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PA INSURANCE DEPARTMENT

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BEFORE THE INSURANCE COMMISSIONER ADMIN HEARINGS OFFICE
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
J.W. HOBAN & ASSOCIATES, INC. : Sections 611-A(5), (11) and (20)
66 Elizabeth Street : of Act 147 of 2002 (40 P.S.
Wilkes-Barre, PA 18702 : §§ 310.11)
: :
Respondent. : Docket No. CO06-02-033

CONSENT ORDER

AND NOW, this *24th* day of *April*, 2006, this Order is hereby issued by the Deputy Insurance Commissioner 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 it has received proper notice of its 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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is J.W. Hoban & Associates, Inc. and maintains its address at 66 Elizabeth Street, Wilkes-Barre, Pennsylvania 18702.
- (b) At all relevant times herein, Respondent has been a licensed insurance producer in Pennsylvania.
- (c) With an effective date of May 4, 2004, Respondent procured homeowners insurance policy #426188 from Farmers Fire Insurance Company for policyholder Brian Labar, Shickshinny, Pennsylvania.

- (d) Pertinent to a real estate settlement for policyholder Brian Labar, his real estate agent contacted Respondent to obtain a homeowners insurance policy.
- (e) A producer for Respondent completed the application for Brian Labar but did not obtain the underwriting information from him, then forwarded the application to the real estate agent who, in turn, had Labar sign the application without a producer being present to discuss the terms of the coverage with Brian Labar.
- (f) Brian Labar submitted a claim against the policy after his dog, a box-Labrador retriever, bit another person.
- (g) Farmers Fire Insurance Company cancelled the insurance policy and denied Brian Labar's claim on the basis that he failed to disclose the he owned any pets, leading him to appeal to the Insurance Department.
- (h) The Insurance Department after conducting a hearing, directed Farmers Fire Insurance Company to reinstate the policy and pay the claim on the basis that the company failed to prove material misrepresentation by the policyholder and it would have otherwise written the policyholder.

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 611-A(5) of Act 147 of 2002 prohibits a licensee from intentionally misrepresenting the terms of an actual or proposed insurance contract or application of insurance (40 P.S. § 310.11).
- (c) Respondent's activities described above in paragraphs 3(c) through 3(h) violate Section 611-A(5) of Act 147 of 2002.
- (d) Section 611-A(11) of Act 147 of 2002 prohibits a licensee from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer (40 P.S. § 310.11).
- (e) Respondent's activities described above in paragraphs 3(c) through 3(h) violate Section 611-A(11) of Act 147 of 2002.

- (f) 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).

- (g) Respondent's activities described above in paragraphs 3(c) through 3(h) violate Section 611-A(20) of Act 147 of 2002.

- (h) Respondent's violations of Sections 611-A(5), (11) and (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) 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 Deputy Insurance Commissioner 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) 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 (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 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 Order, the Deputy Commissioner 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 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 Consent

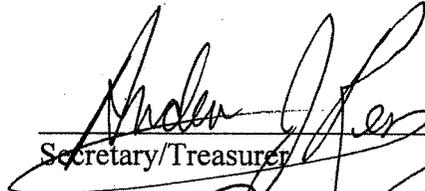
Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY: 

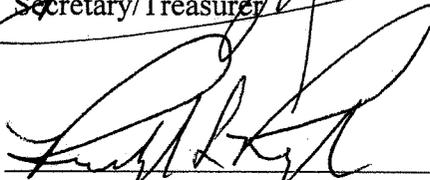
J.W. HOBAN & ASSOCIATES, INC.,
Respondent



President/Vice President



Secretary/Treasurer



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania