

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

In the Matter of Herlen C. Porterfield III

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Steve M. Mihalchick on Wednesday, September 6, 2006, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Herlen C. Porterfield III. The OAH record closed at the conclusion of the prehearing conference on September 6, 2006.

STATEMENT OF ISSUES

The issues presented in this case are: 1) whether the Respondent, Herlen C. Porterfield III, failed to report to the Department his criminal conviction for Mail Fraud or mention the conviction on his application for an individual non-resident insurance producer's license, whether he failed to report to the Department the revocation of his insurance licenses in Virginia, Kentucky, Iowa, Utah, and Kansas; 2) whether the Respondent thereby violated Minn. Stat. §§ 45.027, subd. 7(a)(2) and (3), 60K.43, subd. 1(1), (6) and (9), and 60K.54, subd. 1, by providing incomplete and untrue information in his licensing application, obtaining a license through fraud or misrepresentation, having a similar license revoked in another jurisdiction, and being convicted of a violation involving moral turpitude; and, 3) if so, whether the Respondent should be subject to discipline, censure or a civil penalty pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 60K.43, and his license revoked or suspended pursuant to Minn. Stat. § 45.027, subd. 6.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges (“Notice of Hearing”) initiating this contested case proceeding was served on the Respondent, Herlen C. Porterfield III, via first class mail on August 4, 2006, at the following address: 118 Bartram Ave., Lansdowne, PA 19050.^[1]

2. The Notice of Hearing set a prehearing conference Wednesday, September 6, 2006, at 9:30 a.m.^[2]

3. The Notice Hearing contained the following language:

Respondent’s failure to appear at the prehearing conference and/or contested case hearing may result in a finding that Respondent is in default, that the Department’s allegations contained in the Statement of Charges may be accepted as true, and that the Department’s proposed action may be upheld.^[3]

4. The Respondent did not file a notice of appearance or make any request prior to the September 6, 2006 prehearing conference for a continuance or any other relief. No one appeared on behalf of the Respondent at the prehearing conference on September 6, 2006.

5. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

6. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of Hearing are hereby taken as true and incorporated into these Findings of Fact.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 60K.43, subd. 2.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has complied with all relevant procedural legal requirements.

3. The Respondent, having made no appearance at the prehearing conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. By providing incomplete and untrue information in his licensing application, obtaining a license through fraud or misrepresentation, being convicted of a crime involving moral turpitude, and failing to report license revocations from other

states, the Respondent has violated Minn. Stat. §§ 60K.43, subd. 1(1), (6) and (9), and 60K.54, subd. 1. The Respondent's license is subject to discipline and the Respondent is subject to censure and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 60K.43. The imposition of sanctions is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce discipline, censure, and/or impose an appropriate civil penalty against the Respondent, Herlen C. Porterfield III.

Dated: September 19, 2006

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default (no tape recordings).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of Kevin Murphy, Deputy Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions

to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

^[1] Affidavit of Service by First Class Mail of Ann Kirilin attached to the Notice of Hearing.

^[2] Notice of Hearing, p. 1.

^[3] *Id.*, p. 3.