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INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

2007 OCT 22 PM 3:01  
ADMIN HEARINGS OFFICE

IN RE:	:	ALLEGED VIOLATIONS:
	:	
<b>Robert Sturman</b>	:	Sections of the Insurance Department
1 Brown Drive	:	Act of 1921, P.L. 789, No. 285, <i>as</i>
Churchville, PA 18966	:	<i>amended</i> (40 P.S. §§ 310.78(b),
	:	310.11(20)).
Respondent	:	
	:	
	:	Docket No. <b>SC07-06-016</b>

ADJUDICATION AND ORDER

AND NOW, this 22<sup>nd</sup> day of October, 2007, Joel Ario, Acting 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 June 12, 2007 directed to Robert Sturman ("Sturman" or "the respondent"). The OTSC alleged that Sturman violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that Sturman, a licensed insurance producer, failed to report criminal charges within 30 days as required, and that with this failure he demonstrated a lack of general fitness to be worthy of licensure.

The OTSC advised Sturman to file an answer in accordance with the applicable

<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285, *as amended* by the Act of December 3, 2002, No. 147, 40 P.S. §§ 310.1 *et seq.*

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. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on Sturman by first class mail.

Sturman failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On August 7, 2007, the Department filed a motion for default judgment and served Sturman 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 filed any other document in this case.

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 because Sturman 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;<sup>2</sup> 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

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<sup>2</sup> 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.

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 case<sup>3</sup> provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.<sup>4</sup> However, given that the respondent has not answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

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<sup>3</sup> 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.*).

<sup>4</sup> The Insurance Department Act section mandates written notice of the nature of the alleged violations and requires that a hearing be fixed at least ten (10) days thereafter, and further provides that:

After the hearing or failure of the person to appear at the hearing, if a violation of this act is found, the commissioner may, in addition to any penalty which may be imposed by a court, impose any combination” of the following deemed appropriate: . . .

40 P.S. § 310.91. This Section then lists available penalties.

While no court has directly addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Insurance Department Act, the case law supports such power. For example, in *United Healthcare Benefits Trust v. Insurance Commissioner*, 620 A.2d 81 (Pa. Cmwlth. 1993), the Court affirmed the Commissioner's grant of summary judgment for civil penalties despite the language contained in the applicable statutes which seemed to require a hearing. 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 Kozubal*, P93-08-13 (1997); *In re Phelps*, P95-09-007 (1997); *In re Taylor*, SC96-11-034 (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). 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 Sturman was a licensed insurance producer who was criminally charged in 2006 with Theft by Deception-False Impression (18 Pa.C.S.A § 3922) and Bad Checks (18 Pa.C.S.A. § 4105). The alleged activities leading to these charges included misappropriating client investment funds in excess of \$145,000.00 and writing two bad checks in excess of \$20,000.00 to investment clients. Sturman did not notify the Pennsylvania Insurance Department of these criminal charges as required. 40 P.S. § 310.78.

In its OTSC, the Department alleges that Sturman committed two violations of the Insurance Department Act: 1) he failed to notify the Insurance Department of the two criminal charges made against him in March, 2006 as required by 40 P.S. § 310.78(b); and 2) he demonstrated a lack of fitness, or competence or reliability to be an insurance agent in violation of 40 P.S. §§ 310.11 (20).

For each of these two counts, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his certificate of qualification. 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).

In other words, penalties not only may be imposed for violating specific provisions of the act such as failing to report a criminal charge; 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 two counts.

Sturman is liable for remedial action for failing to report the criminal charges lodged against him. Even though the record contains no evidence concerning the results of the charges lodged against Sturman, the underlying allegations leading to the criminal charges are significant. The failure to report them demonstrates that Sturman currently is not fit to work as an insurance producer. Agents are held to a high degree of professionalism and must exercise good judgment. Even when criminal charges have not yet resulted in convictions, an agent's sense of responsibility and good judgment require him to follow the regulations and report such charges.

However, in the American criminal justice system, an individual is presumed innocent until proven guilty. *Commonwealth v. Doswell*, 621 A.2d 104 (Pa. 1993); *Commonwealth v. Pierce*, 303 A.2d 209 (Pa. 1973). Without evidence that Sturman has been convicted of the crimes with which he has been charged, the penalties in this case will not be based on the nature of the underlying allegations, but on his failure to report the charges.

### PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by Sturman'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). Sturman's failure to comply with all the statutes and regulations applicable to his license, including the reporting of the criminal charges lodged against him, reveal his lack of fitness for licensure. No evidence exists to mitigate the evidence of the violation committed by Sturman who has not offered mitigating evidence or arguments.

The Department in both its OTSC and its motion for default judgment asks that Sturman's insurance producer license be revoked, that Sturman be barred from future licensure, that a civil penalty not to exceed \$5,000.00 be imposed per violation, that Sturman be ordered to cease and desist from violating the insurance laws of this Commonwealth and that other appropriate conditions be imposed.

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 agent or a broker 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 criminal charges be reported to the Pennsylvania Insurance Department.
4. If unfitness is established, the Commissioner may exercise discretion to impose remedial action in light of the agent's conduct as well as mitigating and aggravating factors.
5. Agents are held to a high degree of professionalism and must exercise good judgment.
6. Robert Sturman by his conduct demonstrates 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:

**Robert Sturman**  
1 Brown Drive  
Churchville, PA 18966  
  
Respondent

: ALLEGED VIOLATIONS:

:  
: Sections of the Insurance  
: Department Act of 1921, P.L.  
: 789, No. 285, *as amended* (40  
: P.S. §§ 310.78(b), 310.11(20)).

:  
: Sections of the Insurance  
: Department Regulations (31 Pa.  
: Code §§ )

:  
: Docket No. **SC07-06-016**  
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**ORDER**

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

1. All of the insurance licenses or certificates of qualification of Robert Sturman **ARE REVOKED** for a minimum of five (5) years.

2. Robert Sturman shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order in the amount of Two Thousand Dollars (\$2,000.00). 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.

3. This order is effective immediately.



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Joel Ario  
Acting Insurance Commissioner