BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
JOHN J. MISKELL 19 Warwick Court Reading, PA 19606	: : :	Section 611-A(7) of Act 147 of 2002 (40 P.S. § 310.11)
	:	Title 31, Pennsylvania Code, Sections 37.42, 51.21(a)(b), 51.23, 51.33(a) and 51.35(a)
	:	
Respondent.	:	Docket No. CO04-07-042

CONSENT ORDER

AND NOW, this 17th day of December, 2004, 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 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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

(a) Respondent is John J. Miskell, and maintains his address at 19 Warwick Court, Reading, Pennsylvania 19606.

(b) At all times herein, Respondent was licensed as a resident producer.

(c) Respondent trades as Penn Senior Financial, although he did not register the fictitious entity name with the Department.

(d) In April, 2004, Respondent placed an advertisement in the *Reading Eagle* newspaper regarding equity indexed annuities, however he did not indicate the insurer(s) involved.

(e) Respondent has subsequently registered his fictitious entity name Penn Senior Financial with 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 611-A(7) of Act 147 of 2002 prohibits a licensee from using fraudulent, coercive or dishonest practices or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere (40 P.S. § 310.11).

(c) Respondent's activities described above in paragraphs 3(c) through 3(e) violates Section 611-A(7) of Act 147 of 2002.

(d) Respondent's violations of Section 611-A(7) 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.

(e) Title 31, Pennsylvania Code, Section 37.42, requires certificates and licenses to accurately reflect the name of the individual producer and indicate if fictitious names in which the producer transacts insurance are on file with the Department. Fictitious names used by a producer to transact insurance shall be registered with the Department of State and will be provided to the Department.

(f) Respondent's activities described above in paragraphs 3(c) through 3(e) constitute a violation of Title 31, Pennsylvania Code, Section 37.42.

(g) Title 31, Pennsylvania Code, Section 51.21(a)(b) requires the format and content of an advertisement to be sufficiently complete and clear to avoid deception, and be truthful and not misleading in fact or implication.

(h) Respondent's activities described above in paragraphs 3(c) through 3(e) constitute a violation of Title 31, Pennsylvania Code, Section 51.21(a)(b).

(i) Title 31, Pennsylvania Code, Section 51.23 prohibits any advertisement to be used which contains words or phrases, the meaning or understanding of which may not be reasonably comprehended by the segment of the general public to which it is directed.

(j) Respondent's activities described above in paragraphs 3(c) through 3(e) constitute a violation of Title 31, Pennsylvania Code, Section 51.23.

(k) Title 31, Pennsylvania Code, Section 51.33(a) requires if a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits selected.

(l) Respondent's activities described above in paragraphs 3(c) through 3(e) constitute a violation of Title 31, Pennsylvania Code, Section 51.33(a).

(m) Title 31, Pennsylvania Code, Section 51.35(a) requires the name of the actual insuring company to be clearly identified in all advertisements.

(n) Respondent's activities described above in paragraphs 3(c) through 3(e) constitute a violation of Title 31, Pennsylvania Code, Section 51.35(a).

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 shall pay a civil penalty of Five Hundred Dollars ($500.00) 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 Sharon L. Harbert, 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 ninety (90) 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, (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 three (3) years from the date of this Order.

(d) 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.

(e) At the hearing referred to in paragraph 5(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 5(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.

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

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: _____
JOHN J. MISKELL, Respondent

_____
RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania