

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

IN THE MATTER OF:	:	
	:	
DAVID S. FLESER	:	DBR No.: 05-I-0080
	:	
RESPONDENT.	:	

DECISION

Hearing Officer:	Joseph J. LoBianco, Esq.	
Hearing Held:	August 11, 2005	
Appearances:	Elizabeth Kellher Dwyer, Esq.	Department prosecutor
	David S. Fleser	No appearance

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 April 8, 2005. The Order to Show Cause alleged that the insurance producer’s license held by David S. Fleser (“Respondent”) should be revoked for violation of R.I. Gen. Laws §§ 27-2.4-14(a)(8) and (9), appointed the undersigned as Hearing Officer, and scheduled a pre-hearing conference for May 19, 2005. Respondent appeared at the May 19, 2005 pre-hearing conference and agreed on the record to schedule the hearing in this matter for August 11, 2005 at 10:30 a.m. A written Pre-hearing Order scheduling the hearing accordingly was issued by the undersigned and sent by first-class mail on May 20, 2005 to Respondent’s most recent address on record with the Department. Said order was

not returned to the Department. The hearing was held on August 11, 2005. Respondent did not appear at the hearing and failed to contact the undersigned or Department counsel with an explanation for his absence at the hearing.

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. ISSUE

Whether Respondent's license should be revoked pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(8) and (9).

IV. MATERIAL FACTS AND TESTIMONY

At the Hearing, the undersigned noted that the Hearing was noticed on the record at the Pre-hearing conference and scheduled to commence at 10:30 a.m. on August 11, 2005, that it was now 11:20 a.m. on said date, and that Respondent had failed to appear. Department's counsel stated that she attempted to contact Respondent via e-mail, but that the message was returned as undeliverable. She further stated that the Department had not received a telephone call or any other communication from the Respondent since the date of the Pre-hearing conference.

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.

The Department presented a Licensee List Report, printed from a database kept by the Department, which indicates that Respondent holds license number 1056351 (“License”), and that he has three separate lines of authority under the License: life; health,

accident and sickness; and variable life and variable annuity. The undersigned took administrative notice of the License List Report and admitted it into evidence as Department's Exhibit 1.

The Department presented a Settlement Agreement signed by the Respondent on October 14, 2001 and executed by the Commonwealth of Massachusetts Division of Insurance on December 10, 2001 ("Massachusetts Agreement"). Pursuant to the terms of the Massachusetts Agreement, the Respondent's Massachusetts non-resident insurance producer's license was revoked based on Respondent's failure to maintain a Rhode Island license. The undersigned took administrative notice of the Massachusetts Agreement and admitted it into evidence as Department's Exhibit 2.

The Department presented a Consent Agreement signed by the Respondent on October 25, 2001 and executed by the Department on November 2, 2001 ("2001 Consent Agreement"). Pursuant to the terms of the 2001 Consent Agreement, the Respondent had failed to meet the continuing education requirements for insurance producers pursuant to R.I. Gen. Laws § 27-3.2-1 *et seq.* for the period of July 1, 1995 to June 30, 1996. The Respondent also misrepresented to the Department that he had completed his continuing education credits on his renewal application. Respondent agreed to an administrative penalty in return for the Department's agreement to allow Respondent to apply for a new insurance producer's license. The undersigned took administrative notice of the 2001 Consent Agreement and admitted it into evidence as Department's Exhibit 3.

The Department presented a Consent Order Making Findings and Imposing Remedial Sanctions and supporting documents issued by the Department on July 14, 2003 ("2003 Consent Order"). The 2003 Consent Order was drafted in response to three

complaints alleging that the Respondent engaged in unauthorized and unsuitable trades in securities. The 2003 Consent Order contains a Restrictive Agreement executed by the Respondent and the Department's Securities Division on July 9, 2003. Pursuant to the terms of the Restrictive Agreement, the Respondent paid an administrative penalty in settlement of the complaints filed against him, and was allowed to retain his securities license as long he was supervised by another licensee for a period of two years. The undersigned took administrative notice of the 2003 Consent Order and admitted it into evidence as Department's Exhibit 4.

The Department presented another Consent Order Making Findings and Imposing Remedial Sanctions and supporting documents issued by the Department on September 24, 2004 ("2004 Consent Order"). The 2004 Consent Order was drafted in response to a complaint alleging that the Respondent engaged in unauthorized and unsuitable trades in securities. Pursuant to the terms of the 2004 Consent Order, the Respondent paid an administrative penalty in settlement of the complaints filed against him, and agreed to a bar "from association with a licensed broker dealer or investment advisor in Rhode Island and from conducting any securities activity in the state of Rhode Island for a period of five (5) years." The undersigned took administrative notice of the 2004 Consent Order and admitted it into evidence as Department's Exhibit 5.

The Department argued that in addition to the Respondent's failure to attend the Hearing, Respondent's insurance License should be revoked based on the evidence presented. First, the Department argued that Respondent's License should be revoked because holding a valid Rhode Island securities license is a prerequisite for the issuance of a Variable Life and Variable Annuity insurance sales producer's license pursuant to R.I. Gen.

Laws § 7-11-101 *et seq.* Second, the Department argued that pursuant to R.I. Gen. Laws § 27-2.4-14(a)(8), the four consent agreements admitted into evidence as Exhibits 2, 3, 4 and 5 collectively show that Respondent engaged in dishonest practices demonstrating incompetence, untrustworthiness, and financial irresponsibility. Together, these consent agreements form a sufficient basis upon which to revoke Respondent's insurance producer's license. In addition, the Department argued that the Massachusetts Agreement admitted into evidence as Exhibit 2 resulted of the revocation of Respondent's license in another state, which is itself a sufficient basis for revocation of Respondent's insurance producer's license pursuant to R.I. Gen. Laws § 27-2.4-14(a)(9).

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 Respondent appear and provide evidence showing why his license should not be revoked pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(8) and (9). Respondent agreed on the record at the Pre-hearing Conference to schedule the hearing for August 11, 2005 at 10:30 a.m. In addition, the undersigned issued a written Pre-hearing Order scheduling the hearing accordingly. Said Pre-hearing Order was sent to Respondent's most recent address on record with the Department by first-class mail on May 20, 2005, and was not returned to the Department. Notwithstanding the above-described notice, the Respondent failed to appear at the 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. At a Pre-hearing Conference held on May 19, 2005, Respondent agreed on the record to schedule the hearing for August 11, 2005 at 10:30 a.m.
2. A written Pre-hearing Order scheduling the hearing for August 11, 2005 at 10:30 a.m. was issued by the undersigned and sent by first-class mail to Respondent's most recent address on record with the Department.
3. The written Pre-Hearing Order was not returned to the Department.
4. Respondent received adequate notice of the hearing scheduled for August 11, 2005 at 10:30 a.m. pursuant to Section 5 of CMR2.
5. Respondent failed to appear at the Hearing.
6. Pursuant to Section 21 of CMR2 and the testimony presented, the allegations in the Order to Show Cause are found to be true.

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 the 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. Respondent has not shown cause as to why his insurance producer's license should not be revoked.

5. Respondent violated R.I. Gen. Laws §§ 27-2.4-14(a)(8) and (9).

VIII. RECOMMENDATION

On the basis of the foregoing, the undersigned recommends that Respondent's insurance producer's license be revoked pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(8) and (9).

Entered this 22nd day of August 2005.

____ original signature on file ____
Joseph James LoBianco
Hearing Officer

ORDER

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

____x____ ADOPT
____ REJECT
____ MODIFY

Dated: August 27, 2005

____ 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.