

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

IN THE MATTER OF: :
: :
: :
CARACAS INSURANCE AGENCY, : **DBR No.: 06-I-0177**
: :
RESPONDENT. : :
: :

DECISION

Hearing Officer: Joseph J. LoBianco, Esq.

Hearing Held: October 10, 2006

Appearances: Elizabeth Kelleher Dwyer, Esq. Department prosecutor
Caracas Insurance Agency No appearance

I. INTRODUCTION

The above-captioned matter came before the Department of Business Regulation (“Department”) on October 10, 2006 pursuant to an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Order to Show Cause”) issued by the Director of the Department on September 20, 2006. The Order to Show Cause alleges that the Caracas Insurance Agency (“Respondent”) is engaged in unlicensed activity within this State and requests that a cease and desist order be issued. The Order to Show Cause appointed the undersigned as Hearing Officer and scheduled a pre-hearing conference for October 10, 2006. Respondent failed to appear. The Department moved for default against the Respondent, presented evidence, and requested that the undersigned make findings of fact and conclusions of law.

II. JURISDICTION

The Department has jurisdiction in this matter pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.*, § 27-16-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*

III. ISSUES

Whether the Respondent is engaging in unlicensed activity within this State in violation of R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-6, 27-2.4-14(a)(5), (7), (8) and (10), 27-16-1.2, and 42-14-16.1.

IV. MATERIAL FACTS AND TESTIMONY

At the October 10, 2006 hearing, the undersigned noted that the hearing was scheduled to commence at 1:00 p.m. on October 10, 2006. The undersigned further noted that it was 1:25 p.m. on said date, and that Respondents had failed to appear.

The Department moved for default pursuant to *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings* (“CMR2”), and proceeded to present evidence to prove the facts set forth in the Order to Show Cause.

The Department presented two (2) exhibits at the October 10, 2006 hearing. The exhibits were marked for identification purposes and both were admitted as full exhibits.

The Department argues that the Respondent should be ordered to cease and desist from engaging in unlicensed activity within this State. The Department presented evidence to show that the Respondent has accepted at least one deposit premium for automobile insurance in violation of R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-6, 27-2.4-14(a)(5), (7), (8) and (10), 27-16-1.2, and 42-14-16.1. See Exhibit 2. The Department also presented evidence to show that the Respondent is holding itself out as an insurance producer in

violation of R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-6, 27-2.4-14, 27-16-1.2, and 42-14-16.1.
See Exhibits 1 and 2.

The Department alleges that these actions form a sufficient basis upon which to order the Respondent to cease and desist from engaging in unlicensed activity within this State.

On the basis of the above and pursuant to Section 21 of CMR2, the Department's counsel requested that the undersigned make findings of fact on the basis of the Pre-hearing Order and the evidence presented and enter a default judgment against Respondent.

V. DISCUSSION

The Order to Show Cause required that Respondents appear and provide evidence as to why the Director should not issue an order requiring that Respondent cease and desist from conducting any unlicensed activity within this State. Notwithstanding the above-described notice, Respondent failed to appear at the October 10, 2006 hearing. Section 21 of CMR2 provides in pertinent part as follows:

If any party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Hearing Officer may enter a default judgment against the defaulting Party, take such action based on the pleadings and/or other evidence submitted by the nondefaulting party as the Hearing Officer deems appropriate in his/her sole discretion or take such other action as the Hearing Officer deems appropriate in his/her sole discretion.

VI. FINDINGS OF FACT

1. An Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer requiring the Respondent to appear at a hearing scheduled for October 10, 2006 at 1:00 p.m. was issued by the Director on September 20, 2006 and sent to the Respondent by certified mail, return receipt requested, and by via first class mail.

2. Respondent received adequate notice of the hearing scheduled for October 10, 2006 at 1:00 p.m. pursuant to Section 5 of CMR2.
3. Respondent failed to appear at the hearing.
4. Respondent has accepted at least one deposit premium for automobile insurance in violation of R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-6, 27-2.4-14(a)(5), (7), (8) and (10), 27-16-1.2, and 42-14-16.1. See Exhibit 2.
5. Respondent is holding itself out as an insurance producer in violation of R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-6, 27-2.4-14, 27-16-1.2, and 42-14-16.1. See Exhibits 1 and 2.
6. Any conclusion of law which is also a finding of fact is hereby adopted as a finding of fact.

VII. CONCLUSIONS OF LAW

Based on the evidence and facts presented, the undersigned concludes as follows:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.*, § 27-16-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*
2. Respondent violated Section 21 of CMR2 by failing to appear the hearing.
3. Respondent violated R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-6, 27-2.4-14(a)(5), (7), (8) and (10), 27-16-1.2, and 42-14-16.1 by engaging in unlicensed activity within this State.
4. As a result of Respondent's failure to appear at the hearing, Respondent is in default.

5. Respondents have not shown cause as to why the Director should not issue an order requiring that Respondent cease and desist from conducting any unlicensed activity within this State.

6. Any finding of fact which is also a conclusion of law is hereby adopted as a conclusion of law.

VIII. RECOMMENDATION

On the basis of the foregoing, the undersigned recommends that the Director rule as follows:

1. Respondent is hereby ordered to cease and desist from engaging in unlicensed activity within this State in violation of R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-6, 27-2.4-14(a)(5), (7), (8) and (10), 27-16-1.2, and 42-14-16.1.
2. Should Respondent apply for an insurance license in the future, the content of this order will be taken into consideration in the Department's determination as to whether or not Respondent should receive an insurance license, and further administrative action pursuant to R.I. Gen. Laws § 42-14-16(a) may be taken with regard to these allegations at the time of such application.

Entered this 24th day of October 2006.

____ original signature on file____
Joseph James LoBianco
Hearing Officer

I have read the Hearing Officer's Decision in this matter, and I hereby take the following action with regard to the Decision:

ADOPT
 REJECT
 MODIFY

Dated: October 24, 2006

original signature on file
A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.