

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

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INSURANCE COMMISSIONER  
2012 MAR 26 PM 12:17  
ADMINISTRATIVE OFFICE

IN RE: : VIOLATIONS:  
: :  
ROBERT G. VIOLA : 40 P.S. §§ 310.11(1), (6), (7), (13),  
2110 Coventry Lane : (17), (20), 310.42, 310.47, 310.78(a),  
Glen Mills, PA 19342-9434 : and 310.96  
: :  
: Title 31, Pennsylvania Code,  
: Section 37.81  
: :  
Respondent. : Docket No. CO12-03-016

CONSENT ORDER

AND NOW, this *26<sup>th</sup>* day of *March*, *2012*, 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 Respondent is Robert G. Viola, and he maintains his address at 2110 Coventry Lane, Glen Mills, Pennsylvania 19342-9434.
- (b) At all times relevant, Respondent had an active resident producer license number 420132 that expires on August 31, 2013.
- (c) On December 28, 2004, Respondent signed Consent Order CO04-11-022 with the Pennsylvania Insurance Department placing Respondent on “Indefinite Supervision” and prohibiting him from transacting surplus lines business in any form.
- (d) On June 21, 2001, the Pennsylvania Department of Revenue, in the Court of Common Pleas for Delaware County, Pennsylvania, had the court issue a copy of a lien for \$2,391.01 against Respondent under Docket No. 01-7327.

- (e) Respondent's renewal application for March 4, 2004 with the Department reflects a "No" answer to Question "3": Have you ever failed to pay state income tax or comply with any administrative or court order directing the payment of state income tax?
  
- (f) On August 6, 2004, Respondent satisfied Docket No. 01-7327 that was issued in the Court of Common Pleas for Delaware County, PA.
  
- (g) Respondent's renewal applications for November 11, 2006 and June 30, 2011 with the Department reflect a "No" answer to Question "2": Have you ever been subject to an administrative action, penalized or fined, had an insurance producer license or other financial services license or its equivalent refused, suspended or revoked by a Governmental entity or is any such action now pending?
  
- (h) On or about November 25, 2007, Respondent wrote homeowners coverage for two (2) rental properties: 1019 Latona Street and 1034 Federal Street, Philadelphia, Pennsylvania. Respondent placed the homeowners' coverage through Insurance Innovators and the policy was underwritten by Hermitage Insurance Company. The premiums were paid directly to the Respondent by

the insured's mortgage company, Bank of America, and forwarded to Insurance Innovators.

- (i) The first policy HCP531278-07 (10/25/2007 – 10/25/2008) was cancelled effective 02/11/2008 for underwriting reasons on both properties. The annual premium of \$2,998.00 had been paid in full, and only \$896.00 was earned premium at the time of cancellation.
- (j) The coverage was reissued effective 02/26/2008 – 02/26/2009 under policy HCP539632 with an annual premium of \$2,817.00. Only \$2,762.00 was paid and the additional \$55.00 was simply written off. It is not clear what happened with the return of the premium of \$2,102.00 under policy HCP 531278-07, and who paid \$2,762.00 under policy # HCP 539632-08.
- (k) During the period between 02/11/2008 and 02/26/2008, the insured submitted a claim for water and roof damage for both properties to Hermitage Insurance Company, which was denied because of the cancellation for underwriting reasons. The insured incurred a bill for over \$11,000.00 for both properties.
- (l) A renewal offer for \$2,562.00 was issued for policy HCP 531278-09 effective 02/26/2009 – 02/26/2010, however, Hermitage Insurance Company reported that no premiums were received and the policy was cancelled effective 04/28/2009.

- (m) Respondent, between 02/15/2008 and 11/01/2011, had submitted renewal applications to the insured's Bank of America escrow account for renewal of their homeowners' coverage and received a total of \$10,394.50, which was not forwarded to Insurance Innovators for coverage.
  
- (n) At all times relevant, between November 27, 2007 and November 1, 2011, Respondent had placed the insured's homeowners' coverage with Insurance Innovators an Excess and Surplus Lines Managing General Agent and Wholesale broker.
  
- (o) On March 12, 2012, Respondent agreed with the Department to have his license revoked with a consent order because he longer wanted to remain in the insurance industry.

#### 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(1) prohibits a licensee or an applicant for a license from providing incorrect, misleading, incomplete or false information to the Department in a license application.
  
- (c) Respondent's activities described above in paragraphs 3(e) and 3(g) violate 40 P.S. § 310.11(1).
  
- (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(e), (g), (j), (l), (m) and 3(n) 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(d), (e), (g), (j), (l), (m) and (n) violate 40 P.S. § 310.11(7).

- (h) 40 P.S. § 310.11(13) prohibits a licensee or an applicant from failing to pay state income tax or comply with any administrative or court order directing the payment of state income tax.
- (i) Respondent's activities described above in paragraph 3(d) violate 40 P.S. § 310.11(13).
- (j) 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.
- (k) Respondent's activities described above in paragraphs 3(e), (g), (j), (l) and (m) violate 40 P.S. § 310.11(17).
- (l) 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.
- (m) Respondent's activities described above in paragraphs 3(c) through 3(m) violate 40 P.S. § 310.11(20).
- (n) 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.

- (o) Respondent's activities described above in paragraphs 3(i) through 3(m) constitute theft, in violation of 40 P.S. § 310.42.
- (p) 40 P.S. § 310.47 prohibits producers from misrepresenting the terms of policies and future dividends.
- (q) Respondent's activities described above in paragraphs 3(i) through 3(m) constitute misrepresenting the terms of policies and future dividends and violate 40 P.S. § 310.47.
- (r) 40 P.S. § 310.78(a) requires a licensee to report any administrative action taken in another jurisdiction or by another governmental agency within 30 days of the final disposition, to include a copy of the order, consent order or other relevant legal documents.
- (s) Respondent's activities described above in paragraph 3(d) violate 40 P.S. § 310.78(a).
- (t) 40 P.S. § 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.

- (u) Respondent's activities described above in paragraphs 3(j), (l) and 3(m) constitute a violation of 40 P.S. § 310.96, and Title 31, Pa. Code, Section 37.81.
  
- (v) Respondent's violations of Sections 310.11(1), (6), (7), (13), (17), (20), 310.42, 310.47, 310.78(a) and 310.96 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) 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.
- (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 an insurance license.
- (f) In the event Respondent's 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 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:

  
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ROBERT G. VIOLA, Respondent

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