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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ADMINISTRATIVE HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
HERBERT H. BAGLEY	:	Sections 611-A (4), (7), (17) and (20)
201 Canterbury Court	:	Act 147 of 2002 (40 P.S. §§ 310.11)
Blue Bell, PA 19422	:	
	:	Section 1615 of the Surplus Lines
	:	Act, Act of May 17, 1921, P.L. 682,
	:	<u>added by</u> the Act of December 18,
	:	1992, P.L. 1519 (40 P.S. § 991.1615)
	:	
	:	
Respondent.	:	Docket No. CO05-07-025

CONSENT ORDER

*AND NOW, this *23rd* day of *August*, 2005, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that he has received proper notice of his rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent specifically denies that he violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

4. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is Herbert H. Bagley, and maintains his address at 201 Canterbury Court, Blue Bell, Pennsylvania 19422.
- (b) On August 3, 1999, the Department granted written consent to Respondent to engage in the business of insurance pursuant to 18 U.S.C. § 1033(e)(2), such written consent explicitly indicating that it would be subject to review should Respondent be found to have violated any applicable insurance statutes and/or regulations.

- (c) At all subsequent times hereto, Respondent has been a licensed insurance producer.
- (d) Between August, 2000 and October, 2004, Respondent placed six surplus lines insurance policies for the Borough of Norristown, Pennsylvania, without possessing a surplus lines license.
- (e) Respondent, in 2003 and 2004, while placing four of the surplus lines policies referenced above, utilized an unlicensed broker to aide in the procurement of the policies.
- (f) Respondent, during 2002 and 2003, improperly charged the Borough of Norristown for taxes on three surplus lines insurance policies, which were tax exempt.
- (g) Respondent, during 2002 and 2003, failed to forward the taxes received from the Borough of Norristown to the Pennsylvania Department of Revenue.
- (h) Respondent made restitution in the amount of \$14,076.63 to the Borough of Norristown in May, 2005.

- (i) Respondent has cooperated with the Department throughout this investigation and has agreed to the revocation of his insurance licenses.

CONCLUSIONS OF LAW

5. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Section 611-A(4) of Act 147 of 2002 prohibits a licensee from improperly withholding, misappropriating or converting money or property received in the course of doing business (40 P.S. § 310.11).
- (c) Respondent's activities described above in paragraphs 3(b) through 3(i) violates Section 611-A(4) of Act 147 of 2002.
- (d) Section 611-A(7) of Act 147 of 2002 prohibits a licensee from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business (40 P.S. § 310.11).

- (e) Respondent's activities described above in paragraphs 3(b) through 3(i) violates Section 611-A(7) of Act 147 of 2002.

- (f) Section 611-A(17) of Act 147 of 2002 prohibits a licensee from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty (40 P.S. § 310.11).

- (g) Respondent's activities described above in paragraphs 3(b) through 3(i) violates Section 611-A(17) of Act 147 of 2002.

- (h) Section 611-A(20) of Act 147 of 2002 prohibits a licensee from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure (40 P.S. § 310.11).

- (i) Respondent's activities described above in paragraphs 3(b) through 3(i) violates Section 611-A(20) of Act 147 of 2002.

- (j) Respondent's violations of Sections 611-A(4), (7), (17) and (20) of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):

- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Act;
 - (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.
- (k) Section 1615 of the Surplus Lines Act prohibits any producer licensed by the Department to transact surplus lines insurance unless such agent or broker is licensed as a surplus lines agent (40 P.S. § 991.1615).
- (l) Respondent's activities described above in paragraphs 3(b) through 3(i) constitute transacting surplus lines insurance without being properly licensed.
- (m) Respondent's violations of Section 1615 of the Surplus Lines Act are punishable by the following, under Section 1625(b) of the Insurance Company Law:
- (i) imposition of a penalty not exceeding \$1,000 for the first offense and \$2,000 for each succeeding offense.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) All licenses and certificates of Respondent are hereby revoked, and consent to engage in the business of insurance pursuant to 18 U.S.C. § 1033 is hereby withdrawn.

7. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

8. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

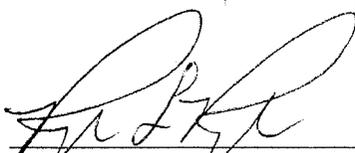
11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

12. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent

Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY:


HERBERT H. BAGLEY, Respondent


RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania