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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : ALLEGED VIOLATIONS:
: :
James E. Hocker : 40 P.S. § 310.11(5), (6), (7), (16), (19),
15490 Wrangletown Road : and (20); 40 P.S. § 310.47; 40 P.S. §
Shirleysburg, PA 17260 : 1171.5(a)(1)(i), and (12)
: :
Respondent : Docket No. **SC19-04-002**

ADJUDICATION AND ORDER

AND NOW, this 11th day of July, 2019, Jessica K. Altman, 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 April 11, 2019 directed to James E. Hocker (“the respondent”). The OTSC alleged that Hocker violated the Insurance Department Act¹ and Unfair Insurance Practices Act (UIPA).² Specifically, the OTSC alleged that Hocker, a licensed insurance producer, intentionally misrepresented terms of life insurance policies. He informed at least thirteen individuals that their annual life insurance premiums were payable only for a specified number of years when, in fact, premium payments were due

¹ Act of May 17, 1921, P.L. 789, No 285 *as amended through* the Act of June 25, 1997, P.L. 349, No. 40, *repealed and partially reenacted by* the Act of December 3, 2002, P.L. 1183, No. 147.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

² 40 P.S. 1171.5(a)(1)(i), and (12).

DATE MAILED: July 11, 2019

for the life of the policies.

The OTSC advised Hocker 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 Hocker by certified and first class mail. A return receipt from the 15490 Wrangletown Road, Shirleysburg, Pennsylvania address evidenced the respondent's receipt.

Hocker failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On May 15, 2019, the Department filed a motion for default judgment and served Hocker 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. A return receipt from the 15490 Wrangletown Road, Shirleysburg, Pennsylvania address showed acceptance of the OTSC and the copy sent by 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.

This adjudication 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 Hocker

failed to answer the order to show cause or motion for default judgment. The OTSC 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, 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 statutes specifically applicable to the present case⁴ provide for a hearing procedure prior to certain penalties being imposed by the

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.*); Unfair Insurance Practices Act of July 22, 1974, P.L. 589, No. 205 (40 P.S. §§ 1171.1-1171.15)

Commissioner. *See* 40 P.S. § 310.91,⁵ 40 P.S. § 1171.8.⁶ However, given that the respondent has not 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. Also, the Court specifically has upheld a decision in which the Commissioner granted default judgment for a 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

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 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.

⁶ The UIPA mandates written notice of the violation stating the time and place for hearing not less than thirty days from the date of the notice. The statute also provides that the person charged shall have an opportunity to be heard and that:

Following the hearing, the Commissioner shall issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required of the person charged.

40 P.S. § 1171.8(c).

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 Czmus*, SC09-05-009 (2009); *In re Kroope*, SC09-12-005 (2010); *In re Chappel*, SC14-10-024 (2015); *In re Ott*, SC15-11-002 (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 Hocker is a licensed insurance producer maintaining his address at 15490 Wrangletown Road, Shirleysburg, PA 17260 [OTSC ¶¶ 1–2]. From

March 2014 through May 2015 Hocker solicited and sold life insurance policies with KSKJ Life to thirteen individuals. [OTSC ¶¶ 6–116; Appendices A–Y]. In each case, Hocker told his customer that the KSKJ policy only required annual premium payments for a specified number of years, when in reality the payments were due for the life of the policies. [*Id.*]. None of the clients would have purchased a KSKJ policy if Hocker had provided accurate information about their policy premiums. [*Id.*].

When they discovered this misrepresentation, ten consumers opted for relief from the lifetime premium payments by exchanging the KSKJ policy for a reduced paid-up life insurance policy, with greatly reduced face values. [*Id.*]. Each of these consumers lost significant value in their policies as follows: (1) face value of the KSKJ policy of \$183,291 reduced to \$44,170; (2) face value of the KSKJ policy of \$113,040 reduced to \$29,140; (3) face value of the KSKJ policy of \$254,086 reduced to \$82,476; (4) face value of the KSKJ policy of \$25,000 reduced to \$8,309; (5) face value of the KSKJ policy of \$60,000 reduced to \$17,601; (6) face value of the KSKJ policy of \$158,263 reduced to \$38,153.22; (7) face value of the KSKJ policy of \$95,394 reduced to \$31,954; (8) face value of the KSKJ policy of \$158,263 reduced to \$62,856; (9) face value of the KSKJ policy of \$42,354 reduced to \$14,730; and (10) face value of the KSKJ policy of \$100,182 reduced to \$35,465. [OTSC ¶¶ 3–75, 81–98; Appendices A–P, R–U].

Two of the respondent's clients elected to surrender their policies rather than pay the lifetime premiums. One consumer who purchased a KSKJ policy in January 2015 with a face value of \$155,099 chose to surrender it in 2018 for \$5,161.69 [OTSC ¶¶ 99–107; Appendices V–W]. Another consumer purchased a KSKJ policy in May 2014 with a face value of \$73,975 and elected to surrender it in 2018 for \$5,060.27. [OTSC ¶¶ 108–116; Appendices X–Y]. One consumer maintained her policy which requires annual payments of \$5,000, even though she would not have purchased the policy if she had known of the lifetime premium payment obligation. [OTSC ¶¶ 76–80; Appendix Q].

Additionally, the respondent engaged in fraudulent activity leading to a lawsuit in the United States District Court in the Middle District of Pennsylvania. In August 2018 that court entered a default order against Hocker in favor of the Securities and Exchange Commission. [OTSC ¶¶ 117]. The court found Hocker guilty of two counts of fraud in violation of 15 U.S.C § 77q(a) and 77j(b) and 17 C.F.R. § 240.10b-5. [OTSC ¶ 118]. Hocker never reported this judgment to the Department. [OTSC ¶ 119].

Based on these facts, the Department charged Hocker with sixty-six (66) violations of the Insurance Department Act: Counts I–XIII: thirteen counts of intentionally misrepresenting terms of an actual or proposed insurance contract in violation of 40 P.S. § 310.11(5); Counts XIV–XXVI: thirteen times admitting to or having been found to commit an unfair insurance practice or fraud in violation of 40 P.S. § 310.11(6); and Counts XXVII–XXXIX: thirteen counts of using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in doing business in the Commonwealth in violation of 40 P.S. § 310.11(7).

The Department also charged Hocker as follows: Counts XL–LII: thirteen times circulating or using written or oral statements misrepresenting the terms of a contract of insurance issued or to be issued by an insurer thus violating 40 P.S. § 310.11(16) and 310.47(a)(1); and Counts LIII–LXV: thirteen times demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure in violation of 40 P.S. § 310.11(20). Finally, the Department charged Hocker in Count XCII for failing to report a default judgement entered against the respondent in favor of the Securities and Exchange Commission in violation of 40 P.S. § 310.78(a).

The Department also charged Hocker with twenty-six (26) violations of the UIPA as follows: Counts LXVI–LXXVIII: thirteen times misrepresenting the benefits, advantages, conditions or terms of any insurance policy in violation of 40 P.S. §

1171.5(a)(1)(i); and Counts LXXIX–XCI: thirteen times obtaining a fee, commission, money or other benefit from an insurer, agent, broker or individual by making false or fraudulent statements or representations on or relative to an application for an insurance policy, in violation of 40 P.S. § 1171.5(a)(12).

For each of the Insurance Department Act counts (counts I–LXV and XCII), 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 a penalty of up to \$5,000 per violation. 40 P.S. § 310.91(d)(1), (2). The Commissioner also may order a respondent to cease and desist and impose other conditions the Commissioner deems appropriate. 40 P.S. § 310.91(d)(3), (4). Under the UIPA counts (counts LXVI–XCI), the Commissioner has authority to order a violator to cease and desist from engaging in such violation and may suspend or revoke the person’s license. 40 P.S. § 1171.9.⁷

In the present case, the admitted facts support sanctions for these charges against Hocker. The respondent committed fraud when he falsely advised thirteen clients that they only had to pay premiums for a limited number of years when in fact they owed annual premiums for the life of their policies. With this conduct, the respondent is liable under 40 P.S. § 310.11(5) and (7). He is separately liable under 40 P.S. § 310.11(16) and 310.47(a)(1) for circulating or using written or oral statements that misrepresented terms of an insurance contract.

With this same conduct the respondent violated UIPA thirteen times. The UIPA defines unfair or deceptive acts or practices to include “[m]aking false or fraudulent statements or representations on or relative to an application for an insurance policy, for

⁷ A penalty of up to \$5,000 for each knowing violation of Section 1171.5 may be imposed by a court in an action filed by the Commissioner. 40 P.S. § 1171.11. Unlike for violations of the Insurance Department Act, civil penalties are not available in an administrative action under the UIPA.

the purpose of obtaining a fee, commission, money or other benefit from any insurers, agent, broker or individual.” 40 P.S. § 1171.5(a)(12). Respondent’s misrepresentation in the sale of thirteen policies fits squarely into the definition of an unfair and deceptive practice prohibited by the UIPA. He is liable under counts LXVI–XCI.

By violating the UIPA in these thirteen instances, Respondent also violated the Insurance Department Act. That statute provides that a licensee shall not “[a]dmit to or have been found to have committed any unfair insurance practice or fraud.” 40 P.S. § 310.11(6). Hocker is liable under counts XIV–XXVI.

Finally, Hocker is liable under counts LIII–LXV for violating 40 P.S. § 310.11(20). That provision proscribes demonstrating “a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.” In the present case, the admitted facts include that Respondent intentionally sold life insurance policies under false pretenses for the purpose of receiving commissions. Respondent’s conduct in misrepresenting the terms of the policies he sold demonstrates that he cannot be trusted with the financial affairs of consumers and is not worthy of licensure.

Liability under ninety-one counts results from Hocker’s course of conduct in selling life insurance policies by intentionally misrepresenting the amount of premium clients had to pay for their policies. There is some overlap between the misrepresentation section and the fraudulent or dishonest practices section which both prohibit misrepresenting terms of insurance contracts. However, Section 310.11(5) adds the element of intentionality and respondent will be found separately liable under each provision.

The UIPA section adds the element that Respondent’s purpose was to receive a fee, commission, money or other benefit. The Insurance Department Act’s prohibition against unfair insurance practices or fraud adds the element that the conduct is committed by a

licensed producer or an applicant for a producer's license. The worthiness section prohibits all of Respondent's conduct, including his failure to report a default judgment against him, which demonstrates unfitness, competence and reliability. Thus, although some sanctions will be collapsed or combined in recognition of the duplication between counts, Respondent is liable under each of the ninety-two counts in the OTSC.

With his actions, Hocker demonstrated that he is not worthy of licensure. With Hocker liable for remedial action under these charges, the appropriate action must be established.

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). The actions in the present case directly are connected to the respondent's duties as an insurance producer. Thirteen times Hocker fraudulently induced his customers to purchase life insurance policies by misrepresenting the length of time consumers had to pay annual premium payments for their policies. He coerced them into purchasing the policies by falsely stating that the payments would not be due after a certain number of years. In fact, premium payments for the policies were payable every year for the life of the policy.

As a result of this misrepresentation, twelve clients lost significant value in their life insurance policies when they either elected to purchase a paid-up life insurance policy or simply surrendered their policies. One consumer continues to pay \$5,000 per year for the KSKJ policy. Additionally, when a default judgment was entered against him and in favor of the Securities and Exchange Commission in 2018, Hocker failed to report that action to the Department. That judgment too was based on the respondent's actions which resulted in defrauding investors.

The course of conduct in the present case is particularly egregious. This seriousness is reflected in the penalties imposed. Hocker has inflicted significant financial harm on others, evidencing 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 upon others is incapable of the trust necessary in the profession. Simply put, Hocker cannot be trusted with the pocketbooks, bank accounts and personal information of his customers.

As an additional aggravating factor, the course of conduct continued over a period of time and harmed many individuals. This was not an isolated lapse in judgment but a continuing pattern and practice of deceiving and stealing from others. The amount of money lost by thirteen individuals, and others named in the federal lawsuit against him is staggering, and the respondent has made no restitution to the victims.

No evidence exists to mitigate the seriousness of the violations. Hocker did not offer mitigating evidence or arguments.

The Department in its Order to Show Cause requested that the Commissioner revoke

the respondent's insurance producer license, bar respondent from future licensure as an insurance producer or from applying to renew any license previously held by respondent in this commonwealth, impose on respondent a civil penalty of \$5,000 per violation, order respondent to cease and desist from violating the insurance laws of the Commonwealth and impose any other conditions as the Commissioner deems appropriate, including restitution and supervision for any future license, should respondent ever become relicensed.

In its motion for default judgment, the Department requests that the Commissioner enter a default judgement against the respondent, adjudicate the matter based upon the pleadings of record, revoke respondent's producer's license, prohibit respondent from applying for a producer license in this Commonwealth and impose upon respondent a civil penalty of \$5,000 for each of Counts one through ninety-two for a total of \$460,000.

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.

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : ALLEGED VIOLATIONS:
: :
James E. Hocker : 40 P.S. § 310.11(5), (6), (7), (16),
15490 Wrangletown Road : (19), and (20); 40 P.S. § 310.47;
Shirleysburg, PA 17260 : 40 P.S. § 1171.5(a)(1)(i), and (12)
: :
Respondent : Docket No. **SC19-04-002**

ORDER

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

1. James E. Hocker shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication. This shall include making restitution or reimbursement to all individuals and entities deprived of money by respondent's conduct as described in the foregoing adjudication. Upon request by the Pennsylvania Insurance Department, restitution shall be made through the Department and/or verification of any restitution payment shall be made to the Department.

2. All of the insurance licenses or certificates of qualification of James E. Hocker **ARE REVOKED** for a minimum of 20 years pursuant to 40 P.S. 310.91. Additionally, James E. Hocker is prohibited from applying for a license or certificate of qualification in this Commonwealth for a minimum of 20 years. James E. Hocker also is prohibited from applying to renew any license or certificate of qualification previously held by either in this Commonwealth for a minimum of 20 years.

3. James E. Hocker shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order in the amounts of Sixty-Five Thousand Dollars (\$65,000.00) for Counts I–LXV and One Thousand Dollars (\$1,000.00) for Count XCII. Payment of the total amount of Sixty-Six Thousand Dollars (\$66,000.00) 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. Should the respondent ever become licensed at any future date, such license may be suspended immediately by the Insurance Department following its investigation and determination that: (i) the penalty has not been fully paid; (ii) any other term of this order has not been complied with; or (iii) any complaint against the respondent is accurate and a statute or regulation has been violated. The Department's right to act under this section is limited to a period of ten (10) years from the date of any relicensure.

5. James E. Hocker shall have no right to prior notice of a suspension imposed pursuant to paragraph 4 of this order, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to the respondent by certified mail, return receipt requested, notification of the suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of the respondent's written request.

6. At the hearing described in paragraph 5 of this order, the respondent shall have the burden of establishing worthiness for an insurance license.

7. In the event that the respondent's license is suspended pursuant to paragraph

4 of this order, and the respondent either fails to request a hearing within thirty (30) days or at the hearing fails to establish that the respondent is worthy of a license, the respondent's suspended licenses shall be revoked.

8. This order is effective immediately.



JESSICA K. ALTMAN
Insurance Commissioner