

COUNTY OF MARION

) SS:
)

IN THE MATTER OF:

Miriam Colon
4895 MacArthur Road
Whitehall, PA 18052

Respondent

Type of Agency Action: Enforcement)

FILED

MAR 07 2022

STATE OF INDIANA
DEPT. OF INSURANCE

CAUSE NO.: DOI-1121-002309
19599-AG19-0806-108

On January 21, 2022, the Administrative Law Judge, Ann Pagonis, filed her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended Order and Notice of Filing Recommended Order on Respondent by mailing the same to her address of record.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order, and more than eighteen (18) days have elapsed.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Respondent's nonresident producer license number 668011 is **Suspended** for a period of one (1) year from the date of this order.
2. Respondent is to pay a fine in the amount of Seven hundred fifty dollars (\$750.00) within thirty (30) days.

Under Ind. Code §4-21.5-5-5, Respondent has the right to appeal this Final Order by filing a petition for Judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS ORDERED by the Commissioner this 7 day of March, 2022.



Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Miriam Colon
4895 MacArthur Road
Whitehall, PA 18052

Samantha Aldridge, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

RECOMMENDED ORDER

Pursuant to IC 4-21.5 this Recommended Order is not final and shall be presented to the ultimate authority for issuance of a final order.



FILED: January 21,
2022

STATE OF INDIANA OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Administrative Cause No.: DOI-1121-002309
Underlying/State Agency Action No.: 19599-AG19-0806-108

Final Agency Authority: Commissioner of the Department of Insurance

Indiana Department of Insurance
Petitioner,

v.

Miriam Colon
Respondent.

Type of Agency Action: Enforcement

License Number: 668011

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED DEFAULT ORDER

An evidentiary hearing was held on this matter on December 7, 2021, at 10:00 am EST via telephonic conference. The Indiana Department of Insurance ("Petitioner") appeared by counsel, Samantha Aldridge, and Miriam Colon ("Respondent") did not appear. The undersigned Administrative Law Judge ("ALJ") for the Office of Administrative Law Proceedings ("OALP") commenced the hearing at 10:15 am EST, at which time, Petitioner moved for Respondent to be defaulted and entered evidence into the record.

Respondent called Steven Embree as a witness and offered three (3) exhibits that were admitted into the record without objection and identified as Petitioner's Exhibits ("PX") 1 through 3.

- PX 1 is a three (3) page copy of a Pennsylvania court docket indicating that Respondent entered a guilty plea to Retail Theft, a Summary Offense, on May 19, 2016.
- PX 2 is a three (3) page copy of a Pennsylvania court docket indicating that Respondent entered a guilty plea to Disorderly Conduct, a Misdemeanor of the Third Degree, on July 15, 2020.
- PX 3 is one (1) page letter dated June 15, 2020, from Respondent to Petitioner regarding Respondent's arrest in January of 2020.

Based upon the evidence presented at said hearing, the ALJ now makes and issues the following Findings of Fact, Conclusions of Law, and Recommended Default Order.

FINDINGS OF FACT

Regarding Default

1. On November 3, 2021, Petitioner served a *Statement of Charges* on Respondent by United States first class mail. There is no indication that Respondent did not receive the *Statement of Charges*. (Transcript pages 17 and 18.)
2. In the *Combined Notice of ALJ and Filing Procedures and Order Setting Evidentiary Hearing ("Order")* issued on November 4, 2021, and served on Respondent by United States first class mail, an evidentiary hearing by telephonic conference was scheduled for December 7, 2021, at 10:00 am EST.
3. Petitioner was present by counsel by telephone at the evidentiary hearing and Respondent was not present in person or by counsel.
4. The evidentiary hearing telephonic conference line remained open from 10:00 am EST to approximately 10:33 am EST and Respondent did not appear.
5. Petitioner entered evidence into the record and moved for Respondent to be held in default.
6. Respondent did not file a motion to continue the evidentiary hearing, and there is no indication that service of the Order was not perfected on Respondent.
7. A *Notice of Proposed Default Order ("Notice")* was issued on December 7, 2021.

8. In the Notice, a seven (7) day deadline for Respondent to file a motion for the case to remain open was set.
9. Twenty-six (26) days have passed since the deadline. Respondent did not meet the deadline. No motion to continue the deadline has been filed, and there is no indication that service of the Notice was not perfected on Respondent.

Regarding the Merits

10. Petitioner is a nonresident insurance producer who lives in Pennsylvania. (PX 3 and transcript page 11.)
11. On April 21, 2016, Respondent was charged with Retail Theft, a Summary Offense, in Pennsylvania. (PX 1 and transcript page 13.)
12. Respondent did not provide the Commissioner of the Indiana Department of Insurance ("Commissioner") with notice of Respondent's charge of Retail Theft within thirty (30) days of the Respondent's first pretrial hearing conference. (Transcript page 14.)
13. On May 29, 2016, Respondent was convicted of Retail Theft in Pennsylvania. (PX 1 and transcript page 13.)
14. Respondent did not report the Retail Theft conviction to the Commissioner. (Transcript page 14.)
15. On January 26, 2020, Respondent was charged with Disorderly Conduct, a Misdemeanor of the Third Degree, in Pennsylvania. (PX 2 and transcript page 15.)
16. Respondent did not provide the Commissioner with notice of Respondent's Disorderly Conduct charge within thirty (30) days of the Respondent's first pretrial hearing conference. (Transcript page 14.)
17. Respondent sent a letter dated June 15, 2020, to the Commissioner explaining that Respondent had been arrested on January 25, 2020 but did not include any supporting documents. (PX 3.)
18. On July 15, 2020, Respondent was convicted of Disorderly Conduct in Pennsylvania. (PX 2 and transcript page 15.)
19. Respondent did not report the Disorderly Conduct conviction to the Commissioner.

20. Any Conclusion of Law that should have been a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

Regarding Default

1. A hearing was held pursuant to Indiana Code 27-1-15.6-12(b)(2)(A) to determine the reasonableness of the Commissioner's decision to suspend Respondent's nonresident producer license, and order a civil penalty against Respondent in the amount of seven hundred fifty dollars (\$750.)
2. A Party may be held in default when a Party fails to "to attend or participate in a pre-hearing conference, hearing, or other later stage of the proceeding." Indiana Code 4-21.5-3-24.
3. Respondent failed to attend the evidentiary hearing and therefore holding Respondent in default is appropriate pursuant to Indiana Code 4-21.5-3-24(a)(4).
4. The ALJ issued a *Notice of Proposed Default Order* as required by Indiana Code 4-21.5-3-24; however, Respondent did not file any response to it. Indiana Code 4-21.5-3-24(b).

Regarding the Merits

5. Insurance producers are required to report any criminal prosecution of the producer to the Commissioner within thirty (30) days of the initial pretrial hearing date. Producers are required to submit a copy of the initial complaint, the order resulting from the hearing, and any other relevant legal documents to the Commissioner with their report. Indiana Code 27-1-15.6-17(b). Respondent did not report her 2016 and 2020 criminal prosecutions to the Commissioner.
6. The Commissioner is authorized to levy a civil penalty and suspend the license of an insurance producer for violating an insurance law. Indiana Code 27-1-15.6-12(b)(2)(A). Respondent violated insurance law by not timely reporting her criminal prosecutions to the Commissioner and by not providing relevant legal documents to the Commissioner with her report.
7. The person requesting that an agency act has the burden of persuasion and the burden of going forward. Indiana Code 4-21.5-3-14(c). Petitioner requested that Respondent's

license be suspended and that a civil penalty be ordered against the Respondent, therefore Petitioner bears the burden of proof.

8. Petitioner met its burden of proving that Respondent failed to notify the Commission of two (2) criminal prosecutions in violation of Indiana Code 27-1-15.6-17(b).
9. The decision to suspend Respondent's nonresident producer license and order a civil penalty against her because she violated an insurance law is reasonable.
10. Any Finding of Fact that should have been a Conclusion of Law is hereby adopted as such.

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED:

In consideration of the foregoing, Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the **Commissioner of the Department of Insurance** that Respondent's nonresident producer license number 668011 should be suspended, and a civil penalty should be ordered against Respondent in the amount of seven hundred fifty dollars (\$750.)

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the **Commissioner of Insurance**. This recommended order is not final.

This matter is now before the ultimate authority, the **Commissioner of the Department of Insurance**, who has the final authority over this matter and shall review this **Recommended Order** and issue a final order to all parties.

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the objection with reasonable particularity; and 2) Is filed with the ultimate authority, the **Commissioner of the Department of Insurance**, within fifteen (15) days from the date of this Order. IC 4-21.5-3-29

Any questions regarding this matter may now be directed to Dawn Bopp at dbopp@idoi.in.gov.

SO ORDERED: January 21, 2022



Hon. Ann Pagonis
Administrative Law Judge
Indiana Office of Administrative Law Proceedings
100 N. Senate Ave. Rm. N-802
Indianapolis, IN 46204

Distributed to Parties:

Indiana Department of Insurance – Petitioner, served by Counsel Samantha Aldridge by E-Mail at saldrige@idoi.in.gov

Miriam Colon – Respondent, served by U.S. Postal Mail at 4895 MacArthur Road Whitehall, PA 18052

Additional Distribution to Non-Party:

Dawn Bopp – Non-Party, Administrator for the Indiana Department of Insurance served as at DBopp@idoi.in.gov for purposes of scheduling a court reporter as needed for any hearing.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 19599-AG19-0806-108

IN THE MATTER OF:

Miriam L. Colon
4895 MacArthur Road,
Whitehall, PA 18052

Respondent.

Type of Agency Action: Enforcement

License Number: 668011

STATEMENT OF CHARGES

The Enforcement Division of the Indiana Department of Insurance ("Department"), by counsel, Victoria Hastings, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5 *et seq.* and Indiana Code § 27-1-15.6-12, files its Statement of Charges against Miriam L. Colon ("Applicant"), as follows:

FACTS

1. Respondent's Indiana nonresident producer license was first issued on or around September 25, 2009.
2. Respondent's Indiana nonresident producer license is set to expire on March 31, 2022.
3. On May 19, 2016, Respondent was convicted of Retail Theft, a Summary Offense, in the Commonwealth of Pennsylvania.
4. On April 21, 2016, Respondent had her initial pretrial hearing in her Retail Theft criminal case.
5. Respondent failed to timely notify the Department about the retail theft prosecution within thirty (30) days of the initial pretrial hearing date.

6. On January 25, 2020, Respondent was charged in Pennsylvania with Disorderly Conduct, a Misdemeanor of the Third Degree.,
7. On January 26, 2020, Respondent had her initial pretrial hearing.
8. Respondent failed to timely notify the Department about the 2020 Disorderly Conduct charges within thirty (30) days of the initial pretrial hearing date.
9. Respondent did not notify the Department about the 2020 charges until July 15, 2020.

CHARGES

COUNT I

1. Averments 1 through 9 are incorporated fully herein by reference.
2. Applicant's conduct is in violation of Indiana Code § 27-1-15.6-12(b)(2)(A), which provides in part, that the Commissioner may suspend an insurance producer's license for violating an insurance law.
3. Respondent's conduct is in violation of Indiana Code § 27-1-15.6-17(b), which is an insurance law, that provides that not more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction.

This is considered an agency action. This action has been initiated by the aforementioned authority. The State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter. You will be contacted by the OALP with more information to begin the administrative process.

WHEREFORE, the Enforcement Division of the Indiana Department of Insurance, by counsel, Victoria Hastings, respectfully requests that the Commissioner set this matter for a hearing pursuant to Indiana Code § 4-21.5 and:

1. Issue an order suspending Respondent's nonresident producer license number 668011;
2. Issue an order imposing a civil penalty against Respondent in the amount seven hundred fifty dollars (\$750); and
3. All other relief just and proper upon the premises.

Respectfully submitted,

Victoria Hastings, Attorney #34052-29
Enforcement Division
Indiana Department of Insurance
Enforcement Division
311 West Washington Street, Suite 103
Indianapolis, Indiana 46204-2787
Telephone: (317) 234-2101
Facsimile: (317) 232-5251

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the following Respondent by United States first class mail, postage prepaid, the same day as filing.

Miriam L. Colon
4895 MacArthur Road,
Whitehall, PA 66801

Victoria Hastings