Department charged Kroope with five distinct violations of the Insurance Department Act: 1) failing to pay state income tax for the years 1999 through 2006 in violation of 40 P.S. § 310.11(13); 2) providing incorrect, misleading, incomplete or false information on his license applications in violation of 40 P.S. § 10.310.11(1); 3) attempting to obtain a license through misrepresentation in violation of 40 P.S. § 310.11(3); 4) demonstrating financial irresponsibility in the conduct of doing business in the Commonwealth; and 5) demonstrating a lack of general fitness, competence or reliability.

When a respondent fails to appear for a hearing, and the Insurance Commissioner finds that a respondent has violated the act, he has authority to suspend, refuse to renew or revoke a respondent's license. 40 P.S. § 310.91(d)(1). This section also authorizes the imposition of a \$5,000.00 fine for each violation. 40 P.S. § 310.91(d)(2). Furthermore, penalties may be imposed not only for violating specific provisions of the act such as failing to pay state income tax and lying about it on license renewal applications; they may be imposed if the agent or broker demonstrates a lack of general fitness. In the present case, the admitted facts support sanctions for each of the five counts.

Kroope is subject to penalties for count 1. His failure to pay state income tax not only violates the Insurance Department Act, it also violates the Commonwealth tax laws. According to tax lien records attached to the Order to Show Cause and which remain unchallenged by Kroope in this action, his current tax lien for the years 1999 through 2006 totals \$151,376.59 in back taxes and penalties. [OTSC Exhibits B, C, D]. This pattern of behavior constitutes more than a lapse of judgment or simple error. It reveals a serious financial irresponsibility as an insurance producer.

In addition, Kroope falsified his license renewal applications by answering "no" to

the question of whether he had failed to pay state income tax. He made this misrepresentation three times in order to obtain his license for the years 2004, 2006 and 2008. [OTSC ¶¶ 8 through 13]. On each of these applications he also agreed to an attestation that his answers on the application were correct. [OTSC ¶¶ 14, 15]. He is subject to penalties on Counts 2 and 3 of the OTSC. These particular offenses go to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance buying public. If he is dishonest with the regulator, then Kroope cannot be entrusted with the welfare of individuals he purports to serve. All these actions also subject him to penalties for demonstrating financial irresponsibility in the conduct of doing business in the Commonwealth and a lack of general fitness, competence or reliability as charged in Counts 4 and 5 of the OTSC.

With Kroope subject to penalties under each of the five 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 Kroope's conduct. 40 P.S. § 310.91(d)(1) and (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). Kroope's failure to comply with all the statutes and regulations applicable to his license reveal his lack of fitness for licensure. No evidence exists to mitigate the evidence of the violation committed by Kroope who has not offered mitigating evidence or arguments.

The Department in both its OTSC and its motion for default judgment asks that Kroope be ordered to cease and desist from the activities alleged in the OTSC, that Kroope's insurance producer license be revoked, that a civil penalty not to exceed \$5,000.00 be imposed per violation, that Kroope be ordered to pay restitution to the Department of Revenue and that other appropriate relief be granted.

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. Unfitness to hold a license may be established by a producer's violation of the Insurance Act which requires that a producer pay state income taxes and provide accurate and truthful information on an license application.

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

5. Producers are held to a high degree of professionalism and must exercise good judgment.

6. Richard Alan Kroope by his conduct has violated the Insurance Department Act and demonstrated that he currently is unfit to hold an insurance license.

8. 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.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

Richard Alan Kroope
1036 Linden Street
Bethlehem, PA 18018

Respondent

: ALLEGED VIOLATIONS:

:

: Sections 611-A(1), (2), (3), (7),
: (13), and (20) of the Insurance
: Department Act of 1921, P.L.
: 789, No. 285, *as amended* (40
: P.S. §§ 310.11(1), (3), (7), (13)
: and (20)).

:

: 31 Pa. Code §§ 37.46 and 37.47

:

: Docket No. **SC09-12-005**

ORDER

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

1. The motion for default judgment of the Pennsylvania Insurance Department is **GRANTED**.

2. Richard Alan Kroope shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

3. All of the insurance licenses or certificates of qualification of Richard Alan Kroope **ARE REVOKED** for a minimum of seven (7) years for each of his five violations of the Insurance Department Act, with these revocations to run concurrently with each other. Additionally, Richard Alan Kroope shall be ineligible to apply for, or receive, any certificate of qualification or license for a period of seven (7) years from the

date of this order. Should Richard Alan Kroope ever become re-licensed, he will be subject to supervision by the Department for a term of seven (7) years following the date of licensure.

4. Richard Alan Kroope shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

- a. Count One (7 violations) : \$7,000.00
- b. Counts Two and Three (6 violations): \$12,000.00
- c. Counts Four and Five: \$5,000

for a total of Twenty-Four Thousand Dollars (\$24,000). 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.

5. If he has not done so already, Richard Alan Kroope shall make restitution in the amount of \$151,376.59 to the Department of Revenue and 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.

6. This order is effective immediately.



JOEL ARIO
Insurance Commissioner