

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS{PRIVATE }
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903

IN THE MATTER OF:

**KATYUSKA M. GAVIRIA and
CATONE INSURANCE AGENCY**

RESPONDENTS.

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DBR No.: 05-I-0061

DECISION

Hearing Officer: Joseph J. LoBianco, Esq.

Hearing Held: November 28, 2005 and June 5, 2006

Appearances: Elizabeth Kellher Dwyer, Esq. Department prosecutor
Michael P. Jolin, Esq.
Richard W. Berstein, Esq.

Katyuska M. Gaviria and No appearance
Catone Insurance Agency

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation (“Department”) as the result of 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 March 21, 2005, and an Amended Order to Show Cause, Notice of Hearing, and Appointment of Hearing Officer (“Amended Order to Show Cause”) issued by the Director on February 7, 2006. The Amended Order to Show Cause alleged that the insurance producer’s license held by Katyuska M. Gaviria (“Respondent”) and the insurance

producer's business entity license held by Catone Insurance Agency ("Respondent") should be revoked for violations of R.I. Gen. Laws § 27-2.4-3, R.I. Gen. Laws §§ 27-2.4-14(4), (5), (8), and (10), R.I. Gen. Laws § 27-2.4-19, and the Rhode Island Automobile Insurance Plan ("RIAIP") Rules. The Order to Show Cause appointed the undersigned as Hearing Officer and scheduled a pre-hearing conference for April 6, 2005. Respondents failed to appear at the April 6, 2005 pre-hearing conference and the Department moved for default. Prior to the issuance of a default judgment, in a letter dated April 13, 2005, Respondents requested that the pre-hearing conference be rescheduled. The Department did not object, and a pre-hearing conference was held on May 10, 2005. A written Pre-hearing Order scheduling the hearing for June 15, 2005 was issued by the undersigned on May 11, 2005. At the request of the parties, the hearing was continued to November 28, 2005. At the hearing, after the Department's prosecutor entered its first eight exhibits into evidence without objection, the parties agreed to continue the hearing so that they could meet off the record to discuss stipulating to the remaining Department exhibits. Thereafter, the parties requested a series of additional continuances to allow them time to negotiate a possible settlement. When settlement negotiations proved unsuccessful, a new hearing date was scheduled for June 5, 2006. Respondents did not appear at the June 5, 2006 hearing and failed to contact the undersigned or Department counsel with an explanation for their absence.

II. JURISDICTION

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

III. ISSUES

Whether Respondents' licenses should be revoked for violating R.I. Gen. Laws § 27-2.4-14 (4), (5), (8), and (10); R.I. Gen. Laws § 27-2.4-19; and the Rhode Island Automobile Insurance Plan Rules.

IV. MATERIAL FACTS AND TESTIMONY

At the June 5, 2006 hearing, the undersigned noted that the hearing was noticed via electronic mail forwarded to the parties on May 30, 2006, and scheduled to commence at 2:00 p.m. on June 5, 2005. The undersigned further noted that it was 2:17 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.

Department's counsel stated that the Department had met with Respondents on several occasions to discuss a settlement that would include the surrender of their licenses. When Respondents stopped responding to communications from the Department, the Department requested the June 5, 2006 hearing date.

The Department presented twenty-eight (28) pre-marked exhibits at the June 5, 2006 hearing. Exhibits 1 through 8 are identical to those previously admitted into evidence at the November 28, 2005 hearing. The Department's prosecutor stated that she mailed all twenty-eight (28) exhibits to Respondents' counsel, along with a cover letter requesting that Respondents stipulate to these exhibits. The cover letter, dated February 6, 2006, was admitted and marked as Department's Exhibit 29. According to the Department's prosecutor, Respondents' counsel informed the Department that she had no objection to any

of the exhibits. Furthermore, the Department received no written response to the February 6, 2006 cover letter. The Department's counsel requested that the undersigned take administrative notice of Exhibits 1 through 28 as business records of the Department. The undersigned hereby takes administrative notice of Exhibits 1 through 28, and admits each of them as a full exhibit.

The Department argues that in addition to the Respondents' failure to attend the hearing, Respondents' insurance licenses should be revoked based on the evidence presented. The Department argues that Respondents' licenses should be revoked because Respondents, on numerous occasions, engaged in inappropriate conduct and failed to meet their obligations as licensed insurance producers. The Department presented evidence of inappropriate conduct including, but not limited to, failing to submit consumers' monthly insurance premiums, failing to submit consumers' applications for insurance, forging consumers' names on insurance applications, submitting over 100 applications containing deficiencies to the RIAIP, submitting checks for insurance premium payments to the RIAIP that were refused for payment by the bank upon which they were drawn, and allowing unlicensed employees to sign the licensee's name to insurance applications submitted to the RIAIP. These actions violate R.I. Gen. Laws § 27-2.4-14 (4), (5), (8), and (10), R.I. Gen. Laws § 27-2.4-19, and the Rhode Island Automobile Insurance Plan Rules. These actions form a sufficient basis upon which to revoke Respondents' insurance producer's licenses. In further support of its arguments, the Department submitted a brief containing recommended conclusions of fact and law.

On the basis of the above and pursuant to Section 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*, the Department's counsel

requested that the undersigned make findings of fact on the basis of the Pre-hearing Order and the testimony submitted and enter a default judgment against Respondent.

V. DISCUSSION

The Order to Show Cause required that Respondents appear and provide evidence showing why their licenses should not be revoked pursuant to R.I. Gen. Laws § 27-2.4-14 (4), (5), (8), and (10); R.I. Gen. Laws § 27-2.4-19; and the Rhode Island Automobile Insurance Plan Rules. Respondents appeared with counsel at the pre-hearing conference and at the November 28, 2005 hearing. The hearing was continued at the request of the parties. Respondents engaged in extensive settlement negotiations with the Department until they suddenly stopped responding to all communications from the Department. The June 5, 2006 hearing date was communicated to Respondents' counsel via electronic mail on May 30, 2006. Notwithstanding the above-described notice, Respondents failed to appear at the June 5, 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. Notice of the hearing scheduled for June 5, 2006 at 2:00 p.m. was issued by the undersigned and sent by electronic mail to Respondents' counsel.
2. Respondent received adequate notice of the hearing scheduled for June 5, 2006 at 2:00 p.m. pursuant to Section 5 of CMR2.

3. Respondent failed to appear at the Hearing.
4. Odadele J. Omisore obtained insurance through Respondents effective February 24, 2000 and made monthly payments to Respondents on an automobile insurance policy issued through the RIAIP. The monthly premium payments made by Omisore were not forwarded by Respondents to the insurer, causing the insurance to be cancelled. As a result, Omisore was uninsured for more than a month. Respondents eventually returned Omisore's payments, but did so only after intervention by the Department. These actions violate R.I. Gen. Laws § 27-2.4-14(4), (5) and (8), and R.I. Gen. Laws § 27-2.4-19. See Department's Exhibits 1, 2, 3, 4, 5, 6, and 9.
5. Luis A. Martinez applied for insurance coverage through Respondents and paid the initial premium for insurance with an effective date of October 23, 2003. However, the actual insurance policy issued had an effective date of October 27, 2003. Respondents indicated that, "by error the application was left behind and not included in the envelope we mailed to RIAIP." Respondent Gaviria thereafter completed and signed another application, "because the original one was ruined." Martinez's signature was forged on the new application. Martinez suffered a loss between October 23, 2003 and October 27, 2003 and was not covered by insurance. These actions violate R.I. Gen. Laws § 27-2.4-14(4), (5), (8) and (10), and R.I. Gen. Laws § 27-2.4-19. See Department's Exhibits 7, 8, 10, 11, and 12.
6. Jose Batista applied for automobile insurance through Respondents on September 2, 2004 and provided the initial premium payment to Respondents. Batista contacted Respondents to cancel the insurance on September 17, 2004.

When Batista requested a refund of unearned premium he was informed by RIAIP that they had no record of his application. Respondents indicated that they could not locate a copy of the application. Respondents refunded the entire premium to Mr. Batista only after Department intervention. These actions violate R.I. Gen. Laws § 27-2.4-14(4), (5) and (8), and R.I. Gen. Laws § 27-2.4-19. See Department's Exhibits 13, 14, and 15.

7. Hector Cruz purchased insurance through Respondents on June 16, 2004 and made five monthly premium payments to Respondents. On October 4, 2004 Cruz received notice of cancellation from the RIAIP indicating that the policy would be cancelled effective October 18, 2004 for nonpayment of premium. Upon receiving notice of cancellation, Cruz inquired of Respondents and was assured that the cancellation was in error and his insurance was still in force. However, Respondents had, in fact, failed to forward Cruz's payment to the insurer. Subsequent to the cancellation, on October 21, 2004 and November 8, 2004, Respondents accepted two monthly payments as, "...the employee did not notice the insurance had cancelled." Eight days after the effective date of cancellation (October 18, 2004), Cruz was in an accident and found that he was not covered by insurance. These actions violate R.I. Gen. Laws § 27-2.4-14(4), (5) and (8), and R.I. Gen. Laws § 27-2.4-19. See Department's Exhibits 16, 17, and 18.

8. On April 29, 2005 Respondents prepared an application for Francisco D. Nunez and accepted a deposit premium. That application and deposit premium was not provided to the RIAIP. Respondents agreed that they accepted the application and deposit premium, but misplaced both and did not submit them to the RIAIP.

Another application was submitted on behalf of Nunez on August 26, 2005 with a lower deposit premium. However, Respondents did not refund the overpayment until October 20, 2005, only after Department intervention. Although insurance was not issued to Nunez until August 26, 2005, Respondent issued Nunez an identification card on August 15, 2005, indicating a policy effective date of July 27, 2005. These actions violate R.I. Gen. Laws § 27-2.4-14(4), (5) and (8), and R.I. Gen. Laws § 27-2.4-19. See Department's Exhibits 19, 20, 21, and 22.

9. Juan DeLaRosa completed an application for insurance through Respondents and tendered a deposit of \$225.00 on August 30, 2005. On September 21, 2005 DeLaRosa was involved in an accident and was cited for failure to have automobile insurance. DeLaRosa inquired of Respondents and was told that his insurance was not effective until September 27, 2005. The RIAIP reported that the only application received for DeLaRosa was dated September 27, 2005. DeLaRosa indicated that his signature on the September 27, 2005 application was forged. These actions violate R.I. Gen. Laws § 27-2.4-14(4), (5), (8) and (10), and R.I. Gen. Laws § 27-2.4-19. See Department's Exhibits 23 and 24.

10. The RIAIP is the "residual market mechanism" for automobile insurance in Rhode Island. It operates to assure that persons who otherwise would not qualify for insurance from "voluntary" carriers are able to purchase automobile liability insurance so that they may comply with the mandatory automobile insurance statute. See R.I. Gen. Laws § 31-47-1 *et seq.* Pursuant to R.I. Gen. Laws § 31-33-8, the Department approves the RIAIP's plan of operation, which governs the manner in

which producers appointed to submit applications to the RIAIP must operate (hereinafter the “Plan”).

11. The RIAIP reported to the Department that in calendar year 2005, on six occasions, RIAIP received an application for insurance from Respondents after a loss had occurred. Pursuant to the RIAIP approved plan, a producer may only bind a policy on the date the premium deposit is received. Respondents indicated a business practice of accepting premium and obtaining money orders to send to RIAIP one or two days after the premium was collected. In six cases, a loss occurred between the date of the application and the date of receipt by RIAIP. In each of those cases the money order was dated after the loss had occurred. This violates the approved Plan rules.

12. The RIAIP reported to the Department that in the month of December 2005, of the 137 applications it received from Respondents, 38 of them had deficiencies. This violates the approved Plan rules. See Department’s Exhibits 25, 26, 27, and 28.

13. During calendar year 2005, Respondents submitted to the RIAIP on behalf of insureds numerous checks for premium payments that were refused for payment by the bank upon which they were drawn. These actions violate R.I. Gen. Laws § 27-2.4-14 and the Plan rules. See Department’s Exhibits 25, 26, 27, and 28.

14. On three occasions in calendar year 2005, RIAIP received applications for insurance submitted by Respondents, which appeared to have a signature other than that of Respondent Katyuska M. Gaviria. RIAIP allows only certified producers to submit applications. Respondents replied to an inquiry regarding this situation by stating that Respondent Gaviria, “...will be signing all the insurance applications

from now on until her employees become licensed.” These actions violate R.I. Gen. Laws §§ 27-2.4-3, 27-2.4-14(10) and Section 64 of the approved Plan rules. See Department’s Exhibits 25, 26, 27 and 28.

15. 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 testimony 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.*, 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. As a result of Respondent’s failure to appear at the hearing, a default judgment is hereby entered against Respondent.
4. Respondents have not shown cause as to why their insurance producer’s licenses should not be revoked.
5. Respondents violated R.I. Gen. Laws § 27-2.4-14 (4), (5), (8), and (10); R.I. Gen. Laws § 27-2.4-19; and the Rhode Island Automobile Insurance Plan Rules.
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 Katyuska M. Gaviria's insurance producer license (license number 1055664) and Respondent Catone Insurance Agency's insurance producer business entity license (license number 1091698) are revoked.
2. Respondents are ordered to pay an administrative penalty in the amount of ten thousand dollars (\$10,000.00).
3. As an additional administrative penalty, Respondents shall satisfy all consumer claims outlined above, and any other claims of which they are or become aware, including but not limited to placing their Errors & Omissions insurance carrier on notice for each claim.
4. Should Respondents apply an insurance license in the future, the content of the Order, as well as satisfaction of all consumers injured by the Respondents' inappropriate conduct, will be taken into consideration in the Department's determination as to whether or not Respondents 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 15th day of June 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: June 15, 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.

CERTIFICATION

I hereby certify on this _____ day of June 2006 that a copy of the within Decision was sent by first class mail, postage prepaid and certified mail, return receipt requested to:

Katyska M. Gaviria
Catone Insurance Agency
858 Broad Street
Providence, RI 02907

and by first class mail to:

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