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INSURANCE DEPARTMENT
2009 MAY 12 AM 11:37
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

DIANE BATT
1642 Clifford Drive
Erie, Pennsylvania 16505

: VIOLATIONS:
:
: 40 Purdon's Statutes, Sections
: 310.11(4), 310.11(7),
: 310.11(20), 310.78(b)
: and 310.96
:
Respondent. : Docket No. CO09-03-005

CONSENT ORDER

AND NOW, this *12th* day of *May*, 2009, 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 she has received proper
notice of her 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 she violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

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

- (a) Respondent is Diane Batt, and maintains her address at 1642 Clifford Drive, Erie, Pennsylvania 16505.
- (b) Respondent is a Resident Insurance Producer, with the Commonwealth of Pennsylvania. Her license #315199 became effective January 12, 1995 and expires on January 12, 2010.
- (c) Respondent, on or about June 23, 2008 as an employee of Bayline Insurance Agency, collected a \$688.00 cash premium payment for the insured, Douglas Goodrich, that was to pay his annual automobile insurance coverage.

- (d) Respondent, on or about June 23, 2008, failed to remit the \$688.00 cash premium payment to her employer, Bayline Insurance Agency, or to the insurer, Erie Insurance in a timely manner.
- (e) Respondent, on or about July 31, 2008, sent a postal money order in the amount of \$350.00 to Erie Insurance to make a partial payment of the premium that was owed by the insured, Douglas Goodrich, on his automobile insurance policy. Respondent also sent a personal check in the amount of \$398.00 on or about August 22, 2008 to Erie Insurance for premium payment for the insured, Douglas Goodrich, on his automobile insurance policy.
- (f) Respondent, on or about August 29, 2008, during an investigation by the Port Alleghany Police Department, was charged with Theft by Unlawful Taking and Theft by Failure to Make Required Disposition of Funds. These charges were filed by the McKean County District Attorney's Office under OTN:K749673-1.
- (g) Respondent failed to report these criminal charges to the Pennsylvania Insurance Department within 30 days as required by law.
- (h) Respondent, on or about February 13, 2009 acknowledged to the Insurance Department that after collecting the \$688.00 cash payment from the insured,

Douglas Goodrich, she failed to remit the payment to the Bayline Insurance Agency, or to the insurer, Erie Insurance, but instead placed the cash in Mr. Goodrich's file. Respondent also acknowledged that at a later date, she took the cash from Mr. Goodrich's file and deposited it into her own personal account, which she knew to be improper.

- (i) Respondent, on or about February 13, 2009, indicated to the Insurance Department that she is not active in the insurance business, and that she is willing to sign a consent order revoking her insurance license.

CONCLUSIONS OF LAW

5. 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 Purdon's Statutes, Section 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 4(d) through 4(h) constitute improperly withholding, misappropriating, or converting money or property received in the course of doing business, in violation of 40 Purdons Statutes, Section 310.11(4).
- (d) 40 Purdons Statutes, Section 310.11(7) prohibits a licensee from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.
- (e) Respondent's activities described above in paragraphs 4(c) through 4(h) violate 40 Purdons Statutes, Section 310.11(7).
- (f) 40 Purdons Statutes, Section 310.11(20) 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.
- (g) Respondent's activities described above in paragraphs 4(c) through 4(h) violate 40 Purdons Statutes, Section 310.11(20) .
- (h) 40 Purdons Statutes, Section 310.78(b) requires that, within 30 days of being charged with criminal conduct, a licensee shall report the charges to the Department. The licensee shall provide the Department with a copy of the

criminal complaint, information or indictment, a copy of the order resulting from any pretrial hearing, and a report of the final disposition of the charges.

- (i) Respondent's activities described above in paragraph 4(g) violate 40 Purdons Statutes, Section 310.78(b).
- (j) 40 Purdons Statutes, Section 310.96 and Title 31, Pa. Code, Section 37.81, the Regulations of the Insurance Department prohibit producers from, without the express consent of the insurance entity on whose behalf the funds were received, mingle the funds with the producer's own funds or with funds held by the producer in any other capacity. The funds of each insurance entity must be reasonably ascertainable from the books of accounts and records of the insurance producer.
- (k) Respondent's activities described above in paragraphs 4(e) through 4(h) constitute a violation of 40 Purdons Statutes, Section 310.96, and Title 31, Pa. Code, Section 37.81.
- (l) Respondent's violations of Sections 310.11(4), (7), (20), 310.78(b) and 310.96 are punishable by the following, under 40 Purdons Statutes, Section 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 every violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

ORDER

6. 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/certificates of Respondent to do insurance business are hereby revoked.
- (c) If Respondent should ever become licensed in the future, her certificates and 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 (ii) above is limited to a period of five (5) years from the date of issuance of such certificates and licenses.

- (d) Respondent specifically waives her 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.
- (e) At the hearing referred to in paragraph 6(d) of this Order, Respondent shall have the burden of demonstrating that she is worthy of an insurance certificate and license.
- (f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 6(c) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that she is worthy of a certificate and license, Respondent's suspended certificates and licenses shall be revoked.

7. 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.

8. 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.

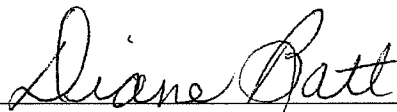
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

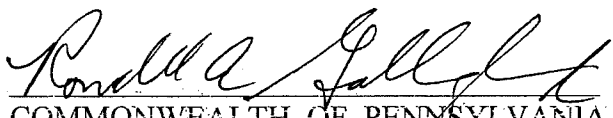
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 Insurance Department. Only the Insurance Commissioner or a duly authorized delegate 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: 
DIANE BATT, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner