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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
Jovani L. Chappel	:	40 P.S. § 310.11(2), (14), (19), (20)
191 Trailwoods Drive	:	40 P.S. § 310.78(b)
Dayton, OH 45415	:	
	:	
Respondent	:	Docket No. SC14-10-024

ADJUDICATION AND ORDER

AND NOW, this 16th day of April, 2015, Teresa D. Miller, 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 February 18, 2015 directed to Jovani L. Chappel ("the respondent"). The OTSC alleged that the respondent violated the Insurance Department Act.¹ Specifically, the OTSC alleged that the respondent, a non-resident licensed insurance agent, was convicted of a felony robbery with threat of immediate serious injury and a misdemeanor accident involving damage to a vehicle/property, failed to inform the department of the conviction and prison sentence, and failed to inform the Insurance Department of his address change.

¹ Act of May 17, 1921, P.L. 789, No 285 as amended through the Act of June 25, 1997, P.L. 349, No. 40, repealed and partially reenacted by the Act of December 3, 2002, P.L. 1183, No. 147. (40 P.S. §§ 310.1 et. seq.).

DATE MAILED: April 16, 2015

The OTSC advised the respondent 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 OTSC also advised the respondent to set forth the facts and state concisely the matters of law upon which he relies. The OTSC further advised the respondent 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 the respondent by first class mail.

The respondent failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On March 20, 2015, the Department filed a Motion for Default Judgment and served the respondent in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was served 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 delivered and signed for on February 21, 2015. The Motion for Default Judgment was served by certified and first-class mail to the respondent at the same address at which the OTSC was delivered. 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 the respondent 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;² 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 case³ provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.⁴ However, given that the respondent has not

² 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.

³ 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.*).

⁴ 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: . . .

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 (2002); *In re Czmus*, SC09-05-009 (2009). The Commissioner adopts this reasoning in

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

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, no factual disputes need to be addressed 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 the respondent was a non-resident licensed insurance agent. [OTSC ¶ 2]. On August 26, 2013, the respondent committed a bank robbery in the course of which he threatened to kill bank employees and customers. [OTSC ¶ 3]. Upon his arrest in Allegheny County, Pennsylvania, the respondent was charged with one felony count of Robbery with a Threat of Immediate Serious Injury, one felony count of Robbery with a Demand for Money from a Financial Institution, and one misdemeanor count of Accident Involving Damage to Vehicle/Property. [OTSC ¶ 4; Exhibit A]. The Respondent did not notify the Pennsylvania Insurance Department ("Department") of these charges and did not provide the Department with copies of the criminal complaint, information or indictment by which he was charged, a copy of the order issued from his pretrial hearing or a report of the final disposition of the charges. [OTSC ¶ 5]. On April

22, 2014, the Respondent pled guilty to and was convicted of one felony count of Robbery with a Threat of Immediate Serious Injury. [OTSC ¶ 6; Exhibit A].

As a result of these facts, the respondent was charged with five distinct violations of the Insurance Department Act: 1) failing to report misconduct pursuant to 40 P.S. § 310.78(b); 2) committing a felony in violation of 40 P.S. § 310.11(14); 3) failing to notify the Department of his address change pursuant to 40 P.S. § 310.11(19); 4) failing to demonstrate general fitness or worthiness of licensure pursuant to 40 P.S. § 310.11(20); and 5) violating the insurance laws of Pennsylvania in violation of 40 P.S. § 310.11(2).

For each of these five 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 the respondent. With his actions, the respondent demonstrated that he is not worthy of licensure under 40 P.S. § 310.11(1) and 310.11(20). With the respondent 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).

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 this case the respondent has evidenced a willingness to use the threat of physical harm in order to obtain money in a bank robbery. This underlying course of conduct is of the most serious nature. This seriousness is reflected in the penalties imposed. The respondent's infliction of financial harm and threat of physical harm on others during a bank robbery attempt evidences a moral turpitude which is antithetical to the trustworthiness required in the profession.

By definition, agents and brokers have extensive personal contact with applicants and insureds. The applicants and insureds entrust financial and personal matters to the agent, and rely upon the agent's integrity. An agent who has recently inflicted financial harm and the threat of physical harm upon others is incapable of the trust necessary in the profession. Simply put, the respondent at this time cannot be trusted with the lives, pocketbooks, bank accounts and personal information of his customers.

In addition, the respondent has shown a lack of respect for the Department by refusing to comply with regulations requiring disclosure of criminal conviction records, to provide information about his change of address and to respond to the Order to Show Cause or Motion for Default Judgment. Taken all together, these violations of the Pennsylvania Insurance Laws demonstrate that the respondent is not worthy of licensure at this time. No evidence exists to mitigate the seriousness of the violations.

The Department in its Order to Show Cause requests that the Insurance Commissioner bar the respondent from licensure for at least five years, impose on him the maximum civil penalty of \$5,000 for each violation, order the respondent to cease and desist from violating the Pennsylvania Insurance laws and to impose any other conditions deemed appropriate by the Commissioner, including supervision for a minimum of five years if the respondent should ever become relicensed. In its Motion for Default

Judgment, the Department requests that the Insurance Commissioner order the respondent to cease and desist from the activities alleged in the OTSC, revoke the respondent's insurance producer licenses, impose a civil penalty of up to \$5,000.00 per violation and grant any other appropriate restitution and relief.

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 prohibits an insurance producer licensee from committing felonies, and requires a producer licensee to report criminal conduct and address changes.

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

6. Jovani L. Chappel 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.

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Respondent	:	Docket No. SC14-10-024

ORDER

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

1. Jovani L. Chappel shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Jovani L. Chappel **ARE REVOKED** for a minimum of **ten (10)** years pursuant to 40 P.S. 310.91 for each of Counts I through 5 with these revocations to run **concurrently** with each other for a total minimum period of **ten (10)** years. Additionally, Jovani L. Chappel is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of **ten (10)** years. Jovani L. Chappel is also prohibited from applying to renew any certificate of qualification previously held by him in this Commonwealth for a minimum of **ten (10)** years.

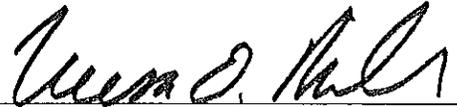
3. Jovani L. Chappel shall pay a civil penalty to the Commonwealth of

Pennsylvania as within thirty (30) days of this order as follows:

- a. Count I: \$4,000.00
- b. Count II: \$5,000.00
- c. Count III: \$2,000.00
- d. Counts IV and V: \$4,000.00

for a total of **fifteen thousand (\$15,000.00) dollars**. Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Administrative Assistant, 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. This order is effective immediately.



TERESA D. MILLER
Acting Insurance Commissioner