

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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INSURANCE DEPARTMENT
2007 SEP 25 AM 10:52
ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
MARLIN S. GROSS : Sections 611-A(20) and 678-A(b)
1016 Northeast Columbus Drive : of Act 147 of 2002 (40 P.S.)
Lee's Summit, MO 64084 : §§ 310.11 and 310.78
: :
: :
Respondent. : Docket No. CO07-07-026

CONSENT ORDER

AND NOW, this *25th* day of *September*, 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 Marlin S. Gross, and maintains his address at 1016 Northeast Columbus Drive, Lee's Summit, Missouri 64086.
- (b) At all relevant times herein, Respondent has been a licensed non-resident insurance producer in Pennsylvania, with a Certificate of Qualification #420532 that expires on January 4, 2009.
- (c) On January 24, 1988, Respondent was found guilty in The Iowa District Court, In And For Linn County, Iowa, of violating The Criminal Code of Iowa §§ 708.1 and 708.2(4) – Assault causing bodily injury, both charges misdemeanors.

- (d) On September 11, 1989, Respondent was found guilty in The Iowa District Court, In And For Linn County, Iowa, of violating The Criminal Code of Iowa §§ 708.1 and 708.2(2) – Assault causing bodily injury, both charges misdemeanors.
- (e) On November 22, 1995, Respondent was found guilty in The Iowa District Court, In And For Linn County, Iowa, of violating The Criminal Code of Iowa §§ 708.1 and 708.2A(2a) – Assault (Domestic Abuse) causing bodily injury, both charges misdemeanors.
- (f) On November 16, 2004, Respondent was issued a Non-Resident Producer Individual License in the Commonwealth of Pennsylvania.
- (g) Respondent failed to report the misdemeanor convictions referenced in paragraphs 3(c), (d) and (e) above to the Department.
- (h) On April 12, 2006, Respondent entered into Settlement Order, Case No. INS-2006-00094, with the State Corporation Commission of the Commonwealth of Virginia, for Respondent's failure to report the misdemeanor convictions referenced in paragraphs 3(c), (d) and (e) above to the Commonwealth of Virginia.

- (i) On April 25, 2006, Respondent reported the above referenced Settlement Order, No. INS-2006-00094, to the Department.

- (j) On June 8, 2006, Respondent entered into Stipulation No. 2006-0116-S, with the New York Insurance Department, for Respondent's failure to report the misdemeanor convictions referenced in paragraphs 3(c), (d) and (e) above to New York.

- (k) On July 13, 2006, Respondent reported the above referenced Stipulation No. 2006-0116-S, to the Department.

- (l) On November 28, 2006, Respondent submitted his Non-Resident Producer Individual License Renewal Application to the Department.

- (m) Respondent reported the misdemeanor convictions referenced in paragraphs 3(c), (d) and (e) above to the Department.

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) through 3(m) violates Section 611-A(20) of Act 147 of 2002.
- (d) Section 678-A(b) of Act 147 of 2002 requires within 30 days of being charged with criminal conduct, a licensee shall report the charges to the Department. The licensee shall provide the Department with a copy of the criminal complaint, information or indictment, a copy of the order resulting from any pretrial hearing, and a report of the final disposition of the charges (40 P.S. § 310.78(b)).
- (e) Respondent's activities described above in paragraphs 3(c) through 3(m) violates Section 678-A(b) of Act 147 of 2002.
- (f) Respondent's violations of Sections 611-A(20) and 678-A(b) 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

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.

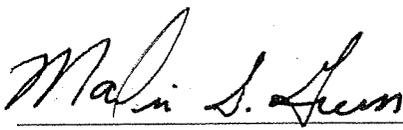
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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 delegate 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: 
MARLIN S. GROSS, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: Randolph L. Rohrbaugh
Deputy Insurance Commissioner