

RECEIVED
PA INSURANCE DEPARTMENT

04 AUG 27 AM 10:43

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

IN RE:	:	VIOLATIONS:
	:	
DWAYNE E. POPE and	:	Sections 611-A(4), (7), (17),
ADVANCE SETTLEMENT AGENCY,	:	642-A and 678A(b) of Act 147
INC.	:	of 2002 (40 P.S. §§ 310.11(4),
32 Longstreet Drive	:	(7), (17), 310.42 and 310.78)
East Berlin, PA 17316	:	
	:	
Respondents.	:	Docket No. CO04-07-011

CONSENT ORDER

AND NOW, this 27th day of August, 2004, 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. Respondents hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree 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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondents are Dwayne E. Pope and Advance Settlement Agency, Incorporated, and maintain an address at 32 Longstreet Drive, East Berlin, Pennsylvania 17316.
- (b) Respondents are, and at all times relevant herein have been, licensed insurance producers.
- (c) Respondents failed to notify the Department of an action taken against them by the Maryland Department of Insurance, on or about March 18, 2004.

- (d) The Security Title Guarantee Corporation of Baltimore performed an agency review at Respondent's office on or about August 12, 2003.
- (e) As a result of the agency review, it was discovered that there were unsubstantiated withdrawals from a settlement account totaling \$135,862.42.
- (f) As a result of the agency review, The Security Title Guarantee Corporation of Baltimore terminated Respondent's appointments.
- (g) As of May 12, 2004, Security Title Guaranty Corporation estimated there are unaccounted title insurance and escrow funds totaling \$1,600,000.00.

CONCLUSIONS OF LAW

4. 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) Respondents are 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) Activities described above in paragraphs 3(c) through 3(g) 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 in this Commonwealth or elsewhere (40 P.S. § 310.11).
- (e) Activities described above in paragraphs 3(c) through 3(g) 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) Activities described above in paragraphs 3(c) through 3(g) violates Section 611-A(17) of Act 147 of 2002.

- (h) Section 642-A of Act 147 of 2002 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 (40 P.S. § 310.42).
- (i) Activities described above in paragraphs 3(c) through 3(g) constitutes theft, in violation of Section 642-A of Act 147 of 2002 (40 P.S. § 310.42).
- (j) Section 696-A of Act 147 of 2002 requires every insurance producer to be responsible in a fiduciary capacity for all funds received or collected as an insurance agent or broker (40 P.S. § 310.96).
- (k) Activities described above in paragraphs 3(c) through 3(g) constitute a violation of acting in a responsible fiduciary capacity when handling funds received or collected as a producer and violates Section 696-A of Act 147 of 2002.
- (l) Violations of Sections 611-A(4), (7), (17), 642-A and 696-A 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.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondents consent to the following:

- (a) Respondents 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 Respondents to do insurance business are hereby revoked.
- (c) If Respondents should ever become licensed in the future, their 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 Respondents are 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) Respondents specifically waives their rights 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 Respondents 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 Respondents' written request.

(e) At the hearing referred to in paragraph (d) of this Order, Respondents shall have the burden of demonstrating that they are worthy of an insurance certificate and license.

(f) In the event Respondents' certificates and licenses are suspended pursuant to paragraph 5(c) above, and Respondents either fail to request a hearing within thirty (30) days or at the hearing fail to demonstrate that they are worthy of a certificate and license, Respondents' suspended certificates and licenses shall be revoked.

6. 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.

7. 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.

8. In any such enforcement proceeding, Respondents 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.

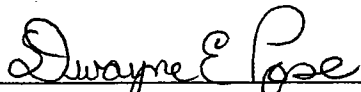
9. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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.

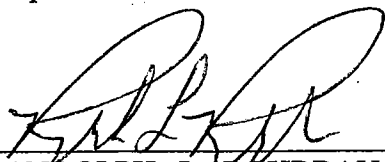
11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy

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:



DWAYNE E. POPE for ADVANCE
SETTLEMENT AGENCY, INC.,
Respondents



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania