

RECEIVED
INSURANCE DEPARTMENT
03 DEC 33 AM 11:22
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:
Spiros Kasapidis
1612 North 11th Street
Reading, PA 19604

Respondent

: **ALLEGED VIOLATIONS:**
:
: Insurance Department Act, Act of May 17,
: 1921, P.L. 789, No. 285 (40 P.S. §§ 234,
: 279) (31 Pa. Code §§ 37.46, 37.47)
:
: Sections 5(a)12) of the Unfair Insurance
: Practices Act, Act of July 22, 1974, P.S.
: 589, No. 204 (40 P.S. § 1171.5)
:
: Docket No. **SC03-07-008**

ORDER AND ADJUDICATION

AND NOW, this 2nd day of January, 2007, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), makes the following Adjudication and Order. This case involves an insurance agent's alleged failure to submit initial life insurance premium payments and supporting material to an insurance company.

PROCEDURAL HISTORY

On July 8, 2003, the Insurance Department of the Commonwealth of Pennsylvania ("Department") filed an Order to Show Cause ("OTSC") alleging that Spiros Kasapidis violated sections 604 and 639 of the Insurance Department Act¹ and corresponding

¹ Act of May 17, 1921, P.L. 789, No. 285 as amended through the Act of June 25, 1997, P.L. 349, No. 40 (formerly 40 P.S. §§ 234, 279 (West 1999)), *repealed and partially reenacted* by the Act of December 6, 2002, P.L. 1183, No. 147. For ease of reference throughout this adjudication, citations will utilize the former Purdon's sections and subsections.

DATE MAILED:

regulations,² as well as alleging that Mr. Kasapidis violated section 5(a)(12) of the Unfair Insurance Practices Act.³ The OTSC consisted of sixty-four (64) numbered factual and legal averments and ten (10) exhibits, and was based upon the respondent's submission of five particular life insurance applications to Pruco Life Insurance Company ("Pruco") between October 2001 and February 2002. In the OTSC, the Department *inter alia* alleged that: 1) the respondent forged the applicant's signature on one of the applications; 2) Mr. Kasapidis failed to remit initial premium checks to Pruco for the five applications; and 3) by representing to Pruco that he received premium payments without forwarding payments to the company, the respondent made fraudulent representations for the purpose of obtaining commissions.

A presiding officer was appointed, and on August 15, 2003 the respondent filed an answer to the Department's OTSC in which he denied generally the averments in the OTSC. On August 2, 2003, the Department filed a motion for an order in the nature of a default judgment for failure to specifically admit or deny the OTSC averments. The respondent filed an amended answer on September 15, 2003 in which he specifically answered the averments. On that date, the presiding officer accepted the specific answer and denied the Department's motion.

The parties filed a joint stipulation of undisputed facts, and a prehearing conference was conducted on October 30, 2003. The parties appeared for a hearing on November 13, 2003, and the joint stipulation of facts (JS1) was admitted into the record, as were twelve additional documents (JS2-JS13) pursuant to stipulation of the parties. Two of the documents (JS12 and JS13) were part of insurance company files produced in response to a subpoena which had been issued for the respondent. In addition to the

² 31 Pa. Code §§ 37.46 and 37.47.

³ Act of July 22, 1974, P.L. 589, No. 205, (40 P.S. § 1171.5(a)(12)).

stipulated facts and documents, the Department presented the testimony of four witnesses and the respondent testified on his own behalf.

Following receipt of the hearing transcript, a briefing schedule was established and the parties filed briefs pursuant to that schedule. This matter is now ready for disposition.

FINDINGS OF FACT

1. The respondent, Spiros Kasapidis, resides in Reading, Pennsylvania and has been a licensed resident insurance agent since October 4, 1999. [Exhibit JS1 ¶¶ 1, 3-4].
2. Mr. Kasapidis was appointed as an agent with Prudential Financial/Pruco Life Insurance Company ("Pruco") in December 2000 and sold life insurance policies for the company. [Exhibit JS1 ¶ 5; N.T. 33-34, 48].
3. Over the course of the next year and a half, Mr. Kasapidis submitted approximately 75-85 life insurance applications to Pruco. [N.T. 78, 82-83].
4. Pruco's process for receiving applications included that the agent could call in an application by telephone initially, possibly followed by a facsimile transmission of the documentation, followed by a mailer including the documents and a prepaid premium if any. [N.T. 17-19].
5. In the initial telephone conversation, if the agent indicates that he or she received a prepaid premium payment from the applicant, Pruco's telephone underwriter keys into their computer system that prepayment was received, the date of the check and the amount. [N.T. 19-20; Exhibits JS3, JS5, JS7, JS9, JS11].
6. Whether receiving the application by telephone, fax or both, Pruco waits to process the application until the actual check is received if there is a prepaid premium. [N.T. 19].
7. When a check is received in the mailer, it is sent to Pruco's check-processing area. [N.T. 17-18, 28].

8. On occasion, application documents are misplaced or lost by Pruco's new business team, requiring that they be faxed again to the company by the agent. [N.T. 28, 79, 84, 92-93].
9. On occasion, a check sent from the new business team to the check processing area is misplaced and not processed. [N.T. 29, 79].
10. An agent is credited with 80 percent of the commission for sale of a policy the week following submission of application information if the agent indicates that a prepaid premium was received. [N.T. 42-43, 45].
11. The credited premium is paid out to an agent over a period of ten weeks. [N.T. 45-47].
12. If the actual payment is not received in 14 days from the date the agent supplied the information, the credited commission is taken away from the agent. [N.T. 43-44, 47].
13. There is no real benefit to the agent in writing policies in which the commissions are subsequently taken away because the new business is not underwritten or lapses in the first year of the policy. [N.T. 47-48, 74].

Natale Application

14. On or around October 12, 2001, Mr. Kasapidis submitted to Pruco various forms in connection with an application by Michael Natale. [Exhibits JS1 ¶¶ 5-9, JS2].
15. At the time, Michael Natale lived in Reading, Pennsylvania; a Reading address was listed on the application worksheet and the applicant's occupation was listed as "student." [Exhibits JS1 ¶ 10, JS2, JS12].

16. Pruco's records show that Mr. Kasapidis telephoned into Pruco an application for Mr. Natale on October 12, 2001 indicating a prepayment by check of the same date in the amount of \$51.31. [N.T. 19-20; Exhibit JS3].

17. Mr. Kasapidis submitted the original new business application including the check by mail in Pruco's new business mailer. [N.T. 13; Exhibit JS1 ¶ 12].

18. Pruco's computer records indicated that the prepayment check was not received by the company. [N.T. 21-22; Exhibit JS3].

19. Pruco notified Mr. Kasapidis via electronic communication that the prepayment check and voided check for electronic funds transfer remained outstanding and that certain forms were unreadable but Mr. Kasapidis did not respond to the communication. [N.T. 20-21; Exhibit JS3].

20. Pruco credited Mr. Kasapidis's commission account in the amount of \$136.86 but did not issue the Natale policy and recaptured the amount which it previously had credited the account. [Exhibit JS1 ¶¶ 14-16].

Taylor Application

21. On or around January 18, 2002, Mr. Kasapidis submitted to Pruco various forms in connection with an application by Jacob N. Taylor. [Exhibits JS1 ¶¶ 17-21, JS4].

22. Pruco's records show that Mr. Kasapidis telephoned into Pruco an application for Mr. Taylor on January 18, 2002 indicating a prepayment by check of the same date in the amount of \$52.98. [N.T. 22-23; Exhibit JS5].

23. Pruco's computer records indicated that the prepayment check was not received by

the company. [N.T. 22-23; Exhibit JS5].

24. Pruco notified Mr. Kasapidis via electronic communication that the prepayment check remained outstanding but Mr. Kasapidis did not respond to the communication. [N.T. 22-23; Exhibit JS5].

25. Pruco credited Mr. Kasapidis's commission account in the amount of \$117.70 but did not issue the Taylor policy and recaptured the amount which it previously had credited the account. [Exhibit JS1 ¶¶ 23-25].

Pappamedriou Application

26. On or around February 1, 2002, Mr. Kasapidis submitted to Pruco various forms in connection with an application by Christos Pappamedriou. [Exhibits JS1 ¶¶ 26-30, JS6].

27. Pruco's records show that Mr. Kasapidis telephoned into Pruco an application for Mr. Pappamedriou on February 1, 2002 indicating a prepayment by check of the same date in the amount of \$156.01. [N.T. 23-24; Exhibit JS7].

28. Pruco's computer records indicated that the prepayment check was not received by the company. [N.T. 23-24; Exhibit JS7].

29. Pruco notified Mr. Kasapidis via electronic communication that the prepayment check remained outstanding but Mr. Kasapidis did not respond to the communication. [N.T. 23-24; Exhibit JS7].

30. Pruco credited Mr. Kasapidis's commission account in the amount of \$141.30 but did not issue the Pappamedriou policy and recaptured the amount which it previously had credited the account. [Exhibit JS1 ¶¶ 32-34].

Schwartz Application

31. On or around January 31, 2002, Mr. Kasapidis submitted to Pruco various forms in connection with an application by Robert A. Schwartz. [Exhibits JS1 ¶¶ 35-40, JS6].
32. Pruco's records show that Mr. Kasapidis telephoned into Pruco an application for Mr. Schwartz on January 31, 2002 indicating a prepayment by check of the same date in the amount of \$54.58. [N.T. 25; Exhibit JS9].
33. Pruco's computer records as of April 17, 2003 indicated that the prepayment check was not received by the company. [N.T. 25; Exhibit JS9].
34. However, Pruco's paper file for the Schwartz application contained a copy of a check in the amount of \$54.58 written by a "Nicole J. Schwartz" and bearing the same address as for Robert Schwartz on the application documents. [N.T. 12-13, 50-51; Exhibit JS13].
35. Although the check was not written by Robert Schwartz and was on a different account than the one to be used for electronic funds transfer, this method of prepayment is acceptable to Pruco. [N.T. 51-52, 54-55; Exhibits JS8, JS13].
36. Pruco notified Mr. Kasapidis via electronic communication that the prepayment check remained outstanding but Mr. Kasapidis did not respond to the communication. [N.T. 25; Exhibit JS9].
37. Pruco credited Mr. Kasapidis's commission account in the amount of \$145.50 but did not issue the Schwartz policy and recaptured the amount which it previously had credited the account. [Exhibit JS1 ¶¶ 42-44].

Scheifley Application

38. On or around February 18, 2002, Mr. Kasapidis submitted to Pruco various forms in connection with an application by Jeffrey Scheifley. [Exhibits JS1 ¶¶ 45-48, JS8].
39. Pruco records show that Mr. Kasapidis telephoned into Pruco an application for Mr. Scheifley on February 18, 2002 indicating a prepayment by check of the same date in the amount of \$148.32. [N.T. 26; Exhibit JS11].
40. Pruco's computer records indicated that the prepayment check was not received by the company. [N.T. 26; Exhibit JS11].
41. Mr. Kasapidis notified Pruco via electronic communication that the application was being withdrawn and via telephone that no money was received from the applicant. [N.T. 25; Exhibit JS11].
42. Pruco credited Mr. Kasapidis's commission account in the amount of \$134.34 but did not issue the Scheifley policy and recaptured the amount which it previously had credited the account. [Exhibit JS1 ¶¶ 50-53].
43. Other than the five applications which are the subject of this action and a short period of time in which Mr. Kasapidis was difficult to contact, Pruco did not experience problems with his work or business practices. [N.T. 38, 44-45].
44. Pruco never received a complaint from any of Mr. Kasapidis's clients. [N.T. 45].
45. Other than the Schwartz file, Mr. Kasapidis's client files did not contain a copy of the prepayment check he represented to Pruco as having been received. [N.T. 34-38].

46. Mr. Kasapidis's other client files contained copies of prepayment checks. [N.T. 35].
47. Pruco requires of its agents as a good business practice that copies of all application materials including checks be maintained in case something gets lost and an issue arises such as a claim arising in the underwriting period. [N.T. 34].
48. Mr. Kasapidis did not make copies of all documents in all instances, and acknowledged that this was not a good business practice. [N.T. 75-77].
49. Additional factual findings in the Discussion section of this adjudication are incorporated herein.
50. Should any of the foregoing factual findings be deemed conclusions of law, the ones so found are incorporated therein.

DISCUSSION

The most serious charge against Spiros Kasapidis is that he submitted an application for Michael Natale without Mr. Natale's knowledge or consent and that he forged Mr. Natale's signature in order to receive a commission. Also serious are the charges that on five occasions, Mr. Kasapidis misrepresented to Pruco that he had received prepaid premium in order to receive commissions. Although the evidence in this case establishes that Mr. Kasapidis on five occasions engaged in sloppy business practices reflecting on his worthiness as an agent, the evidence does not establish the more serious charges.

Most of the facts in this case are undisputed, and have been stipulated by the parties. The parties mainly disagree on the inferences which should be drawn from those undisputed facts.

As set forth more fully in the foregoing factual findings, Pruco's records show that in five instances a prepaid premium was not received by the company for new life insurance business. Mr. Kasapidis in each instance performed the necessary factfinding from the client, completed application documents, and telephoned in the application to Pruco, representing that he had the prepayment in hand. Mr. Kasapidis believed that he mailed the check in each instance. In each case, Mr. Kasapidis was credited with a commission, which was taken away when the policy was not written.

Mr. Kasapidis in each instance received essentially no benefit from the application. The commission amounts were small and while eighty per cent was credited immediately, they were paid over a ten-week "roll" period. Further, the entire commission for each application was backed off the account after 14 days. Accordingly,

at most Mr. Kasapidis on five occasions received the temporary use for two weeks of an amount not exceeding approximately \$11.64 (ten percent of eighty percent of \$145.50 for the Schwartz application, the largest commission of the five), and the use of an additional \$11.64 for one week. [N.T. 43-48]. This type of temporary partial crediting of commissions occurs for all of Pruco's agents for such things as when a payment is dishonored, the policy lapses in the first year or the applicant does not meet underwriting standards. [N.T. 16-18 45-49, 85-86].

Other than the stipulation that the Natale check was placed in the mailer to Pruco with the other documents, there is no persuasive evidence of record why Pruco did not show the prepayment checks as being received. The only photocopy of a check is the one written by Nicole Schwartz. While Mr. Kasapidis testified that he always placed the check in the mailer with the original documents and his testimony generally was credible, he did not testify with particularity concerning the Taylor, Pappamedriou, Schwartz and Scheifley applications. Mr. Kasapidis and both of Pruco's representatives testified that documents including checks occasionally were lost, misplaced or misrouted at Pruco's offices. The fact that the five instances in question occurred within a short period of time could lead to an inference that either Pruco or Mr. Kasapidis during that time was using faulty procedures. Neither inference is more likely.

One problem with the evidence in this case is that Mr. Kasapidis, by his own admission and the testimony of Pruco's representative, was somewhat sloppy in his business practices by not copying the applicants' checks or documenting contact with the applicants. This makes it impossible to determine whether Mr. Kasapidis actually received a check from three of the applicants and also why the applicants apparently were content not to receive the life insurance policy for which they applied. This breach in good business practices was compounded by Mr. Kasapidis's failure to respond to

Pruco's inquiries in the five instances.

This break from good business practice was dangerous to the applicants and to Pruco. If a claim arose while Pruco showed that the prepayment had not been received, coverage of the policy would be thrown into question, possibly resulting in litigation or an innocent party losing rights which proper documentation would have protected.

While the receipt and disposition of the prepayment checks cannot be determined from the record, it is clear that the Michael Natale who testified at the hearing never applied for life insurance through Mr. Kasapidis. Mr. Natale credibly testified to this effect, and this testimony was corroborated by Mr. Kasapidis himself. However, this does not establish that Mr. Kasapidis fabricated an application for Mr. Natale.⁴ To the contrary, the evidence established that a different Michael Natale applied for life insurance through Mr. Kasapidis.

The actual applicant, as testified by Mr. Kasapidis and corroborated by the application, was much younger than the Mr. Natale who appeared at the hearing. The applicant had a different address, social security number and listed his occupation as "student." Further, fabricating an application and forging a signature would make no sense. As already discussed, Mr. Kasapidis received no benefit from policies which were not written or lapsed in the first year; he thus had no reason to create a fictitious application. He only would benefit if a real applicant was contacted by Pruco, met

⁴ Testimony by a Department investigator who searched for but did not find another Michael Natale in Reading, Pennsylvania is not competent evidence that a different Michael Natale did not apply for life insurance. The testimony is hearsay, asserting the status of unspecified databases used by the investigator. The source was not subject to cross examination and was not self-authenticating such as a business or official record. The hearsay testimony is uncorroborated by other competent evidence. Although Mr. Kasapidis did not object to the testimony, this hearsay evidence, uncorroborated by other competent evidence of record, cannot be used to make a factual finding. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976); *Joyce v. W.C.A.B. (Ogden/Allied Maintenance)*, 680 A.2d 855 (Pa. 1996). Further, even if true at the time of the hearing, the testimony does not establish that a different Michael Natale did not reside in Reading at the time of the application.

underwriting guidelines, and properly kept the policy in force for at least a year.

For the same reason he would have no reason to fabricate an application, Mr. Kasapidis would have no reason to misrepresent to Pruco that he possessed or expected prepayment to be mailed with the original application. It was not established that Mr. Kasapidis in fact failed to include the check in the mailer, and it would make no sense for him not to. Without Pruco receiving and crediting a prepayment, Mr. Kasapidis received no benefit. Further, the copy of the Schwartz check and the stipulation that the Natale check was mailed negate that any misrepresentations were made at least with regard to those two applications.

While the scenarios as charged by the Department are possible, they are not likely. The Department failed to meet its burden to establish the fabrication, forgery and misrepresentations.

However, the Department did establish the Count against Mr. Kasapidis relating to his worthiness relating to the agent's processing of the five applications in question. The breach of good practices endangering both his client and his principal reflects upon Mr. Kasapidis's worthiness to practice the profession.

Section 639 of the Insurance Department Act (40 P.S. § 279) provides for the imposition of remedial actions for specific violations of the Act. The Act also provides for the imposition of remedial actions "upon satisfactory evidence of such conduct that would disqualify the agent or broker from initial issuance of a certificate of qualification under section 604" 40 P.S. § 279(a). Section 604⁵ authorizes the issuance of a certificate of qualification for an insurance agent when the Insurance Department "is

⁵ 40 P.S. § 234.

satisfied that the applicant is worthy” of such certification. The worthiness of an applicant or agent is determined by examination of information pertaining to the agent’s honesty, reliability, efficiency, educational training and business experience and reputation.

In other words, penalties not only may be imposed for violating specific provisions; they may be imposed if the agent or broker is determined to be untrustworthy or professionally unfit. In the present case, the facts support remedial action since evidence of slipshod and irregular business practices warrants sanctions. *Insurance Department v. Ciervo*, 353 A.2d 900 (Pa. Cmwlth. 1976). Mr. Kasapidis is subject to administrative penalties.

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). Mr. Kasapidis's conduct was potentially serious. The conduct involved the business of insurance. The conduct jeopardized insurance coverage and had the potential to impact innocent persons.

However, substantial mitigating circumstances are present. The conduct took place over a short period of time, and Mr. Kasapidis at all other times exhibited proper care towards his client and principal in his business practices. Mr. Kasapidis was not shown to have a record of any prior discipline. Pruco did not experience problems with his service other than surrounding the five applications. No client complaints were lodged with the company. There is no evidence that any of the five applicants was dissatisfied with the service provided by Mr. Kasapidis or the fact that no policy was issued. Mr. Kasapidis did not profit personally from his actions and Pruco was not actually harmed although the potential existed. Mr. Kasapidis acknowledged that he did not exercise proper business practices with regard to the applications, indicating an acceptance of responsibility.

The Department requests revocation of Mr. Kasapidis's insurance licenses for a minimum of five years and a \$5,000 civil penalty for each of the two counts. Considering the facts in this matter, the applicable law, the nature of the conduct and the mitigating circumstances, penalties are imposed as set forth in the accompanying order.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:
Spiros Kasapidis
1612 North 11th Street
Reading, PA 19604

Respondent

ALLEGED VIOLATIONS:

Insurance Department Act, Act of May 17,
1921, P.L. 789, No. 285 (40 P.S. §§ 234,
279) (31 Pa. Code §§ 37.46, 37.47)

Sections 5(a)12) of the Unfair Insurance
Practices Act, Act of July 22, 1974, P.S.
589, No. 204 (40 P.S. § 1171.5)

Docket No. **SC03-07-008**

ORDER

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

1. Spiros Kasapidis shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.
2. All of the insurance licenses of Spiros Kasapidis **ARE SUSPENDED** for thirty (30) days, effective on the fifteenth (15th) day from the date of this order.
3. Spiros Kasapidis shall **PAY A CIVIL PENALTY** to the Commonwealth of Pennsylvania within thirty (30) days of this order in the amount of Five Hundred Dollars (\$500.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Fraser, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no insurance license may be restored, issued or renewed until the said civil penalty is paid in full.



M. DIANE KOKEN
Insurance Commissioner