

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

IN THE MATTER OF:	:	
	:	
ALTAGRACIA HERNANDEZ,	:	DBR No.: 06-I-0171
	:	
RESPONDENT.	:	

DECISION

Hearing Officer:	Joseph J. LoBianco, Esq.	
Hearing Held:	October 10, 2006 and December 13, 2006	
Appearances:	Elizabeth Kelleher Dwyer, Esq.	Department prosecutor
	Altagracia Hernandez	No appearance October 10, 2006
	Benjamin A. Mesiti, Esq.	For Altagracia Hernandez, December 13, 2006 only

I. INTRODUCTION

The above-captioned matter came before the Department of Business Regulation (“Department”) on October 10, 2006 and December 13, 2006 pursuant to an Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer (“Order to Show Cause”) issued by the Director of the Department on September 20, 2006. The Order to Show Cause alleges that the insurance producer’s license held by Altagracia Hernandez (“Respondent”) should be revoked for violation of R.I. Gen. Laws § 27-2.4-3, R.I. Gen. Laws § 27-2.4-14, R.I. Gen. Laws § 27-2.4-19, and the Rhode Island Automobile Insurance Plan (“RIAIP”) Rules. The Order to Show Cause appointed the undersigned as Hearing

Officer and scheduled the Hearing for October 10, 2006. Respondent failed to appear. The Department moved for default against the Respondent, presented evidence, and requested that the undersigned make certain findings of fact and conclusions of law. Prior to the issuance of a decision, Respondent contacted the Department and requested an opportunity to be heard. The hearing was continued and held on December 13, 2006. At the hearing, Respondent voluntarily surrendered her license.

II. JURISDICTION

The Department has jurisdiction in this matter pursuant to R.I. Gen. Laws §§ 27-2.4-1 *et seq.*, R.I. Gen. Laws §§ 42-14-1 *et seq.*, R.I. Gen. Laws §§ 42-35-1 *et seq.*

III. ISSUES

Whether Respondent's insurance producer license should be revoked for violating R.I. Gen. Laws § 27-2.4-12, R.I. Gen. Laws § 27-2.4-14, R.I. Gen. Laws § 27-2.4-19, Insurance Regulation 73, and the Rhode Island Automobile Insurance Plan Rules.

IV. MATERIAL FACTS AND TESTIMONY

At the October 10, 2006 hearing, the undersigned noted that the hearing was scheduled to commence at 1:30 p.m. on October 10, 2006. The undersigned further noted that it was 1:45 p.m. on said date, and that Respondents had failed to appear.

The Department moved for default pursuant to *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings* (“CMR2”), and proceeded to present evidence to prove the facts set forth in the Order to Show Cause.

The Department presented six (6) exhibits at the October 10, 2006 hearing. The exhibits were marked for identification purposes and were admitted as full exhibits.

The Department argues that Respondent's insurance producer license should be revoked for violating R.I. Gen. Laws § 27-2.4-14, R.I. Gen. Laws § 27-2.4-19, and the Rhode Island Automobile Insurance Plan Rules.

The Department presented evidence that the Plan has informed the Department that since Respondent began submitting applications from the 858 Broad Street address, the Plan has received over 60 incorrect broker of record letters from Respondent, each of which needed to be returned for proper signature. The Department also presented evidence that the Plan has received a number of applications from the Respondent with no deposit premium or with no signature. The Department presented evidence that other applications were returned to Respondent because they were illegible, and that Respondent resubmitted those same applications without explanation. The Department alleges that these actions violate the approved Plan rules. See Exhibit 1.

The Department presented evidence that Respondent submitted numerous checks to the Plan for premium payments on behalf of insureds which were refused for payment by the bank upon which they were drawn. The Department alleges that these actions violate R.I.G.L. § 27-2.4-14 and the approved Plan rules. See Exhibit 1.

The Department presented evidence that the telephone at Respondent's office is generally busy. Furthermore, the Plan has reported that when the phone is answered, it is answered by a man who refuses to state his name. The Department alleges that these actions violate R.I.G.L. § 27-2.4-14 and the approved Plan rules.

The Department presented evidence that it had received complaints from Miriam Gomes and Cassandra Lynch. Ms. Gomes was involved in an accident with a vehicle owned by Cassandra Lynch. Ms. Lynch had identified “Catone” as her insurance agency. When Ms. Gomes contacted “Catone” she was told that they would not provide her with the name of Ms. Lynch’s insurance carrier. When Ms. Gomes contacted the Plan, she was informed that no application was ever submitted on behalf of Ms. Lynch and that she did not have an insurance policy issued through the Plan. According to her complaint, Ms. Lynch applied for insurance with “the Catone’s,” paid \$290, and was given a temporary insurance card. After the accident, she went to 858 Broad Street and was told that she did not have insurance because they were still waiting to receiving additional employment information from her. The \$290 was not returned. See Exhibits 2 and 3.

The Department presented evidence that on August 8, 2006, the Department received a complaint from Jasmine Alvarez. On March 20, 2006 Ms. Alvarez completed an application for insurance through the Plan signed by Respondent Hernandez and paid a deposit premium. She was provided with an insurance identification card signed by Respondent indicating a policy effective March 20, 2006 and expiring on April 20, 2006. She indicated that she made monthly payments to Hernandez (operating out of an office still using the Catone name), but despite numerous inquires she did not receive a policy number. On July 27, 2006 she contacted the Plan, which indicated that she had not had insurance with the Plan since October of 2005. The policy in effect at that time had been issued through the Catone agency. It was cancelled in October or 2005 for nonpayment of premium. See Exhibit 4.

The Department presented evidence that on August 10, 2006 it sent correspondence to Respondent requesting a response to the Alvarez complaint. The Department received no response from the Respondent. The Department alleges that this violates Insurance Regulation 73. See Exhibit 5.

The Department presented evidence that it has been provided with a “receipt” for a deposit premium accepted by Respondent from an insured. The “receipt” was issued by “Caracas Insurance Agency,” with its location listed as 858 Broad Street, Providence, Rhode Island 02907. Respondent Hernandez issued a temporary identification card for the policy issued under the name “Caracas Insurance Agency.” “Caracas Insurance Agency” is not a licensed insurance producer in the State of Rhode Island. See Exhibit 6.

The Department presented evidence that there is a sign outside Respondent’s business at 858 Broad Street that states “Catone Insurance Agency.” The Department alleges that this violates R.I. Gen. Laws § 27-2.4-12.

The Department alleges that these actions form a sufficient basis upon which to revoke the Respondent’s License.

On the basis of the above and pursuant to Section 21 of CMR2, the Department’s counsel requested that the undersigned make findings of fact on the basis of the Pre-hearing Order and the evidence presented and enter a default judgment against Respondent.

Before a decision could be issued on the Department’s Motion for Default, the Respondent contacted the Department via correspondence requesting an opportunity to be heard. The Department did not object, and a hearing was scheduled for November 10, 2006. After a series of continuance requested by the parties, the hearing was held on December 13, 2006. At that time, Department’s counsel informed the undersigned that the Department

had received nine (9) additional consumer complaints against Respondent, in addition to the two (2) complaints presented by the Department on the record on October 10, 2006. The Department's counsel also stated that Respondent had voluntarily surrendered her license and agreed to revocation thereof. Respondent's counsel stated that Respondent feels that she is also a victim in this matter. Counsel further stated that Respondent intends to fight these complaints in order to clear her name, and eventually to re-acquire her license.

V. DISCUSSION

The Order to Show Cause required that Respondent appear and provide evidence showing why its license should not be revoked for violation of R.I. Gen. Laws § 27-2.4-3, R.I. Gen. Laws § 27-2.4-14, R.I. Gen. Laws § 27-2.4-19, and the Rhode Island Automobile Insurance Plan ("RIAIP") Rules. Notwithstanding the above-described notice, Respondents failed to appear at the October 10, 2006 hearing. Section 21 of CMR2 provides in pertinent part as follows:

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.

VI. FINDINGS OF FACT

1. An Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer requiring the Respondent to appear at a hearing scheduled for October 10,

2006 at 1:30 p.m. was issued by the Director on September 20, 2006 and sent to the Respondent by certified mail, return receipt requested, and by via first class mail.

2. Respondent received adequate notice of the hearing scheduled for October 10, 2006 at 1:30 p.m. pursuant to Section 5 of CMR2.

3. Respondent failed to appear at the October 10, 2006 hearing.

4. The Plan has received over 60 incorrect broker of record letters from Respondent, each of which needed to be returned for proper signature. The Plan has received a number of applications from the Respondent with no deposit premium or with no signature. Other applications were returned to Respondent because they were illegible. Respondent resubmitted those same applications without explanation. These actions violate the approved Plan rules. See Exhibit 1.

5. Respondent submitted numerous checks to the Plan for premium payments on behalf of insureds which were refused for payment by the bank upon which they were drawn. These actions violate R.I.G.L. § 27-2.4-14 and the approved Plan rules. See Exhibit 1.

6. The telephone at Respondent's office is generally busy. When the phone is answered, it is answered by a man who refuses to state his name. These actions violate R.I.G.L. § 27-2.4-14 and the approved Plan rules.

7. The Department received complaints from Miriam Gomes and Cassandra Lynch. Ms. Gomes was involved in an accident with a vehicle owned by Cassandra Lynch. Ms. Lynch had identified "Catone" as her insurance agency. When Ms. Gomes contacted "Catone" she was told that they would not provide her with the name of Ms. Lynch's insurance carrier. When Ms. Gomes contacted the Plan, she

was informed that no application was ever submitted on behalf of Ms. Lynch and that she did not have an insurance policy issued through the Plan. According to her complaint, Ms. Lynch applied for insurance with “the Catone’s,” paid \$290, and was given a temporary insurance card. After the accident, she went to 858 Broad Street and was told that she did not have insurance because they were still waiting to receiving additional employment information from her. The \$290 was not returned. These actions violate R.I. Gen. Laws § 27-2.4-14, R.I. Gen. Laws § 27-2.4-19, and the Rhode Island Automobile Insurance Plan Rules. See Exhibits 2 and 3.

8. On August 8, 2006, the Department received a complaint from Jasmine Alvarez. On March 20, 2006 Ms. Alvarez completed an application for insurance through the Plan signed by Respondent Hernandez and paid a deposit premium. She was provided with an insurance identification card signed by Respondent indicating a policy effective March 20, 2006 and expiring on April 20, 2006. She indicated that she made monthly payments to Hernandez (operating out of an office still using the Catone name), but despite numerous inquires she did not receive a policy number. On July 27, 2006 she contacted the Plan, which indicated that she had not had insurance with the Plan since October of 2005. The policy in effect at that time had been issued through the Catone agency. It was cancelled in October of 2005 for nonpayment of premium. These actions violate R.I. Gen. Laws § 27-2.4-14 and the Rhode Island Automobile Insurance Plan Rules. See Exhibit 4.

9. On August 10, 2006 the Department sent correspondence to Respondent requesting a response to the Alvarez complaint. The Department received no

response from the Respondent. This violates Insurance Regulation 73. See Exhibit 5.

10. The Department has been provided with a “receipt” for a deposit premium accepted by Respondent from an insured. The “receipt” was issued by “Caracas Insurance Agency,” with its location listed as 858 Broad Street, Providence, Rhode Island 02907. Respondent Hernandez issued a temporary identification card for the policy issued under the name “Caracas Insurance Agency.” “Caracas Insurance Agency” is not a licensed insurance producer in the State of Rhode Island. These actions violate R.I. Gen. Laws § 27-2.4-12, R.I. Gen. Laws § 27-2.4-14 and the Rhode Island Automobile Insurance Plan Rules. See Exhibit 6.

11. There is a sign outside Respondent’s business at 858 Broad Street that states “Catone Insurance Agency.” This violates R.I. Gen. Laws § 27-2.4-12.

12. Respondent has voluntarily surrendered her license.

13. Any conclusion of law which is also a finding of fact is hereby adopted as a finding of fact.

VII. CONCLUSIONS OF LAW

Based on the evidence and facts presented, the undersigned concludes as follows:

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.*, R.I. Gen. Laws § 42-35-1 *et seq.*
2. Respondent violated Section 21 of CMR2 by failing to appear at the October 10, 2006 hearing.

3. Respondent violated R.I. Gen. Laws § 27-2.4-14, R.I. Gen. Laws § 27-2.4-19, Insurance Regulation 73, and the Rhode Island Automobile Insurance Plan Rules.
4. Because the Respondent appeared on December 13, 2006 and voluntarily surrendered her license, the Department's Motion for Default is moot.
5. Any finding of fact which is also a conclusion of law is hereby adopted as a conclusion of law.

VIII. RECOMMENDATION

On the basis of the foregoing, the undersigned recommends that the Director rule as follows:

1. Respondent's insurance producer license is revoked for violation of R.I. Gen. Laws § 27-2.4-3, R.I. Gen. Laws § 27-2.4-14, R.I. Gen. Laws § 27-2.4-19, Insurance Regulation 73, and the RIAIP Rules.
2. The eleven (11) consumer complaints against Respondent received by the Department to date shall be considered by the Department if Respondent ever applies for another license.

Entered this 20th day of December 2006.

__ original signature on file ____
Joseph James LoBianco
Hearing Officer

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

ADOPT
 REJECT
 MODIFY

Dated: December 20, 2006

original signature on file
A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION 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.