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INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
David Dallmer	:	63 P.S. 1606(a)(5), (13)
12737 Verda Drive	:	
Philadelphia, PA 19154	:	
	:	
Respondent	:	Docket No. SC17-05-001

ADJUDICATION AND ORDER

AND NOW, this 28th day of July, 2017, Teresa D. Miller, 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 May 8, 2017 directed to David Dallmer (“the respondent”). The OTSC alleged that Dallmer violated the Insurance Adjusters Act.¹ Specifically, the OTSC alleged that Dallmer, a licensed public adjuster, improperly retained funds in excess of the agreed upon contingency fee in contracts with two different insureds.

The OTSC advised Dallmer to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised him that the answer must specifically

¹ Act of December 20, 1983, P.L. 260, No. 72, 63 P.S. §§ 1601-1608 (“Insurance Adjusters Act”).

DATE MAILED: July 28, 2017

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 Dallmer by first class mail.

Dallmer failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On June 14, 2017, the Department filed a Motion for Default Judgment and To Have Allegations Demmed Admitted and served Dallmer in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was served by both certified and regular mail to the respondent to his last known home address as kept on file in the Department. A certified mail return receipt indicated that it was received and signed for on May 20, 2017. The first class mail 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. More than ten days have passed since the filing of the Motion for Default Judgment and To Have Allegations Deemed Admitted and this case is ready for adjudication.

This opinion and order addresses the Motion for Default Judgment and the OTSC. 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 Dallmer failed to answer the OTSC or Motion for Default Judgment. The OTSC 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, this adjudication includes an analysis of an agency's authority for imposing penalties without an evidentiary hearing.

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 Insurance Adjusters Act applicable to the present matter provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 63 P.S. § 1606.³ 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 The Insurance Adjusters Act 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 such hearing or upon failure of the accused to appear at such a hearing, the Insurance Commissioner shall impose such of the above penalties as he deems advisable

63 P.S. § 1606(c).

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 Kroope*, SC09-12-005 (2010); *In re Chappel*, SC14-10-024 (2015); *In re Ott*, SC15-11-002 (2016); *In re Riddell*, SC16-04-002 (2016). 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 Dallmer is a licensed public adjuster whose license is set to expire on May 31, 2018. [OTSC ¶ 2]. In February 2015, an insured (" Insured No. 1") hired Dallmer to act as a public adjuster to assist with two homeowners insurance claims filed with Liberty Mutual Insurance Corporation. [OTSC ¶ 3]. In his contract with Insured No. 1, Dallmer agreed that he would be paid a contingency fee of 25% of the claim payment. [OTSC ¶ 4]. Liberty Mutual Insurance Corporation issued three checks totaling \$14,497.40 to resolve the claims. [OTSC ¶ 5]. From August to November 2015, Dallmer told Insured No. 1 that he was still waiting for the endorsed checks to be returned from the mortgage company listed as a payee on the checks. [OTSC ¶ 8]. In November, 2015 Dallmer issued two checks to Insured No. 1 totaling \$8,722.15. [OTSC ¶ 9]. Although Dallmer was entitled to only 25%, or \$3,624.35, from the settlement checks, he actually retained a total of 5,775.25. [OTSC ¶ 10].

Also in February 2015, another insured (“ Insured No. 2”) hired Dallmer to act as a public adjuster to assist with a homeowners insurance claim filed in that case with State Farm Insurance Company. [OTSC ¶ 11]. Dallmer and Insured No. 2 executed a contract providing that Dallmer would be paid a contingency fee of 25% of the claim amount. [OTSC ¶ 12]. Between April and September, Dallmer received three checks from State Farm Insurance Company totaling \$13,397.95. [OTSC ¶ 13]. In February 2016, Dallmer issued two checks to Insured No. 2 totaling \$5,524.40. [OTSC ¶ 15]. Even though he was only entitled to retain \$3,349.49 under the agreement, Dallmer retained \$7,873.55. [OTSC ¶ 16].

For these activities, in the OTSC the Department charged Dallmer with two distinct violations of the Insurance Adjusters Act: 1) misappropriating funds in violation of 63 P.S. § 1606(a)(5) and 2) demonstrating incompetence and untrustworthiness to transact the business of a public adjuster in violation of 63 P.S. § 606(a)(13).

For each of these two charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his public adjuster’s license. 63 P.S. § 1606(a). Additionally the Insurance Adjusters Act authorizes the Commissioner to impose a penalty of up to \$5,000 for each and every violation of the Act. 63 P.S. § 1606(b). In the present case, the facts warrant imposition of these penalties for each charge.

By definition, a public adjuster is one who evaluates and presents claims for property losses or damages, and receives compensation for the giving of advice or assistance to an insured in the adjustment of claims for such losses. *See* 63 P.S. § 1601. Public adjusters must be held to a very high professional standard for honesty and integrity so that their claims evaluations and advice may be trusted. A public adjuster license may only be issued when the Insurance Commissioner is “satisfied that the applicant is

trustworthy and competent to transact business as a public adjuster.” 63 P.S. § 1602. Likewise, the license may be suspended or revoked when the Commissioner determines that a public adjuster is no longer competent or trustworthy. 63 P.S. § 1606(a).

Considering the nature of a public adjuster’s work in collecting information about insurance losses, presenting claims to insurance companies, and reimbursing clients for their losses, the thefts committed by Dallmer go to the heart of the requirement that public adjusters be trustworthy and reliable. His thefts of client funds in two incidents mean that he cannot be entrusted with the funds he obtains on behalf of those individuals he purports to serve. His actions make Dallmer completely untrustworthy as a public adjuster and subject to significant penalty.

With Dallmer liable for remedial action under each of the two 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 Adjusters Act, including those provisions violated by Dallmer's conduct. 63 P.S. § 1606(a). Each action violating a provision specified in section 1606(a) also subjects the respondent to a maximum five thousand dollar civil penalty. 63 P.S. § 1606(b).

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). Dallmer's thefts of insurance payments evidence a lack of integrity and honesty which is antithetical to the trustworthiness required in a public adjustor's profession. By definition, public adjusters have extensive personal contact with insureds and access to funds obtained on their behalf. Both insurance companies and insureds must be able to rely upon the public adjuster's integrity when collecting claims payments and reimbursing insureds for the correct amounts. Dallmer's misappropriation of the insurance company payments demonstrates that he is incapable of engendering the trust necessary in the profession. Simply put, Dallmer at this time cannot be trusted with the pocketbooks, bank accounts and personal information of his customers.

No evidence exists to mitigate the seriousness of the violations. Dallmer, not appearing in these proceedings, did not offer mitigating evidence or arguments. On the other hand, two aggravating factors have been considered in fashioning the appropriate penalties. One serious aggravating factor is that the conduct directly involved the business of public adjusting. Failure to respond in this disciplinary proceeding brought by the regulator of his profession is an additional aggravating factor.

The Department in its order to show cause requested a fine of not more than \$5,000 for each violation under each of the two counts under which the respondent has been found liable, restitution to Insured No. 1 and Insured No. 2 for the amounts owed to them by the respondent, revocation or suspension of the respondent's public adjusters license and a bar from future licensure or from applying to renew a license and any other appropriate penalties. In its Motion for Default Judgment, the Department repeated these requests.

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 a public adjuster has engaged in conduct which would disqualify him from initial issuance of a certificate or a license.
3. A public adjuster who misappropriates insurance funds is not qualified for licensure.
4. If incompetency or untrustworthiness is established, the Commissioner may exercise discretion to impose remedial action in light of the public adjuster's conduct as well as mitigating and aggravating factors.
5. Public adjusters are held to a high degree of professional competence and trustworthiness.
6. David Dallmer by his conduct towards his clients has demonstrated untrustworthiness to transact the business of a public adjuster.
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. **SC17-05-001**

ORDER

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

1. The public adjuster license of David Dallmer is **REVOKED** for a minimum of five (5) years pursuant to 60 P.S. § 1606(a) for each of Counts one and two, with these revocations to run **consecutively** with each other. Additionally, David Dallmer is prohibited from applying for a public adjuster's license in this Commonwealth for a minimum of ten (10) years. David Dallmer also is prohibited from applying to renew the public adjuster's license previously held by him in this Commonwealth for a minimum of ten (10) years.

2. David Dallmer shall pay restitution within thirty (30) days of this order as follows:

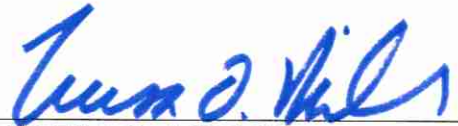
- a. Insured No. 1: \$2,150.90
- b. Insured No. 2: \$4,524.06

3. David Dallmer. 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

for a total of Ten Thousand Dollars (\$10,000.00). Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: 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.



TERESA D. MILLER
Insurance Commissioner