

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
BUILDINGS 68 AND 69
CRANSTON, RI 02920**

IN THE MATTER OF: :
 :
MICHAEL PAUL IPPOLITO, : **DBR No. 13IN001**
 :
RESPONDENT. :

DECISION REVOKING LICENSE

Hearing Officer: Neena Sinha Savage, Esq.

Hearing Held: February 13, 2013

Appearances:

For Respondent: Charles J. Emma, Esq. (Not admitted to Practice in Rhode Island)

For the Department: Elizabeth Kelleher Dwyer, Esq.

I. INTRODUCTION

This matter was scheduled to come on for a pre-hearing conference before the undersigned Hearing Officer on January 29, 2013, pursuant to an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Order”) issued to Michael Paul Ippolito (“Respondent”) requiring Respondent to appear before the Department of Business Regulation (“Department”) on January 29, 2013 and answer why the Director of the Department should not issue an order suspending or revoking Respondent’s insurance producer license (number 2102720) pursuant to R.I. Gen. Laws §§ 27-2.4-14 and 42-14-16.

Respondent failed to appear in response to the Order on January 29, 2013. The Department counsel, did however, receive a letter dated January 17, 2013 from attorney Charles

J. Emma from Punta Gorda, Florida (indicating that he was representing Respondent, but not licensed in the State of Rhode Island). The Hearing Officer and Department counsel, after reviewing the letter at the prehearing conference on January 29, 2013, determined that a letter should be sent to Respondent and attorney Emma advising them of certain issues and continuing the hearing on this matter. On January 30, 2013, Department counsel sent a letter to Respondent and Attorney Emma stating that: 1) the undersigned Hearing Officer should be copied on all correspondence pertaining to the administrative hearing; 2) neither Respondent or an authorized representative appeared at the January 29, 2013 pre-hearing conference; 3) the undersigned Hearing Officer has set a new hearing date of February 13, 2013 at 10:00 am which is a continuation of the date in the Order and failure to appear will subject Respondent to default in this administrative proceeding; and, 4) based on Rhode Island Supreme Court case law, the Department cannot communicate with Attorney Emma as counsel for Respondent unless he is licensed or admitted *pro hac vice* in Rhode Island.

After the Respondent failed to appear at the February 13, 2013 hearing, the Department moved for a default judgment based on Respondent's failure to appear or otherwise defend this action. Based on Respondent's failure to appear and defend the allegations in this matter, the undersigned recommends that a default judgment enter and Respondent's insurance producer license be revoked based on the evidence submitted by the Department.

II. JURISDICTION

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

III. DISCUSSION

A default judgment against Respondent is appropriate in this case. Rule 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings* provides:

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.

In this case, Respondent was notified of the January 29, 2013 prehearing conference date in the Order issued on January 11, 2013. Further, when he did not appear and the Department received notification of an non-RI licensed and therefore, unqualified, attorney, the Department sent another letter on January 30, 2013 notifying Respondent of the new hearing date (February 13, 2013) and the consequences of default due to failure to appear.

The Order containing the notice of the initial pre-hearing conference date was sent via certified mail and regular mail to Respondent at two separate addresses, in South Hadley, Massachusetts and in Springfield, Massachusetts. While only the certified mail to the Springfield, Massachusetts was returned with the stamp that "FORWARD TIME EXP RTN TO SEND," the regular mail was not returned and United States Postal Service records confirmed that the Order sent to the South Hadley, Massachusetts address was delivered. Further, Attorney Gemma's reference to the Order in his January 17, 2013 letter confirms that the Respondent received it. The Department's January 30, 2013 letter informing Respondent of the February 13, 2013 hearing date was mailed via regular mail to the South Hadley, Massachusetts address and has not been returned. The subsequent failure by Respondent to defend this action with an appearance at the pre-hearing conference on January 29, 2013 and February 13, 2013 provides cause for a default judgment in favor of the Department pursuant to Rule 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*. Therefore, the

evidence submitted by the Department in Exhibits 1 through 7 and the Order is deemed established and incorporated herein as findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. Respondent is the holder of an insurance producer license number 2102720 with life and health lines of authority. The license was issued on March 29, 2012 and expires on June 30, 2013.

2. The Department received notification on September 18, 2011 from the Respondent's former employer alleging misrepresentation and misappropriation of premiums.

3. The Department received notification on October 5, 2011 from another one of the Respondent's former employers alleging misrepresentation and the coaching of applicants of insurance with respect to the completion of applications for insurance with false or misleading information.

4. On November 27, 2012, the Department wrote to Respondent at both addresses as indicated on his active RI licenses.

5. Pursuant to Central Management Regulation 2 Section (4)(A) and Insurance Regulation 73 Section (5)(F), a licensee is required to respond to correspondence from the Department within fifteen (15) days.

6. To date, Respondent has not responded to the allegations regarding misrepresentation from his two past employers.

7. Respondent's insurance producer license has been revoked in 14 states and he has not reported such actions pursuant to R.I. Gen. Laws § 27-2.4-18.

8. On January 11, 2013, the Department issued an Order to Respondent requiring Respondent to appear before the Department and answer why the Director of the Department

should not issue an order suspending or revoking Respondent's insurance producer license application pursuant to R.I. Gen. Laws §§ 42-14-16, 42-35-9, and 27-2.4-14.

9. The Department sent the Order via certified mail, return receipt requested and regular mail.

10. The United States Postal Service "Track & Confirm" record indicates that the Order was delivered to Respondent's South Hadley, MA address, but not to his Springfield, MA address.

11. The Respondent's proposed attorney's January 17, 2013 letter to the Department references the Order and confirms receipt of the Order and notice of the January 29, 2013 prehearing conference date.

12. On January 29, 2013 a pre-hearing conference was scheduled but Respondent failed to appear.

13. On January 30, 2013, the Department mailed a letter to Respondent and his proposed counsel notifying them that: 1) the undersigned Hearing Officer should be copied on all correspondence pertaining to the administrative hearing; 2) neither Respondent or an authorized representative appeared at the January 29, 2013 pre-hearing conference; 3) the undersigned Hearing Officer has set a new hearing date of February 13, 2013 at 10:00 am which is a continuation of the date in the Order and failure to appear will subject Respondent to default in this administrative proceeding; and, 4) based on Rhode Island Supreme Court case law, the Department cannot communicate with Mr. Emma as counsel for Respondent unless he is licensed or admitted *pro hac vice* in Rhode Island.

14. The Department's January 30, 2013 was mailed to the South Hadley, Massachusetts address and has not been returned.

15. Respondent did not appear at the February 13, 2013 hearing on this matter.

V. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter as set forth in Section II, *supra*.
2. The Department has established that there is sufficient cause to revoke Respondent's insurance producer license pursuant to R. I. Gen. Laws § 27-2.4-14(a)(2) (which allows revocation for violating any insurance laws, or violating any regulation, subpoena, or order of the insurance commissioner or of another state's insurance commissioner) based on Respondent's failure to: appear at hearing on this matter, respond to the Department's request for a response to the allegations of misrepresentation; and, based on the revocations of his insurance producer license in fourteen (14) other states.
3. The Department has also established that Respondent failed to comply with CMR 2 Section 2(4)(A) and Insurance Regulation 73 Section (5)(F) by failing to respond to the Department's request for an explanation of allegations at issue and the Order in this matter.
4. The Department has established that there is sufficient cause to revoke Respondent's insurance producer license pursuant to R.I. Gen. Laws § 27-2.4-14(a)(7) (which allows revocation for having admitted or been found to have committed any insurance unfair trade practice or fraud) based on the misrepresentation of the nature of the business he submitted to one of his former employers, a life insurance company, and by falsely verifying the presence of a licensed agent at the time of enrollments for that same former employer of Respondent.
5. The Department has established that there is sufficient cause to revoke Respondent's insurance producer license pursuant to R.I. Gen. Laws § 27-2.4-14(a)(7) (which allows revocation for having admitted or been found to have committed any insurance unfair trade practice or fraud) based on evidence submitted by another former employer of Respondent who documented Respondent's coaching of insurance applicants to encourage misrepresentations in the application.

6. The Department has established that there is sufficient cause to revoke Respondent's insurance producer license pursuant to R.I. Gen. Laws § 27-2.4-14(a)(8) (which allows revocation for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place) based on the documented misrepresentation by Respondent's former employers in Section V paragraphs 3 and 4.

7. The Department has established that there is sufficient cause to revoke Respondent's insurance producer license due to Respondent's failure to comply with R.I. Gen. Laws § 27-2.4-18 (which requires licensees to report administrative actions against the licensed insurance producer in another state within 30 days of the final disposition) based on Respondent's failure to report the revocation of his insurance producer license in 14 other states.

8. The Department has established that there is sufficient cause to revoke Respondent's insurance producer license due to Respondent's failure to comply with R.I. Gen. Law § 27-2.4-19 (which requires that the portion of all premiums and moneys collected by a licensed insurance producer from a policyholder shall be held in a fiduciary capacity for the insurance company and shall not be misappropriated or converted to the insurance producer's own use or illegally withheld by the insurance producer) based on evidence from Respondent's former employer that it never received premiums collected by Respondent as indicated by the Respondent's former employer as described in Section V paragraph 3.

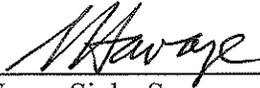
9. A default judgment against Respondent is appropriate given his failure to defend this action pursuant to Rule 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

VI. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department Order that Respondent's insurance producer license be revoked pursuant to R.I. Gen.

Laws §§ 27-2.4-14(a) (2), (7), (8) and for failure to comply with R.I. Gen. Laws §§ 27-2.4-18 and 19 and for failure to comply with Central Management Regulation 2 and Regulation 73 and the order enter based on Respondent's default pursuant to Rule 21 *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

Dated: 2/20/2013



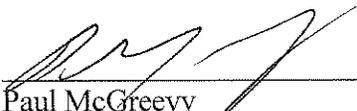
Neena Sinha Savage
Hearing Officer

ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 20 Feb 2013



Paul McGreevy
Director

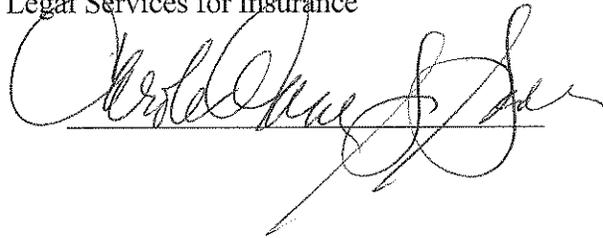
THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify on this 10th day of February 2013 that a copy of the within Decision was sent by first class mail, postage prepaid and certified mail to:

Michael Paul Ippolito
9 Misty Court
South Hadley, Massachusetts 01075

and also to the following parties at the Department of Business Regulation by electronic mail:
Neena Sinha Savage, Hearing Officer
Elizabeth Kelleher Dwyer, Esq. Deputy Chief of Legal Services for Insurance

A handwritten signature in black ink, appearing to read "Michael Paul Ippolito", is written over a horizontal line. The signature is cursive and somewhat stylized.