

The Respondent failed to appear at a show cause hearing held at the Department on May 5, 2011, after having been duly served with notice of the hearing in accordance with R.I. Gen. Laws § 42-35-9.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 7-11-1 *et seq.*, R. I. Gen. Laws § 42-14-1, *et seq.*, and R.I. Gen. Laws § 42-35-1, *et seq.*

III. FINDINGS OF FACT

After hearing the testimony of the Department's witness and due consideration of the evidence presented by the Department in this matter, the undersigned Hearing Officer makes the following findings of fact:

1. Respondent has held Rhode Island resident insurance producers license number 105412 since 1963. At all times relevant hereto Respondent was a licensed insurance producer in this state.
2. On April 21, 2011 the Insurance Division issued and served upon Respondent an Order to Show Cause alleging that Respondent had violated various insurance statutes and requiring that he appear at a hearing on May 3, 2011 to answer those allegations.
3. Respondent failed to appear at the hearing on May 5, 2011; however, counsel for the Respondent sent a letter dated April 27, 2011 to the Hearing Officer, which stated in pertinent part:

“In an effort to facilitate your proceedings in the above-captioned matter, my client, Martin B. Feibish, has instructed me to inform you that he will not be contesting the allegations set forth in the Order. While he makes no specific admissions to those allegations, Mr. Feibish will voluntarily surrender the licenses in question and abide by the terms set forth by the hearing officer. Additionally, Mr. Feibish would like the Department to know that any misconduct on his part was isolated to only one client file, and he and he alone was involved in the administration of that file.”

4. The above statements in Respondent's Counsel's letter are afforded limited weight given the context of this proceeding and are not construed to exonerate Respondent or any other individual or entity. Those statements were not made by the Respondent under oath, and were not corroborated by any other evidence presented at hearing.

5. Brad Simonds, Agency Supervisory Officer for MML Financial Group d/b/a Legacy Financial Group, LLC testified under oath at the hearing that:
 - A. He is employed at MML Financial Group d/b/a Legacy Financial Group, LLC in Providence, Rhode Island ("MML") as Agency Supervisory Officer, which is basically an on-site compliance officer with supervisory authority over Respondent's licensed activities at the branch located at 300 Centerville Road in Warwick, Rhode Island ("MML Warwick").
 - B. At a February 23, 2011 meeting, the Respondent produced a three-inch thick file (from under the desk) containing what he represented to be a client's financial records.
 - C. Respondent admitted to Mr. Simonds that he had forged documents and financial statements related to that client's accounts and misappropriated those funds for his own use.
 - D. Respondent admitted to Mr. Simonds that he had created a fraudulent mortgage-backed securities products to create the façade that he had invested the client funds in interest bearing vehicles. In fact the investment vehicles were fictitious and were used to hide the misappropriation of the Client's funds.
 - E. Respondent used funds deposited with him by the Client to make interest payments on previous fictitious investments. Respondent never missed an interest payment until February 2011 when he ran out money.
 - F. Respondent told Mr. Simonds that he had spent millions of dollars of the Client's funds due to a gambling problem.

6. The Hearing Officer finds the testimony of the Department's witness to be credible, reliable and uncontradicted in the record.

7. Based on Mr. Simonds' testimony and inferences that may be made from Respondent's counsel's April 27, 2011 letter as well as Respondents failure to appear, Respondent is found to have engaged in fraud, misrepresentation, misuse and misappropriation of a client's funds without the consent or knowledge of that client.
8. It is in the public interest to permanently revoke Respondents' insurance producers license.

IV. CONCLUSIONS OF LAW

1. There is sufficient cause under R.I. Gen. Laws to permanently revoke Respondents' insurance producers license pursuant to R.I. Gen. Laws § 42-14-16(a)(1), based on the following actions by the Respondent:

- a. Respondent improperly misappropriated and converted money in violation of R.I. Gen. Laws § 27-2.4-14(4).
- b. Respondent committed an insurance unfair trade practice and fraud in violation of R.I. Gen. Laws § 27-2.4-14(7).
- c. Respondent forged another's name to a document in violation R.I. Gen. Laws § 27-2.4-14(8).

2. The Department's ability to impose a civil penalty and/or require other actions for the above violations pursuant to R.I. Gen. Laws § 42-14-16(a)(4) are specifically reserved and may be asserted as deemed necessary and appropriate by the Department after notice and hearing to Respondent.

3. A default judgment against Respondent is appropriate given his failure to appear and/or defend this action pursuant to Section 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

V. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department Order that:

1. The Respondent is defaulted for his failure to appear and/or defend this administrative enforcement action;
2. Respondent's insurance producers license is permanently revoked.

DATED: 6/20/11


Ellen R. Balasco, Esq.
Hearing Officer

ORDER

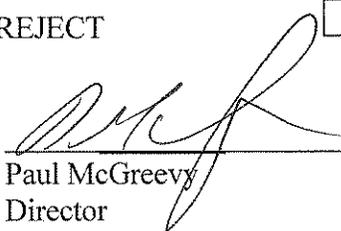
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 28 June 2011


Paul McGreevy
Director

ENTERED as Administrative Order No. 11-054 on the 20th day of June, 2011.

THIS ORDER OF DISMISSAL CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-1 ET SEQ. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify that on the 20th day of June, 2011, a true copy of this Decision and Final Order was sent by first class mail, postage prepaid to:

Martin B. Feibish, 300 Centerville Road, Suite 400A, Warwick, Rhode Island 02886

Martin B. Feibish, at 51 Arbor Drive, Providence, Rhode Island 02908,

Benjamin A. Mesiti, Esq. at 986 Hartford Avenue, Johnston, Rhode Island 02919

and by electronic mail to the following parties at the Department of Business Regulation:

Elizabeth Kelleher Dwyer, Esq., Deputy Chief of Legal Services

Joseph Torti, Deputy Director