

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

RECEIVED  
INSURANCE DEPARTMENT  
2008 SEP 26 AM 10:43  
ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:  
: :  
MICHAEL N. GIFFIN : Sections 611-A(20) of Act 147 of  
1025 Buck Run Road : 2002 (40 P.S. §§ 310.11)  
Canonsburg, Pennsylvania 15317 :  
Respondent. : Docket No. C008-07-021  
:

CONSENT ORDER

AND NOW, this *18TH* day of *SEPTEMBER*, 2008, 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.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent specifically denies that he 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 Michael N. Giffin, and maintains his address at 1025 Buck Run Road, Canonsburg, Pennsylvania 15317.
- (b) Respondent is, and during all times relevant herein, was a licensed insurance producer with a Certificate Of Qualification #314904 that expires on January 10, 2010.
- (c) Respondent is the Designated Licensee - Producer of Giffin Planning Services, Limited Liability Corporation, effective January 10, 2004.
- (d) Respondent is the Designated Licensee - Producer of Ensphere Marketing Group, Limited Liability Corporation effective, March 23, 2004.

- (e) Ensphere holds a valid Resident Producer Agency License #57682, that expires on March 23, 2010.
- (f) On March 3, 2006, Respondent and/or his office, submitted an ING Agent Change of Record form which contained a non-genuine signature of insured Edna Enelow.
- (g) Thereafter, Enelow rescinded the March 3, 2006 change in service agent and she was not harmed as a result of the non-genuine signature referenced in paragraph 4(f) above.

#### 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) 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) The activities described above in paragraph 4(f) violate Section 611-A(20) of Act 147 of 2002.
  
- (d) 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.) Denial, suspension, refusal to renew or revocation of the 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

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 paragraph 4(f) of the Conclusions of Law.
  
- (b) Respondent shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) 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 Ginny Baker, Administrative Assistant, 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 five years from the date of this Order.

- (d) Respondent specifically waives his right to prior notice of said suspension as provided in paragraph 6(c) above, 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 mails 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 he is worthy of a 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 he is worthy of a 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 brought pursuant to paragraph 7 above, 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 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:   
MICHAEL N. GIFFIN  
Respondent

BY:   
COMMONWEALTH OF  
PENNSYLVANIA Ronald A. Gallagher  
Deputy Insurance Commissioner