

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDGS. 68-69
1511 PONTIAC AVENUE
CRANSTON, RI 02920**

IN THE MATTER OF:	:	
	:	
MICHAEL BRESETTE,	:	DBR No. 11-I-0132
	:	
RESPONDENT.	:	
	:	

ORDER DENYING MOTION TO RECONSIDER

This matter was heard on January 9, 2012 on the Show Cause Order issued by the Director of the Department of Business Regulation (“Department”). The Respondent failed to appear at that hearing. A Decision and Final Order defaulting the Respondent and revoking his insurance claims adjuster license was issued by the Hearing Officer on January 13, 2012. On February 9, 2012, a Motion to Reconsider was delivered by facsimile transmission to the Hearing Officer.

Section 19 of Central Management Regulation 2 – *Rules of Procedure for Administrative Hearings*, states:

“At any time after the issuance of a final order of the Director, any party may, for good cause shown, by motion petition the Director to reconsider the final order. The Petitioner shall file his/her motion within twenty (20) days of the issuance of the final order, and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances. The Department shall not entertain a motion for reconsideration filed more than twenty (20) days after the entry of the final decision, unless the Hearing Officer finds good cause to entertain said motion.”

Counsel for the Respondent filed his Motion to Reconsider on February 9, 2012, though he first contacted the Hearing Officer of his intention to do so by letter faxed on January 31, 2012. The filing of his motion therefore, technically, falls outside the time requirements proscribed by Section 19 of CMR 2.

In response to counsel's January 31 letter to the Hearing Officer, the undersigned indicated that counsel was to send a Motion with supporting Memorandum no later than February 10, 2012; however, this Hearing Officer in no way indicated that this was to be considered an extension of the twenty (20) day time limit set forth in CMR 2, Section 19. It is certainly incumbent upon counsel to know and follow regulations which control administrative hearings in the forum in which they are heard.

However, even if the Motion to Reconsider had been timely filed by the Respondent, he has not established good cause for the Hearing Officer to reconsider this matter. In his Memorandum in Support of the Motion to Reconsider, counsel argues that the Respondent "did not receive notice of the pre-hearing conference." The Respondent executed an Affidavit attached to the Memorandum averring that he "was on a cruise and out of the country for the dates December 23, 2011 through December 31, 2011." The affidavit further states that the only address where [I] presently receive mail is 52 Tug Hollow Road, Richmond, Rhode Island and 22 Monterey Drive, West Warwick, Rhode Island."

As certified by the Department, the Order to Show Cause and Notice of Hearing was sent by first class mail, postage prepaid, and also by certified mail to the Respondent at 52 Tug Hollow Road, Richmond, Rhode Island on December 29, 2011. This address is the last address provided by the Respondent to the Department's insurance division.

At its hearing, the Department proffered evidence in the form of a United States Postal Service “Track and Confirm” printout which established that notice of the certified mail was left at the Respondent’s stated address on January 7, 2012 at 12:54 pm. That mailing was subsequently returned to the Department indicating that it had not been claimed. However, the first class envelope was never returned to the division. The logical conclusion must therefore be reached that this mailing was, in fact, delivered to the Respondent’s address.


Similarly, the Order of Revocation was sent to Respondent by the Department on January 18, 2012 to the same address, also by regular first class mail and by certified mail. Again, after three attempts made by the U.S. Postal Service (on January 19, January 24 and February 4) that mailing was returned to the Department as unclaimed by the Respondent. The first class copy of that Order was never returned to the Department. In fact, the Respondent states in his Affidavit that he “received a copy of the Order revoking [his] license on January 24, 2011.”

These facts certainly lead to the conclusion that regular mail is delivered to the Richmond address, and is received by the Respondent, but that he chooses not to claim certified mailings for which notice is left.

Section 9(B) of CMR 2 states: “Service upon persons who have not yet made an appearance (in an administrative hearing) shall be at the last address on file with the Department for any licensee.” It further proscribes that “service under these rules shall be made upon a party by first class mail, postage prepaid, certified mail or hand delivery,” and “service by mail is complete upon mailing.” (emphasis added)

Based upon the consideration of the foregoing, it is the recommendation of the Hearing Officer that the Director deny the Motion for Reconsideration.

Dated: March 8, 2012


Ellen R. Balasco, Esq.
Hearing Officer

ORDER

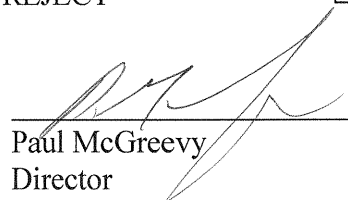
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 9 March 2012


Paul McGreevy
Director

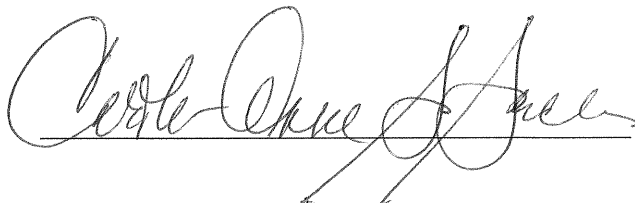
ENTERED as Administrative Order No. 12-011 on the 9th day of March, 2012.

CERTIFICATION

I hereby certify that on the 9th day of March, 2011, a true copy of this Order was sent by first class mail, postage prepaid to counsel for the Respondent, Joseph M. Rameaka, Esq. at 873 Warwick Avenue, Warwick, Rhode Island 02888, and by electronic mail to the following parties at the Department of Business Regulation:

Elizabeth Kelleher Dwyer, Esq., Deputy Chief of Legal Services

Joseph Torti, Deputy Director


Elizabeth Kelleher Dwyer, Esq.