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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:  
: :  
**Ruben Perez** : 63 P.S. § 1606(a)(5), (12) and (13)  
4045 Sheridan Avenue #405 : :  
Miami Beach, FL 33140 : :  
: :  
Respondent : Docket No. **SC19-04-001**

**ADJUDICATION AND ORDER**

AND NOW, this 20<sup>th</sup> day of June, 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 4, 2019 directed to Ruben Perez (“Perez” or “the respondent”). The OTSC alleged that Perez violated the Public Adjusters Act.<sup>1</sup> Specifically, the OTSC alleged that Perez, a licensed non-resident public adjuster, misappropriated an insurance claim payment intended for the insured.

The OTSC advised Perez 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

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<sup>1</sup> Act of December 20, 1983, P.L. 260, No. 72 as amended, 63 P.S. §§ 1601-1608.

DATE MAILED: June 20, 2019

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, including deemed admission of the alleged facts and authenticity of documents and the issuance of an order imposing penalties. Following the filing of the OTSC, a presiding officer was appointed and the appointment order was served on Perez by first class and certified mail.

Perez failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On May 9, 2019, the Department filed a motion for default judgment and served Perez in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent to his last known addresses in Philadelphia, Pennsylvania and Cherry Hill, New Jersey as kept on file in the Department as well as an additional address for the respondent in Miami, Florida. The first class mailing to Cherry Hill was returned by the post office as undeliverable and no certified receipt was returned. The certified mailing to Philadelphia was returned to the Department as undeliverable but the first class mailing was not returned as undeliverable. Neither the first class mailing nor certified mailing to the Miami address was returned as undeliverable and the Department received the certified return receipt showing delivery of the OTSC on April 8, 2019. Notice of the OTSC also was published in the Pennsylvania Bulletin on April 20, 2019.<sup>2</sup> 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.

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<sup>2</sup> 49 Pa. Bull. 1971 (April 20, 2019).

## DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since Perez 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>3</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 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>4</sup> provides for a hearing procedure prior to certain penalties being imposed by the

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<sup>3</sup> The OTSC warned the respondent that failure to answer in writing would result in deemed admission of the alleged facts and authenticity of documents and the issuance of an order imposing penalties.

<sup>4</sup> Act of December 20, 1983, P.L. 260, No. 72 *as amended*, 63 P.S. §§ 1601–1608.

Commissioner.<sup>5</sup> 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 directly has addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Public Adjusters Act, the caselaw supports such authority. 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)<sup>6</sup> 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.

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<sup>5</sup> "NOTICE AND HEARING.-- Before the Insurance Commissioner shall take any action as above set forth, he shall give written notice to the person accused of violating the law, stating specifically the nature of such alleged violation and fixing a time and place, at least ten days thereafter, when a hearing of the matter shall be held. 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. When the Insurance Commissioner shall have taken any actions as above set forth, the party aggrieved may appeal therefrom to the Commonwealth Court." 63 P.S. § 1606(c).

<sup>6</sup> Act of July 22, 1974, P.L. 589, No. 205, 40 P.S. §§ 1171.1-1171.15.

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 Phelps*, P95-09-007 (1997); *In re Crimboli*, SC99-04-015 (1999); *In re Warner*, SC01-08-001 (2002); *In re Taylor*, SC07-11-015 (2008); *In re Kroope*, SC09-12-005 (2010); *In re Funari*, SC14-01-005 (2014) (public adjuster); *In re Kletch*, SC15-04-022 (2015); *In re Riddell*, SC16-04-002 (2016) (public adjuster). The Commissioner adopts this reasoning in the present case: the important aspects of 2 Pa.C.S. § 504 and 63 P.S. § 1606(c) 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 Perez was a nonresident licensed public adjuster on April 12, 2017 when he entered into a public adjusting contract with Beatrice Rosario in Darby, Pennsylvania. [OTSC ¶ 3 and Appendix A]. Perez entered into the contract with Ms. Rosario after her house was damaged due to a windstorm. [*Id.*]. On November 8, 2017, Selective Insurance Company issued payment in the amount of \$7,103.67 payable to Ms. Rosario, Wells Fargo Bank and the respondent's company, R.P. Adjustment Group, LLC.

[OTSC ¶ 4 and Appendix B]. Perez deposited the check from Selective Insurance into his bank account and has not remitted the money to Ms. Rosario nor responded to her attempts to communicate with him. [OTSC ¶¶ 5-8].

Perez was charged with three distinct violations of the Public Adjusters Act: 1) misappropriating, converting to his own use or improperly withholding of moneys held on behalf of another party to the contract pursuant to 63 P.S. § 1606(a)(5); 2) committing fraudulent practices pursuant to 63 P.S. § 1606(a)(12); and 3) demonstrating incompetence or untrustworthiness to transact the business of a public adjuster pursuant to 63 P.S. § 1606(a)(13).

Perez is liable for remedial action under count one (misappropriation). He retained the entire \$7,103.67 payment from Selective Insurance. At most, the public adjuster contract between Ms. Rosario and R.P. Adjustment Group entitled the adjuster to a contingent fee of 15% of each draft paid by Selective in settlement of Ms. Rosario's claim. [OTSC Appendix A]. However, by refusing to return Ms. Rosario's attempted communications and by failing to respond to the OTSC, Perez has failed to account for any portion which might justifiably have been retained. Perez's retention of the claim proceeds harmed his client, who needed those funds to remediate her loss. Misappropriation of that money constitutes the precise conduct proscribed by 63 P.S. § 1606(a)(5). The respondent is liable under the first count.

For the same conduct, Perez is liable under count two for violating the proscription on fraudulent practices. By retaining the settlement proceeds and by failing to account for that retention, Perez falsely implied that he or his company were entitled to the proceeds. This conduct deceived both his client and the insurance company making payment on the

claim. He thus violated 63 P.S. § 1606(a)(12) which prohibits fraudulent practices.<sup>7</sup> He is liable under the second count.

Finally, by his course of conduct, the respondent demonstrated untrustworthiness to transact the business of a public adjuster and defeated his central obligation to his client: to obtain payment for her loss. Perez's failure to remit the insurance proceeds intended to compensate his client for her loss, after promising to do so in his contract with her, demonstrates that he cannot be trusted with the financial affairs of consumers and companies alike. He violated 63 P.S. § 1606(a)(13) and is liable under count three.

For each of the counts for which liability is established, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his license as well as imposing a penalty of up to \$5,000.00 per violation. 63 P.S. § 1606(a) and (b). Penalties not only may be imposed for violating specific conduct such as the misappropriation and fraud provisions; they may be imposed if the public adjuster is determined to be untrustworthy or incompetent. 63 P.S. § 1606(a)(13). In the present case, the admitted facts support sanctions for each of three counts against the respondent. With Perez liable for remedial action under any or all of the counts, the appropriate action must be established for his conduct.

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<sup>7</sup> The facts in the present case do not include an express fraudulent misrepresentation by Perez upon which his client or the company relied beyond the general promise in the contract "to advise and assist in the adjustment of the insurance claim." [OTSC Appendix 1]. The respondent would better have been charged under 63 P.S. § 1606(a)(2), which proscribes "engaging in . . . any fraudulent or misleading conduct with respect to a claim or loss that the licensee is adjusting." The respondent was not charged with violating this subsection.

## PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Public Adjusters Act, including those provisions violated by Perez's conduct. 63 P.S. § 1606(a). Each action violating the Act also subjects the actor to a maximum five thousand dollar civil penalty. 63 P.S. § 1606(b). Department regulations promulgated pursuant to the Public Adjusters Act also provide that the penalties of the Unfair Insurance Practices Act<sup>8</sup> may be imposed for a pattern or practice or a single flagrant violation of those regulations. 31 Pa. Code § 1157(4).

A Commissioner is given broad discretion in imposing penalties against licensees. *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); *Riddell, supra*. Perez's violations are of the most serious nature, and directly connected to his duties as a public adjuster. This seriousness is reflected in the penalties imposed. Perez's infliction of financial harm on a client, even if a single instance, evidences a moral turpitude which is antithetical to the trustworthiness required in the profession. By definition, a public adjuster investigates and adjusts claims for insurance consumers who have suffered a loss, and advises them about their claims. 63 P.S. § 1601. Public adjusters thus work for and have personal contact with insureds, who rely upon the adjuster's integrity. An adjuster who has recently inflicted financial harm upon his own client is incapable of the trust necessary in the profession in this Commonwealth. Simply put, the respondent at this time cannot be trusted with the money and personal information belonging to his customers.

No evidence exists to mitigate the seriousness of the violations, other than it being one course of conduct involving one client and apparently being the first disciplinary action

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<sup>8</sup> Act of July 22, 1974, P.L. 589, No. 205 as amended (40 P.S. §§ 1171.1-1171.15).

against the respondent in Pennsylvania.<sup>9</sup> The respondent, not appearing in these proceedings, did not offer mitigating evidence or arguments. An 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 three counts for which the respondent is found liable. The Department sought revocation of the respondent's public adjusters license and a bar from future licensure. The Department also requested that the Commissioner order the respondent to cease and desist from violating insurance laws of the Commonwealth and impose any other appropriate conditions including restitution and supervision for future licenses should the respondent ever become relicensed. In its motion for default judgment, the Department requested that the Commissioner revoke the respondent's license, prohibit him from applying for a public adjusters license and impose upon the respondent a civil penalty totaling \$15,000 for the three counts.

Although the respondent is liable under each of the three counts, this liability is based upon the same course of conduct: retaining Ms. Rosario's settlement proceeds. Had Perez committed additional acts or omissions constituting violations in each count, he would be sanctioned separately for each violation.<sup>10</sup> However, for the purpose of remedial

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<sup>9</sup> The Department did not allege prior complaints or disciplinary action against the respondent, and administrative notice is taken that no enforcement actions or consent orders were entered against the respondent until the present action.

<sup>10</sup> See *In re Funari*, SC14-01-005 (2014) (fraud count included endorsing clients' names without their knowledge or consent); *In re Riddell*, SC16-04-002 (adjuster used an unapproved contract form, made express misrepresentations concerning incurred expenses and endorsed claim check with his clients' signatures without their knowledge or consent). By representing via the false signatures that their clients signed off on the checks, the adjusters in *Funari* and *Riddell* were sanctioned separately for the fraud count in addition to the misappropriation count. In contrast to *Funari* and *Riddell*, Perez did not forge his clients' signatures. Rather, he endorsed Selective's claim check himself with a power of attorney for Ms. Rosario and for deposit in the account of R.P. Adjustment Group, LLC. [OTSC Appendices A and B].

action against the respondent in the present case, the three violations will merge and be considered together. 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.

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4045 Sheridan Avenue #405 : :  
Miami Beach, FL 33140 : :  
: :  
Respondent : Docket No. **SC19-04-001**

**ORDER**

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

1. Ruben Perez shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. The Pennsylvania nonresident public adjusters license of Ruben Perez **IS REVOKED** for a minimum of five (5) years pursuant to 63 P.S. § 1606(a). Additionally, Ruben Perez is prohibited from applying for a resident or nonresident public adjusters license in this Commonwealth for a minimum of five (5) years. Ruben Perez also is prohibited from applying to renew any license previously held by him in this Commonwealth and issued by the Insurance Department for a minimum of five (5) years.

3. Ruben Perez shall pay restitution within thirty (30) days of this order in the amount of Seven Thousand One Hundred Three Dollars and Sixty-Seven Cents (\$7,103.67) to Beatrice Rosario. In addition to the above restrictions, no Pennsylvania public adjuster license or insurance license may be issued or renewed until the said restitution is paid in full.

4. Ruben Perez shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order in the amount of Four Thousand Dollars (\$4,000.00). 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 Pennsylvania public adjuster license or insurance license may be issued or renewed until the said civil penalty is paid in full.

5. This order is effective immediately.

  
JESSICA K. ALTMAN  
Insurance Commissioner