

its order, the Division reports that the Respondent has failed to respond to the complaints and inquiries by the Department regarding these matters.

The matter was assigned for a hearing on October 8, 2013. The Respondent failed to appear at the show cause hearing held at the Department on that date, after having been duly served with notice of the hearing in accordance with the provisions of 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 arguments of counsel, the testimony of the Department's witness and due consideration of the evidence presented by the Insurance Division in this matter, the undersigned Hearing Officer makes the following findings of fact:

1. Respondent was issued Rhode Island resident insurance producer license number 2006459 on July 27, 2004. At all times relevant hereto, the Respondent was acting as an agent for Affinity Insurance Services, Inc. ("Affinity"). The Respondent also holds a Massachusetts resident insurance producer license.

2. On July 8, 2014, the Insurance Division received a consumer complaint against the Respondent alleging that the consumer was owed a refund from an insurance policy from Affinity.

3. The consumer had contacted Affinity prior to filing her complaint requesting that a new refund check be issued to her, as she had accidentally destroyed the first refund check that she had received.

4. The Respondent, in his response to the consumer's request, advised the consumer that he would investigate the situation and reply back to her.

5. The Respondent failed to reply to the consumer in a timely manner.

6. On July 8, 2014, the Division forwarded a letter to the Respondent by regular and electronic mail, both of which included a copy of the complaint, and an

instruction that he reply to the Division with a written response to the allegations within twenty-one (21) calendar days, in accordance with Insurance Regulation 73.

7. The Respondent failed to reply to the July 8, 2014 correspondence.

8. On August 1, 2014, the Division forwarded a second letter to the Respondent noting his failure to respond to the first inquiry, and instructing that he provide a written response on or before August 10, 2014.

9. The Respondent failed to reply in any manner to the second letter.

10. On August 20, 2014, the Division forwarded all documents relative to the Complaint via electronic mail to the Respondent. He responded by electronic mail the same date, stating that "I am positive that payment has been returned to [the Complainant] and will obtain confirmation with response."

11. The Respondent acknowledged that he was required to reply, but he failed to respond or reply in any manner to the Division's numerous requests.

12. On September 15, 2014, the Insurance Division issued and caused to be served upon Respondent an Order to Show Cause and Notice of Hearing (the "Order") alleging that Respondent had violated various insurance statutes and requiring that he appear at a hearing on October 8, 2014 at the Department's offices to answer those allegations.

13. The Order was sent to two different addresses on file with the Department by both certified mail and regular mail. The first address was listed as his residence, at 26 Candlewood Drive, Scituate, MA 02669, and the second was a business address in care of Affinity Insurance Services, Inc. 1 Federal Street, Boston, MA 02110-2003.

14. The United States Postal Service Tracking data reveals that the certified envelopes containing the Order were delivered to the Respondent at both his home address, and his business address, listed above.

15. The Respondent failed to appear at the hearing on July 23, 2013, and failed to defend the allegations contained in the Order to Show Cause in any manner.

16. The Respondent also failed to adequately respond to the Department's request for an explanation of the issues raised in the two complaints filed against him.

17. The Insurance Division has complied with the requirements of R.I. Gen. Laws § 42-35-9 regarding notice in contested cases, and the Respondent was afforded an opportunity for a hearing after reasonable notice.

18. Based on the documentary evidence and legal arguments presented by the Division at hearing, and based on Respondent's failure to appear at the hearing after receiving notice, the Division has established that the Respondent has committed violations of the following Insurance Regulation 73(5)(f) and Central Management Regulation 2(4)(a) by failing to adequately respond to the complaints and inquiries of the Department's Insurance Division.

19. The Respondent has been defaulted in this administrative enforcement action by virtue of his failure to appear and/or otherwise defend the Division's allegations at a hearing, for which he was duly noticed.

IV. CONCLUSIONS OF LAW

1. Whenever the director shall have cause to believe that a violation of title 27 and/or chapters 14, 14.5, 62 or 128.1 of title 42 or the regulations promulgated thereunder has occurred by a licensee, or any person or entity conducting any activities requiring licensure under title 27, the director may, in accordance with the requirements of the Administrative Procedures Act, chapter 35 of this title:

- (1) Revoke or suspend a license;
- (2) Levy an administrative penalty in an amount not less than one hundred dollars (\$100) nor more than fifty thousand dollars (\$50,000);
- (3) Order the violator to cease such actions;
- (4) Require the licensee or person or entity conducting any activities requiring licensure under title 27 to take such actions as are necessary to comply with title 27 and/or chapters 14, 14.5, 62, or 128.1 of title 42, or the regulations thereunder; or
- (5) Any combination of the above penalties.

2. 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. The Respondent shall provide a written response to the allegations contained in the July 8, 2014 consumer complaint to the Division.

3. The Respondent shall pay an administrative penalty in the amount of ONE THOUSAND DOLLARS (\$1,000.00) for the violations cited herein, payable to the Office of the General Treasurer.

DATED: 3/26/15



Ellen R. Balasco, Esq.
Hearing Officer

ORDER

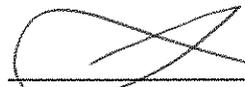
I have read and considered the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 3/26/15



Macky McCleary
Director

THIS 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 26th day of March, 2015 a true copy of this Decision was sent by first class mail, postage prepaid to: David E. Lee at 26 Candlewood Drive, Scituate, MA 02669, and to David E. Lee at Affinity Insurance Services, Inc. 1 Federal Street, Boston, MA 02110-2003; and by electronic mail to the following parties at the Department of Business Regulation:

Elizabeth Kelleher Dwyer, Esq., Associate Director, Insurance Division

Beth Volucci, Senior Insurance Analyst

Joseph Torti, Deputy Director Insurance Division

Ellen R. Balasco, Esq., Hearing Officer

A handwritten signature in black ink, appearing to read "Ellen R. Balasco", written over a horizontal line.