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INSURANCE DEPARTMENT

2013 NOV 21 PM 12: 27
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
BRETT R. HORAN	:	40 P.S. §§ 310.11(5), (6) and (7)
348 Central Drive	:	627-3(a)
Cranberry Township, Pa 16066	:	
	:	
Respondent.	:	Docket No. CO13-08-019

CONSENT ORDER

AND NOW, this *21ST* day of *NOVEMBER, 2013*, 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 it 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 Brett R. Horan and maintains his address at 348 Central Drive, Cranberry Township, PA 16066
- (b) Respondent was at all times relevant hereto has been, a licensed insurance producer.
- (c) Respondent misrepresented the terms and conditions of annuity contracts to a minimum of eight policyholders between August 2005 and August 2006 by implying the annuity products provided financial compensation to any person who desired to change from another insurance company who incurred a surrender fee or loss.
- (d) Respondent was responsible for having eight of his clients change their existing annuity policies, which he sold to them previously, to another

annuity policy with another insurance company he represented at the time with no benefit or gain for the clients in 2005 and 2006.

- (e) Respondent was responsible for the above noted eight policyholders to incur high surrender fees ranging from 13.5% to 28.5% for a total of \$23,331.
- (f) Respondent misrepresented the terms and conditions of an annuity contract to seven policyholders between February and September 2008 by implying the annuity products provided financial compensation to any person who desired to change from another insurance company who incurred a surrender fee or loss.
- (g) Respondent was responsible for having seven policyholders change their existing annuity policies, which he sold to them previously, to another annuity policy with another insurance company he represented at the time with no benefit or gain for the clients between February and September 2008.
- (h) Respondent was responsible for the above noted seven policyholders to incur high surrender fees ranging from 7% to 27.8% when the applications for the annuity indicated only 3% surrender fee, for six of those clients and 2% for one client, a total of \$30,044.

- (i) Respondent was responsible for four of the above noted seven policyholders to incur additional loss to the value of their previous annuity product as they suffered a Market Value Adjustment fee, for a total of \$1,690.35 when they changed annuity products.
- (j) Respondent misrepresented the terms and conditions of an annuity contract to seven clients between June and September 2011 by implying the annuity product provided financial compensation to any person who desired to change from another insurance company who incurred a surrender fee or loss.
- (k) Respondent was responsible for having seven of his clients change their existing annuity policies, which he sold to them previously, to another annuity policy with another insurance company he represented at the time with no benefit or gain for the clients between June and September 2011.
- (l) Respondent was responsible for the above noted seven policyholders to incur high surrender fees ranging from 7% to 17.5% when the applications for the annuity indicated "no" surrender fee, for a total of \$14,944.
- (m) Respondent was responsible for one of the above noted seven policyholders to incur additional loss to the value of their previous annuity

product as they suffered a Market Value Adjustment fee, for a total of \$407.70 when they changed annuity products.

- (n) Respondent was responsible for policyholder A incurring \$1,419.95 in surrender fees on June 16, 2003 when he convinced her to terminate three National Western annuities, established in June 2002 and worth \$42,931. The remaining \$41,527 was used to purchase a SunLife annuity in June 2003 from a company the respondent represented, which was detrimental to her financial condition.
- (o) Respondent was responsible for having policyholder A withdraw \$1,394 on July 28, 2003 from the cash value of her SunLife policy, which was used to pay a yearly insurance premium for an Assurity Life insurance policy that she had established with another producer in 2002.
- (p) Respondent was responsible for having policyholder A incur \$3,223 in surrender fees when he convinced her to terminate her SunLife policy in July 2004. The remaining funds, totaling \$37,230, was used to partially fund an Allianz Life Insurance Company annuity in July of 2004.
- (q) Respondent was responsible for having policyholder A terminate her Omega Credit Union bank account for a total of \$45,134 and having the funds used to partially fund the same Allianz annuity in July 2004.

- (r) Respondent was responsible for having policyholder A submit \$4,886 of her personal money to partially fund the same Allianz policy in July 2004, which total value was \$87,250.

- (s) Respondent was responsible for having policyholder A incur a total of \$2,789 in surrender fees when he had her take six withdrawals from the established 2004 Allianz policy from July 2006 to February 2013. Those six withdrawals were used to purchase additional insurance annuities from various companies that Respondent held an appointment with.

- (t) Respondent was responsible for using the first Allianz withdrawal on July 26, 2006 of \$4,362, via a Federal 1035 tax exchange, to fund the purchase of an American General annuity which was detrimental to her financial condition.

- (u) Respondent was responsible for using the second Allianz personal withdrawal on April 25, 2008 of \$6,330, to fund the purchase of another Allianz annuity, which was detrimental to her financial condition. The policyholder was instructed by the Respondent to request the funds as a personal withdrawal, as opposed to a Federal 1035 tax exchange, thus circumventing reportable surrender fees.

- (v) Respondent was responsible for using the third Allianz personal withdrawal on February 27, 2009 of \$6,801, to fund the purchase of another Assurity life insurance policy in March 2009, which was detrimental to her financial condition. Policyholder was instructed by the Respondent to request the funds as a personal withdrawal, as opposed to a Federal 1035 tax exchange, thus circumventing reportable surrender fees. The policy lapsed at the first year for non-payment of premium.
- (w) Respondent was responsible for using the fourth Allianz personal withdrawal on April 29, 2010 of \$4,300, to fund the purchase of a Columbia Life Insurance policy and Presidential Life insurance policy in June 2010, which was detrimental to her financial condition. Policyholder A was instructed by the Respondent to request the funds as a personal withdrawal, as opposed to a Federal 1035 tax exchange, thus circumventing reportable surrender fees. The two policies lapsed at the end of the first year for non-payment of premium.
- (x) Respondent was responsible for using the fifth Allianz personal withdrawal on July 16, 2011 of \$8,186, to fund the purchase of another Presidential Life Insurance policy in July 2011, which was detrimental to her financial condition. Policyholder A was instructed by the Respondent to request the funds as a personal withdrawal, as opposed to a Federal 1035 tax exchange.

thus circumventing reportable surrender fees. The policy lapsed at the first year for non-payment of premium.

- (y) Respondent was responsible for using the sixth Allianz personal withdrawal on February 12, 2013 of \$55,454 to fund the purchase of an EquiTrust Life Insurance Company annuity, which was detrimental to her financial condition. This withdraw depleted the policy value, thus terminating it.
- (z) Respondent convinced policyholder A to use \$2,909 her personal funds to purchase a 5 Star Life Insurance policy on July 23, 2012, which was detrimental to her financial condition. The policy lapsed on the first year anniversary date for failure to make premium payment.
- (aa) Respondent convinced policyholder A to use \$2,948 of her personal funds to purchase an Independent Order of Foresters life insurance policy on June 26, 2013, which was detrimental to her financial condition.
- (bb) Respondent acknowledged he improperly advised all the above noted policyholder's on the actual terms, conditions and potential financial loss they could incur when he convinced them to switch from an existing annuity to another annuity product and company he presently represented between 2005 and 2013.

- (cc) Respondent was responsible for forty 5 Star Life Insurance policies to be purchased by Pennsylvania citizens when he was not properly appointed with the company to sell their products in the Commonwealth.

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) 40 P.S. § 310.11(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(cc) violate 40 P.S. § 310.11(5).
- (d) 40 P.S. § 310.11(6) prohibits a licensee or an applicant from committing any unfair insurance practice or fraud.

- (e) Respondent's activities described above in paragraphs 3(c) through 3(cc) violate 40 P.S. § 310.11(6).

- (f) 40 P.S. § 310.11(7) prohibits a licensee or an applicant from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.

- (g) Respondent's activities described above in paragraphs 3(c) through 3(cc) violate 40 P.S. § 310.11(7).

- (h) Respondent's violations of Sections 310.11(5), (6) and (7) are punishable by the following, under 40 P.S. § 310.91:
 - (i) suspension, revocation or refusal to issue the license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
 - (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.

- (l) 40.P.S. § 627-3(a) states: In making a recommendation to a consumer for the purchase of an annuity or the exchange of an annuity that results in another

insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

- (m) Respondent's activities described above in paragraphs 3(j) through 3(m) violate 40 P.S. § 627-3(a).

- (n) Respondent's violations of 627-3(a) are punishable by the following under 40 P.S. §627-6(a): Upon a determination by hearing that this article has been violated, the commissioner may pursue one or more of the following courses of action:
 - (1) Issue an order requiring the person in violation to cease and desist from engaging the violation.
 - (2) Suspend or revoke or refuse to issue or renew the certificate or license of the person in violation.
 - (3) Impose a civil penalty of not more than \$5,000 for each violation
 - (4) Impose any other penalty or remedy deemed appropriate by the commissioner, including restitution.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following, under

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Future license applications will not be considered until restitution is made. Proof of restitution payment shall be provided to the Insurance Department by Respondent.
- (c) All licenses of Respondent to do the business of insurance are hereby revoked.
- (d) Future license applications will be further conditioned upon Respondent making restitution to any person the Deputy Commissioner identifies and demonstrates that restitution is owed to them by Respondent. Proof of restitution payment shall be provided to the Insurance Department by Respondent.
- (e) If Respondent should ever become licensed in the future, his 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 issuance of such licenses.

(f) 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.

(g) At the hearing referred to in paragraph 5(f) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.

(h) In the event Respondent's licenses are suspended pursuant to paragraph 5(e) 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 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.

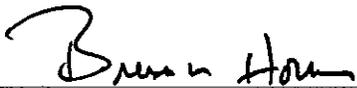
8. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

9. In any such enforcement proceeding, 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: 
BRETT R. HORAN, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The
Administrative Code of 1929

AND NOW, this 27th day of April, 2011, Ronald A.

Gallagher, Deputy Insurance Commissioner, is hereby designated as the Commissioner's
duly authorized representative for purposes of entering in and executing Consent Orders.

This delegation of authority shall continue in effect until otherwise terminated by a later
Order of the Insurance Commissioner.


Michael F. Considine
Insurance Commissioner

