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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:
	:	
Amanda Luwana Stewart	:	40 P.S. §§ 310.11(1),(14), (20)
3680 McConnell Rd.	:	40 P.S. § 310.78(b)(3))
Hermitage, PA 16148	:	
	:	
Respondent	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA INSURANCE	:	
DEPARTMENT	:	Docket No. SC19-11-008

ADJUDICATION AND ORDER

AND NOW, this 27th day of February, 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 November 13, 2019 directed to Amanda Luwana Stewart (“the respondent”). The OTSC alleged that Stewart violated the Insurance Department Act.¹ Specifically, the OTSC alleged that Stewart, a licensed insurance agent, provided false information on her license renewal application when she denied the existence of pending criminal charges. She also failed to report the charges

¹ Act of May 17, 1921, P.L. 789, No 285 *as amended through* the Act of June 25, 1997, P.L. 349, No. 40, *repealed and partially reenacted by* the Act of December 3, 2002, P.L. 1183, No. 147.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

DATE MAILED: February 27, 2020

and their final disposition within 30 days.

The OTSC advised Stewart to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised her 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 she relies. She 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 Stewart at both her addresses by both certified and first class mail. A return receipt revealed that Stewart accepted service of the appointment order at the 406 Milliken Avenue, Sharpsville, PA 16150 address.

Stewart failed to answer the Department's OTSC or otherwise respond to the Administrative Hearings Office. On December 19, 2019, the Department filed a motion for default judgment and served Stewart in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was sent by both certified and first class mail to the respondent to her last known addresses as kept on file in the Department. A certified mail return receipt indicated that the OTSC was received. The first class mailings were 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 OTSC. Factual findings and some legal conclusions are contained within the body of this adjudication.

DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since

Stewart failed to answer the OTSC or motion for default judgment. The OTSC and motion advised as to the consequences of the failure to respond.² However, because of the language in the penalty provisions of applicable statutes, this adjudication includes an analysis of an agency's authority for imposing penalties without an evidentiary hearing.

There are no factual disputes in the present matter. All factual averments in the OTSC are deemed to be admitted under 1 Pa. Code § 35.37.

Under general rules of administrative procedure, a final order may be entered without hearing for an insufficient answer to the OTSC unless otherwise provided by statute. *See* 1 Pa. Code § 35.37 (“Mere general denials . . . will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings.”). A respondent failing to file an answer within the time allowed shall be deemed in default. *Id.* Department regulations do not limit the Commissioner's ability to order a default judgment without a hearing, so any limitation must come, if at all, from a statute.

In order for an adjudication by a Commonwealth agency to be valid, a party must have a “reasonable notice of a hearing and an opportunity to be heard.” 2 Pa.C.S. § 504 (Administrative Agency Law). Similarly, the 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

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, 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

answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

While no court has directly addressed the power of a Commissioner to enter a default judgment without hearing in a case under the Insurance Department Act, the caselaw supports such power. For example, in *United Healthcare Benefits Trust v. Insurance Commissioner*, 620 A.2d 81 (Pa. Cmwlth. 1993), the Court affirmed the Commissioner's grant of summary judgment for civil penalties despite the language contained in the applicable statutes which seemed to require a hearing.

In a case involving another agency, the Commonwealth Court upheld summary judgment imposing discipline issued by a commission despite the fact that the respondent had requested a hearing. *Kinniry v. Professional Standards and Practices Commission*, 678 A.2d 1230 (Pa. Cmwlth. 1996). In *Kinniry*, the applicable statute (24 P.S. §§ 2070.5(11), 2070.13) provided for a hearing procedure before discipline was imposed. However, the respondent's attorney merely requested a hearing without answering the specific factual averments in the charges against the respondent (which charges were treated as an order to show cause). The Court upheld the summary judgment since deemed admission of the factual averments presented no factual issues to be resolved at hearing.

The Commissioner consistently has applied the reasoning of *United Healthcare* and similar cases when the respondent does not answer the order to show cause and a motion for default judgment. See *In re 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 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.

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 her 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 her 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 Stewart is a licensed insurance agent who maintains her address of record with the Department at 3680 McConnell Rd., Hermitage, Pennsylvania 16148. On April 9, 2017, Stewart was charged in Mercer County, Pennsylvania with the misdemeanor offenses of Driving Under the Influence of Alcohol, two counts of Endangering the Welfare of Children, Resisting Arrest, Operating a Vehicle without Ignition Interlock and Institutional Vandalism. She was also charged with two summary Motor Vehicle Code violations. When Stewart completed her license renewal application on August 15, 2017, she falsely answered "no" to the question asking if she had been convicted of, or is currently charged with, committing any misdemeanors.

Two days later, on August 17, 2017 Stewart again ran afoul of the law and was

charged in Mercer County, Pennsylvania with two felony counts of Burglary and Criminal Conspiracy-Burglary. She was also charged with the misdemeanor offenses of Theft by Unlawful Taking-Movable Property, Possession of Instrument of a Crime and Receiving Stolen Property. On August 24, 2017 Stewart was charged again in Mercer County, Pennsylvania with a felony offense of Forgery, as well as two misdemeanor offenses of Receiving Stolen Property and Disorderly Conduct.

On September 11, 2017, Stewart pled guilty to the April 9, 2017 misdemeanor Resisting Arrest charge and on September 12, 2017, she pled guilty to the August 24, 2017 misdemeanor Disorderly Conduct charge. Subsequently on April 23, 2018, Stewart pled guilty to the felony Criminal Trespass charges from August 17, 2017.

On September 29, 2017 the Department issued a warning letter to Stewart for failing to report the criminal charges within 30 days. The letter notified Stewart that she was responsible for notifying the Department of the disposition of her criminal charges within 30 days. Stewart did not respond.

On the basis of these facts, the Department in its OTSC charged Stewart with four distinct violations of the Insurance Department Act: 1) Failing to Notify the Department of the Final Disposition of Charges within 30 days, thus violating 40 P.S. § 310.78(b)(3); 2) Providing Incorrect, Misleading or False Information in a License Application, thus violating 40 P.S. § 310.11(1); 3) Committing a Felony or Its Equivalent, thus violating 40 P.S. § 310.11 (14); and 4) Demonstrating a Lack of General Fitness, Competence or Reliability Sufficient to Satisfy the Department that the Licensee is Worthy of Licensure, thus violating 40 P.S. § 310.11(20).

For each of these four charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of her

certificate 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 charges against Stewart.

By failing to report the criminal charges against her in April, August, and September 2017, Stewart in each instance violated 40 P.S. § 310.78(b) as set forth in Count 1. That provision requires that “[w]ithin 30 days of being charged with criminal conduct, a licensee shall report the charges to the department” and also requires that the licensee supply the Department with copies of the charging document, pretrial orders and final disposition within 30 days. Stewart violated this requirement three times.

Additionally, by falsely answering “no” to the question regarding pending criminal charges on her license renewal application, Stewart violated the requirements of 40 P.S. § 310.11(1). This statutory provision prohibits licensees from providing “incorrect, misleading, incomplete or false information to the Department in a license application.” At the time that she prepared her application to renew her insurance producer license, Stewart had pending criminal charges against her as a result of her April 2017 actions. She violated this provision one time.

When Stewart pled guilty to a felony offense in April 2018 related to the August 17, 2017 charges, she violated 40 P.S. § 310.11(14). This statutory section prohibits a licensee from committing a felony or its equivalent. Stewart violated this provision one time.

Finally, Stewart violated 40 P.S. § 310.11(20) as contained in Count IV, which requires general fitness, competence and reliability demonstrating worthiness of licensure. The respondent’s course of conduct included the commission of a felony as failure to report and providing false information on her insurance license application. Her

course of conduct demonstrated a lack of fitness to be licensed as a professional insurance producer.

The elements of all these charges are established by the admitted facts. With the respondent liable for remedial action under each of these charges, the appropriate remedial action must be established for each one.

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). Although the underlying criminal charges are not directly connected to Stewart's duties as an insurance producer, her failure to report the offenses and her incorrect response on her renewal application directly are connected to the respondent's duties to the Department as an insurance producer.

In particular, the misrepresentation on the respondent's Pennsylvania license application goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the insurance buying public. If she is dishonest with the regulator, then Stewart cannot be entrusted with the welfare of individuals she purports to serve. By definition, producers have extensive personal contact with applicants and

insureds. The applicants and insureds entrust financial and personal matters to the producer, and rely upon the producer's integrity. A producer who has been dishonest with the regulators of her professions is incapable of the trust necessary in the profession. Simply put, Stewart at this time cannot be trusted with the pocketbooks, bank accounts and personal information of her customers.

Little evidence exists to mitigate the seriousness of the violations set out in the OTSC. Stewart did not offer mitigating evidence or arguments. However, 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. Also, without minimizing the seriousness of the respondent's criminal conduct underlying this case, the criminal conduct did not involve the business of insurance and there exists no evidence that the conduct directly inflicted financial or personal harm upon insurance consumers.

On the other hand, an aggravating factor in this case is Stewart's willingness to mislead the Department by denying the existence of any criminal charges even though she had such charges pending at the time she filed her application for renewal of her license. Additionally, Stewart has failed to participate in these proceedings further demonstrating a lack of respect for the Department that regulates her business.

The Department in its Order to Show Cause requests that the Commissioner revoke Stewart's insurance producer license(s), bar her from future licensure as an insurance producer, or from applying to renew any license previously held by Stewart in this Commonwealth, impose on Stewart a civil penalty of \$5,000 per violation, and impose any other conditions as the Commissioner deems appropriate. In its motion for default judgment, the Department seeks the same relief.

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 an individual 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 requires that an insurance producer refrain from committing a felony or its equivalent.

4. Unworthiness to hold a license may also be established by a producer's failure to comply with the law, which requires a producer to notify the Insurance Department of the disposition of any criminal charges.

5. Unworthiness to hold a license may also be established by a producer's failure to comply with the law, which prohibits a producer from supplying incorrect, misleading or false information in a license application.

6. 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.

7. Producers are held to a high degree of professionalism and must exercise good judgment.

8. Producers on the front line dealing with the insurance-buying public must avoid conduct demonstrating a disregard for regulations which protect those consumers.

9. Amanda Luwana Stewart by her conduct demonstrates current unworthiness to hold an insurance license.

10. If any of the foregoing Conclusions of Law should be held to constitute Findings of Fact, the ones so found are incorporated therein by reference.

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Respondent	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA INSURANCE	:	
DEPARTMENT	:	Docket No. SC19-11-008

ORDER

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

1. Amanda Luwana Stewart shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses or certificates of qualification of Amanda Luwana Stewart **ARE REVOKED** for a minimum of three (3) years pursuant to 40 P.S. 310.91 for each of Counts I through IV, with these revocations to run concurrently with each other for a total minimum period of three (3) years. Additionally, Amanda Luwana Stewart is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of three (3) years. Amanda Luwana Stewart is also prohibited from applying to renew any certificate of qualification previously held by her

in this Commonwealth for a minimum of three (3) years.

3. Amanda Luwana Stewart shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows:

- a. Count I: \$500.00
- b. Count II: \$4,000.00
- c. Count III: \$3,000.00
- d. Count IV: \$1,000.00

for a total of eight thousand five hundred (\$8,500.00) 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. This order is effective immediately.



JESSICA K. ALTMAN
Insurance Commissioner