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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE
BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
TIMOTHY BARANIK : 40 P.S. §§ 310.11(4), (5), (7)
76 Logan Blvd., 2nd floor : (17), (20) and 310.42
Altoona, PA 16602 :
: :
Respondent. : Docket No. CO14-03-006

CONSENT ORDER

AND NOW, this 28th day of April, 2014, this Order is hereby issued by the Insurance Department 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.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following

Findings of Fact:

- a. Respondent is Timothy M. Baranik and maintains his address at 76 Logan Blvd., 2nd Floor, Altoona, PA 16602.
- b. Respondent is, and at all times relevant hereto has been, a licensed resident insurance producer.
- c. From approximately 2011 through 2012, Respondent collected insurance premiums totaling \$6,987 from at least six Harleysville Insurance Company policyholders and failed to remit the premium to Harleysville Insurance Company in a timely manner.
- d. Respondent established installment payment plans in at least sixteen instances for the aforementioned Harleysville Insurance Company policyholders subsequent to collecting the full amount of the annual premium.
- e. Respondent established the installment payment plans for the aforementioned Harleysville Insurance Company policyholders without their knowledge or consent.
- f. Respondent failed to remit the installment premiums in a timely manner in accordance with the installment payment plans he established without the policyholders' knowledge or consent.

- g. Respondent's failure to remit premium payments to Harleysville Insurance Company in a timely manner in accordance with the installment payment plans he established without the policyholder's knowledge or consent resulted in late notices, non-pay cancellation notices, and reinstatement notices being issued to policyholders.
- h. According to Harleysville Insurance Company, one policyholder received twenty seven notices pertaining to late payments over this two year period, 2011 through 2012.
- i. Harleysville Insurance Company provided a spreadsheet identifying the dates and amounts of premium payments made by four policyholders to Respondent and dates and amounts of payments Respondent made payments to Harleysville Insurance Company.
- j. Payment information for two additional policyholders who paid their annual premiums in full to Respondent and for whom Respondent made partial premium payments to Harleysville Insurance Company was obtained and added to the spread sheet provided by Harleysville Insurance Company.
- k. Respondent made at least eleven false statements, which are evidenced in audio recordings of telephone calls placed by Respondent to Harleysville Insurance Company, regarding the dates and amounts of premium payments Respondent received from policyholders and the type of installment plan they desired.
- l. False statements made to Harleysville Insurance Company by Respondent regarding the aforementioned premium payments and installment plans resulted in Harleysville Insurance Company waiving late fees.

- m. Respondent placed holds on the accounts of the aforementioned policyholders to avoid the issuance of late notices, non-pay cancellation notices, and reinstatement notices.
- n. Respondent, on at least nine occasions, contacted Harleysville Insurance Company by telephone and asked Harleysville Insurance Company staff to pull and destroy invoices, late notices, non-pay cancellation notices, and reinstatement notices for the aforementioned policyholders.
- o. Respondent told Harleysville Insurance Company staff that a policyholder would have been confused and it would make a bad situation if reinstatement notices went out to the policyholder who had paid his annual insurance premiums in full to the respondent.
- p. On or about April 27, 2012, Respondent asked a policyholder to void a check in the amount of \$1490 made payable to Harleysville Insurance Company which represented the full amount of their annual premium for both their auto and homeowners insurance policies.
- q. Respondent asked the aforementioned policyholder to issue a check payable to "Baranik Insurance Agency" in the amount of the annual homeowner's insurance policy premium and a check payable to Harleysville Insurance Company in the amount of the annual auto insurance premium.
- r. Pursuant to the above, Respondent remitted partial premium payments to Harleysville Insurance Company for the policyholder's homeowner's insurance, resulting in the issuance of a cancellation notice being issued to the policyholder.

- s. Respondent accessed a company database and reduced uninsured and underinsured motorist (UM/UIM) coverage limits without having the appropriate forms required by statute in approximately ten instances in 2011 through 2012.
- t. As a result of Respondent's actions, Harleysville provided UM/UIM coverage at the bodily injury liability limit as required by statute, resulting in a loss of premium to Harleysville in the amount of \$1,535.
- u. On January 9, 2014, Respondent was interviewed and stated he had obtained the appropriate forms in all instances in which he accessed a company database and reduced UM/UIM motorist coverage limits.
- v. Pursuant to the aforementioned, Respondent provided the UM/UIM coverage selection/rejection forms for only two instances in which he accessed a company database and reduced uninsured and underinsured motorist (UM/UIM) coverage limits.
- w. Respondent failed to provide Harleysville Insurance Company with the aforementioned two UM/UIM coverage selection/rejection forms.
- x. Respondent admitted to amending the UM/UIM coverage with an endorsement without having obtained the proper forms in one instance.
- y. On January 9, 2014, Respondent was interviewed and admitted that in approximately 2011 through 2012, he converted policyholders' premium payments for his personal use to include paying his mortgage.

CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) 40 P.S. § 310.11(4) prohibits producers from improperly withholding, misappropriating, or converting money or property received in the course of doing business.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(y) constitute improperly withholding, misappropriating, or converting money or property received in the course of doing business, in violation of 40 P.S. § 310.11(4).
- (d) 40 P.S. § 310.11(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (e) Respondent's activities described above in paragraphs 3(d) through 3(x) violate 40 P.S. § 310.11(5).

- (f) 40 P.S. § 310.11(7) prohibits a licensee or an applicant from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.
- (g) Respondent's activities described above in paragraphs 3(c) through 3(y) violate 40 P.S. § 310.11(7).
- (h) 40 P.S. § 310.11(17) prohibits a licensee or an applicant from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (i) Respondent's activities described above in paragraphs 3(c) through 3(y) violate 40 P.S. § 310.11(17).
- (j) 40 P.S. § 310.11(20) prohibits a licensee or an applicant from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.
- (k) Respondent's activities described above in paragraphs 3(c) and 3(y) violate 40 P.S. § 310.11(20).

- (l) 40 P.S. § 310.42 prohibits any producer from fraudulently appropriating, taking, disposing of, withholding, lending, investing or otherwise using any money received in the capacity of an insurance producer without the consent of the insurer.

- (m) Respondent's activities described above in paragraph 3(y) constitute theft, in violation of 40 P.S. § 310.42.

- (n) Respondent's violations of Sections 310.11(4), (5), (7), (17), (20) and 310.42 are punishable by the following, under 40 P.S. § 310.91:
 - (i) suspension, revocation or refusal to issue the license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
 - (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department 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 of Respondent to do the business of insurance are hereby revoked.
- (c) Respondent shall make restitution to all persons listed in the above Findings of Fact. Proof of restitution payment shall be provided to the Insurance Department by Respondent. Future license applications will not be considered until restitution has been made.
- (d) If Respondent should ever become licensed in the future, his licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under this section is limited to a period of five (5) years from the date of issuance of such licenses.

(e) Respondent specifically waives his right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.

(f) At the hearing referred to in paragraph 5(d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.

(g) In the event Respondent's licenses are suspended pursuant to paragraph 5(c) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that he is worthy of a license, Respondent's suspended licenses shall be revoked.

6. In the event the Insurance Department 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.

7. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department 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.

8. 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.

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

10. 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.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law

contained herein, and this Consent Order is not effective until executed by the
Insurance Commissioner or a duly authorized delegee.

BY: Timothy M. Baranik
TIMOTHY BARANIK, Respondent

Arthur F. McNulty
COMMONWEALTH OF PENNSYLVANIA
By: ARTHUR F. MCNULTY
Deputy Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The
Administrative Code of 1929

AND NOW, this 10 day of March, 2014, Arthur F. McNulty,
Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly
authorized representative for purposes of entering in and executing Consent Orders. This
delegation of authority shall continue in effect until otherwise terminated by a later Order
of the Insurance Commissioner.


Michael F. Consedine
Insurance Commissioner

