

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
FRANCIS V. SCHWENK : 40 P.S. §§ 310.11(5), (6), 310.11(20)
101 Good Drive : and 1171.5(a)(12)
Lancaster, PA 17607 : :
Respondent. : Docket No. CO12-10-020

CONSENT ORDER

AND NOW, this *14th* day of *January, 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.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following

Findings of Fact:

- (a) Respondent is Francis V. Schwenk and maintains his address at 101 Good Drive, Lancaster, PA 17607.
- (b) Respondent is, and at all times relevant hereto has been, a resident insurance producer.
- (c) Between 2009 and into 2012, inclusive, Respondent, as Designated Licensee of Consumers Insurance Group, Incorporated, was aware of the agency overcharging of premiums of Erie Insurance Company policyholders by improperly adjusting the terms and conditions of existing automobile insurance contracts at the time of renewal.
- (d) Changes were made to individual policies during their renewal phase reflecting increases in the number of annual miles driven and the limits of accidental death coverage, without the policyholders' knowledge or consent.

- (e) Records showed and Respondent affirmed that specific changes were made to multiple policies by resident producers Thomas E. Goebeler, Laura M. Schwenk and Larry E. Snyder of Consumers Insurance Group, Inc.
- (f) Pertinent to the investigation, Erie Insurance Company provided a spreadsheet showing mileage rates were changed from a short rate to a long rate for multiple policies resulting in increased premiums.
- (g) Erie Insurance Company also provided a spreadsheet showing accidental death coverage was changed, generally, to a higher limit of coverage for multiple policies.
- (h) On September 6, 2012, the Respondent was interviewed and affirmed that increases were made to policyholders' insurance pertinent to mileage and accidental death without the policyholders' knowledge and consent.
- (i) The Respondent, on behalf of Consumers Insurance Group, Inc., agreed to coordinate efforts with Erie Insurance Company to make restitution to policyholders based upon accurate underwriting.
- (j) The Respondent denied that Consumers Insurance Group or affiliated agencies had engaged in the aforementioned practices with policyholders of other insurers.

- (k) The Respondent affirmed that Erie Insurance Company was not aware or complicit in the aforementioned activity.

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) 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(k) 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(k) violate 40 P.S. § 310.11(6).
- (f) 40 P.S. § 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.
- (g) Respondent's activities described above in paragraphs 3(c) through 3(k) violate 40 P.S. § 310.11(20).
- (h) Respondent's violations of Sections 310.11(5), (6) and (20) 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.
- (i) 40 P.S. § 1171.5(a)(12) prohibits agents from making false or fraudulent statements or representations on or relative to an application for an insurance policy.

- (j) Respondent's activities described above in paragraphs 3(c) through 3(k) constitute making false or fraudulent statements or representations on or relative to an application for an insurance policy and violate 40 P.S. § 1171.5(a)(12).
- (k) Respondent's violations of 40 P. S. §1171.5(a)(12) are punishable by the following, under 40 P.S. §§ 1171.8, 1171.9, and 1171.11:
- (i) an order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);
 - (ii) commencement of an action against Respondent for the following civil penalties:
 - (1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;

(2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;

(3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

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 shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the PA Insurance Department,

Commonwealth of Pennsylvania. Payment should be directed to April Phelps, Bureau of Licensing and 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 thirty (30) days after the date of the Consent Order.

(c) Respondent, as the Designated Licensee of Consumers Insurance Group, shall assist Erie Insurance Company in the latter's efforts to make restitution to such persons as the Deputy Commissioner identifies and determines are owed restitution. Respondent shall coordinate with Erie Insurance Company to provide the Insurance Department with proof of restitution within three (3) months from the date that such determination is made by the Deputy Commissioner.

(d) Respondent will assist to the best of his ability the Pennsylvania Insurance Department in conducting investigations and prosecution of any licensed or unlicensed entity performing the business of insurance including, but not limited to, any public adjuster, insurance producer, company, etc., their employees and officers, including but not limited to testifying as a witness relative to any of the aforesaid entities, their employees and officers in any civil or administrative action involving same.

- (e) Respondent's 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.
- (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 a 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.

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 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.

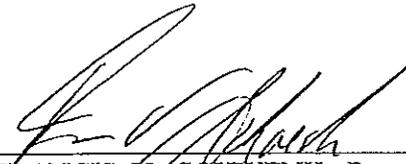
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

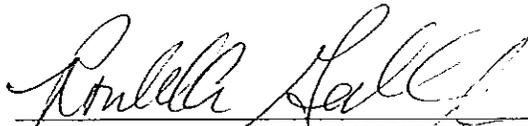
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 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:


FRANCIS V. SCHWENK, Respondent


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

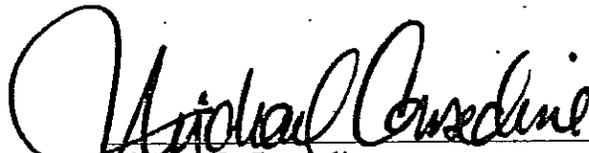
BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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. Consedine
Insurance Commissioner

