

**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:	:	
	:	
Kathleen Bruno,	:	DBR No.: 2017-IN-018
	:	NPN-2310763
Respondent.	:	

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause Why Orders Should Not Issue to Revoke License, to Cease and Desist Unlawful Activity and to Pay Penalties; Notice of Hearing and Appointment of Hearing Officer (“Notice”) issued by the Department of Business Regulation (“Department”) to Kathleen Bruno (“Respondent”) on May 1, 2017. The Respondent holds an insurance producer license (“License”) issued pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.* A pre-hearing conference was held on May 19, 2017. A hearing was scheduled for July 20, 2017 at which time the Respondent did not appear. As the Respondent was adequately notified of the hearing, a hearing was held.¹ The Department was represented by counsel who rested on the record. Additionally, section 2.21 of 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings* (“the Rules”) provides that a judgment may be entered based on pleadings and/or evidence submitted at hearing by a non-defaulting party.

¹ See Department’s Exhibit One (1) indicating the Respondent’s mailing addresses and email address on record with the Department.

II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 27-2.4-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and the Rules.

III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 27-2.4-1 *et seq.* and if so, what should be the sanction.

IV. TESTIMONY AND MATERIAL FACTS

Holly Campbell, Insurance Analyst, testified on behalf of the Department. She testified that the Department received a complaint from a consumer (“Consumer”) regarding his purchase of a surplus line policy from the Respondent. She testified that surplus line policies are usually purchased through an agent so the insured pays the premiums through an agent rather than being directly billed by an insurance carrier. She testified that the Consumer paid the premium for his policy the full year in advance to the Respondent. See Department’s Exhibit Five (5) (copy of premium check). She testified that in March, 2016, 30 days after the policy was supposed to begin, the Consumer received a notice of cancellation for non-payment of the premium. See Department’s Exhibit Two (2) (notice of cancellation). She testified that she received confirmation from both the insurance carrier and the surplus line broker that the Consumer’s policy was cancelled in March, 2016 for non-payment and never was reinstated. She testified that the Respondent submitted to the Department a notice showing that the cancellation notice to the Consumer had been rescinded, and that later the Consumer cancelled the policy. See Department’s Exhibit Eight (8) (Respondent’s email to Department including the “reinstatement notice” and “cancellation endorsement”). She testified that these documents looked like they were cut and pasted and the Respondent admitted to surplus line broker that she submitted a fake rescission

notice and fake cancellation endorsement to the Department. See Department's Exhibit 10 (admission of falsification). She testified that the Consumer believing his policy to still be in place tried to cancel it on July 1, 2016 (Department's Exhibit Seven (7)) and at that time the Respondent forwarded the Consumer a partial refund. See Department's Exhibit Six (6) (copy of partial refund check). She testified that the Respondent is still owed \$1,097.20 from his paid premium. See Department's Exhibit 13 (calculations).

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998).

B. **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 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *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). 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. *Id.* 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 (R.I. 2006).

C. Relevant Statute

R.I. Gen. Laws § 27-2.4-14 provides in part as follows:

Licenses – Denial – Nonrenewal – Suspension or revocation. (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:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner;

(4) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place;

D. Whether the Respondent Violated R.I. Gen. Laws § 27-2.4-14

The Department rested on the testimony, exhibits, and pleadings and requested revocation of License and that the Respondent be ordered to refund the Consumer, but if that was beyond the scope of the Department’s authority then to pay an administrative penalty.

Based on the testimony, the evidence, and the pleadings, the Respondent took money from

her Customer and failed to purchase insurance. She provided false information and lied to her Customer regarding the status of the insurance coverage. She lied and provided false documents (the reinstatement and endorsement cancellation) to the Department in an effort to hide her failure to purchase the insurance. She has not fully reimbursed the Customer for his payment for insurance that he did not receive. Pursuant to section 2.21 of the Rules, the Respondent is declared to be in default for failing to appear at the hearing. Pursuant to section 2.21 of the Rules, the allegations in the Notice are found to be true.

E. Sanctions

R.I. Gen. Laws § 27-2.4-14 provides in part as follows:

(c) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to an administrative fine in accordance with § 42-14-16.

R.I. Gen. Laws § 42-14-16 provides in part as follows:

Insurance – Administrative penalties. (a) Whenever the director shall have cause to believe that a violation of title 27 and/or chapters 14, 14.5, 62 or 128.1 of title 42 or the regulations promulgated thereunder has occurred by a licensee, or any person or entity conducting any activities requiring licensure under title 27, the director may, in accordance with the requirements of the Administrative Procedures Act, chapter 35 of this title:

- (1) Revoke or suspend a license;
- (2) Levy an administrative penalty in an amount not less than one hundred dollars (\$100) nor more than fifty thousand dollars (\$50,000);
- (3) Order the violator to cease such actions;
- (4) Require the licensee or person or entity conducting any activities requiring licensure under title 27 to take such actions as are necessary to comply with title 27 and/or chapters 14, 14.5, 62, or 128.1 of title 42, or the regulations thereunder; or
- (5) Any combination of the above penalties.

Section 2.16 of DBR2 provides as follows:

Penalties

A. In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s) or regulation(s), the Hearing Officer shall look to past precedence of the Department for guidance and may consider any mitigating or aggravating circumstances.

1. Mitigating circumstances may include, but shall not be limited to, the following: the Party's licensing history, i.e. the absence of prior disciplinary actions; the Party's acceptance of responsibility for any violations; the Party's cooperation with the Department; and the Party's willingness to give a full, trustworthy, honest explanation of the matter at issue.

2. Aggravating circumstances may include, but shall not be limited to, the following: the Party's prior disciplinary history; the Party's lack of cooperation and/or candor with the Department; the seriousness of the violation; whether the Party's act undermines the regulatory scheme at issue; whether there has been harm to the public; and whether the Party's act demonstrates dishonesty, untrustworthiness, or incompetency.

B. The finding of mitigating factors will not necessarily lead to a reduction in the penalty imposed if the circumstances of the violations found by the Hearing Officer are such that they do not warrant a reduction in penalty.

The Respondent's actions demonstrate dishonesty to her customer, the insurance company, the surplus line broker, and the Department. She was also financially dishonest by taking money from the Customer and not purchasing the coverage and then not fully refunding the Customer.

There has been no showing of any mitigating factors under the Rules. Instead, there are only aggravating factors such as the Respondent's lack of cooperation and/or candor with the Department, the seriousness of the violation, harm to the public, and that the Respondent's actions demonstrate dishonesty, untrustworthiness, and incompetency. Furthermore, it is not in the best interests of the Rhode Island consumers to have the Respondent be licensed. See *DiPaolo v. Marques*, 2010 R.I. Super. LEXIS 158. See also *Rocha v. State PUC*, 694 A.2d 722 (R.I. 1997).

The Department does not have authority to order the Respondent to reimburse the Consumer. See R.I. Gen. Laws § 27-2.4-16 and R.I. Gen. Laws § 42-14-16. The Department does have authority to revoke the Respondent's License and impose an administrative penalty for her many serious statutory violations.

VI. FINDINGS OF FACT

1. On or about May 1, 2017, the Notice was issued to the Respondent by the Department.
2. A pre-hearing conference was held on May 19, 2017.
3. A hearing was held on July 20, 2017 at which time the Respondent did not appear despite being adequately notified of the hearing.
4. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to 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.*
2. The Respondent violated R.I. Gen. Laws § 27-2.4-14(2) (violate insurance laws); (4) (improperly withholding, misappropriating or converting moneys received in course of doing business); (5) (misrepresenting terms of insurance contract or application); (7) (insurance unfair trade practice or fraud); and (8) (fraudulent, dishonest practices).

VIII. RECOMMENDATION

Based on the forgoing, pursuant to R.I. Gen. Laws § 27-2.4-1 *et seq.* and R.I. Gen. Laws § 42-14-16, the undersigned recommends that the Respondent's License be revoked. In addition, pursuant to R.I. Gen. Laws § 42-14-16, an administrative penalty of \$5,000 is imposed on the Respondent that shall be due within 30 days of the execution of this decision.²

Dated: 7/28/17


Catherine R. Warren, Esquire
Hearing Officer

² If the Respondent provides proof of reimbursement to the Consumer of the money he is owed, it is recommended that this be considered a mitigation of the administrative penalty and the Department may agree to reduce the penalty.

ORDER

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

 X ADOPT
 REJECT
 MODIFY

Dated: 7/27/17

Scottye Lindsey
Scottye Lindsey
Director

NOTICE OF APPELLATE RIGHTS

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

CERTIFICATION

I hereby certify that on this 7 day of August, 2017, that a copy of the within decision was sent by first class mail, postage prepaid and electronic delivery to Ms. Kathleen Bruno, 200 Heroux Blvd., #903, Cumberland, R.I. 02864 and The Commercial Ins. Exchange, 2155 Diamond Hill Rd., Cumberland, R.I. 02864 and by electronic delivery to her email address on record with the Department and by electronic delivery to Matthew Gendron, Esquire, and Elizabeth Kelleher Dwyer, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue. Cranston, R.I.

Scottye Lindsey