

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of
the Insurance Agent's License of
Obdulio Cerceno

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

Administrative Law Judge Allan W. Klein conducted a prehearing conference in this contested case proceeding beginning at 1:30 p.m. on May 4, 2000 at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, represented the Department of Commerce. Obdulio Cerceno did not appear at the prehearing conference, nor did anyone appear on his behalf. The record closed on May 4, 2000 when the prehearing conference ended.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after reviewing the hearing record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota Law, the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument. Parties should contact the Office of the Commissioner, Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55155, to find out how to file objections or present argument.

STATEMENT OF THE ISSUE

Whether the Commissioner of Commerce should revoke Mr. Cerceno's insurance agent's license, or censure him, and/or assess a civil penalty against him for violating Minnesota's insurance agent's licensing statutes and rules.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 4, 1998, the Department's attorney began this contested case proceeding by serving Mr. Cerceno with the Notice of and Order for Hearing and Prehearing Conference (Notice of Hearing) by certified U. S. Mail directed to the address that Mr. Cerceno had most recently provided to the Department. That address was: 2425 West County Road C2, Apartment 320, Roseville, MN 55113. That notice was returned to the Department, undelivered.

2. The Notice of Hearing scheduled a prehearing conference in this contested case proceeding beginning at 1:30 p.m. on May 4, 2000. The Notice of Hearing contained the following statements:

If Respondent fails to attend or otherwise appear without the prior consent of the judge any prehearing conference, settlement conference, hearing in this matter, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's insurance agent license may be revoked or suspended, Respondent may be censured, and/or a civil penalty may be imposed against Respondent without further proceedings.

A PARTY INTENDING TO APPEAR AT THE PREHEARING CONFERENCE MUST FILE THE ENCLOSED NOTICE OF APPEARANCE WITH THE ABOVE-NAMED ADMINISTRATIVE LAW JUDGE WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS ORDER. A COPY OF THE NOTICE OF APPEARANCE MUST ALSO BE SERVED WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS ORDER UPON ASSISTANT ATTORNEY GENERAL MICHAEL J. TOSTENGARD, 1200 NCL TOWER, 445 MINNESOTA STREET, ST. PAUL, MINNESOTA 55101-2130. (Emphasis in original).

3. Mr. Cerceno has never filed a Notice of Appearance, as the Notice of Hearing instructed him to do. Furthermore, he did not appear at the May 4, 2000 prehearing hearing conference, nor did he make a prehearing request to the Administrative Law Judge to be excused from appearing at that conference or to have the conference rescheduled for a later date.

4. Because of Mr. Cerceno's violations of this Office's rules, particularly because he failed to appear at the prehearing conference, the facts alleged in the Notice of Hearing are taken as true, and the Administrative Law Judge incorporates those facts into these Findings by reference.

5. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner of Commerce authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and orders.

2. The Department has complied with all of Minnesota law's substantive and procedural requirements.

3. The Department gave Mr. Cerceno proper and timely notice of the prehearing conference that was scheduled in this proceeding.

4. Under the Office of Administrative Hearings' rules, Mr. Cerceno is in default because he failed to appear at the scheduled prehearing conference without being excused by the Administrative Law Judge.

5. Under those rules, when a party defaults, an administrative law judge may take the facts alleged in the Notice of Hearing as true and no longer in dispute.

6. Based upon the facts alleged in the Notice of and Order for Prehearing Conference and Hearing, which the Administrative Law Judge has taken as true, Mr. Cerceno has violated Minnesota's insurance agent's licensing statutes and rules. The law therefore allows the Commissioner to take disciplinary action against him and to assess a civil penalty against him.

7. Revoking Mr. Cerceno's insurance agent's license and assessing a civil penalty against him would be in the public interest.

8. The Administrative Law Judge adopts as Conclusions any Findings which are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner revoke Mr. Cerceno's insurance agent's license and assess a civil penalty against him.

Dated this 12th day of May, 2000.

s/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

Reported: Default

NOTICE

Under Minnesota law, the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.