

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

2017 FEB -7 PM 12: 05

ADMIN HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
Metro Bucks Insurance Agency, LLC	:	40 P.S. §§ 310.11(4), (17), and (20)
10 S. Clinton Street, Suite 100	:	
Doylestown, PA 18901	:	
	:	
and	:	
	:	
Stephen I. Gottlieb	:	
49 W. Oakland Avenue	:	
Doylestown, PA 18901	:	
	:	
Respondents	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA INSURANCE	:	
DEPARTMENT	:	Docket No. SC16-06-017

ADJUDICATION AND ORDER

AND NOW, this 7th day of February, 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 June 22, 2016 directed to Metro Bucks Insurance Agency, LLC and Stephen I. Gottlieb (collectively “the respondents”). The

DATE MAILED: February 7, 2017

OTSC alleged that the respondents violated the Insurance Department Act.¹ Specifically, the OTSC alleged that Gottlieb, a licensed insurance agent, and the qualifying active officer and owner of Metro Bucks obtained a quote from Hull & Company for a commercial garage liability policy for a client, accepted a check for payment of the premium, deposited the money into the Metro Bucks business account, then failed to remit it to Hull & Company ultimately resulting in cancellation of the policy. As of the date of filing the OTSC, the respondents had not accounted for the premium payment paid to them by their customer.

The OTSC advised respondents to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised them that the answer must specifically admit or deny each of the factual allegations made in the OTSC. The respondents were advised to set forth the facts and state concisely the matters of law upon which they rely. They further were 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 Metro Bucks and Gottlieb by certified and first class mail.

On July 25, 2016 the respondents filed a one page document with attachments including a finance agreement presented to their customer, the original quote from Hull & Company, an application for insurance and “mandatory Pa. State Paperwork for UM & UMI.” The respondents’ filing also included the following paragraph:

Since January of this year we have had several clients pay in cash or the Agency directly. On January 28th we had a client give us \$300 cash. We deposited it and paid his insurance immediately. May of this year we had a title company send a check made out to the agency for a new home owner’s policy. We deposited the check and paid the premium the same day. We do

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.*).

not make a habit of keeping client's money. There were extenuating circumstances to this case. For a time we had our account frozen due to no action of the agency. If any further information is needed it will be provided immediately.

Upon receipt of this document, the Presiding Officer on July 25, 2016 issued an order scheduling a prehearing telephone conference on September 20, 2016. On July 28, 2016 the Department filed a motion to have allegations and authenticity of documents deemed admitted or alternatively to compel filing of an answer more definite and certain.

On September 15, 2016 Department Counsel sent a letter to the Administrative Hearings Office requesting continuance of the prehearing telephone conference to permit additional settlement discussions. Following the rescheduled October 17, 2016 prehearing telephone conference, the Presiding Officer issued an order directing that, if respondents secured legal counsel, an entry of appearance had to be filed by October 24, 2016, or it would be presumed that respondents elected to proceed without counsel. Respondents were also directed to file a response by November 4, 2016 to the Department's Motion to Have Allegations and Authenticity of Documents Deemed Admitted or Alternatively to Compel Filing of an Answer More Definite and Certain. A hearing was scheduled for December 7, 2016.

The respondents did not file any response to the October 17, 2016 Order or communicate any further with either the Department or the Administrative Hearings Office. On November 29, 2016 the Department filed a Motion for Default Judgment. By Order on the same date, the Presiding Officer canceled the December 7, 2016 hearing. The respondents have filed no answer to the motion for default judgment.

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 Metro Bucks and Gottlieb failed to comply with the October 17, 2016 Order directing them to file a more definitive answer to the OTSC by November 4, 2016. The Order also informed the respondents that:

in the event that a response is not filed by November 4, 2016, the facts and documents contained in the June 22, 2016 Order to Show Cause will be deemed admitted or authenticated.

Furthermore, the respondents have failed to answer the motion for default judgment. The OTSC, October 17, 2106 Order 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."). 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.

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.

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 complied with the Order to provide a definitive answer to the OTSC 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

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: . . .

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

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 in which the respondents have failed to deny or respond to the specific factual averments in the OTSC or to respond to a motion for default judgment. 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 Metro Bucks is owned by Stephen I. Gottlieb who is a

licensed Pennsylvania insurance producer whose license was scheduled to expire July 31, 2016. [OTSC ¶¶ 1 through 4]. In February 2015, the respondents requested and obtained a quote from Hull & Company for a commercial garage liability policy for one of their customers. [OTSC ¶¶ 6–7; Appendices A and D]. Respondents received a check in the amount of \$1,972.00 from, Raymond Knipp, their customer, as a premium payment. [OTSC ¶ 10]. Respondents deposited the check into the agency's business bank account. [OTSC ¶ 11]. Hull & Company issued an invoice for the premium but respondents did not remit payment. [OTSC ¶¶ 12–13]. Despite at least four additional email contacts from Hull & Company throughout spring 2015 requesting payment, the respondents did not send payment. [OTSC ¶ 14–17]. As a result the policy cancelled for nonpayment. [OTSC ¶ 18]. As of the date of filing the OTSC, respondents had not accounted for the \$1,972.00 premium payment. [OTSC ¶ 19].

Each respondent was charged with three distinct violations of the Insurance Department Act: 1) Withholding, misappropriating, or converting money or property received in the course of doing business; 2) Committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty; and 3) demonstrating a lack of worthiness.⁵

For each of these charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of their certificates 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 three charges against the respondents.

The respondents are in the business of providing customers with insurance policies. In their dealings with a customer, Raymond Knipp, the respondents accepted his

⁵ The OTSC contains six counts with three violations being attributed to Metro Bucks and three violations attributed to Stephen Gottlieb. However, the counts for each respondent are the same and will not be repeated here.

premium payment towards purchase of a garage liability policy. They deposited his check into their own business account and withheld it from payment to the insurer. By so doing, the respondents violated 40 P.S. § 310.11(4) which prohibits “withholding, misappropriating, or converting money or property received in the course of doing business.” The respondents are jointly liable under counts one and four.

The respondents compounded their mishandling of Mr. Knipp’s premium payment by falsely claiming to the insurer that their delay in paying the premium was due to the process of obtaining premium financing. When the respondents did not pay the premium after four requests from the insurer, Mr. Knipp’s policy cancelled. With their misrepresentation to the insurer and by permitting the cancellation of Mr. Knipp’s policy, the respondents violated 40 P.S. § 310.11(17) which prohibits committing “dishonest acts or an act involving a breach of fiduciary duty.” Their actions left Mr. Knipp without the coverage for which he had paid. The respondents are jointly liable under counts two and five.

Taken all together, the respondent’s activities violated 40 P.S. § 310.11(20) which prohibits a licensee from demonstrating “a lack of general fitness, competence or reliability.” The respondents are jointly liable under counts three and six.

Liability under all six counts results from the respondents’ course of conduct in one business transaction with one customer. Although the Department has not alleged that the customer faced any claims while uninsured, he was left without the coverage for which he had paid. The respondents are separately liable under each count because each statutory section proscribes certain aspects of the course of conduct, with the worthiness count encompassing all aspects. With the respondents liable for remedial action under all 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 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). Each of the underlying actions in the present case directly are connected to the respondents' duties in their capacities as either an insurance agency or producer. This seriousness is reflected in the penalties imposed. Metro Bucks' and Gottlieb's conversion of a premium payment to some use other than that for which it was solicited or intended evidences a moral turpitude which is antithetical to the trustworthiness required in the profession. As the result of their actions, the respondents' client lost his initial \$1,972.00 premium payment and ultimately his insurance coverage. The harm inflicted by the respondents involves more than the loss of a premium payment. By allowing the policy to cancel, Metro Bucks and Gottlieb have deprived at least one policyholder of the security and peace of mind which insurance provides. The respondents took far more than money. They violated their fiduciary duty to the client and violated his trust in them.

By definition, producers and agencies have extensive personal contact with applicants and insureds. The applicants and insureds entrust financial and personal matters to the agent, and rely upon the producer's integrity. An agency and producer who has recently misappropriated a client's funds, thus causing the client to lose insurance coverage is incapable of the trust necessary in the profession. Simply put, Metro Bucks and Gottlieb at this time cannot be trusted with the pocketbooks, bank accounts and

personal information of their customers.

As an additional aggravating factor, the respondents repeatedly ignored deadlines and directives contained in multiple orders issued during these proceedings. This demonstrates a lack of respect towards the regulator and awareness of the significance of the charges brought against the respondent. Without the respondents' meaningful participation in these proceedings, it is impossible to determine whether they tacitly acknowledge and accept the charges against them or passively deny the charges by failing to provide an appropriate response to them.

Lack of remorse or acceptance of responsibility is a substantial aggravating factor. *In re O'Dell*, SC04-09-041 (2007); *In re Burgunder*, SC10-08-017 (2010). Remorse and acceptance of responsibility mitigates the seriousness of the conduct. *In re Gottfried*, SC98-06-009 (1999); *In re Walters*, SC03-12-021 (2004). Despite their initial timely but vague response to the OTSC, the respondents have not demonstrated that they fully appreciate the importance of this matter. By repeatedly neglecting subsequently to participate at various stages of the proceedings Metro Bucks and Gottlieb have relinquished their opportunity to explain their actions or otherwise mitigate the charges.

No evidence exists to mitigate the seriousness of their violations. Neither Metro Bucks nor Gottlieb have offered any mitigating evidence or arguments. However, some evidence of mitigation is evident from the record. The Department did not allege complaints or disciplinary action against the respondents, and administrative notice is taken that no enforcement actions or consent orders were entered against the respondents until the present action.

The Department in its Order to Show Cause asks that the respondents be found in violation of 40 P.S. § 310.11(4), (17) and (20), that the Commissioner revoke the

respondents' insurance producer licenses, bar respondents from future licensure as an insurance producer agency and insurance producer, or from applying to renew any license previously held by the respondents in this Commonwealth, impose on respondents a civil penalty of \$5,000 per violation, order respondents to cease and desist from violating the insurance laws of this Commonwealth, order respondents to pay restitution in the amount of \$1,976 to their victim, pay any other restitution which the commissioner deems appropriate, and impose any other conditions deemed appropriate, including restitution and supervision for any future licenses, should respondents ever become relicensed.

In its motion for default judgment, the Department asks the Commissioner to enter a default judgment against the respondents, to cancel any further hearing scheduled on said matter, to adjudicate the said matter based upon the pleadings of record, to revoke respondents [*sic*] producer licenses, prohibit respondent from applying for a producer license in this Commonwealth, and to impose upon respondent a civil penalty of \$5,000 for each Counts One through Six for a total of \$30,000.

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.

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 the misappropriating or converting of money or property received in the course of doing business or breaching a fiduciary duty.

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. Metro Bucks Insurance Agency, LLC and Stephen I. Gottlieb by their conduct demonstrate 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:	:	VIOLATIONS:
Metro Bucks Insurance Agency, LLC	:	40 P.S. §§ 310.11(4), (17), and
10 S. Clinton Street, Suite 100	:	(20)
Doylestown, PA 18901	:	
	:	
and	:	
	:	
Stephen I. Gottlieb	:	
49 W. Oakland Avenue	:	
Doylestown, PA 18901	:	
	:	
Respondents	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA INSURANCE	:	
DEPARTMENT	:	Docket No. SC16-06-017

ORDER

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

1. Metro Bucks Insurance Agency, LLC and Stephen I. Gottlieb shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Metro Bucks Insurance Agency, LLC and Stephen I. Gottlieb **ARE REVOKED** for a minimum of five (5) years pursuant to 40 P.S. 310.91 for each of Counts I through 6, with these revocations to run concurrently with each other for a total minimum period of five (5) years. Additionally, Metro Bucks Insurance Agency, LLC and Stephen I. Gottlieb are

prohibited from applying for or renewing any certificate of qualification to act as a producer in this Commonwealth for a minimum of five (5) years.

3. Metro Bucks Insurance Agency, LLC and Stephen I. Gottlieb jointly shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows:

- a. Counts one and four : \$5,000.00
- b. Counts two and five: \$5,000.00
- c. Counts three and six: \$2,000.00

for a total of twelve thousand (\$12,000.00) 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. In the event that Raymond Knipp has not been reimbursed yet for premium paid to Metro Bucks Insurance Agency, LLC or Stephen I. Gottlieb without corresponding insurance coverage, Metro Bucks Insurance Agency, LLC or Stephen I. Gottlieb shall be jointly and severally liable to repay such premium as restitution, payable in the time and manner as the civil penalty set forth in paragraph 3.

5. Should either of the respondents ever become licensed at any future date, such respondent's licenses may be immediately suspended 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 five (5) years from the date of any

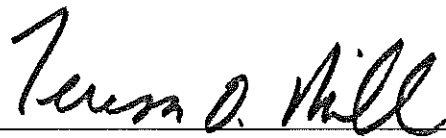
relicensure.

6. A respondent shall have no right to prior notice of a suspension imposed pursuant to paragraph 5 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.

7. At the hearing described in paragraph 6 of this order, the respondent shall have the burden of establishing that he or it is worthy of an insurance license.

8. In the event that the respondent's licenses are suspended pursuant to paragraph 5 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.

9. This order is effective immediately.



TERESA D. MILLER
Insurance Commissioner