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ADMINISTRATIVE SERVICES OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	ALLEGED VIOLATIONS:
	:	
<b>Scott Shapiro</b>	:	40 P.S. §§ 310.11(2), (8), (20)
12948 Equestrian Trail	:	40 P.S. § 310.78(a)
Davie, FL 33330	:	
	:	
Respondent	:	Docket No. <b>SC15-01-015</b>

ADJUDICATION AND ORDER

AND NOW, this 22<sup>nd</sup> day of April, 2015, Teresa D. Miller, Acting 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 February 18, 2015 directed to Scott Shapiro ("Shapiro" or "the respondent"). The OTSC alleged that Shapiro violated the Insurance Department Act.<sup>1</sup> Specifically, the OTSC alleged that Shapiro, a licensed insurance producer, had his insurance licenses revoked by the Commonwealths of Virginia and Kentucky and failed to report the revocations to the Pennsylvania Insurance Department.

The OTSC advised Shapiro to file an answer in accordance with applicable regulations (1 Pa. Code § 35.37), and further advised him that the answer must

<sup>1</sup> Act of May 17, 1921, P.L. 789, No 285, 40 P.S. §§ 310.11(2), (8), (20) and 40 P.S. § 310.78(a).

DATE MAILED: April 22, 2015

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 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 notice of the action was published in the Pennsylvania Bulletin.

Shapiro failed to answer the Department's Order to Show Cause or otherwise respond to the Administrative Hearings Office. On March 20, 2015, the Department filed a motion for default judgment and served Shapiro in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent to his 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 Adjudication and Order addresses the motion for default judgment and the order to show cause. Factual findings and legal conclusions are contained within the body of this adjudication.

#### DISCUSSION

This adjudication is issued without scheduling an evidentiary hearing, since Shapiro 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>2</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.

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<sup>2</sup> 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.

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>3</sup> provides for a hearing procedure prior to certain penalties being imposed by the Commissioner. *See* 40 P.S. § 310.91.<sup>4</sup> However, given that the respondent has not answered the order to show cause and given current caselaw, these hearing procedures are inapplicable.

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<sup>3</sup> Insurance Department Act, Act of May 17, 1921, P.L. 789 as amended (40 P.S. §§ 1 *et seq.*).

<sup>4</sup> 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 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.

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) 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.

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 Jennings*, SC99-10-001 (2001); *In re Warner*, SC01-08-001 (2002); *In re Taylor*, SC07-11-015 (2008); *In re Kroope*, SC09-12-005 (2010); *In re Chappel*, SC14-10-024 (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 Shapiro was a licensed resident insurance producer. [OTSC ¶ 2]. On September 25, 2013, the Virginia State Corporation Commission revoked Shapiro's non-resident producer license for failing to make records available on request for examination by the Commissioner or employees. [OTSC ¶ 4; Exhibit A]. Shapiro failed to notify the Pennsylvania Insurance Department of Virginia's administrative action. [OTSC ¶ 5].

On November 4, 2013, the Kentucky Department of Insurance revoked Shapiro's insurance license for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility and for failing to respond to all attempts to contact him. [OTSC ¶ 6; Exhibit B]. The respondent failed to notify the Pennsylvania Insurance Department of Kentucky's administrative action. [OTSC ¶ 7].

The Pennsylvania Insurance Department attempted to contact Shapiro by mail, telephone and email. [OTSC ¶¶ 8, 10, 12]. The telephone numbers previously listed for the respondent were invalid when the Department attempted to call. [OTSC ¶ 11]. Shapiro did not respond to the Department's mail or email, although neither was returned to the Department as undeliverable. [OTSC ¶¶ 9,13].

Shapiro was charged with four distinct violations of the Insurance Department Act: 1) revocation of insurance licenses by other government entities in violation of 40 P.S. § 310.11(8); 2) failing to report the administrative actions to the Pennsylvania Department in violation of 40 P.S. § 310.78(a); 3) demonstrated lack of worthiness to be an insurance agent pursuant to 40 P.S. § 310.11(20); and 4) violation of Pennsylvania insurance laws or regulations or a subpoena or order of the Commissioner or of another state's Insurance Commissioner in violation of 40 P.S. § 310.11(2).

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.

Shapiro is liable for remedial action under count one (reciprocity). The revocation of his insurance licenses by Virginia and Kentucky constitutes a violation of 40 P.S. § 310.11(8), which prohibits a Pennsylvania licensee or applicant from having another government entity suspend or revoke a producer, financial services or equivalent license.

The respondent also is liable for remedial action under count two (failure to report). 40 P.S. § 310.78(a) requires a licensee to report to the Department any administrative action against the licensee in another jurisdiction or another agency in the

Commonwealth within 30 days of final disposition. Shapiro failed to report either the Virginia or Kentucky administrative actions and accordingly is liable under this count.

Shapiro is liable under the third count (lack of worthiness). By all of his conduct in other states and Pennsylvania, the respondent demonstrated a lack of general fitness, competence and reliability. Combined with his other conduct constituting separate violations of the statute, Shapiro's failure to respond to his profession's regulator/licensing authority demonstrates a complete lack of professional fitness and reliability. This violates 40 P.S. § 310.11(20) and merits remedial action.

Finally, Shapiro is liable under count four (violation of laws, regulations, subpoenas and orders). The respondent's conduct violated three Pennsylvania statutory provisions as contained in the first three counts. Further, the Virginia revocation is based upon a violation of its regulator's order to produce records. The respondent is liable for violating 40 P.S. § 310.11(2).

For each of the four 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. In the present case, the admitted facts support sanctions for each of the charges against the respondent. 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 respondents' conduct. 40 P.S. § 310.91(d)(1). Each action violating a provision of the statute also subjects the actor to a maximum five thousand dollar civil penalty. 40 P.S. § 310.91(d)(2). The respondent may also be ordered to cease and desist from prohibited conduct. 40 P.S. § 310.91(d)(3). Finally, the Commissioner may impose any other conditions deemed appropriate. 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).

Scott Shapiro appears to have withdrawn from the insurance profession. In both the Virginia and Kentucky actions, as well as in Pennsylvania, the respondent failed to respond to inquiries from the regulator and subsequently to the enforcement actions. The underlying conduct cited in the Virginia revocation order (failure to make requested records available) and Kentucky order (excessively telephoning a client or prospect and offering to "waive" a nonexistent company activation fee to another individual) do not seem to be of the most serious nature. While revoking Shapiro's license, neither regulator imposed a civil penalty or other sanction in their respective orders.

However, Shapiro compounded his conduct by failing to address it in both states, and by violating Pennsylvania law with multiple acts of omission. Cumulatively, the seriousness of his conduct has multiplied with each failure to act, culminating in his failure to respond to this enforcement action. Licensure provides a bulwark to protect the insurance buying public, and the respondent's repeated and consistent failure to respond to licensing authorities has eroded this protection.

In Kentucky, the respondent was sanctioned for activities directly connected with his duties as an insurance producer and which harmed insurance consumers and damaged the profession. In Virginia, Shapiro exhibited disdain towards the regulator and the respondent's duties as a licensee by failing to comply with the directive to make records available. In both Kentucky and Virginia, the respondent demonstrated disregard towards the respective regulators by failing to respond to the charges resulting in the revocation orders. The revocation orders by corresponding regulators in other states merit revocation in Pennsylvania as a violation of 40 P.S. § 310.11(8).

The respondents' failure to report the Virginia and Kentucky actions to the Pennsylvania regulator also breached the respondents' duties to the Commonwealth and to the public. Whether a conscious concealment, negligent nondisclosure or abandonment of the profession, the failure to disclose the Virginia and Kentucky actions hampered the Insurance Department's ability to regulate the profession and protect insurance consumers. This nondisclosure goes to the heart of the requirement that insurance producers be trustworthy and reliable in their work with the licensing authority and the insurance buying public.

In addition, Shapiro's failures undermine the confidence placed by insurance consumers in the respondent as well as in the profession. Applicants and insureds entrust financial and personal matters to the producer, and rely upon the producer's integrity. The respondent's actions violated the laws of this Commonwealth and thus damaged the trust consumers place in their producers. The respondent's failure to comply with applicable laws and codes of conduct in multiple states is an aggravating factor, as is his failure to respond to this enforcement action.

The respondent did not appear to offer mitigating evidence or arguments and the only mitigating facts appear in the admitted averments of the OTSC. While Shapiro's conduct is serious relative to the Pennsylvania regulator and public, it did not involve an affirmative misrepresentation such as by disclaiming other enforcement actions on an application. The Department did not assert any history of discipline. Other than the harm to Pennsylvania consumers and the profession generally, the respondent's charged and admitted conduct did not inflict personal or financial harm on any particular Pennsylvania individual. A motivation or explanation for Shapiro's conduct in all three states remains a mystery, and thus is neither a mitigating nor aggravating factor.

The Department in its Order to Show Cause requested revocation of the respondent's insurance producer licenses with a bar for future licensure, a civil penalty of \$5,000 for each violation, an order to cease and desist from violating laws of the Commonwealth and a 5-year minimum period of supervision should the respondent become relicensed. In its motion for default judgment, the Department requested: entry of default judgment; deeming facts and documents in the OTSC admitted and authentic; ordering the respondent to cease and desist from the activities alleged in the OTSC; revoking the respondent's insurance producer licenses; imposing a civil penalty of up to \$5,000 per violation; and granting other appropriate relief.

The motion for default judgment and deemed admission is GRANTED. Considering the facts in this matter, the applicable law, the seriousness of the conduct, and the aggravating and mitigating circumstances, penalties are imposed as set forth in the accompanying order.

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Davie, FL 33330	:	
	:	
Respondent	:	Docket No. <b>SC15-01-015</b>

**ORDER**

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

1. Scott Shapiro shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.

2. All of the insurance licenses of Scott Shapiro **ARE REVOKED** pursuant to 40 P.S. 310.91 for a minimum of five (5) years for each of counts one, two, three and four, with these revocations to run **concurrently** with each other. Additionally, Scott Shapiro is prohibited from applying for a license to act as an agent, broker or producer in this Commonwealth for a minimum of five (5) years. Scott Shapiro is also prohibited from applying to renew any license previously held by him in this Commonwealth for a minimum of five (5) years.

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

- a. Count one: \$250
- b. Count two: \$1,000
- c. Count three: \$500
- d. Count four: \$500

for a total of Two Thousand Two Hundred Fifty Dollars (\$2,250). 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. In addition to the above restrictions, no insurance license will be issued or renewed for the respondent until the civil penalty owed by him is paid in full.

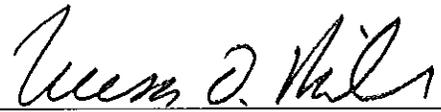
4. Should the respondent ever become licensed at any future date, the respondent's certificates and licenses may be immediately suspended by the Insurance Department following its investigation and determination that: (i) the penalty has not been fully paid; (ii) any other term of this order has not 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.

5. Scott Shapiro 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 a respondent's certificates and 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 certificates and licenses shall be revoked.

8. This order is effective immediately.



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TERESA D. MILLER  
Acting Insurance Commissioner