

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

IN THE MATTER OF:

TIMOTHY P. CASSERLY,

RESPONDENT.

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DBR No.: 08-I-0066

DECISION

Hearing Officer: Michael P. Jolin, Esq.

Hearing Held: March 26, 2008
May 6, 2008

Appearances:

For Respondent: Timothy P. Casserly, *Pro se* (failed to appear)

For the Department: Elizabeth Kelleher Dwyer, Esq.

I. INTRODUCTION

On May 6, 2008, this matter came on for a pre-hearing conference pursuant to Rule 5 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*. Timothy P. Casserly (“Respondent”) failed to appear. Respondent also failed to appear at a previously scheduled pre-hearing conference on March 26, 2008. Pursuant to Rule 21 *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*, the Hearing Officer hereby recommends the entry of a default judgment against Respondent for his failure to defend of this action and a denial of his application for an insurance producers license.

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. ISSUE

The issue presented in this matter is whether or not Respondent's application for an insurance producer's license should be denied pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(6) and (8).

IV. FINDINGS OF FACT

1. Respondent applied for an insurance producers license in accordance with R.I. Gen. Laws § 27-2.4-8.

2. The Department of Business Regulation's Insurance Division ("Department") denied his application on February 8, 2008 pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(6) and (8) because Respondent has a felony conviction and three subsequent misdemeanor convictions that establish "incompetence, untrustworthiness or financial irresponsibility."

3. Respondent made a timely request for a hearing in a letter received on March 5, 2008.

4. An Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer was issued on March 11, 2008 and sent to the address provided on Respondent's application by first class mail, postage prepaid, and certified mail, return receipt requested.

5. The U.S. Post Office returned the green Return Receipt card to the Department with a date of delivery of March 13, 2008.

6. The pre-hearing conference was held on March 26, 2008. The Department's counsel appeared but Respondent did not.

7. At the March 26, 2008 pre-hearing conference, the Department presented four exhibits, admitted into evidence without objection. They include:

DBR No. 1 – Respondent’s application of an insurance producers license.

DBR No. 2 – The Department’s letter, dated February 8, 2008, notifying Respondent that the Department denied his application.

DBR No. 3 – Respondent’s letter to the Department, dated March 3, 2008, in which he explained the circumstances of the charges filed against him and requested a hearing.

DBR No. 4 – A USPS Return Receipt card, indicating that the Order to Show Cause was delivered to Respondent’s address on March 13, 2008.

8. At the March 26, 2008 pre-hearing conference, the Department moved for judgment by default.

9. Shortly after the pre-hearing conference, the Department informed the hearing officer that Respondent contacted the Department and apparently received an incorrect notice for the pre-hearing conference.

10. To provide Respondent with an opportunity to be heard, a second pre-hearing conference was scheduled for May 6, 2008 pursuant to a notice issued on April 18, 2008 and sent via certified mail, return receipt requested.

11. The Department received the green Return Receipt card, indicating that the notice was delivered to Respondent’s address on April 19, 2008.

12. Prior to the May 6, 2008 conference, the Department’s counsel informed the Hearing officer that she received information from Respondent’s significant other that Respondent was not going to contest the denial of insurance producer license application.

13. On May 6, 2008, Respondent again failed to appear.

V. CONCLUSIONS OF LAW AND RECOMMENDATION

Rule 21 *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. Challenge to such an order shall be made as a motion for reconsideration per Section 19, above.

Respondent failed to appear at two (2) scheduled pre-hearing conferences. The second of these conferences was scheduled out of an abundance of caution when a question arose to whether Respondent received the proper notice for the March 26, 2008 pre-hearing conference.

The Department's counsel in this matter represents that Respondent's significant other told her via telephone that Respondent was not going to challenge the denial of his application shortly before the May 6, 2008 pre-hearing conference. Respondent did not show up at the Department at the appointed time on May 6, 2008.

R.I. Gen. Laws § 27-2.4-14(a)(6) provides that the insurance commissioner may refuse to issue an insurance producer's license if an applicant has been convicted of a felony. R.I. Gen. Laws § 27-2.4-14(a)(8) further provides that the insurance commissioner may refuse to issue an insurance producer's license if the applicant has demonstrated incompetence, untrustworthiness or financial irresponsibility. It is undisputed that Respondent's Criminal History Record contains five (5) charges and dispositions. To wit, on May 20, 1995, Respondent was arrested for felony assault and pled *nolo contendere*. He was also arrested on October 9, 1998 for driving with a suspended license and for obstructing justice. For those charges, he pled guilty and received a suspended sentence, probation, and a fine. On October 7, 2001, Respondent was charged with

resisting arrest. He pled *nolo contendere* on November 13, 2001 and received a one-year suspended sentence and probation. Finally, Respondent pled *nolo contendere* to simple assault on November 4, 2002 and received another one-year suspended sentence and probation.

Given Respondent's failure to defend this action, his application for an insurance producers license should be denied pursuant to Rule 21 *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*. The Department has provided sufficient evidence that warrant this denial pursuant to R.I. Gen. Laws §§ 27-2.4-14(a)(6) and (8).



Dated: May 23, 2008

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: May 27, 2008

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.