

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX  
1511 PONTIAC AVENUE, BLDG. 68-1  
CRANSTON, RHODE ISLAND 02920

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IN THE MATTER OF:

AIMEE O'DONNELL,

RESPONDENT.

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DBR No. 08-I-0143

**DECISION**

Hearing Officer: Michael P. Jolin, Esq.

Hearing Held: October 7, 2008

Appearances:

For Respondent: Aimee O'Donnell, *Pro se* (failed to appear)

For the Department: Elizabeth Kelleher Dwyer, Esq.

**I. INTRODUCTION**

On October 7, 2008, this matter came on for an evidentiary hearing pursuant to an Order to Show Cause dated July 21, 2008 and a Pre-Hearing Conference Order dated August 15, 2008. The Department of Business Regulation ("Department") seeks to revoke Aimee O'Donnell's ("Respondent") insurance producer license (no. 8975894). The license was issued on November 14, 2006 and expires on December 31, 2008. Respondent appeared at the pre-hearing conference on August 14, 2008 but failed to appear at the hearing on October 7, 2008.

At the hearing, the Department of Business Regulation ("Department") moved for a default judgment but also put evidence on the record to establish its basis for the revocation of Respondent's license. Based on the evidence presented and the applicable law, the undersigned

recommends that Respondent's license be revoked for violating R.I. Gen. Laws §§ 27-2.4-14(a)(4), 27-2.4-14(a)(8), and 27-2.4-18(b) and that a default judgment be entered against her for her failure to defend this action.

## **II. JURISDICTION**

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

## **III. ISSUES**

The issues in this matter are as follows:

A. Whether or not Respondent's insurance producer license should be revoked or otherwise sanctioned for improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business pursuant to R.I. Gen. Laws § 27-2.4-14(a)(4);

B. Whether or not Respondent's insurance producer license should be revoked or otherwise sanctioned for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place pursuant to R.I. Gen. Laws § 27-2.4-14(a)(8); and

C. Whether or not Respondent's insurance producer license should be revoked or otherwise sanctioned for her failure to report to the Department a criminal prosecution within thirty (30) days of the initial pre-hearing date pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(2) and 27-2.4-18(b).

## **IV. STANDARD OF REVIEW FOR AN ADMINISTRATIVE HEARING**

It is well settled that in formal or informal adjudications 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). 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”). This means that for each element to be proven, the factfinder 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 proponent of this action is the Department. As such, it bears the burden for establishing why it is more likely than not that Respondent conducted herself in a manner that violated the statutes and regulations under which she holds her insurance producer license.

## **V. MATERIAL FACTS AND TESTIMONY**

At the hearing, the Department presented thirteen (13) exhibits that were admitted into evidence without objection. They include:

DBR No. 1 – A letter from the Department of Attorney General dated May 28, 2008 confirming that Respondent pled *nolo contendere* to an amended charge of embezzlement under \$100 on May 27, 2008.

DBR No. 2 – A summary sheet prepared by Melissa Woodhouse, a part-owner and employee of The Insurance Store, Inc., Respondent’s employer, documenting the deposit shortages attributed to Respondent during the calendar year 2006.

DBR No. 3 – A summary sheet prepared by Melissa Woodhouse documenting the deposit shortages attributed to Respondent during the calendar year 2007.

DBR No. 4 – Respondent’s license history generated by the Department’s Insurance Division.

DBR No. 5 – Four separate documents that include (i) a summary sheet for the week ending May 26, 2006, entitled “Money Counter,” that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks

summarized in the Money Counter that were deposited on May 26, 2006; (iii) the "Slip Counter" showing the receipts issued for amounts received for the week ending May 26, 2006; and (iv) Respondent's timesheet for the week ending May 27, 2006.

DBR No. 6 – Four separate documents that include (i) a summary sheet for the week ending June 2, 2006, entitled "Money Counter," that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks summarized in the Money Counter that were deposited on June 2, 2006; (iii) the "Slip Counter" showing the receipts issued for amounts received for the week ending June 2, 2006; and (iv) Respondent's timesheet for the week ending June 3, 2006.

DBR No. 7 – Four separate documents that include (i) a summary sheet dated June 20, 2006, entitled "Money Counter," that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks summarized in the Money Counter that were deposited on June 20, 2006; (iii) the "Slip Counter" showing the receipts issued for amounts received through June 20, 2006; and (iv) Respondent's timesheet for the week ending June 24, 2006.

DBR No. 8 – Four separate documents that include (i) a summary sheet for the week ending July 7, 2006, entitled "Money Counter," that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks summarized in the Money Counter that were deposited on July 7, 2006; (iii) the "Slip Counter" showing the receipts issued for amounts received for the week ending July 7, 2006; and (iv) Respondent's timesheet for the week ending July 8, 2006.

DBR No. 9 – Four separate documents that include (i) a summary sheet dated July 11, 2006, entitled "Money Counter," that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks summarized in the Money Counter that were deposited on July 11, 2006; (iii) the "Slip Counter" showing the receipts issued for amounts received through July 11, 2006; and (iv) Respondent's timesheet for the week ending July 15, 2006.

DBR No. 10 – Four separate documents that include (i) a summary sheet dated July 25, 2006, entitled "Money Counter," that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks summarized in the Money Counter that were deposited on July 25, 2006; (iii) the "Slip Counter" showing the receipts issued for amounts received through July 25, 2006; and (iv) Respondent's timesheet for the week ending July 29, 2006.

DBR No. 11 – Four separate documents that include (i) a summary sheet dated November 3, 2006, entitled "Money Counter," that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks summarized in the Money Counter that were deposited on November 3, 2006; (iii) the "Slip Counter" showing the receipts issued for amounts received through November 3, 2006; and (iv) Respondent's timesheet for the week ending November 4, 2006.

DBR No. 12 – Four separate documents that include (i) a summary sheet dated December 22, 2006, entitled “Money Counter,” that ties the monies and checks received to receipts issued; (ii) a bank deposit ticket for the monies and checks summarized in the Money Counter that were deposited on December 22, 2006; (iii) the “Slip Counter” showing the receipts issued for amounts received through December 22, 2006; and (iv) Respondent’s timesheet for the week ending December 23, 2006.

DBR No. 13 – Twenty (20) packets similar to DBR Nos. 5-12 representing twenty (20) weeks in 2007 beginning with a packet dated January 9, 2007 and ending with a packet dated May 17, 2007.

John J. Clarke, Jr., president of The Insurance Store, Inc., located in West Warwick, Rhode Island, testified on behalf of the Department. Mr. Clarke is an independent insurance agent and a licensed insurance producer. His insurance agency represents such companies as Zurich, Progressive, and AIG, among others.

Mr. Clarke testified at the hearing that he hired Respondent in April 2006 as a bookkeeper. He stated that Respondent’s duties included handling cash and checks from customers who paid their premiums in person; issuing receipts to these customers; answering the phones; logging entries into the computer system; preparing deposit slips; and making bank deposits. Mr. Clarke also stated that Respondent enrolled in and attended insurance producer licensing classes that were paid for by The Insurance Store. Upon completing the classes, Respondent made a successful application to the Department and became licensed as an insurance producer in November 2006. Mr. Clarke testified that Respondent, once licensed, concentrated on servicing The Insurance Store’s auto insurance customers.

Mr. Clarke also testified to the office procedures for handling the cash and checks received by his walk-in customers. He stated that all employees are authorized to take cash from customers, including Respondent. Each time a payment was made in person, three copies of a receipt were generated: one for the customer, one for the customer’s file, and one for bookkeeping as a control copy. At the end of the day, the control copies and the monies received were turned over to Mr.

Clarke. After counting all of the cash and checks, he would then itemize the amount of currency received by denomination and the checks received on a document entitled, "Money Counter."

Mr. Clarke then explained the document entitled, "Slip Counter." This document provided a list of the individual receipt numbers generated for each customer, the amount of the premium paid, the service charge, and the total amount received from the customer. Finally, he testified that one of his employees would fill out the bank deposit slip based on the amount of cash and checks documented on the Money Counter.

Mr. Clarke also testified to Respondent's duties. He stated that she would assist customers at the counter who came into the office to pay their insurance premiums in person. He described that she would issue receipts for the monies received per office policy. She also prepared the bank deposit slips. According to Mr. Clarke, Respondent would fill out the deposit slip based on the amounts totaled on the Money Counter and then take the deposit slip, checks, and cash to the bank.

Mr. Clarke then provided testimony on two (2) exhibits introduced by the Department that detailed the monies Respondent allegedly stole. The exhibits were summaries of the cash shortages discovered for the years 2006 and 2007, respectively. These summaries showed the difference between the cash received from customers, as documented on the Money Counter and Slip Counter, and the bank deposit slips prepared by Respondent. The summary for 2006 listed eight (8) separate deposits in which there was a total shortage of \$1,548 between cash received and monies actually deposited. The summary for 2007 listed twenty (20) deposits that show a shortage of \$4,920 in cash received compared to monies actually deposited.

The Department also had Melissa Woodhouse testify. She put together the cash shortage summaries. She confirmed that the supporting data provided in Department's Exhibits 5 through 13 matched the amounts shown on the two (2) summaries for the years 2006 and 2007.

Finally, the Department entered into the record a letter from the Department of Attorney General that confirmed that Respondent pled *nolo contendere* to a charge of embezzlement under \$100 for which she received a one-year suspended sentence and one year of probation. The letter, dated May 28, 2008, is addressed to Mr. Clarke of The Insurance Store and was signed by Tracee Johnson, the Department of Attorney General's Victim Services Advocate.

## **VI. DISCUSSION**

R.I. Gen. Laws § 27-2.4-14(a)(4) provides that the Department, after a due and proper hearing, may revoke an insurance producer's license upon proof that the holder of the license improperly withheld, misappropriated, or converted any monies received in the course of doing insurance business. In addition, R.I. Gen. Laws § 27-2.4-14(a)(8) provides that the Department, after a due and proper hearing, may revoke an insurance producer's license upon proof that the holder of the license engaged in fraudulent, coercive, or dishonest practices.

In this case, the Department showed by a preponderance of the evidence that Respondent intentionally misrepresented the cash received from her employer's customers on the bank deposit slips on at least twenty-eight (28) separate occasions. The evidence also shows that she then deposited the lesser amount on each of these occasions with the bank and kept the difference for herself. Mr. Clarke testified credibly that the total shortage of \$6,468 shown on the two summaries was attributable to Respondent.

While admittedly circumstantial, Mr. Clarke testified to his personal knowledge that Respondent was the employee who filled out the offending deposit slips and made the actual deposits at the bank. He stated he was familiar with Respondent's handwriting and recognized it on the deposit slips that contained misrepresentations of the actual amount of cash received from his customers. In just one of many examples, he explained the Money Counter dated May 26, 2006 and marked as part of DBR No. 5. It showed a total of \$563 in cash received for that day. He then

showed the correlating bank deposit slip for that day, filled out by Respondent. It clearly indicated the amount of currency to be deposited as \$463, not the \$563 received. Finally, Mr. Clarke pointed to the time sheet for that week. It was prepared by Respondent and indicated that she worked on May 26, 2006, the day of this deposit. He testified to similar supporting documents for the other nineteen (19) deposits made by Respondent that showed significant cash shortages.

This evidence presented amply demonstrates that Respondent improperly withheld or misappropriated monies in violation of R.I. Gen. Laws § 27-2.4(a)(4). By the same token, such conduct also constitutes fraudulent and dishonest practices in violation of R.I. Gen. Laws § 27-2.4(a)(8).

The Department may also revoke an insurance producer's license upon proof that the license holder violated any insurance law. Here, Respondent failed to notify the Department of a criminal complaint filed against her as required by R.I. Gen. Laws § 27-2.4-18(b). This criminal prosecution led to Respondent's plea of *nolo contendere* on May 27, 2008. While no evidence was put on the record that Respondent failed to notify the Department, Respondent was not present to defend or rebut the charge. As such, the Department's allegation is deemed to be true for purposes of this administrative hearing.

Finally, notwithstanding the evidence that preponderates the Department's demand for the revocation of Respondent's license, a default judgment against Respondent is appropriate as well. 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 failed to appear at the evidentiary hearing scheduled for October 7, 2008. There is no question that she had notice of this hearing date because she was present at the pre-hearing conference on August 14, 2008 when the parties – including Respondent – agreed upon the October 7, 2008 date. Her appearance at the pre-hearing conference also confirmed that the Department was sending its notices to Respondent’s correct address. Her subsequent failure to appear and defend this action at the October 7, 2008 hearing provides ample 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*.

## **VII. FINDINGS OF FACT**

1. The Department issued Respondent an insurance producer license (no. 8975894) with property and casualty lines of authority on November 14, 2006. It expires on December 31, 2008.
2. The Department of Business Regulation’s Insurance Division (“Department”) issued an Order to Show Cause to revoke Respondent’s license on July 22, 2008 for violating R.I. Gen. Laws §§ 27-2.4-14(a)(4), 27-2.4-14(a)(8), and 27-2.4-18(b).
3. Respondent appeared at the pre-hearing conference scheduled on August 14, 2008 and agreed to a hearing date of October 7, 2008 at 10:00 a.m.
4. The undersigned issued a Pre-Hearing Conference Order on August 15, 2008 following the pre-hearing conference clarifying the issues and setting the hearing date for October 7, 2008 at 10:00 a.m.
5. Respondent had notice of the October 7, 2008 hearing but failed to appear.
6. Respondent was responsible for the deposit shortages summarized in DBR Nos. 2 and 3, for the years 2006 and 2007, respectively.

7. Respondent pled *nolo contendere* to an amended charge of embezzlement under \$100 on May 27, 2008.

8. Respondent failed to notify the Department of the initial complaint filed against her within thirty (30) days of the pre-hearing date of the criminal prosecution that led to the May 27, 2008 plea of *nolo contendere* to the embezzlement charge.

### **VIII. 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. Respondent violated R.I. Gen. Laws § 27-2.4-14(a)(4) for improperly withholding, misappropriating or converting any monies received in the course of doing insurance business.
3. Respondent violated R.I. Gen. Laws § 27-2.4-14(a)(8) for engaging in fraudulent, coercive, or dishonest practices.
4. Respondent violated R.I. Gen. Laws § 27-2.4-14(a)(2) for failing to notify failed to notify the Department of the initial complaint filed against her within thirty (30) days of the pre-hearing date of the criminal prosecution that led to the May 27, 2008 plea of *nolo contendere* to the embezzlement charge in accordance with R.I. Gen. Laws § 27-2.4-18(a).
5. A default judgment against Respondent is appropriate given her failure to defend this action pursuant to Rule 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

**IX. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that the Director of the Department find that Respondent's insurance producers license be revoked for (i) failure to defend this action pursuant to Rule 21 *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings* and (ii) violations of R.I. Gen. Laws §§ 27-2.4-14(a)(4), 27-2.4-14(a)(8), and 27-2.4-18(b).

Dated: 11/3/08

  
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Michael P. Jolin  
Hearing Officer

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

ADOPT  
 REJECT  
 MODIFY

Dated: 11-03-2008

  
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A. Michael Marques  
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 5<sup>th</sup> day of November, 2008, that a copy of the within Decision was sent by first class mail, postage prepaid, to the following:

Aimee O'Donnell  
5 Bradley Court  
West Warwick, Rhode Island 02893

and by hand delivery to:

Elizabeth Kelleher Dwyer, Esq.  
Department of Business Regulation  
1511 Pontiac Avenue, Bldg. 69-2  
Cranston, Rhode Island 02920

Donna Arabian  
Department of Business Regulation  
1511 Pontiac Avenue, Bldg. 69-2  
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Ray Ricci