

RECEIVED
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

2013 FEB 25 AM 7:20
ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
DAVID M. SMITH : 40 P.S. §§ 310.11(4), (6), (7), (17), (20)
1425 Sunset Drive : and 310.42
Lancaster, PA 17601 :
: :
Respondent. : Docket No. CO12-12-007

CONSENT ORDER

AND NOW, this *25th* day of *February*, *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 David M. Smith and maintains his address at 1425 Sunset Drive, Lancaster, PA 17601.
- (b) Respondent is, and at all times relevant hereto has been, a resident insurance producer.
- (c) Respondent, from 2009 through 2010, accepted 24 checks from an insured totaling over \$24,731.00 intended to pay insurance premiums.
- (d) Respondent issued invoices and insurance policies to the same insured during that time period.
- (e) Respondent admitted the insured had no insurance for that same time period.
- (f) Respondent admitted that he used the money for his own use.

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(4) prohibits producers from improperly withholding, misappropriating, or converting money or property received in the course of doing business.
- (c) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute improperly withholding, misappropriating, or converting money or property received in the course of doing business, in violation of 40 P.S. § 310.11(4).
- (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(f) violate 40 P.S. § 310.11(6).

- (f) 40 P.S. § 310.11(7) prohibits a licensee or an applicant from using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business.
- (g) Respondent's activities described above in paragraphs 3(c) through 3(f) violate 40 P.S. § 310.11(7).
- (h) 40 P.S. § 310.11(17) prohibits a licensee or an applicant from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (i) Respondent's activities described above in paragraphs 3(c) through 3(f) violate 40 P.S. § 310.11(17).
- (j) 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.
- (k) Respondent's activities described above in paragraphs 3(c) through 3(f) violate 40 P.S. § 310.11(20).
- (l) 40 P.S. § 310.42 prohibits any producer from fraudulently appropriating, taking, disposing of, withholding, lending, investing or otherwise using any

money received in the capacity of an insurance producer without the consent of the insurer.

- (m) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute theft, in violation of 40 P.S. § 310.42.
- (n) Respondent's violations of Sections 310.11(4), (6), (7), (17), (20) and 310.42 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.

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) All licenses of Respondent to do the business of insurance are hereby revoked.

(c) Respondent shall make restitution to the insured referenced in paragraphs 3(c) through 3(e) in the amount of \$31,741.00 within sixty (60) days from the date of this Order. Respondent shall make restitution to persons other than if the Deputy Commissioner identifies such persons and determines that restitution is owed to them by Respondent. Proof of restitution payment shall be provided to the Insurance Department by Respondent. In no event may Respondent ever be relicensed unless and until he has provided proof of full and timely payment as mandated herein.

(d) If Respondent should ever become licensed in the future, his 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 issuance of such licenses.

(e) 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.

(f) At the hearing referred to in paragraph 5(e) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.

(g) In the event Respondent's licenses are suspended pursuant to paragraph 5(d) 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 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: David M. Smith
DAVID M. SMITH, Respondent

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

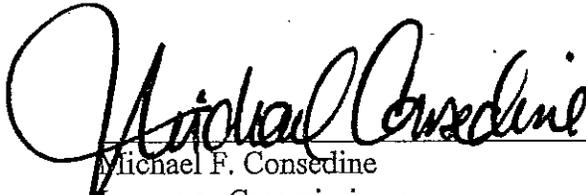
BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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

