INSURANCE DEPARTMENT
2009 MAR 13 PM 1:35
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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| IN RE: | : | VIOLATIONS: |
| | : | |
| ANTHONY C. MERCADANTE<br>564 East Main Street<br>Uniontown, Pennsylvania 15401 | : | 40 Purdons Statutes, Sections<br>310.11(7), 310.11(20) and 310.96 |
| | : | Title 31, Pennsylvania Code,<br>Section 37.81 |
| Respondent. | : | Docket No. CO09-01-013 |

CONSENT ORDER

AND NOW, this 13th day of March, 2009, 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 he 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 Anthony C. Mercandante, and maintains his address at 564 East Main Street, Uniontown, Pennsylvania 15401.

(b) Respondent is a Resident Producer with the Commonwealth of Pennsylvania. His license # 326257 became effective October 22, 1979, and expires March 15, 2010.

(c) Respondent, between February 6, 2003 and October 3, 2005, acting as a Monumental Life Insurance Company representative, Respondent collected cash premium payments of approximately $1,652.20 from his client, Agnes

Kisner. Respondent failed to remit these premium payments to Monumental Life Insurance Company.

(d) Respondent, between January 12, 2004 and December 6, 2004, completed and submitted five (5) Monumental policy loan requests for the insured, Agnes Kisner, who has indicated that she did not know about the loans or authorized them.

(e) The five (5) Monumental policy loan requests were approved and $1,294.90 was applied to the insured's premium payments. There were also five (5) Monumental checks issued to Mrs. Kisner totaling $720.00.

(f) Respondent, on or about January 15, 2009 acknowledged to the Insurance Department that he had made a mistake and admitted wrongdoing in the collecting of cash premium payments from Mrs. Kisner, and his failure to remit the payments to Monumental. Respondent also acknowledged completing and submitting the Monumental policy loan requests for Mrs. Kisner.

(g) Respondent, on or about January 15, 2009 indicated to the Insurance Department that he is out of the insurance business, and that he is willing to sign a consent order revoking his insurance license.

## 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.

(d) 40 Purdons Statutes, Section 310.11(7) prohibits a licensee from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.

(c) Respondent's activities described above in paragraphs 4(c) and 4(d) violate 40 Purdons Statutes, Section 310.11(7).

(d) 40 Purdons Statutes, Section 310.11(20) 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.

(e) Respondent's activities described above in paragraphs 4(c) and 4(d) violate 40 Purdons Statutes, Section 310.11(20) .

(f) 40 Purdons Statutes, Section 310.96 and Title 31, Pa. Code, Section 37.81, the regulations of the Insurance Department, prohibit producers from, without the express consent of the insurance entity on whose behalf the funds were received, mingle the funds with the producer's own funds or with funds held by the producer in any other capacity. The funds of each insurance entity must be reasonably ascertainable from the books of accounts and records of the insurance producer.

(g) Respondent's activities described above in paragraphs 4(c) and 4(d) constitute a violation of 40 Purdons Statutes, Section 310.96, and Title 31, Pa. Code, Section 37.81.

(h) Respondent's violations of Section 310.11(7), 310.11(20) and 310.96 are punishable by the following, under 40 Purdons Statutes, Section 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 every violation of the Act;

(iii) an order to cease and desist; and

(iv) any other conditions as the Commissioner deems appropriate.

## ORDER

6. 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) All licenses/certificates of Respondent to do insurance business are hereby revoked.

(c) If Respondent should ever become licensed in the future, his 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 (ii) above is limited to a period of five (5) years from the date of issuance of such certificates and licenses.

(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 (d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance certificate and license.

(f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 6(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 certificate and license, Respondent's suspended certificates and 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: Anthony C Mercadante
ANTHONY C. MERCADANTE, Respondent

Ronald A. Gallagher Jr.
COMMONWEALTH OF PENNSYLVANIA
By: Ronald A. Gallagher, Jr.
Deputy Insurance Commissioner