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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:
: :
Michael Vincent Shattuck : 40 P.S. §§ 310.11(20) and 310.78(b)(3)
53 Acres Drive :
Ridley Park, PA 19078 :
: :
Respondent : Docket No. **SC19-12-019**

ADJUDICATION AND ORDER

AND NOW, this 13th day of March, 2020, 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 December 30, 2019 directed to Michael Vincent Shattuck (“Shattuck” or “the respondent”). The OTSC alleged that Shattuck violated the Insurance Department Act¹. Specifically, the OTSC alleged that Shattuck, a licensed insurance producer, failed to report two criminal convictions to the Department within 30 days as required by law.

The OTSC advised Shattuck 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

¹ Act of May 17, 1921, P.L. 789, No 285, 40 P.S. §§ 310.11(20) and 310.78(b)(3).

DATE MAILED: March 13, 2020

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 Shattuck by first class and certified mail at the two addresses for the respondent given in the OTSC. A certified mailing and a first class mailing were returned as undeliverable while the other certified mailing was returned as unclaimed. The other first class mailing was not returned by the post office as undeliverable.

Shattuck failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On February 10, 2020, the Department filed a motion for default judgment and served Shattuck in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent by first class and certified mail to the respondent's Ridley Park, Pennsylvania address as kept on file with the Department as well as an Aston, Pennsylvania address which the Department had for the respondent. The mailings to the Ridley Park address were returned as undeliverable. The mailings to the Aston address were not returned as undeliverable and the return receipt for the certified mailing was delivered on January 4, 2020 as evidenced by the attached signed certified mail return receipt card. Notice of the OTSC also was published in the Pennsylvania Bulletin on Saturday, January 18, 2020. 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 Shattuck 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.

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 answered

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 as amended (40 P.S. §§ 1 *et seq.*).

⁴ The Insurance Department Act section mandates written notice of the nature of the alleged violations and

the order to show cause and given established 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 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 an Unfair Insurance Practices Act (UIPA)⁵ 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 even though 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.

requires that a hearing be fixed at least ten (10) days thereafter, and further provides that:

After the hearing or upon 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.

⁵ 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 Young*, SC98-08-027 (2000); *In re Warner*, SC01-08-001 (2002); *In re Taylor*, SC07-11-015 (2008); *In re Kroope*, SC09-12-005 (2010); *In re Kletch*, SC15-04-022 (2015). 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 Shattuck was a licensed resident insurance producer with an address of record with the Department in Ridley Park, Pennsylvania. [OTSC ¶¶ 1-2]. On August 8, 2018, the respondent was charged in Delaware County, Pennsylvania with Carrying a Firearm Without a License, Possession of a Controlled Substance, Possession of Drug Paraphernalia, Driving Under the Influence of a Controlled Substance, Making Repairs/Selling Offensive Weapons and Disorderly Conduct. [OTSC ¶ 3; Appendix A].

All the charges were misdemeanors except for the Disorderly Conduct Charge which was a summary offense. [*Id.*].

On October 12, 2018, the Department issued the respondent a warning letter about failing to report the August criminal charges within 30 days. [OTSC ¶ 4; Appendix B]. The warning letter detailed what the law required, including that Shattuck must notify the Department of the disposition of his criminal charges within 30 days. [*Id.*]. On February 4, 2019, Shattuck pleaded guilty to Carrying a Firearm Without a License and Driving Under the Influence of a Controlled Substance, both misdemeanors. [OTSC ¶ 6; Appendix A]. Shattuck did not report the final disposition of the charges against him to the Department within 30 days. [OTSC ¶ 7].

Shattuck was charged with two distinct violations of the Insurance Department Act: 1) failure to notify the Department of the final disposition of criminal charges in violation of 40 P.S. § 310.78(b)(3); and 2) demonstrated 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).

For each of the counts, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of his licenses as well as imposing a penalty of up to \$5,000.00 per violation. 40 P.S. § 310.91(d)(1), (2). The Commissioner also may order the respondent to cease and desist and impose other conditions the Commissioner deems appropriate. 40 P.S. § 310.91(d)(3), (4). In the present case, the admitted facts support sanctions in both counts against the respondent.

By failing to report to the Department the final disposition of criminal charges within 30 days, the respondent is liable under 40 P.S. § 310.78(b)(3) as set forth in count one. The applicable subsection provides as follows:

(b) Criminal Conduct Reporting.—Within 30 days of being charged with criminal conduct, a licensee shall report the charges to the department. The licensee shall provide the department with all of the following within 30 days of their availability to the licensee:

- (1) A copy of the criminal complaint, information or indictment.
- (2) A copy of the order resulting from a pretrial hearing, if any.
- (3) A report of the final disposition of the charges.

40 P.S. § 310.78(b). Shattuck previously had been given a written warning about his failure to report his arrest to the Department. The warning reminded the respondent that he must report the final disposition of the charges within 30 days after such disposition. Shattuck failed to do so. He is liable under count one.

The respondent also is liable for remedial action under count two (worthiness). 40 P.S. § 310.11(20) provides that a licensee shall not “[d]emonstrate a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.” The respondent’s course of conduct in failing to report the criminal charges to the Department and subsequently failing to report disposition of the charges demonstrates a lack of trustworthiness necessary in the profession. Whether by conscious intent, avoidance or negligence, Shattuck failed to inform the regulator of his profession about his criminal conduct. This demonstrates a lack of fitness, competence and reliability rendering him subject to sanctions.

With Shattuck liable for remedial action under each of the two counts, the appropriate action must be established for his conduct.

PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by Shattuck's conduct. 40 P.S. 310.91(d)(1). Each violation subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. 310.91(d)(2). The actor may be ordered to cease and desist his conduct. 40 P.S. 310.91(d)(3). The Commissioner also may impose other appropriate conditions. 40 P.S. 310.91(d)(4).

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 underlying course of conduct in the present case, which includes reporting to the regulator of his profession, is serious and directly connected to the respondent's duties as an insurance producer. The respondent's failure to report the convictions to the Commonwealth's regulator breached the respondent's duties to the Commonwealth and to the public. Whether a conscious concealment or a negligent nondisclosure, the failure to disclose the convictions and actions hampered the Insurance Department's ability to regulate the profession and protect insurance consumers. This concealment goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance-buying public. The seriousness of the respondent's omission is reflected in the penalties imposed.

The omission is aggravated by the Department's written warning to the respondent just four months prior to his convictions. The warning letter not only admonished the respondent for failure to report the numerous charges against him at that time, the letter specifically reminded the respondent of his responsibility to report the ultimate disposition of the charges to the Department within 30 days. As an additional aggravating factor, Shattuck did not participate in these proceedings to offer an explanation or otherwise

answer to the charges against him. Even if failure to participate represents an acceptance of whatever discipline might be imposed, the failure disrespects the licensing jurisdiction to which Shattuck subscribed.

Some evidence exists to mitigate the seriousness of the violations. First, other than the October 2018 warning letter and the current action, Shattuck has no record of public discipline in Pennsylvania. Also, none of the charged or convicted criminal conduct involved the business of insurance and no evidence exists that the conduct inflicted financial or personal harm upon insurance consumers or other individuals. Finally, the respondent did not affirmatively misrepresent his criminal history to the Department, but rather misled the Department by omission. The Department learned about the charges and the convictions without the respondent reporting them, but this itself is not mitigating. Failure to report violates the statute and evidences untrustworthiness whether the Department otherwise learns of the criminal history or not. A failure to report at least delays the Department's receipt of information relevant to a licensee's trustworthiness. However, such an omission does not evidence deceit to the extent evidenced by an affirmative false representation to the Department.

The Department in its OTSC requested that the Commissioner revoke the respondent's insurance producer's license(s), bar the respondent from future licensure as an insurance producer, bar the respondent from applying to renew any license previously held by him, impose a \$5,000.00 civil penalty per violation, and impose other appropriate conditions including restitution and supervision should the respondent ever become relicensed. In its motion for default judgment, the Department also requested that the respondent be ordered to cease and desist from violating insurance laws and that the supervision period be for a minimum period of five years.

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
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IN RE:	:	ALLEGED VIOLATIONS:
	:	
Michael Vincent Shattuck	:	40 P.S. §§ 310.11(20) and 310.78(b)(3)
53 Acres Drive	:	
Ridley Park, PA 19078	:	
	:	
Respondent	:	Docket No. SC19-12-019

ORDER

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

1. Michael Vincent Shattuck shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.
2. All of the insurance licenses or certificates of qualification of Michael Vincent Shattuck **ARE SUSPENDED** for a period of six (6) months pursuant to 40 P.S. 310.91, effective on the fifteenth (15th) day from the date of this order. Additionally, Michael Vincent Shattuck is prohibited from applying for a license or certificate of qualification in this Commonwealth for a minimum of six (6) months. Michael Vincent Shattuck also is prohibited from applying to renew any certificate of qualification previously held by him in this Commonwealth for a minimum of six (6) months.
3. Michael Vincent Shattuck shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows: Five Hundred Dollars (\$500.00). 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. After expiration of the period of suspension specified in this order, the 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 two (2) years from the date the initial period of suspension expires.

5. Michael Vincent Shattuck 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 that he is worthy of an insurance license.

7. In the event that the respondent's licenses are 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