

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

IN THE MATTER OF:	:	
	:	
ROSSAIRE ACOSTA,	:	DBR No. 13IN073
	:	
RESPONDENT.	:	

DECISION AND ORDER OF REVOCATION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: October 8, 2013

Appearances:

For Respondent: Respondent appeared *pro se*.

For the Department: Elizabeth Kelleher Dwyer, Esq.

I. INTRODUCTION

Rossaire Acosta (“Respondent”) was previously issued an insurance producer’s license by the Department of Business Regulation (“Department”) on June 10, 2005. That license expired on May 31, 2013. The Department issued Respondent an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer on July 3, 2013 (“Order”) based on a complaint filed against her, and several reports from insurance carriers regarding problems with the Respondent’s business activities as an insurance producer. The matter was scheduled for pre-hearing conference on July 15, 2013. The Respondent failed to appear on that date, and counsel for the Department requested that default judgment enter based upon her failure to appear.

The Respondent later provided the Division with an acceptable excuse for her failure to appear at the pre-hearing conference, and the matter was rescheduled to August 8, 2013 at which time this case was scheduled for a full, evidentiary hearing on October 8, 2013.

Based on the evidence presented at hearing and the applicable law, the Department has preponderated that there is cause for the revocation of Respondent's insurance producer license pursuant to §§ 27-2.4-14.

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 PRESENTED

The issues presented in this matter are whether or not Respondent's application for renewal of her insurance producer's license should be denied, and whether that license should be revoked based on violations of the provisions of R.I. Gen. Laws §§ 27-2.4-14(a)(2), (4) and (8); and 27-2.4-6.

In the Order to Show Cause, the Department sets forth the grounds upon which it seeks the revocation of Respondent's license. First, the Department believes that Respondent accepted premium payments from consumers and failed to remit those payments for insurance policies to Dairyland Insurance and to the Rhode Island Automobile Insurance Plan (the "Plan") on several occasions.

The Department further alleges that the Respondent accepted an application for insurance from a consumer, but failed to transmit the application to the Plan contemporaneously, thereby causing a delay in the effective date of the consumer's policy. The Order also states that the Respondent owed a return commission payment to the Plan due to cancelled policies which was

unpaid, and that the Plan was unable to contact the Respondent's business after her telephone lines had been disconnected.

Finally, the Order alleges that the Respondent accepted applications and premium checks from consumers for at least four (4) policies after the expiration of her license which occurred on May 31, 2013, constituting unlicensed activity.

IV. MATERIAL FACTS AND TESTIMONY

The Department presented nine (9) documents to support its case to revoke Respondent's license. Respondent offered testimony in her own defense.

The first four exhibits proffered by the Department had been previously admitted at the pre-hearing, and were readmitted. These documents included: (1) a printout of Department's electronic licensing summary and history for the Respondent, (2) a copy of the NAIC license renewal application from the Respondent dated June 17, 2013, (3) United States Postal Service "Track and Confirm" information (to support Department's request for the previously issued default judgment) and (4) a multiple document package containing copies of correspondence to and from the Department regarding the Respondent's licensing history and business activities.

Department submitted a fifth exhibit which was a four page document titled Producer Performance Complaint Forms, dated June 13, 2013, June 18, 2013 and July 18, 2013 and September 20, 2013, which substantiate the Department's allegation that the Rhode Island Automobile Insurance Plan pursued complaints against the Respondent for her failure to pay return commissions to the Plan, and otherwise failed to comply with the guidelines of the Plan.

The remaining exhibits submitted by the Division included a complaint from a consumer received on July 22, 2013 reporting that his insurance coverage through the Plan had been cancelled due to non-payment of premiums. The complainant states that he made his premium

payments on or before the due date to the Respondent's agency. It appears, therefore, that the Respondent failed to forward those premiums funds to the Plan, causing the policy to be cancelled, and the consumer to be left without insurance coverage on his automobile.

As evidenced by Department's exhibit number 7, a complaint was received in the Division on September 18, 2013 from another consumer. This complaint alleged that the Respondent had committed "insurance fraud", by accepting payments from him and not forwarding those premium payments to the Plan. However, the Respondent's response to this complaint contains a plausible explanation for this policy not being in effect. According to the Respondent, the Plan instructed her to retract all applications which were submitted after May 31, 2013 (including the complainant's) because her insurance producer license expired on that date. This information is corroborated by Department's exhibit number 5.

As for Respondent's defense, she provided sworn testimony at the hearing, and her written statement sent to the Department on August 14, 2013 was presented as a full exhibit. Basically, the Respondent accepts responsibility for a number of actions which constitute violations of the insurance regulations and laws, as well as Rhode Island Automobile Insurance Plan guidelines. She acknowledges having accepted cash for premium payments, paying the plan with checks having insufficient funds, having a non-working telephone number for business use, having allowed customer's policies to lapse and accepting applications and payments after her license had expired. Both in her testimony, and in her written statement, she cites having experienced a difficult divorce and the illnesses of her father and mother in the past year as being the reasons for her "mistakes".

She indicated further that she has a plan for improving her business practices by hiring someone to assist in her office who intends to become licensed as an insurance producer, eliminating the use of a "signature stamp" and working with a broker to obtain quotes for Errors

and Omissions insurance which is affordable for her. She further states that she would refund the money owed to one of the Complainants within several days after the hearing.

V. 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). In this case, the proponent of this enforcement action is the Department. 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 fact finder 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 Department bears the burden for establishing why it is more likely than not that Respondent conducted activities and business practices that violated the statutes and regulations under which she holds her insurance producer license.

VI. DISCUSSION

Rhode Island law authorizes the Department to oversee the licensure and regulation of insurance producers. An insurance producer is required to be licensed under the laws of this state to sell, solicit or negotiate insurance. (*R. I. Gen. Laws* § 27-2.4-2)

In examining Title 27, Chapter 2.4, it is clear that the legislature intended to place express requirements upon insurance producers by enacting a comprehensive statutory scheme to insure that the insurance industry is comprised of licensees who are competent, financially responsible, honest and trustworthy, and who will not pose a threat to the public interest. The Department is provided numerous grounds in that chapter upon which to deny, revoke or suspend an application or license.

Among the grounds upon which a decision to revoke or suspend may be made is upon proof that a licensee improperly withheld, misappropriated or converted any monies or properties received in the course of doing insurance business. [*R.I. Gen. Laws § 27-2.4-14(4)*] The Department has established that this Respondent did, on at least two occasions, fail to remit insurance premiums to an insurer which had been paid to her by consumers. There is further, uncontradicted proof that, on four other occasions, she failed to remit return commission payments to the Plan. Clearly, these six instances are evidence that this Respondent, whether by mistake or intention, has improperly withheld monies from both consumers and insurers.

Both the testimony of the Respondent and the documentary evidence presented by the Department during the hearing clearly establish that this Respondent has demonstrated financial irresponsibility in the course of producing insurance. These instances date back to October of 2011, when the Department was notified by Dairyland Insurance that the Respondent's appointment had been terminated for failure to remit premiums. In her response, she admitted to having done so, indicating that she had accepted checks from consumers with insufficient funds and stated she did not have the monies available to pay Dairyland Insurance for the policies she had produced.

As further proof of poor and irresponsible financial practices, the evidence shows that the Plan notified the Department in January of 2013 that, due to the number of checks which had

been refused for payment due to insufficient funds during the previous year, the Plan would no longer accept personal or agency checks from the Respondent. In fact, it is clear that this Respondent's history of doing business as an insurance producer for at least the past two and a half years is marked with periods of financial instability, late payments, office closures and disconnected phone lines at her office. No other conclusion can be reached other than the fact that this Respondent lacks the ability to competently conduct her business as an insurance producer. This incompetence poses a financial risk and exposure to liability created by being unknowingly uninsured for her customers.

R.I. Gen. Laws § 27-2.4-14 (a)(8) establishes as grounds for suspension or revocation of an insurance producer's license “. . . demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state . . .”

In addition to the foregoing, R. I. Gen. Laws § 27-2.4-3 states that no person shall sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this chapter. This Respondent's license as an insurance producer expired on May 31, 2013. After that date, she accepted applications and premium checks from consumers for at least four insurance policies and submitted them to the Rhode Island Automobile Insurance Plan, in clear violation of this section.

VII. FINDINGS OF FACT

1. The Department issued Respondent an Order to Show Cause why her insurance producer's license renewal application should not be denied, and suspending or revoking her license on July 2, 2013.

2. The Respondent made a request for a full hearing during the pre-hearing conference held on August 8, 2013.

3. A full, evidentiary hearing was held on October 8, 2013 before the undersigned Hearing Officer.

4. The facts contained in Sections IV and VI are incorporated by reference herein.

VIII. CONCLUSIONS OF LAW

In accordance with the testimony and facts presented:

1. The Department has jurisdiction over this matter as set forth in Section II, *supra*.

2. Under the standard set forth in Section V and the statutory framework and analysis set forth in Section VI, the Department established by a preponderance of the evidence that Respondent's insurance producer license should be revoked for cause and a failure to properly serve the interests of the public under the license in violation of R.I. Gen. Laws § 27-2.4-14(a)(4) and (8), and that she has engaged in unlicensed activities required licensure after expiration, in violation of R.I. Gen. Laws § 27-2.4-3.

IX. RECOMMENDATION

Based on the above analysis, and due consideration of the facts presented, the Hearing Officer recommends that the Director of the Department of Business Regulation enter an Order denying the Respondent's application for renewal of her insurance producer's license, and further revoking that license.

Dated: December 11, 2013



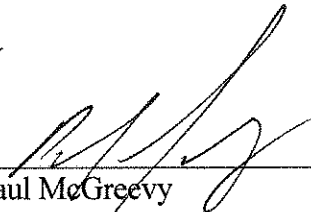
Ellen R. Balasco, Esq.
Hearing Officer

ORDER OF THE DIRECTOR

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

- ADOPT
- REJECT
- MODIFY

DATED: 11 Dec 2013



Paul McGreevy
Director

ENTERED as Administrative Order No. 13-065 on the 12th day of December, 2013.

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 12th day of December, 2013, that a copy of the within Decision and Order of Revocation was sent by first class mail, postage prepaid, to Rossaire Acosta at O and R Multiservices Salon and Spa, 209 Plainfield Street, Providence, RI 02909 and sent by electronic mail to the following parties at the Department of Business Regulation: Joseph Torti, Deputy Director of Insurance, Elizabeth Kelleher Dwyer, Esq., and Rachel Chester, Insurance Analyst.

