GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION

In the Matter of	)	
	)	
District of Columbia Department of Insurance and Securities Regulation	)	
	)	
Petitioner	)	
	)	
v.	)	Order No.
	)	SC# SO-00-02
Reginald C. Minus	)	
	)	
RESPONDENT	)	

Proposed Decision and Order

Jurisdiction

This matter, SC# SO-00-02, came before Leslie Johnson, Hearing Officer, District of Columbia Department of Insurance and Securities Regulation (hereinafter "Department") on Thursday, May 25, 2000 pursuant to the Insurance Agents and Brokers Licensing Act, D.C. Code § 35-1326(a)(3)(1997); the Fire, Casualty, and Marine Insurance Act, D.C. Code § 35-1544 (a) and (b); and Title 26 Sections 100.4 and 101 *et seq.* of the District of Columbia Municipal Regulations (hereinafter "DCMR") for the purpose of considering whether the licenses of Reginald Minus, and the license of Minus and Associates, Inc. should be revoked or suspended.

Procedural History

A Notice of Show Cause was sent to Reginald Minus and Minus and Associates, Inc. on April 17, 2000 informing the Respondent of the charges against him and his company. After notice was duly given, a Show Cause hearing was held on Thursday, May 25, 2000 in the above-captioned matter before Leslie E. Johnson, Hearing Officer. The hearing was conducted for the purpose of considering whether the licenses of Reginald Minus (BI 00192341 and AI 00155671), and the license

of Minus and Associates, Inc. (AF 00119705) should be revoked or suspended.

The record in the instant case closed on June 8, 2000. At the conclusion of the hearing, the parties were instructed to submit Proposed Decisions and Orders by the close of business - June 8, 2000. The Government submitted a Proposed Decision and Order, the Respondent did not.

Issues Considered

1. Whether the license of Respondent Reginald Minus should be suspended or revoked, pursuant to the Fire, Casualty, and Marine Insurance Act, D.C. Code § 35-1544(b) for failing to pay taxes or file affidavits as required by D.C. Code § 35-1544(a)?

2. Whether the license of Respondent Reginald Minus should be suspended or revoked, pursuant to the Insurance Agents and Brokers Licensing Act, D.C. Code § 35-1326(a) (3)(1997) for failing to comply with an Order of the Commissioner?

Analysis

1. Whether the license of Respondent Reginald Minus should be suspended or revoked, pursuant to the Fire, Casualty, and Marine Insurance Act, D.C. Code § 35-1544(b) for failing to pay taxes or file affidavits as required by D.C. Code § 35-1544(a)?

D.C. Code, Title 35, Section 1544(b) states in pertinent part:

Each agent or broker so licensed to procure policies from unauthorized companies shall keep a separate account of the business transacted thereunder, which shall be open at all times to the inspection of the Commissioner. The license provided for in this

section may be revoked or renewal thereof refused for failure to pay the tax or to file the affidavit specified herein...

During the preliminary portion of the hearing, the Government introduced documentation that Respondent Reginald Minus was licensed to procure policies in the District of Columbia (Government's Exhibit #2).

The Government's witness, Betty Bates, Supervisory Fraud Investigator, testified that the Department of Insurance and Securities Regulation (Department) conducted a market conduct examination (Government's Exhibit #3) of the Respondent's company for the period from January 1, 1994 through December 31, 1996.

On direct examination by the Government, Ms. Bates testified that the market conduct examination was conducted on site (examination conducted at Mr. Minus' business address at 3rd Street, NW, Washington, DC) during November and December 1997. The purpose of the examination was to take a closer look at the operations of Mr. Minus. According to Ms. Bates, the examination was the result of a referral from the Department's Fraud Division.

Ms. Bates testified that the market conduct covered the period from January 1, 1994 - Dec. 31, 1996, and that the market conduct examination consisted of looking at the management of Mr. Minus' business, including reports that Mr. Minus should have had in his office. The Department also looked at complaint records, advertisement, licensing records and anything pertaining to policyholder services and underwriting. (See Summary of pages one to three of the market conduct examination).

The specific purpose of conducting the examination of Mr. Minus' operations and management, in addition to the overall purpose stated in the "Scope of Examination", (See Government's Exhibit #3, page 3) was to determine how Respondent's operations were structured and organized in order to recognize and address problems that may occur in the insurance industry; and to determine an overview of what Respondent's operations were and how they operated. (See

Government's Exhibit #3, page 6). Respondent was requested to provide a copy of his plans of operations, "surplus lines manual," and/or supporting written statements. Respondent provided a copy of his "business plan" and written statements.

The Government submitted evidence of the history and profile of Respondent Reginald Minus' business. According to Government's Exhibit #3, Mr. Minus' business was established on November 14, 1983 in the District of Columbia as a multi-line insurance agency, specializing in the property and casualty lines of business. Mr. Minus is licensed in the tri-state area of Washington, D.C., Maryland, and Virginia. Respondent's business services all geographical areas of operation, i.e., all quadrants within the District of Columbia.

D.C. Code § 35-1544 (a) specifies that each agent or broker licensed in the District shall, pay, to the collector of taxes, through the Commissioner, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediate preceding 6 months' period. The evidence at the hearing and the record show that Respondent failed to pay to the collector of taxes the required taxes. In fact, the market conduct examination (Government's Exhibit #3) revealed that the Respondent had failed to maintain and properly file documentation regarding claims, resulting in an outstanding tax amount of $9,792.22, in violation of D.C. Code § 35-1544(a).

According to the Market Conduct Examination, Respondent's business operations maintain an estimated annual premium volume in excess of $1,000,000.00. Since 1983, Respondent has developed a base of more than 400 policyholders, of which 40% are commercial accounts. At the time of examination, in the line of commercial lines of business, Respondent's front line underwrote excess and surplus lines, as well as, standard (admitted) business through brokerage house arrangements. In the excess and surplus lines of business, all information is transmitted to the brokerage houses for placement with a "non-admitted" carrier/insurer. Currently, Respondent does not possess a surplus lines license. (See Respondent's testimony)

D.C. Code § 1544(a) states that each agent or broker so licensed to procure policies from unauthorized companies shall execute and file with the Department on or before the 10th of each month an affidavit covering the transactions of the previous calendar month. According to evidence submitted at the hearing by the Government, Mr. Minus failed to file the requisite monthly affidavits, in violation of D.C. Code § 1544(a). (See Government's Exhibit #3) Mr. Minus produced no evidence to the contrary.

Ms. Bates testified concerning the findings of the Department's market conduct examination. (See Government's Exhibit #3, VIII, Summary of Important Points). She testified that Respondent Reginald Minus had been cited for the following violations: Failure to file with the Department in a timely manner, 35-1544-a; failure to file all transactions, 35-1544(a) - 5 and failure to file the location and addresses of risks, 35-1544(a)(1). The offenses totaled 7 violations and 405 counts, leaving a outstanding premium tax amount of $9,797.22, and a penalty interest at eight (8) percent of $17, 271.91, totaling an amount due of $27,069.13, for which Mr. Minus was required and failed to pay.

Ms. Bates testified that Mr. Minus was given a breakdown of the tax amount owed. She also stated that Mr. Minus was informed that he was to make available to the Department materials pertaining to the Minus business operations, management, records and manuals; including the surplus lines manual, internal audits, anti-fraud plans and approved surplus line carriers. The Department also recommended that the Respondent devise a complaint register, and obtain evidence regarding due diligence of placements.

Ms. Bates also testified that Mr. Minus was notified of the Department's findings verbally during the exit interview prior to leaving the market conduct site. A proposed draft report was sent to Mr. Minus in July 1998. She further testified that Mr. Minus signed an acknowledgment of receipt (Government's Exhibit #4) dated July 10, 1998. Mr. Minus responded to the Department's recommendation in a letter addressed to Betty Bates (Government's Exhibit #5). According to Ms. Bates, the letter indicated that Mr. Minus would fully comply with the Department's recommendations and agreed with its findings.

Additionally, Ms. Bates testified that the Department did nothing after receiving Mr. Minus' August 1998 letter until Commissioner Mirel sent him a letter on November 1999. (Government's Exhibit 5 - Document 2). She indicated that the Department waited from August 1998 to November 1999 to issue the Minus market conduct report because Ms. Bates was working on another report, and she and the staff were waiting for that report to become final in order to issue the Minus report. Mr. Minus was not notified that his final report was being placed on hold. The Decision to place the matter on hold was initially made by Reginald Berry, who at the time was Acting Deputy Commissioner.

Ms. Bates testified that a letter was sent to Mr. Minus on November 2, 1999 (Government's Exhibit 5 - letter 2). The letter contained the final market conduct report and a proposed consent agreement of what Mr. Minus was expected to pay, and invited him to her office to discuss the report itself.

Ms. Bates testified that a Proposed Order and Consent Agreement (Government's Exhibit #6) was sent to Mr. Minus from Commissioner Lawrence Mirel. Ms. Bates also testified that the Agreement specified the outstanding balance that the Department required Mr. Minus to pay (including interest and penalty), the potential administrative fine, and provisions in the D.C. Code that it was determined he had violated. (Government's Exhibit #6).

Ms. Bates testified that Mr. Minus had made four payments towards the total owed in the amount of $2,300.00. She also presented evidence of a payment plan that would permit Mr. Minus to pay the back taxes owed, as well as maintain his business.

Mr. Reginald Minus presented evidence in the form of a statement to the Department. In his statement, Mr. Minus conceded that he had failed to file and pay taxes in the amount of $9,797. He stated that the reason for his failure to file and pay taxes on time was due to a shortage of help and a disorganized processing system in his business.

The license of Respondent Reginald Minus should be suspended pursuant to the Fire, Casualty, and Marine Insurance Act, D.C. Code § 1544(b) because the Government presented uncontested evidence that the Respondent Reginald Minus was licensed to procure policies from unauthorized companies, and failed to pay the tax or file the affidavit specified as required by D.C. Code § 35-1544(a).

2. Whether the license of Respondent Reginald Minus should be suspended or revoked, pursuant to the Insurance Agents and Brokers Licensing Act, D.C. Code § 35-1326(a)(3)(1997) for failing to comply with an Order of the Commissioner?

D.C. Code, Title 35, Section 1326(a)(3) states:

> The Commissioner may suspend, revoke, or refuse to continue, renew, or issue any license issued under this chapter if, after notice to the licensee and to the insurer represented and hearing, he finds as to the licensee any on or more of the following conditions:
>
> (3) Violation of or noncompliance with, any insurance laws, or for violation of any lawful rule, regulation, or order of the Commissioner or of a commissioner of another state.

Ms. Bates testified that a Proposed Order and Consent Agreement (Government's Exhibit #6) was sent to Mr. Minus from Commissioner Lawrence Mirel. Ms. Bates also testified that the Agreement specified the outstanding balance that the Department required Mr. Minus to pay, (including interest and penalty), a potential administrative fine, and informed him of D.C. Code provisions that it was determined he had violated. (See Government Exhibit #6).

Ms. Bates testified that Mr. Minus had made four payments totaling $2,300.00. Although Mr. Minus made these payments, he did not comply with the Commissioner's Order. The Order required Mr. Minus to pay premium taxes in the amount of $9,797.22 and penalty and interest in the amount of $17,271.91

(among other requirements), this Mr. Minus did not do. Ms. Bates also presented evidence of a payment plan that would permit Mr. Minus to pay the back taxes owed, as well as maintain his business.

Mr. Reginald Minus presented evidence in the form of a statement to the Department. In his statement, Mr. Minus conceded that he had failed to file and pay taxes in the amount of $9,797. He stated that the reason for his failure to file and pay taxes on time was due to a shortage of help and a disorganized processing system in his business.

To date, Reginald Minus has an outstanding premium tax balance of $6,992.22, and an outstanding interest balance of $24,769.13, and he has not made payments in accordance with the Commissioner's Order. Therefore, Mr. Minus' license should be suspended because he is in violation of the Commissioner's Consent Agreement and Order signed November 30, 1999 (Government's Exhibit #7).

Findings of Fact

The Hearing Officer makes the following findings of fact based on the record as a whole:

1. A Notice of Show Cause was sent to Respondent Reginald Minus on April 17, 2000 informing him of the charges against him.

2. After notice was duly given, a Show Cause hearing was held on May 25, 2000 for the purpose of considering whether the licenses of Reginald Minus (BI 00192341 and AI 00155671), and the license of Minus and Associates, Inc. (AF 00119705) should be revoked or suspended.

3. The Department's Show Cause Notice alleged that Respondent failed to pay to the Collector of Taxes, taxes that the Respondent was required to pay, and that Respondent failed to properly execute and file affidavits

as required by his license, in violation of D.C. Code § 35-1544(a).

4. Specifically the notice alleged that pursuant to D.C. Code § 35-1544(a) each agent or broker licensed in the District shall, pay to the Collector of Taxes, through the Commissioner, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediately preceding 6 months' period; and that in accordance with D.C. Code § 35-3601 et. seq., the D.C. Department of Insurance and Securities Regulation completed an Examination of your Company for the period covering January 1, 1994 through as of December 31, 1996; and that the market conduct examination found that Respondent failed to process and pay claims in a timely manner, that Respondent failed to make claim payments accurately in accordance with policy provisions; and that Respondent failed to maintain and properly file documentation regarding claims, resulting in an outstanding total tax of $9,792.22, in violation of D.C. Code § 35-1544(a).

5. The Department of Insurance and Securities Regulation conducted a market conduct examination of Reginald Minus and his company Minus and Associates.

6. During the preliminary stages of the hearing, the Government introduced documentation that Respondent Reginald Minus is licensed to procure policies in the District of Columbia (Government's Exhibit #2).

7. The Government's witness, Betty Bates, Supervisory Fraud Investigator, testified that the Department of Insurance and Securities Regulation ("Department") conducted a market conduct examination (Government's Exhibit #3) of the Respondent's company for the period January 1, 1994 through December 31, 1996.

8. On direct examination by the Government, Ms. Bates testified that the market conduct examination was conducted on site (examination conducted at Mr. Minus' business address at 3rd Street, NW, Washington, DC) during November and December 1997. The purpose of the

examination was to take a closer look at Mr. Minus' operations.

9. According to Ms. Bates, the market conduct examination was conducted as a result of a referral from the Department's Fraud Division.

10. Ms. Bates testified that the market conduct examination covered the period of January 1, 1994 - Dec. 31, 1996, and that it consisted of looking at Mr. Minus' company management, (including reports that he should have had in his office). The Department also looked at complaint records, advertisement, licensing records, and anything dealing with policyholder services and underwriting. (See Summary of first three pages of market conduct exam).

11. The specific purpose of conducting the Examination of Minus' operations and management, in addition to the overall purpose stated in the "Scope of Examination" Government's Exhibit #3, page 3) was to determine how Respondent's operations were structured and organized in order to recognize and to address problems that may occur in the insurance industry; and to determine an overview of what Respondent's operations were and how they operated. (Government's Exhibit #3, page 6). Respondent was requested to provide a copy of his plans of operations, "surplus lines manual," and/or supporting written statements. Respondent provided a copy of his "business plan" and written statements.

12. The Government submitted evidence of the history and profile of Respondent Reginald Minus' business. According to Government's exhibit# 3, Mr. Minus' business was established on November 14, 1983 in the District of Columbia as a multi-line insurance agency, specializing in the property and casualty lines of business. Respondent Minus is licensed in the tri-state area of Washington, D.C., Maryland, and Virginia. Respondent's business operations service all geographical areas, i.e., all quadrants within the District of Columbia.

13. D.C. Code § 35-1544 (a) specifies that each agent or broker licensed in the District shall, pay, to the collector of taxes, through the Commissioner, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediate preceding 6 month period.

14. The market conduct examination (Government's Exhibit a. #3) found that the Respondent had failed to maintain and properly file documentation regarding claims, resulting in an outstanding tax amount of $9,792.22, in violation of D.C. Code § 35-1544(a).

15. According to the Market Conduct Examination, Respondent's business operations maintain an estimated annual premium volume in excess of $1,000,000.00. Since 1983, Respondent has developed a base of more than 400 policyholders, of which 40% are commercial accounts. At the time of examination, as to commercial lines of business, Respondent's front line underwrote excess and surplus lines, as well as, standard (admitted) business through brokerage house arrangements. In the excess and surplus lines of business, all information is transmitted to the brokerage houses for placement with a "non-admitted" carrier/insurer. Currently, Respondent does not possess a surplus lines license. (See Respondent's testimony)

16. D.C. Code § 1544(a) states that each agent or broker so licensed to procure policies from unauthorized companies shall execute and file with the Department on or before the 10th of each month an affidavit covering the transactions of the previous calendar month.

17. According to evidence submitted at the hearing, Mr. Minus failed to file monthly affidavits, in violation of D.C. Code § 1544(a). (Government's Exhibit #3)

18. Ms. Bates testified about the findings of the market conduct examination. (Government's Exhibit #3, VIII, Summary of Important Points). She testified that

Reginald Minus had been cited for the following violations: Failure to file with our department in a timely manner, 35-1544-a; failure to file all transactions, 35-1544(a)- 5; and failure to file the location and addresses of risks, 35-1544(a)(1). The offenses totaled 7 violations and 405 counts, leaving a outstanding premium tax amount of $9,797.22, and a penalty interest at eight (8) percent of $17, 271.91, totaling an amount due of $27,069.13, for which Mr. Minus was required and failed to pay.

19. Ms. Bates testified that Mr. Minus was given a breakdown of the tax amount owed, and recommended that he make available to the Department information pertaining to the business operations, management, records and manuals, including surplus lines manual, internal audits, anti-fraud plans and approved surplus line carriers. The Department also recommended that the Respondent devise a complaint register, and obtain evidence of due diligence regarding placements.

20. Ms. Bates testified that Mr. Minus was verbally notified of the Department's findings of the Department during the exit interview prior to leaving the market conduct examination site. In July of 1998 a proposed draft report was sent to Mr. Minus. Ms. Bates testified that Mr. Minus signed an acknowledgment of receipt dated July 10, 1998 (Government's Exhibit #4). Mr. Minus responded to the recommendation in a letter addressed to Betty Bates (Government's Exhibit #5). According to Ms. Bates, the letter indicated that Mr. Minus would fully comply with the Department's recommendations and that he agreed with the findings.

21. Ms. Bates testified that the Department did nothing after receiving Mr. Minus' August 1998 letter until Commissioner Mirel sent him a letter on November 1999. (Government's Exhibit 5 - Document 2). She indicated that the Department waited from August 1998 to November 1999 to issue the Minus market conduct report because Ms. Bates was working on another report, and she and the staff were waiting for that report to become final in order to issue the Minus report. Mr. Minus was not notified that the final report was being placed on hold.

The decision to place the matter on hold was initially made by Reginald Berry, who at the time was Acting Deputy Commissioner.

22. Ms. Bates testified that a letter was sent to Mr. Minus on November 2, 1999 (Government's Exhibit #5 - letter 2). The letter contained the final market conduct report and a proposed consent agreement of what he was expected to pay, and invited Mr. Minus to Ms. Bates' office to discuss the report itself.

23. Ms. Bates testified that a Proposed Order and Consent Agreement (Government's Exhibit #6) was sent to Mr. Minus from Commissioner Lawrence Mirel. Ms. Bates also testified that the Agreement specified the outstanding balance that Department required Mr. Minus to pay (including interest and penalty), the potential administrative fine, and provisions in the D.C. Code that it was determined he violated. (Government's Exhibit #6).

24. Ms. Bates testified that Mr. Minus had made four payments totaling $2,300.00. Although Mr. Minus made these payments, he did not comply with the Commissioner's Order. The Order required Mr. Minus to pay premium taxes in the amount of $9,797.22 and penalty and interest in the amount of $17,271.91 (among other requirements), this Mr. Minus did not do. Ms. Bates also presented evidence of a payment plan that would permit Mr. Minus to pay the back taxes owed, as well as maintain his business.

25. Mr. Reginald Minus presented evidence in the form of a statement to the Department. In his statement, Mr. Minus conceded that he had failed to file and pay taxes in the amount of $9,797. He stated that the reason for his failure to file and pay taxes on time was due to a shortage of help and a disorganized processing system in his business.

Conclusions of Law

After a careful evaluation of the evidence and findings of fact, the Hearing Officer concludes, as a matter of law:

1. Respondent failed to pay to the Collector of Taxes, taxes which he was required to pay and failed to properly execute and file affidavits as required by his license in violation of D. C. Code § 35-1544(a).

2. Respondent failed to comply with a valid Consent Agreement and Order of the Commissioner, in violation of D.C. Code § 35-1326(a)(3) by failing to comply with the Commissioner's Order of November 30, 1999.

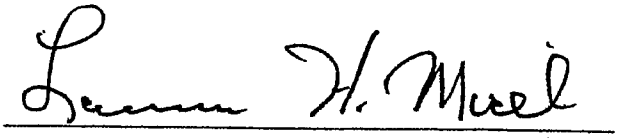
ORDER

IT IS THEREFORE ORDERED that Respondent satisfy the outstanding taxes owed in the amount of $9,797.22 (minus the $2,300.00 paid) and the outstanding interest payments owed in the amount of $17,271.91. IT IS FURTHER ORDERED THAT the licenses of Reginald Minus (BI 00192341 and AI 00155671 and AF 00119705) are HEREBY SUSPENDED until Respondent pays $24,769.13 in full.

Rights of Parties

Each party adversely affected by this Proposed Decision and Order has the right to review it and file exceptions thereto within ten business days. If no exceptions are filed, this Proposed Decision and Order will become the final decision and order of the Commissioner. If exceptions are filed, they will be considered along with the pertinent portions of the exclusive record as may be designated by either party. Once considered, the Commissioner will issue his final decision and order.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of this Department at the City of Washington, D.C. this 24th day of August, 2000



Lawrence H. Mirel
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Proposed Decision and Order was sent to Respondent, via first-class mail, postage prepaid to Reginald Minus, 6230 3rd Street, NW, Suite #15, Washington, D.C. 20011, and hand-delivered to Petitioner's representative, Lilah Blackstone at 810 First Street, N.E., Washington, D.C. 20002.

Signature Date