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ADMINISTRATIVE SERVICES OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
Karen Ann Kletch	:	40 P.S. § 310.11(2), (17), (20)
342 Cecil Henderson Road	:	40 P.S. § 310.12(a)
Canonsburg, PA 15317	:	40 P.S. § 1171.4
	:	40 P.S. § 1171.5(a)(12)
	:	
Respondent	:	Docket No. SC15-04-022

ADJUDICATION AND ORDER

AND NOW, this 20th day of August, 2015, 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 April 30, 2015 directed to Karen Ann Kletch (“the respondent”). The OTSC alleged that the respondent violated the Insurance Department Act.¹ Specifically, the OTSC alleged that during six months in 2013, the respondent, a Pennsylvania licensed insurance producer, forged thirty-four life insurance policy applications in order to obtain commissions from American Income Life (“AIL”).

¹ Act of May 17, 1921, P.L. 789, No 285 as amended through the Act of June 25, 1997, P.L. 349, No. 40, repealed and partially reenacted by the Act of December 3, 2002, P.L. 1183, No. 147.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: August 20, 2015

The OTSC advised the respondent 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.

The respondent failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On July 28, 2015, the Department filed a motion for default judgment and served the respondent in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent to her last known home address as kept on file in the Department and that the document 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 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 the respondent 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

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.

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 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 the order to show cause and given current caselaw, these hearing procedures

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.

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 Crimboli*, SC99-04-015 (1999); *In re Young*, SC98-08-027 (2000); *In re Jennings*, SC99-10-001 (2001); *In re Warner*, SC01-08-001 (2002); *In re Czmus*, SC09-05-009 (2009). 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 an

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 the respondent is a licensed insurance producer in Pennsylvania. From January 1, 2013 to July 10, 2013, the respondent used a variety of false information, including among other items, fictitious names, social security numbers of deceased persons, and false addresses to forge thirty-four life insurance policy applications in order to obtain commissions. OTSC ¶¶ 3–14. Thereafter, in August 2013, when AIL learned of the deception, it terminated the respondent's appointment for "violating company policy and regulatory guidelines." Motion ¶ 2(b)(c). In September 2013, the respondent confessed her actions to the Department investigators, confirming that she had "fabricated nearly all of the information in the applications for thirty-four life insurance policies in order to make commissions." Motion ¶ 2(e). The respondent said she needed commission money because "she was on the verge of losing her home, she was in a custody battle with her son's father and she had recently been diagnosed with cancer." OTSC § 18.

The Department requested that the respondent send a statement further detailing her actions and reasons for creating the false applications. [*Id.*]. However, the respondent then stopped cooperating with the investigators, refusing to return telephone calls and emails. OTSC ¶ 19. She also stopped accepting certified letters from the Department. [*Id.*]. When Department investigators went to the respondent's residence to obtain her signature on a consent order they left a business card asking that the respondent contact the Department. OTSC § 20. The respondent did not contact the Department. OTSC § 21.

As a result, the Department filed the OTSC charging the respondent with five distinct violations of the Insurance Department Act: 1) violating 40 P.S. § 310.11(17) prohibiting licensees from committing "fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty," 2) violating 40 P.S. § 1171.4 and 1171.5(a)(12) by engaging in a "deceptive act or practice in the business of insurance," including "making false or fraudulent statements or representations on or relative to an application for an insurance policy" in order to obtain a commission, 3) violating 40 P.S. § 310.12(1) by failing to "provide a written response to the Department within 30 days of receipt of a written inquiry from the department. . .," 4) violating 40 P.S. § 310.11(20) by demonstrating a "lack of general fitness, competence or reliability sufficient to satisfy the Department that the licensee is worthy of licensure," and 5) violating 40 P.S. § 310.11(2) by failing to abide by the "insurance laws or regulations of this Commonwealth. . ."

For each of these five 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 the respondent. With her actions, the respondent demonstrated that she is not worthy of licensure under 40 P.S. §

310.11(2), (17), (20), 310.12(a), 1171.4 and 1171.5(a)(12). With the respondent liable for remedial action under each of these charges, the appropriate 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). All of the underlying actions in the present case directly are connected to the respondent's duties as an insurance producer. In this case the respondent admittedly forged thirty-four applications, using false social security numbers, addresses and applicant names. Thirty-four times the respondent fraudulently obtained commissions to which she was not entitled.

This theft goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work. The underlying course of dishonesty in the present case is of the most serious nature, and is directly connected to the respondent's duties as an insurance producer. This seriousness is reflected in the penalties imposed. The respondent's actions evidence a moral turpitude which is antithetical to the trustworthiness required in the profession. An insurance producer willing to engage in the types of deception practiced by this respondent is incapable of the trust necessary in the profession. Simply put, the respondent at this time cannot be trusted with the

pocketbooks, bank accounts and personal information of her customers.

In addition, the respondent has shown a lack of respect for the Department by refusing to cooperate with its investigators. Taken all together, these violations of the Pennsylvania insurance laws demonstrate that the respondent is not worthy of licensure at this time. No evidence exists to mitigate the seriousness of the violations.

The Department in its Order to Show Cause asks that the Insurance Commissioner revoke the respondent's insurance producer license(s), bar her from any future licensure as an insurance producer, or from applying to renew any license previously held by the respondent in this Commonwealth, to impose a civil penalty of \$5,000.00 per violation, order the respondent to cease and desist from violating Pennsylvania insurance laws and impose any other appropriate conditions. In its motion for default judgment, the Department requests that the Insurance Commissioner order the respondent to cease and desist from such activities as alleged in the OTSC, revoke the respondent's insurance producer licenses, impose a civil penalty of up to \$5,000.00 per violation and grant any other appropriate restitution and 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 producer or a broker has engaged in conduct which would disqualify her 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 an insurance producer licensee from committing fraud, forgery or other dishonest acts for the purpose of deceptively obtaining commissions.

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. Karen Ann Kletch by her conduct demonstrates 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.

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ORDER

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

1. Karen Ann Kletch shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

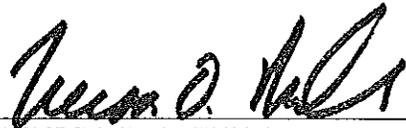
2. All of the insurance licenses or certificates of qualification of Karen Ann Kletch **ARE REVOKED** for a minimum of **twenty (20)** years pursuant to 40 P.S. 310.91 for each of Counts I through 5 with these revocations to run **concurrently** for a total minimum period of **twenty (20)** years. Additionally, Karen Ann Kletch is prohibited from applying for a certificate of qualification to act as a producer in this Commonwealth for a minimum of **twenty (20)** years. Karen Ann Kletch is also prohibited from applying to renew any certificate of qualification previously held by her in this Commonwealth for a minimum of **twenty (20)** years.

3. Karen Ann Kletch shall pay a civil penalty to the Commonwealth of Pennsylvania as within thirty (30) days of this order as follows:

- a. Counts one and two: \$17,000.00
- b. Count three: \$2,000.00
- c. Count four: \$5,000
- d. Count five: \$5,000

for a total of **twenty-nine thousand dollars (\$29,000.00)**. 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.



TERESA D. MILLER
Insurance Commissioner