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INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

2007 JUL 30 AM 10:41  
ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:  
: :  
THOMAS S. DAVIES : Sections 611-A(20) and 678-A(a)  
6552 Bunting Road : of Act 147 of 2002 (40 P.S.)  
Orchard Park, NY 14127 : §§ 310.11 and 310.78  
: :  
Respondent. : Docket No. CO07-06-028

CONSENT ORDER

AND NOW, this 30<sup>th</sup> day of July, 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 Thomas S. Davies, and maintains his address at 6552 Bunting Road, Orchard Park, New York 14127.
- (b) At all relevant times herein, Respondent has been a licensed non-resident insurance producer in Pennsylvania.
- (c) Respondent failed to notify the Department that he had a New Jersey Department of Banking and Insurance Consent Order, issued in July, 2004.
- (d) Respondent failed to notify the Department of four additional state insurance department actions, which arose from the New Jersey Consent Order and his failure to notify each state in which he had an insurance producer license with.

### 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) and 3(d) violates Section 611-A(20) of Act 147 of 2002.
- (d) Section 678-A(a) of Act 147 of 2002 (40 P.S. § 310.11) requires a licensee to report to the Department any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this Commonwealth within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.
- (e) Respondent's activities described above in paragraphs 3(c) and 3(d) violates Section 678-A(a) of Act 147 of 2002.

(f) Respondent's violations of Sections 611-A(20) and 678-A(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 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's 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 this section is limited to a period of five (5) years from the date of this Order.

- (c) 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.
- (d) At the hearing referred to in paragraph 5(c) of this Order, Respondent shall have the burden of demonstrating that he is worthy of a license.
- (e) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(b) 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

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:



THOMAS S. DAVIES, Respondent



COMMONWEALTH OF PENNSYLVANIA

Randolph L. Rohrbaugh

Deputy Insurance Commissioner