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INSURANCE DEPARTMENT

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

IN RE:

Application of Kirk. L. Barbera  
Requesting Written Consent to Engage in the  
Business of Insurance

:  
:  
: Pursuant to the Violent Crime Control and  
: Law Enforcement Act of 1994, 18 U.S.C.  
: §1033  
:  
: Docket No. CW14-03-011

CONSENT ORDER

AND NOW, this 8<sup>th</sup> 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. To the extent applicable, Applicant 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

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

Findings of Fact:

- (a) Applicant is Kirk L. Barbera, and maintains his address at P.O. Box 671, Smithton, PA 15479.
- (b) Applicant does not possess a license to transact insurance as a motor vehicle physical damage appraiser in this Commonwealth.
- (c) On August 12, 2003 in the Westmoreland County Court of Common Pleas, Applicant was convicted of one (1) count of Theft of Leased Property, a felony and was sentenced to one (1) year probation and assessed \$1,544.33 restitution.
- (d) On August 2, 2002 in the Westmoreland County Court of Common Pleas, Applicant was convicted of one (1) count each of Theft By Deception – False Impression, Theft By Unlawful Taking-Movable Property and Receiving Stolen Property, all felonies and sentenced to two (2) years probation and assessed \$4,913.13 restitution and \$141.50 costs/fees.

- (e) On or about December 30, 2013, Applicant submitted an application to the Pennsylvania Insurance Department for written consent to engage in the business of insurance pursuant to 18 U.S.C. §1033(e)(2).
- (f) The activities in which Applicant desires to engage constitute the business of insurance within the meaning of 18 U.S.C. § 1033(e)(1)(A) and (f).

### CONCLUSIONS OF LAW

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

- (a) 18 U.S.C. §1033(e)(2) provides that persons convicted of felonies involving dishonesty or a breach of trust may not engage in the business of insurance or participate in such business unless such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to 18 U.S.C. §1033(e)(2).
- (b) Applicant's convictions of Theft of Leased Property, Theft By Deception – False Impression, Theft By Unlawful Taking-Movable Property and Receiving Stolen Property are criminal felonies involving dishonesty or a breach of trust within the meaning of 18 U.S.C. §1033(e)(1)(A).

- (c) Accordingly, Applicant may not engage in the business of insurance without a written consent issued by the Insurance Department pursuant to 18 U.S.C. § 1033(e)(2).

**ORDER**

4. Accordingly, the Deputy Insurance Commissioner orders and Applicant consents to the following:

- (a) Applicant shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law. Applicant shall further comply with Pennsylvania insurance laws and regulations.
- (b) As a condition to licensure, Applicant shall remain fully and timely compliant with all conditions of his probation and restitution obligations with regard to his 2002 misdemeanor convictions and notify the Insurance Department upon completion.
- (c) Pursuant to 18 U.S.C. § 1033(e)(2), Applicant may engage in the business of insurance as an insurance producer, and only in such capacity, subject to the terms and conditions of this Order, which terms and conditions contained herein are necessary and sufficient to ensure that Applicant may engage in the business

of insurance in a manner that is not reasonably likely to cause harm to the public, policyholders or the industry.

5. The term of this Order shall remain in place for a period of five years and, thereafter, unless and until the Department or the Commissioner terminates the Order. Nothing in this Order shall preclude the Department, the Deputy Commissioner or the Commissioner, in their sole discretion, from decreasing or lessening the restrictions contained in this Order in whole or in part while it is in effect. Any such lessening of the restrictions contained in this Order shall be made in writing by the Department, the Deputy Commissioner or the Commissioner in accordance with the procedures set forth in paragraph 14 of this Order. Further, Applicant shall not apply nor otherwise seek to reduce or remove the restrictions contained in this Order for a period of at least five years.

6. Following the five-year period referenced in paragraph 5, above, this Order shall continue unless and until the Department affirmatively terminates it. Nothing in this Order shall be construed as conferring upon Applicant any property right or interest as a result of receiving this conditional consent to engage in the business of insurance in accordance with the terms of this Order. Applicant expressly waives any right to assert that he is entitled to a hearing on the termination of this Order following the expiration of the five-year period referenced in paragraph 5. Should the Insurance Department or the Commissioner, terminate this Order after the five year period referenced in paragraph 5, above, Applicant may file a new application for a written consent as set forth in

paragraph 4(b), above, to engage in the business of insurance under 18 U.S.C. §1033(e)(2).

7. The Department's conditional consent permitting Applicant to engage in the business of insurance, and Applicant's existing licenses, may be immediately suspended upon notice by the Department following its investigation and determination that Applicant has failed to adhere to any condition set forth in this Order or has violated an insurance statute or regulation.

8. Applicant shall have no right to prior notice of such a suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days from the date the Department mailed to Applicant by certified mail, return receipt requested, notification of such suspension, which hearing shall be held within sixty (60) days of the Department's receipt of Applicant's written request for a hearing.

9. At the hearing referred to in paragraph 8 above, Applicant shall have the burden of demonstrating that he is worthy of an insurance license and a conditional consent to engage in the business of insurance. In the event Applicant's conditional consent, and licenses are suspended pursuant to paragraph 8 above, and Applicant either fails to request a hearing within 30 days or at the hearing fails to demonstrate that he is worthy of a license, Applicant's suspended conditional consent, and licenses shall be revoked.

10. 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.

11. Alternatively, in the event the Insurance Department finds that there has been a breach of any 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.

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

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

14. 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.

15. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or the duly authorized delegee is authorized to bind the Insurance Department with respect to the matters addressed herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY:   
Kirk. L. Barbera, Applicant

  
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. Considine  
Insurance Commissioner

