

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BUILDING 69-2
CRANSTON, RI 02920**

IN THE MATTER OF:

JUDITH O'BRIEN

RESPONDENT.

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DBR NO. 08-I-0063

DECISION

Hearing Officer: Richard W. Berstein

Hearing Held: March 20, 2008 (Prehearing Conference)

Appearances: Elizabeth Kelleher Dwyer Department Prosecutor

Respondent No appearance

1. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation ("Department") as the result of an Order to Show Cause requiring Respondent to appear before the Department and to answer why the Director of the Department should not issue an order denying Respondent's application for an insurance producers license. The Order to Show Cause was filed on March 5, 2008 and sent to Respondent by first class mail and certified mail return receipt.

The Order to Show Cause as described above appointed the undersigned as Hearing Officer. The Order to Show Cause scheduled a prehearing conference on March 20, 2008.

Respondent failed to appear at the date and time scheduled for the prehearing conference. No communication or explanation for said nonappearance was given to the Department, nor did

Respondent reply to the Hearing Officer's offer to waive the default for good cause if timely contacted, as communicated to the Respondent in writing.

II. JURISDICTION

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

III. ISSUES

- 1) Should a default judgment be issued against Respondent?
- 2) Should Respondent's denial of an insurance producer's license be affirmed?

IV. FINDINGS OF MATERIAL FACTS

1. On January 16, 2008 the Department received an application from Respondent for an insurance producer license with Life and Health lines of authority.
In conjunction with that application, Respondent submitted a Rhode Island Bureau of Criminal Identification background check which indicated that she had a DWI conviction 1. On January 16, 2008 the Department received an application from Respondent for an insurance producer license with Life and Health lines of authority.
2. In conjunction with that application, Respondent submitted a Rhode Island Bureau of Criminal Identification background check which indicated that she was convicted DWI on August 28, 1998 and Driving with an invalid license on August 24, 2004. In addition to these convictions, the background check indicated arrests on March 22, 1993 for Possession of Marijuana with intent to deliver; March 7, 2002 for Failure to Appear (two entries); December 5, 2005 for Driving with a

Suspended or Revoked License; September 8, 2006 for Arrest on Warrant; and February 2, 2007 for Arrest on Warrant.

3. The application further disclosed that Respondent had been notified by the Internal Revenue Service of a delinquent tax obligation.
4. On February 8, 2008 the Department notified Respondent that the application was denied pursuant to R.I. Gen Laws § 27-2.4-14(8) and that she could challenge that determination, pursuant to R.I. Gen. Laws § 27-2.4-14(b), by a written request for a hearing within thirty days.
5. On February 20, 2008 Respondent filed a timely written request for a hearing.
6. R.I. Gen. Laws § 27-2.4-14(8) provides:
 - (a) The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy an administrative penalty in accordance with § 42-14-16 or any combination of actions, for any one or more of the following causes: ...
 - (8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place;
 - (b) In the event that the action by the insurance commissioner is to non-renew or to deny an application for a license, the insurance commissioner shall notify the applicant or insurance producer and advise, in writing, the applicant or insurance producer of the reason for the denial or non-renewal of the applicant's or insurance producer's license. The applicant or insurance producer may make written demand upon the insurance commissioner within thirty (30) days for a

hearing before the insurance commissioner to determine the reasonableness of the insurance commissioner's action. The hearing shall be conducted pursuant to the Administrative Procedures Act, chapter 35 of title 42.

7. The Department asserts that the combination of Respondent's two misdemeanor convictions, five additional arrests and delinquent tax obligation show "...incompetence, untrustworthiness or financial irresponsibility..." sufficient for denial of her application as a Life and Health insurance producer.
8. On April 7, 2008, Elizabeth Kelleher Dwyer sent a letter (Exhibit 1), explaining that the undersigned Hearing Officer directed that he would entertain a move by Respondent to vacate the default for good cause by writing to him within seven (7) days. No response was ever received from the Respondent.

V. DISCUSSION

The Order to Show Cause required that Respondent appear to provide evidence as to why the Director of the Department should not issue an order denying Respondent's application for an insurance producer's license. Notwithstanding this notice, Respondent failed to appear at the prehearing conference. The Department's Rules of Practice and Procedure in Administrative Hearings provide, in Section 21 thereof:

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 non-defaulting 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. Challenge to such an order shall be made as a motion for reconsideration per Section 19, above.

VI. CONCLUSIONS OF LAW

Based on the testimony and facts presented I conclude as follows:

1. The Department has jurisdiction over this matter pursuant to R.I. G.L. §§ 27-2.4-1 *et seq.*, 42-14-1 *et seq.*, and 42-35-1 *et seq.*
2. Respondent violated the Department's Rule of Practice and Procedure in Administrative Hearings Section 21 by failing to appear at the prehearing conference.
3. As a result of Respondent's failure to appear at the prehearing conference, Respondent is in default.
4. Respondent has not shown cause as to why her insurance producer's license should be issued.

VII. RECOMMENDATION

Based on the above, the Hearing Officer recommends that:

1. Respondent's denial of an insurance producer's license be affirmed for her failure to appear at the prehearing conference and for her failure to subsequently reply to the Department when offered the opportunity to have the default waived for good cause.
2. Respondent be ordered not to engage in any activities for which a license would be required pursuant to R.I.G.L. §27-2.4-1 *et seq.*
3. If Respondent applies for an insurance producer's license in the future, this Decision in connection with the Findings herein shall be taken into account in the evaluation of that application.

original signature on file
Richard W. Berstein

Dated: July 18, 2008

I have read the Hearing Officer's Decision and Recommendation in this matter and I hereby

 x ADOPT
 REJECT
 MODIFY

the Decision and Recommendation.

original signature on file
A. Michael Marques
Director

Dated: July 28, 2008

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I.G.L. § 42-35-12. PURSUANT TO R.I.G.L. § 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.