

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
NEIL D. CHONOFSKY : Section 611-A(20) of Act 147 of :
30 Callison Lane : 2002 (40 P.S. § 310.11)
Voorhees, NJ 08043 : :
: Section 5(a)(2) of the Unfair
: Insurance Practices Act, Act of
: July 22, 1974, P.L. 589, No. 205
: (40 P.S. § 1171.5)
: :
: Title 31, Pennsylvania Code,
: Sections 51.21(a), (b) and 51.35(a)
: :
Respondent. : Docket No. CO07-05-020

CONSENT ORDER

AND NOW, this 28th day of September, 2007, 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 Neil D. Chonofsky, and maintains his address at 30 Callison Lane, Voorhees, New Jersey 08043.
- (b) At all relevant times herein, Respondent has been a licensed insurance producer in Pennsylvania.
- (c) During 2005 and 2006, Respondent, a producer for Mutual of Omaha, mailed solicitations to approximately 50,000 Pennsylvania mortgagors that did not comply with the Pennsylvania insurance laws and regulations due to the solicitations being deceptive and misleading.
- (d) The solicitation misled and deceived mortgagors into believing that the source of the solicitations were the lending institutions, as opposed to Respondent,

based upon the prominent placement of the lending institutions' names, and the failure of Respondent to identify himself or any insurers.

- (e) The solicitation misled and deceived mortgagors by using the phrase "Attention: Important Final Notice" at the top of the solicitation, thereby falsely implying to mortgagors that a course of action was necessary, the failure of which to do so would otherwise result in an adverse consequence.
- (f) The solicitation included discreet language at the bottom of the form that noted there was no affiliation with a lending institution, but was vague and made no specific reference to Respondent, the insurer or a lending institution.
- (g) Insurers associated with the solicitation, including Mutual of Omaha, had not approved the solicitation.
- (h) On December 4, 2006, Respondent confirmed that the solicitations were mailed to Pennsylvania mortgagors.
- (i) On December 29, 2006, Mutual of Omaha advised that Respondent had sent several thousand mail solicitations to Pennsylvania mortgagors.

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) 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).

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

- (d) Respondent's violations of Section 611-A(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.
- (e) Section 5(a)(2) of the Unfair Insurance Practices Act (40 P.S. § 1171.5) prohibits persons from making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading.
- (f) Respondent's activities described above in paragraphs 3(c) through 3(i) constitute circulating a misleading and deceptive advertisement, and violate Section 5(a)(2) of the Unfair Insurance Practices Act (40 P.S. § 1171.5).
- (g) Respondent's violations of Section 5(a)(2) of the Unfair Insurance Practices Act are punishable by the following, under Sections 8, 9, and 11 of the Act (40 P.S. §§ 1171.8, 1171.9, and 1171.11):
- (i) order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);

(ii) commencement of an action against Respondent for the following civil penalties:

(1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;

(2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;

(3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

- (h) Title 31, Pennsylvania Code, Section 51.21(a) requires the format and content of an advertisement of an insurance contract shall be sufficiently complete and clear to avoid deception, or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
- (i) Title 31, Pennsylvania Code, Section 51.21(b) requires advertisements to be truthful and not misleading in fact or in implication.
- (j) Title 31, Pennsylvania Code, Section 51.35 requires the name of the actual insuring company to be clearly identified in all of its advertisements. The contracts advertised shall be identified by form number or other appropriate identification, so as to clearly identify the contract or contracts advertised.
- (k) Respondent's activities described above in paragraphs 3(c) through 3(i) violate Title 31, Pennsylvania Code, Sections 51.21(a), (b) and 51.35.

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) Respondent shall pay a civil penalty of Seven Thousand, Five Hundred Dollars (\$7,500.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Office Manager, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

- (c) Respondent's certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) penalty payment has not been made, or (ii) any other terms of this Order have not been complied with, or (iii) 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 one (1) year from the date of this Order.

(d) 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.

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

(f) In the event Respondent's certificates and 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 certificates and 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