MEULARIO MISURANCE CEPARTMEN.

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA

IN RE:

VIOLATIONS:

THOMAS J. SCHWARTZ, JR.

63 Purdon's Statutes, Section

3122 Cottman Avenue

1606(a)(13)

Philadelphia, Pennsylvania 19149

Respondent.

Docket No. CO09-03-022

CONSENT ORDER

AND NOW, this 20th day of Capiel , 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.A. §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 Thomas J. Schwartz, Jr., and maintains his address at 3122 Cottman Avenue, Philadelphia, Pennsylvania 19149.
 - (b) Respondent has an active public adjuster license No.133533, that expires on March 8, 2010.
 - (c) Respondent, on March 4, 2005 entered into a Consent Order, Docket No. CO05-02-004 with the Pennsylvania Insurance Department, for violations of 63 Purdons Statutes, Section 1602.
 - (d) Respondent, on October 13, 2006 entered into a Consent Order, Docket No. CO06-08-019 with the Pennsylvania Insurance Department, for violations of 63 Purdons Statutes, Section 1602.
 - (e) On May 30, 2008, Respondent was arrested in the County of Philadelphia under OTN: N5478734 for Driving Under the Influence/General Impairment in violation of Pennsylvania Statute 75 § 3802 Misdemeanor of the 1st Degree.

- (f) On June 12, 2008, Respondent was arrested in the County of Philadelphia under OTN: N5505290 for Simple Assault – PA Statute 18 § 2701; Recklessly Endangering Another Person – PA Statute 18 § 2705; and Resisting Arrest/Other Law Enforcement, all misdemeanors.
- (g) On February 23, 2008, Respondent renewed his public adjuster license by paper application and answered "no" to prior administrative actions:

 CO05-02-004 and CO06-08-019, and failed to report his two 2008 arrests referenced above in paragraphs 3(e) and 3(f).
- (h) On March 23, 2009, Respondent has taken corrective actions regarding the reporting of the administrative and criminal charges to the Bureau of Producer Licensing.

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) 63 Purdon's Statutes, Section 1606(a)(13) states that public adjusters or public adjuster solicitors who demonstrate incompetency or untrustworthiness to transact the business of a public adjuster shall be grounds for fine, suspension or revocation of their public adjuster license.
- (c) Respondent's activities in paragraphs 3(e) through 3(g) violate 63 Purdon's Statutes, Section 1606(a)(13).
- (d) Respondent's violations of Section 1606(a)(13) are punishable by a fine, suspension and revocation of licenses under Section 1606(a) and the following, under 63 Purdons Statutes, Section 1606(b): The Insurance Commissioner may impose a penalty of not more than \$1,000 for every violation of this Act under 63 Purdons Statutes, Section 1606(b).

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; further, Respondent has agreed to enroll in, comply with in every respect, and meet the requirements of the Agents Helping Agents program as a condition of this Order.

- (b) Respondent's 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; and/or (iii) Respondent has failed to comply with any terms or conditions of the Agents Helping Agents Program.
- (c) The Department's right to act under paragraph 5(b) above is in effect for ten(10) 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(b) 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 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, it may, in its discretion, pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or 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.
- 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, <u>supra</u>, 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 the duly authorized delegee 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 Department or a duly authorized delegee.

Respondent

RONALD A. GALLAGHER, JR.

Deputy Insurance Commissioner Commonwealth of Pennsylvania