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ADMINISTRATIVE SERVICES OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

<p>IN RE:</p> <p>Woodolph Romeo 2270 Baylis Ave. Elmont, NY 11003</p> <p>Respondent</p>	<p>: ALLEGED VIOLATIONS:</p> <p>:</p> <p>: Sections 611-A(1), (3), (7), (8)(14), (20) and 678-A(a) of the Insurance Department Act of 1921, P.L. 789, No. 285, <i>as amended</i> (40 P.S. §§ 310.11 and 310.78).</p> <p>:</p> <p>: 31 Pa. Code §§ 37.46 and 37.47</p> <p>:</p> <p>: Docket No. SC10-02-011</p>
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ADJUDICATION AND ORDER

AND NOW, this 21st day of July, 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 February 22, 2010 directed to Woodolph Romeo (“Romeo” or “the respondent”). The OTSC alleged that Romeo violated the Insurance Department Act¹ and Department regulations.² Specifically, the OTSC alleged that Romeo, a licensed insurance agent, was convicted of Attempted Promoting Prostitution, a felony, that he failed to disclose the conviction to the Pennsylvania Insurance Department, that he falsified information on his license application, and that

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

² 31 Pa. Code §§ 37.46 and 37.47.

DATE MAILED: July 21, 2010

two other states revoked his license.

The OTSC advised Romeo 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 Romeo by first class mail.

Romeo failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On March 17, 2010, the Department filed a motion for default judgment and served Romeo in accordance with 1 Pa. Code Chapter 33. The OTSC was served by certified and first class mail to the respondent to his last known address. The return postal receipt signed by the respondent confirmed that the OTSC was delivered and received on February 26, 2010. The motion for default judgment was served by certified and first class mail to the same address. The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter.

This opinion 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 Romeo 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 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

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.

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

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.

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

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.

(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 Romeo is a licensed non-resident insurance producer who was convicted in January 2005, in the Supreme Court of the State of New York in Queens County for attempted promoting prostitution, a felony. His actions involved two minors. He was sentenced to up to six (6) years in state prison. [OTSC ¶¶ 1-3]. The respondent was released on parole in July 2008 and remains on parole until July 22, 2010.

On June 23, 2009, Romeo completed a SIRCON application for a Pennsylvania non-resident producer license. As part of the application process, the respondent answered "no" to the question of whether he had ever been convicted of a crime. [OTSC

¶¶ 11, 12]. He also stated that he had been employed by Masterpiece Media, Brooklyn from January 2005 to December 2008 when in fact, during that time, he was confined at the Riverview Correctional Facility, New York. Romeo submitted the license renewal form with an attestation certifying that the information he provided was “true and correct.” [OTSC ¶ 14].

On September 30, 2009, the Insurance Commissioner of the State of Arkansas revoked the respondent’s Arkansas non-resident producer license. [OTSC ¶ 19; Exhibit C]. On December 15, 2009, the Director of Insurance for the State of South Carolina revoked the respondent’s South Carolina non-resident producer license. [OTSC ¶ 20; Exhibit D]. Romeo did not report either of these revocations to the Pennsylvania Insurance Department. [OTSC ¶ 21].

In its OTSC, the Department alleges that Romeo committed six violations of the Insurance Department Act: 1) he was convicted of a felony in violation of 40 P.S. § 310.11(14); 2) he provided false information on his license application in violation of 40 P.S. §§ 310.11(1) and (3); he committed actions causing revocations of his license in Arkansas and South Carolina; (4) he failed to report the Arkansas and South Carolina license revocations; (5) and (6) he demonstrated 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 fine up to \$5,000.00 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 committing acts leading to a felony conviction and lying about it on an application; they may be imposed if the producer demonstrates a lack of general fitness.

In the present case, the admitted facts support sanctions for each of the six counts.

For each of these six 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. Prohibited acts are listed in 40 P.S. §§ 310.11. In the present case, the admitted facts support sanctions for each of the charges against Romeo. With his actions, Romeo demonstrated that he is not worthy of licensure under 40 P.S. § 310.11(1) and 310.11(20). With Romeo 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 section 310.11 subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. § 310.91(d)(2). Romeo'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 violations committed by Romeo who has not offered mitigating evidence or arguments.

The Department in its OTSC asks that the Insurance Commissioner revoke respondent's producer licenses and bar him from future licensure or from renewing any license previously held by him, impose the maximum civil penalty for each violation, order the respondent to cease and desist from violating Pennsylvania insurance laws and impose any other appropriate conditions. In its motion for default judgment the Department repeats its request that the Commissioner order Romeo to cease and desist

from the activities alleged in the Order to Show Cause, and asks that Romeo's insurance producer license be revoked for a minimum of five (5) years, that Romeo be barred from future licensure for a minimum of five (5) years, that Romeo be subject to a five (5) year period of supervision in the event he becomes relicensed and that an appropriate civil penalty be imposed not to exceed \$5,000.00 per violation.

A Commissioner is given broad discretion in imposing penalties. *Termini v. Department of Insurance*, 612 A.2d 1094 (Pa. Cmwlth. 1992); *Judson v. Insurance Department*, 665 A.2d at 523, 528 (Pa. Cmwlth. 1995). The underlying criminal actions in this case are particularly egregious, involving sexual assault on minors and subsequently attempting to force them into prostitution. An individual capable of committing these crimes is not worthy of licensure as an insurance producer who must be someone who can be trusted in all situations. Romeo is not such a person at this time.

In addition, the respondent's lies on his Pennsylvania license application as well as those in at least two other states 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 regulators, then Romeo 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. Simply put, Romeo at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers.

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

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 agent or a broker 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 that a producer refrain from conduct resulting in a felony conviction or the revocation of a license in another state, provide truthful answers on a license application, report criminal convictions of all types, and demonstrate general fitness, competence or reliability.

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. Woodolph Romeo 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.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

Woodolph Romeo
2270 Baylis Ave.
Elmont, NY 11003

Respondent

: ALLEGED VIOLATIONS:
:
: Sections 611-A(1), (3), (7),
: (8)(14), (20) and 678-A(a) of the
: Insurance Department Act of
: 1921, P.L. 789, No. 285, *as*
: *amended*
: (40 P.S. §§ 310.11 and 310.78).
:
: 31 Pa. Code §§ 37.46 and 37.47
:
: Docket No. **SC10-02-011**

ORDER

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

1. Woodolph Romeo shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Woodolph Romeo **ARE REVOKED** for a minimum of fifteen (15) years pursuant to 40 P.S. 310.91 for each of Counts one through six, with these revocations to run concurrently with each other for a total minimum period of fifteen (15) years. Additionally, Woodolph Romeo is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of fifteen (15) years. Woodolph Romeo is also prohibited from applying to renew any certificate of qualification previously held by him

in this Commonwealth for a minimum of fifteen (15) years..

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

- a. Count one: \$5,000.00
- b. Count two: \$5,000.00
- c. Count three: \$4,000.00
- d. Count four: \$4,000.00
- e. Counts five and six: \$4,000.00

for a total of twenty-two thousand dollars (\$22,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Fraser, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no certificate of qualification or other insurance license may be issued or renewed until the said civil penalty is paid in full.

4. This order is effective immediately.



JOEL ARIO
Insurance Commissioner