

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
BUILDINGS 68 AND 69
CRANSTON, RI 02920**

IN THE MATTER OF: :
 :
MICHAEL C. TULLO, : **DBR No. 13IN032**
 :
RESPONDENT. :

DECISION REVOKING LICENSE

Hearing Officer: Neena Sinha Savage, Esq.

Hearing Held: April 18, 2013

Appearances:

For Respondent: No appearances-did not appear or respond.

For the Department: Elizabeth Kelleher Dwyer, Esq.

I. INTRODUCTION

This matter was scheduled to come on for a pre-hearing conference before the undersigned Hearing Officer on April 18, 2013, pursuant to an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Order”) issued to Michael C. Tullo (“Respondent”) requiring Respondent to appear before the Department of Business Regulation (“Department”) and answer why the Director of the Department should not issue an order suspending or revoking Respondent’s insurance claim adjuster and motor vehicle damage appraiser licenses (number 2052692) (“Licenses”) pursuant to R.I. Gen. Laws §§ 27-10-7, 27-

10.1-7 and Insurance Regulation 42 Sections 9 (A) (1), (3), (7) and Insurance Regulation 43 Sections 8 (E), 11 (A) (1), (3), and (8).¹

The Respondent failed to appear at the April 18, 2013 hearing and the Department moved for a default judgment based on Respondent's failure to appear or otherwise defend this action. Based on Respondent's failure to appear and defend the allegations in this matter, the undersigned recommends that a default judgment enter and Respondent's license be revoked based on the evidence submitted by the Department.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 27-10-1 *et seq.*, 27-10.1-1 *et seq.*, 42-14-1, *et seq.*, and 42-35-1, *et seq.*

III. DISCUSSION

A default judgment against Respondent is appropriate in this case. 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 was notified of the April 18, 2013 prehearing conference date in the Order issued on April 2, 2013. The Order containing the notice of the initial pre-hearing conference date was sent via certified mail and regular mail to Respondent. The United States Postal track and confirm record indicates that the Order was delivered to Respondent on April 6, 2013.

¹ The DBR moved to amend the Order at the April 18, 2013 hearing pursuant to Section 11 of Central Management Regulation 2 which allows oral motions at hearing to clarify and correct citations in the original Order. The undersigned Hearing Officer granted the Motion and the amendment are detailed herein.

Respondent failed to appear at the April 18, 2013 hearing. At the hearing, the Department moved to amend its Order to correct statutory and regulatory citations (which are substantially the same as those cited, but refer to Insurance Producer licensees, not Claims Adjusters and Motor Vehicle Damage Appraisers). Therefore, the statutory and regulatory bases for the Department's Order were amended to be pursuant to R.I. Gen. Laws §§ 27-10-7, 27-10.1-7 and Insurance Regulation 42 Sections 9 (A) (1), (3), (7) and Insurance Regulation 43 Sections 8 (E), 11 (A) (1), (3), and (8).

The Department indicated that the Respondent stated in a telephone conversation that he would submit a letter surrendering his License, but to date there has been no such (Or any other) correspondence received from Respondent. Respondent's failure to defend this action with an appearance at the pre-hearing conference on April 18, 2013 provides 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*. Therefore, the evidence submitted by the Department in Exhibits 1 through 3 and the Order is deemed established and incorporated herein as findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. Respondent is the holder of an Insurance Claim Adjuster and Motor Vehicle Damage Appraiser Licenses number 2052692. The Licenses were issued on October 19, 2007 and expire on May 31, 2013.

2. The Department received written notification via a letter dated December 20, 2012 on December 27, 2012 from the Respondent's former employer, Progressive Insurance Company, notifying the Department that Respondent was terminated for cause (for fraudulent claim filing) on November 19, 2012 (Department's Exhibit 1).

3. Specifically, according to the December 20, 2012 letter, Progressive stated, “[...]it was conclusively determined that Tullo engaged in a scheme whereby he paid parties not affiliated with a claim for fixed property damage. All of the claims in which Tullo issued payments had fixed property features opened well after the initial date of the loss.” The correspondence from Progressive also stated “No supporting documentation was found for any [of the 17] payments Tullo issued and only two (2) of the hard files could be located.”

4. Progressive indicated that Respondent refused to answer questions regarding these suspect payments when questioned on 11/19/2012 and was terminated the same day.

5. On December 28, 2012, the Department wrote to Respondent at the address on file indicated on his active RI licenses requesting an explanation for the termination for cause (Department’s Exhibit 2).

6. Pursuant to Central Management Regulation 2 Section (4)(A) and Insurance Regulation 73 Section (5)(F), a licensee is required to respond to correspondence from the Department within fifteen (15) days.

7. When no response was received within the required time limit as set forth in Central Management Regulation Section 2(4)(A) and Insurance Regulation 73 Section (5)(F), the Department wrote to Respondent a second time on February 5, 2013 (Department’s Exhibit 3).

8. On April 2, 2013, the Department issued an Order to Respondent requiring Respondent to appear before the Department and answer why the Director of the Department should not issue an order suspending or revoking Respondent’s Licenses.

9. The Department sent the Order via certified mail, return receipt requested and regular mail.

10. The United States Postal Service “Track & Confirm” record indicates that the Order was delivered to Respondent’s address.

11. Respondent did not appear at the April 18, 2013 hearing on this matter.

V. 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. The Department has established that there is sufficient cause to revoke Respondent's Insurance Claim Adjuster License pursuant to R. I. Gen. Laws § 27-10-7 (which allows revocation based on the establishment that the interests of the public are not properly served under the license) due to Respondent's failure to: appear at hearing on this matter, respond to the Department's request for a response to the allegations; and, based upon the finding herein that Respondent engaged in fraudulent processing of claims.

3. The Department has also established that Respondent failed to comply with CMR 2 Section 2(4)(A) and Insurance Regulation 73 Section (5)(F) by failing to respond to the Department's request for an explanation of allegations at issue and the Order in this matter.

4. The Department has established that there is sufficient cause to revoke Respondent's Insurance Claim Adjuster License pursuant to Regulation 43 (entitled *Insurance Claim Adjusters*) Sections 8 (E) (which requires every claims adjuster to respond in writing within 21 days to any inquiry of the Department); 11(A) (1) (which permits revocation of Insurance Claim Adjuster licenses for failure to respond to any written inquiry from the Department); (3) (which permits revocation of Insurance Claim Adjuster licenses for the violation of any insurance laws or violating any regulation or order of the Department); and (8) (which permits revocation of Insurance Claim Adjuster licenses for the use of any fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or elsewhere).

5. The Department has established that there is sufficient cause to revoke Respondent's Motor Vehicle Damage Appraiser License pursuant to R.I. Gen. Laws § 27-10.1-7 (which allows revocation for violations of licensing statutes and/or regulations).

6. The Department has established that there is sufficient cause to revoke Respondent's Motor Vehicle Damage Appraiser License pursuant to Regulation 42 (entitled *Motor Vehicle Damage Appraisers*) Sections 9(A) (1) (which permits revocation of Motor Vehicle Damage Appraiser licenses for failure to respond to any written inquiry from the Department); (3) (which permits revocation of Motor Vehicle Damage Appraiser licenses for violating any insurance law, or any regulation issued thereunder, subpoena or order of the Department); and, (7) (which permits revocation of Motor Vehicle Damage Appraiser licenses for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or elsewhere).

7. A default judgment against Respondent is appropriate given his failure to defend this action pursuant to Rule 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

VI. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department Order that Respondent's Motor Vehicle Damage Appraiser and Claims Adjuster Licenses be revoked pursuant to R.I. Gen. Laws §§ 27-10-7, 27-10.1-6, 27-10.1-7 and Insurance Regulation 42 Sections 9 (A) (1) , (3) , (7) and Insurance Regulation 43 Sections 8 (E), 11 (A)(1), (3), and (8) and for failure to comply with Central Management Regulation 2 and Regulation 73 and the order enter based on Respondent's default pursuant to Rule 21 *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

Dated: May 17, 2013



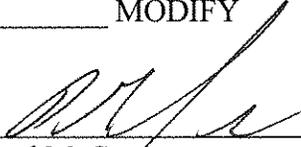
Neena Sinha Savage
Hearing Officer

ORDER

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

ADOPT
 REJECT
 MODIFY

Dated: 20 May 2013



Paul McGreevy
Director

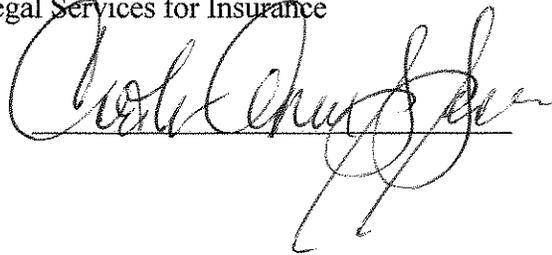
THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify on this 20th day of May 2013 that a copy of the within Decision was sent by first class mail, postage prepaid and certified mail to:

Michael C. Tullo
149 Marlborough St
East Greenwich, RI 02818-3720

and also to the following parties at the Department of Business Regulation by electronic mail:
Neena Sinha Savage, Hearing Officer
Elizabeth Kelleher Dwyer, Esq. Deputy Chief of Legal Services for Insurance

A handwritten signature in black ink, appearing to read "Elizabeth Kelleher Dwyer", written over a horizontal line.