

PAID TO THE INSURANCE DEPARTMENT

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ADMINISTRATIVE OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

<p>IN RE:</p> <p>Jacqueline M. Taylor 1777 Killarney Drive Winter Park, FL 32789</p> <p>Respondent</p>	<p>: ALLEGED VIOLATIONS:</p> <p>:</p> <p>: Sections 611-A of the Insurance</p> <p>: Department Act of 1921, P.L. 789, No.</p> <p>: 285, <i>as amended</i> (40 P.S. §§ 310.78(a)</p> <p>: and 310.11(20)).</p> <p>:</p> <p>:</p> <p>: Docket No. SC07-11-015</p>
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ADJUDICATION AND ORDER

AND NOW, this 17th day of June, 2008, Joel Ario, 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 November 16, 2007 directed to Jacqueline M. Taylor ("Ms. Taylor" or "the respondent"). The OTSC alleged that Ms. Taylor violated the Insurance Department Act.¹ Specifically, the OTSC alleged that Ms. Taylor, a licensed non-resident insurance producer, failed to inform the Department about administrative actions taken against her by other state insurance regulators and on her Pennsylvania license renewal application denied the existence of any such administrative actions.

¹ Act of May 17, 1921, P.L. 789, No 285, 40 P.S. §§ 310.1 *et seq.*

DATE MAILED: June 17, 2008

The OTSC advised Ms. Taylor 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 Ms. Taylor by first class mail.

Ms. Taylor failed to answer the Department's OTSC or otherwise respond to the Administrative Hearings Office. On May 21, 2008, the Department filed a motion for default judgment and served Ms. Taylor in accordance with 1 Pa. Code Chapter 33. The motion declared that the OTSC was mailed to the respondent by both certified and first class mail to her last known home address as kept on file in the Department. The return postal receipt appears to have been signed by Ms. Taylor. [Motion to Dismiss, Exhibit A]. A copy of the document sent by first class mail was not returned to the Department as undeliverable. The motion for default judgment was mailed to the same address. The respondent has not filed a response to the OTSC or motion for default judgment, nor made any other filing in this matter during the six months since service of the OTSC.

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 Ms. Taylor 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.

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

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.

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 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 case law 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

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.

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 Kozubal*, P93-08-13 (1997); *In re Phelps*, P95-09-007 (1997); *In re Taylor*, SC96-11-034 (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). 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 her as well as the consequences of failing to respond, yet fails to answer the allegations or to respond to 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, no factual matters need to be addressed 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 Ms. Taylor is a licensed non-resident insurance producer. Documents attached to the OTSC reveal that in 1996, the Florida Department of

Insurance issued the respondent a consent order for the misappropriation of premium and imposed a \$1,000.00 fine. [Exhibit A]. In 2000 the Wisconsin Department of Insurance denied Ms. Taylor's application for licensure because she failed to make a required disclosure on it. [Exhibit A]. Subsequently, in 2005, the Washington State Department of Insurance issued to the respondent a consent order revoking her insurance license for failing to respond to the Department requirement that she replace her fingerprint cards. [Exhibit B]. Finally in 2006, the Indiana Department of Insurance suspended the respondent's non-resident insurance license because she failed to submit her list of appointments as requested. [Exhibit C]. Ms. Taylor did not report these actions to the Department as required. Additionally, when Ms. Taylor filed her non-resident producer license renewal application she denied the existence of any administrative regulatory actions. [Exhibit D].

As a result, the Department has charged Ms. Taylor with three distinct violations of the Insurance Department Act: 1) failing to report the administrative actions taken against her in another jurisdiction within 30 days as required by 40 P.S. § 310.78(a); 2) providing false information to the Department on her license renewal application as prohibited by 40 P.S. § 310.11(1); and 3) demonstrating that she is not worthy of licensure under 40 P.S. §§ 310.6(1)(6), 310.11(20).

For each of these three charges, the Commissioner has authority to impose remedial action against the respondent, including suspension or revocation of her certificate of qualification 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 three charges against Ms. Taylor.

Ms. Taylor is liable for remedial action for failing to report administrative actions

in Florida, Washington and Indiana as required by 40 P.S. § 310.78(a).⁵ Furthermore, on her 2004 license renewal application, she denied the existence of any administrative actions. [Exhibits A and D]. As a result she is liable for remedial action under 40 P.S. § 310.11(1). With these actions, Ms. Taylor demonstrated that she is not worthy of licensure under 40 P.S. § 310.6(1)(6) and 310.11(20). With Ms. Taylor liable for remedial action under each of these charges, the appropriate action must be established for each one.

⁵ Although the record contains evidence that Wisconsin denied Ms. Taylor's license application, nothing in the record indicates whether any administrative action was taken against her that would require disclosure under the requirements of 40 P.S. 310.78(a). Thus this action has not been considered when calculating the penalty applicable to this count.

PENALTIES

The Commissioner may suspend or revoke a license for conduct violating certain provisions of the Insurance Department Act, including those provisions violated by Ms. Taylor'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). Each of the underlying actions in the present case directly are connected to Ms. Taylor's duties as an insurance agent. Her failure to comply with applicable laws in five states, including her falsification on an application directed to the Pennsylvania Department makes Ms. Taylor unworthy of licensure and subject to significant penalty.

In particular, the misrepresentation on Ms. Taylor's Pennsylvania application for license renewal goes to the heart of the requirement that insurance agents be trustworthy and reliable in their work with the insurance buying public. If she is dishonest with the regulator, then Ms. Taylor cannot be entrusted with the welfare of individuals she purports to serve. Furthermore, Ms. Taylor's has ignored the directives of four other state regulatory agencies as well as these current proceedings. This consistent and repeated disregard for the laws of five states governing the sale of insurance products and the enforcement of those laws demonstrates Ms. Taylor's unworthiness for licensure. She has presented no evidence to mitigate the seriousness of her violations.

The Department in its order to show cause requested that the Commissioner revoke the insurance producer license of Jacqueline M. Taylor and impose a civil penalty not to exceed \$5,000.00 per violation, and order Ms. Taylor to cease and desist from

violating the insurance laws of Pennsylvania.. In its motion for default judgment, the Department requests that the Commissioner enter a default judgment against Ms. Taylor, find that she is unworthy of licensure, order her to cease and desist from the activities described in the Order to Show Cause, revoke Ms. Taylor's non-resident producer's license for a minimum of five (5) years, impose a five year time of supervision should she ever be relicensed and impose an appropriate civil penalty up to the maximum amount available under the law.

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 insurance producer has engaged in conduct which would disqualify her from initial issuance of a license.

3. Unworthiness to hold a license may be established by a producer's failure to comply with the law which requires the reporting of administrative actions in other jurisdictions and which prohibits misrepresentation on any application.

4. If unworthiness is established, the Commissioner may exercise discretion to impose remedial action in light of the agent's conduct as well as mitigating and aggravating factors.

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

6. Jacqueline M. Taylor 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. The Insurance Department's Motion for Default Judgment is **GRANTED**
2. All relevant facts stated in the order to Show Cause filed November 16, 2007 are deemed admitted against Jacqueline M. Taylor; the authenticity of all exhibits attached to the Order to Show Cause is deemed admitted.
3. Jacqueline M. Taylor shall **CEASE AND DESIST** from the prohibited conduct described in the adjudication.
4. The non-resident producer license of Jacqueline M. Taylor **IS REVOKED** for a minimum of five (5) years. In the event she should ever become relicensed, Jacqueline M. Taylor will be subject to five (5) years of Departmental supervision from the time a license, if any, is issued.

5. Jacqueline M. Taylor shall pay a civil penalty to the Commonwealth of Pennsylvania within thirty (30) days of this order as follows: for failing to report three administrative actions, \$200.00 for each offense totaling \$600.00; for misrepresenting facts on the renewal application, \$5,000.00; and for demonstrating unworthiness of licensure, \$2,000.00; for a total payment of **\$7,600.00**. Payment shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania, directed to: Sharon Fraser, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. In addition to the above restrictions, no insurance license may be issued or renewed until the said civil penalty is paid in full.

4. This order is effective immediately.



JOEL ARIO

Acting Insurance Commissioner