

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**Department of Business Regulation**  
**1511 Pontiac Avenue, Bldg. 69-2**  
**Cranston, Rhode Island 02920**

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**IN THE MATTER OF:**

**VINCENT DIPAULO**

**RESPONDENT.**

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**DBR No. 10-I-0108**

**DECISION**

Hearing Officer: Louis A. DeQuattro, Jr., Esq., CPA

Appearances:

For Respondent: John Manni, Esq.

For the Department: Elizabeth Kelleher Dwyer, Esq.

**I. INTRODUCTION**

This matter came before the Hearing Officer for a pre-hearing conference pursuant to Rule 5 of the Central Management Regulation 2-Rules of Procedure for Administrative Hearings to discuss the issues of the case, proposed witnesses and evidence, set a discovery schedule and set a hearing date in connection with an order issued pursuant to R.I. Gen. Laws §§ 42-14-16, 42-35-9 and 27-10-11, by the Director of the Department of Business Regulation (“Department”) issuing an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Order”) to Vincent DiPaolo (referred to herein as “DiPaolo” or “Respondent”) requiring DiPaolo to appear before the Department and to answer why the Director of the Department should not issue an order requiring DiPaolo to Cease and Desist from undertaking activities which require a license

as an insurance claims adjuster pursuant to R.I. Gen. Laws § 27-10-1 *et seq*; issuing an order referring this matter to the Attorney General for criminal prosecution pursuant to R.I. Gen. Laws § 27-10-11 and/or issuing whatever penalty is determined to be appropriate pursuant to R.I. Gen. Laws § 42-14-16. A full hearing on the merits of the matter was held on December 3, 2010.

## **II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws §§27-10-1 *et seq.*, 42-14-1 *et seq.* and 42-35-1, *et seq.*

## **III. ISSUES**

The issues presented in this matter are whether the Respondent should be ordered to Cease and Desist from undertaking activities which require a license as an insurance claims adjuster pursuant to R.I. Gen. Laws § 27-10-1 *et seq*; and whether the Department should issue an order referring this matter to the Attorney General for criminal prosecution pursuant to R.I. Gen. Laws § 27-10-11 and/or issuing whatever penalty is determined to be appropriate pursuant to R.I. Gen. Laws § 42-14-16.

## **IV. MATERIAL FACTS AND TESTIMONY**

The Department presented the testimony of Mr. Anthony Fereola (“Fereola”) a Master Level Adjuster employed by Nationwide Insurance Company (“Nationwide”). Fereola testified that in June 2010 he received a power of attorney document (“POA”) from Respondent, admitted into evidence as DBR Exhibit 1, in order for Respondent to negotiate a settlement on behalf of a claimant in connection with a water loss claim submitted to Nationwide. According to Fereola, since the POA presented was not recognized as a customary public adjuster retention agreement, he contacted the

Department to obtain guidance as to whether such a POA is acceptable. At that time, Fereola was informed by the Department that Respondent's public adjuster license was revoked in 2007. After learning such information, Fereola had no further contact with Respondent and settled the claim directly with the claimant.

The Department also admitted into evidence DBR Exhibit 2, which is a power of attorney document, along with a string of e-mails between Respondent and a representative of One Beacon Insurance Company, whereby the Respondent is purporting to be acting in the capacity as a "consultant" and not a public adjuster with the intention to settle and negotiate the claim on behalf of his client with One Beacon Insurance Company.

The Department also placed into evidence under administrative notice, DBR Exhibit 3, which is a federal indictment naming numerous defendants whereby the Department alleges that statements in the indictment documents show that Respondent was acting in the capacity of an unlicensed claims adjuster. Although DBR Exhibit 3 was admitted into evidence, the contents thereof have not been used by the undersigned Hearing Officer to formulate the decision in this matter.

The Respondent did not testify in this matter or present any evidence. Counsel for the Respondent cross-examined Fereola and made arguments based on the evidence presented by the Department.

## **V. DISCUSSION**

### **A. Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and

ordinary meaning. In *re Falstaff Brewing Corp.* 637 A.2d 1047, 1049 (R.I. 1994). If a statute is clear and unambiguous, “the court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Company v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislative intent must be effectuated. *Id.*

### **B. Standard of Review for an Administrative Hearing**

It is well settled that a formal or informal adjudication which is modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* §10.7 at 759 (2002). In this case, the proponent of this enforcement action is the Department. Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* at 763-766; see also, *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases); *Parker v. Parker*, 238 A.2d 57, 60 (R.I. 1968) (“satisfaction by a ‘preponderance of the evidence’ [is] the recognized burden [of proof] in civil actions”). For each element to be proven, the fact finder must believe that the facts asserted by the

proponent are more probably true than false. See *Parker*, 238 A.2d at 60. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 100 (R.I. 2006).

Here, the Department bears the burden for establishing why it is more likely than not, that the Respondent conducted himself in a manner that violated R.I. General Laws by undertaking activities which require an individual to be a licensed insurance claims adjuster.

### **C. Statutes**

R.I. Gen. Laws § 27-10-1 defines a “public adjuster” in relevant part as:

A public adjuster is any person who, for compensation or any other thing of value on behalf of the insured:

- (i) Acts or aids, solely in relation to first party claims arising under insurance contracts, other than automobile, life, accident and health, that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract...

R.I. Gen. Laws § 27-10-11 states:

Any person who acts as an insurance claim adjuster, other than for life and accident and health insurance, without holding a current valid license as provided in this chapter, or shall act in any manner in the negotiation of any insurance claim agreement in violation of any provision of this chapter, shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than three (3) months, or both, for each offense. In addition, the insurance commissioner shall be empowered to revoke or suspend any license issued under this chapter for the violation of this chapter, as provided in § 27-10-7.

### **D. Analysis**

Based on the evidence presented, Respondent’s actions fall squarely within the unambiguous definition of a public adjuster as set-forth in R.I. Gen. Laws §27-10-1.

Both POA's give Respondent the power to act on the insureds behalf to settle their claims. The testimony provided by Fereola clearly indicated that he understood Respondent to be acting as a public adjuster. Further, the documents accompanying the power of attorney in Exhibit 2 again clearly establish that Respondent was acting as a public adjuster.

Respondent's counsel attempted to argue that the evidence presented indicates that Respondent was acting as a consultant and/or an agent on behalf of his clients with the insurers. Unfortunately for Respondent, it does not matter what you call yourself, it is the actions that take place which dictate whether a person is a public adjuster or not under the statute. In this case, Respondent was acting as a public adjuster without the requisite license.

#### **VI. FINDINGS OF FACT**

1. Respondent previously held a license as an insurance claims adjuster under R.I. Gen. Laws § 27-10-1 *et seq.* as set forth in the Order.
2. On December 21, 2007 the Director of the Department issued a Decision revoking Respondents insurance claims adjuster license as set-forth in the Order.
3. As set-forth in the Order, Respondent appealed that Decision to the Superior Court (PCSC No. 08-0352), however, the Superior Court has not issued a stay of the Department's December 21, 2007 Decision. As such, Respondent's license is currently revoked and he is not authorized to act as a public adjuster as set-forth in the Order.
4. The statutory citations set-forth in Section V are reincorporated herein by reference.
5. The facts set-forth in Section IV are reincorporated herein by reference.

#### **VI. CONCLUSIONS OF LAW**

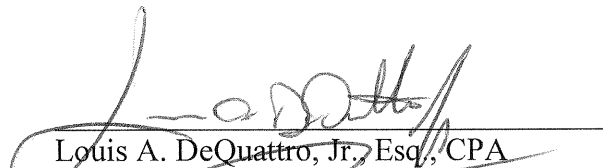
Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws §§27-10-1 et seq., 42-14-1 et seq. and 42-35-1, et seq.
2. The Respondent is in direct violation of R.I. Gen. Laws §27-10-11 for acting as a public adjuster without a license.
3. The Respondent is in direct violation of the Decision of the Department dated December 21, 2007 that revoked Respondent's insurance claims adjuster license.

**VII. RECOMMENDATION**

Based on the evidence presented at hearing and the applicable law, the Department has proven that an order should be issued requiring Respondent to Cease and Desist from undertaking activities that require a license as an insurance claims adjuster pursuant to R.I. Gen. Laws § 27-10-1 *et seq*; and referring this matter to the Attorney General for criminal prosecution pursuant to R.I. Gen. Laws § 27-10-11.

Dated this 7<sup>th</sup> day of June, 2011

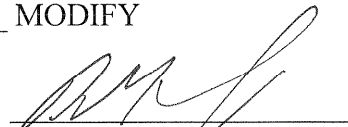
  
Louis A. DeQuattro, Jr., Esq., CPA  
Hearing Officer

**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: 7 June 2011

  
Paul McGreevy  
Director

**NOTICE OR APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-1 *Et Seq.* 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 MAILING 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.**



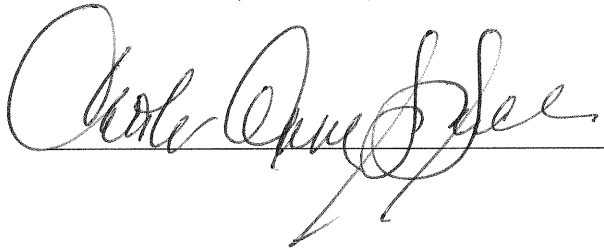
**CERTIFICATION**

I hereby certify that on this 8<sup>th</sup> day of June 2011 a copy of the within Decision and Notice of Appellate Rights was sent by first class mail postage prepaid and certified mail to:

Vincent DiPaolo  
United Consultants Inc. and Claim Services  
734 Hartford Avenue  
Providence RI 02919

John C. Manni, Esq.  
1405 Plainfield Street  
Johnston, RI 02919

and by hand delivery to Elizabeth Kelleher-Dwyer, Esq., Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.



Charles Andrew Lee