

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT
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ADMIN HEARINGS OFFICE

IN RE:

HERITAGE AGENCY
100 Purity Road
Pittsburgh, PA 15235-4441

:
:
: Section 1621 of the Surplus Lines
: Act, Act of May 17, 1921, P.L. 682,
: added by the Act of December 18,
: 1992, P.L. 1519 (40 P.S. § 991.1621)

:
:
: Docket No. CO-03-08-060

Respondent. :

CONSENT ORDER

AND NOW, this 9TH day of February 2006, this Agreement is entered into between the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania and Heritage Agency in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S.A. §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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent maintains its address at 100 Purity Road, Pittsburgh, Pennsylvania 15235-4441.
- (b) Respondent, at all relevant times herein, has been a licensed insurance agency.
- (c) Respondent, in response to a letter dated April 15, 2003, from the Pennsylvania Insurance Department (“Department”), conducted a self-audit of the surplus lines procurements made between January, 2000 and December, 2002, in accordance with guidelines established by the Department, to determine if surplus lines premium taxes were collected and appropriately remitted, to the Pennsylvania Department of Revenue.
- (d) Respondent’s self-audit determined that \$1,551.27 in surplus lines taxes, representing 3% of the total premium for nine policies, was not remitted to the Pennsylvania Department of Revenue in accordance with the requirements of the Pennsylvania surplus lines laws and regulations.
- (e) Respondent, upon finding that surplus lines premium tax was not remitted, collected taxes and reported the unpaid premium tax to the Department.

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) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Section 1621 of the Surplus Lines Act requires a tax of three percent to be levied against insureds on all premiums charged, and for that tax to be collected by the surplus lines licensee and remitted to the Pennsylvania Department of Revenue (40 P.S. §991.1621).
- (c) The activities described in paragraph 3(d) constitute a failure to collect and remit the required three percent (3%) surplus lines premium tax in violation of Section 1621 of the Surplus Lines Act (40 P.S. §991.1621).
- (d) Respondent's violations of Section 1621 of the Surplus Lines Act are punishable by the imposition of a civil penalty not exceeding \$1,000 for the first offense and \$2,000 for each succeeding offense following, under Section 1625(b), in addition to other applicable penalties (40 P.S. §991.1625).
- (e) Section 611-A of Act 147 of 2002 prohibits insurance producer licensees from, *inter alia*, violating the insurance laws or regulations of the Commonwealth of Pennsylvania (40 P.S. §310.11(2)).

- (f) Respondent's activities described in paragraph 3(d) violate Section 611-A of Act 147 of 2002 (40 P.S. §310.11(2)).
- (g) Respondent's violations of Section 611-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 a 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 and Respondent agree as follows:

- (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 One Thousand Dollars (\$1,000.00) to the Commonwealth of Pennsylvania, directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1311 Strawberry Square, Harrisburg, Pennsylvania 17120.
Payment is enclosed with the Settlement Agreement. 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 shall make restitution of unremitted surplus lines taxes, penalties and interest, to the Pennsylvania Department of Revenue. The Department hereby acknowledges receipt of proof that such payment has been made.
- (d) Respondent's producer licenses may be immediately suspended by the Department following its investigation and determination that (i) penalty payment has not been made, or (ii) any 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 two (2) years from the date of this Order.
- (e) Respondent specifically waives its 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.
- (f) At the hearing referred to in paragraph 5(d) of this Order, Respondent shall have the burden of demonstrating that it is worthy of a license.
- (g) In the event Respondent's 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 it is worthy of a license, Respondent's suspended 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 Agreement, the Deputy Commissioner may declare this Agreement 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.

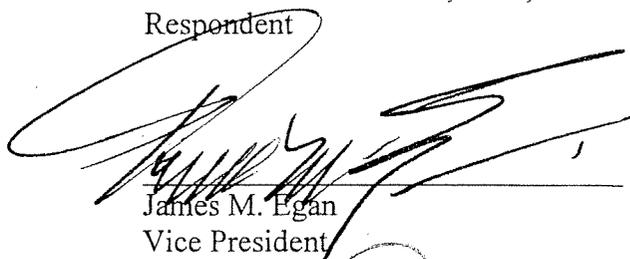
8. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Agreement.

9. This Agreement 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.

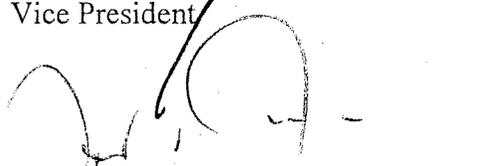
10. This Agreement shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy Insurance

Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Settlement Agreement is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

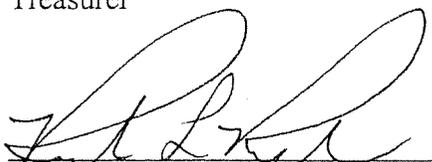
BY: HERITAGE AGENCY, INC.,
Respondent



James M. Egan
Vice President



Robert L. Cohn
Treasurer



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania