

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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INSURANCE DEPARTMENT

2009 APR 21 AM 11:56

ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
KENNETH M. SMARON and : 40 Purdons Statutes, Sections
SMARON INSURANCE AGENCY, INC. : 310.11(4), (7), (17) and (20)
815 South 4th Street : :
Philadelphia, PA 19147 : :
: :
Respondents. : Docket No. CO09-03-014

CONSENT ORDER

AND NOW, this *21st* day of *April*, 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. Respondents hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree 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, Respondents specifically deny that they 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) Respondents are Kenneth M. Smaron (hereinafter, "Respondent") and the Smaron Insurance Agency, Inc., and maintain an address at 815 South 4th Street, Philadelphia, Pennsylvania 19147.
- (b) Respondent possessed a Pennsylvania resident producer license that became inactive on December 9, 2008 for nonrenewal.
- (c) Respondent Smarin Insurance Agency, Inc. possessed a Pennsylvania resident producer license that became inactive, effective March 17, 2009.
- (d) During 2006 and 2007, Respondent procured commercial insurance for policyholders that entailed the establishment of premium finance contracts with Arizona Premium Finance Company and Premium Payment Plan.

- (e) Three premium finance contracts were established for three Pennsylvania policyholders with Arizona Premium Finance Company without the policyholders' knowledge or consent, although the policyholders had to pay premiums to Respondent for the insurance.
- (f) The contract numbers for Arizona Premium Finance Company were 92715222, 92686534, and 92723778.
- (g) During the contract periods, Respondent failed to remit the full premium from the policyholders to the respective insurance companies, resulting in the insurers canceling the policies for non-payment of premiums.
- (h) Arizona Premium Finance Company provided evidence showing that it was owed \$757.39 under account #92715222; \$326.40 under account #92686534; and \$3,103.97 under contract #92723778, totaling \$4,187.76.
- (i) A fourth Pennsylvania policyholder from Willow Grove reported that he procured homeowners and automobile insurance with the Philadelphia Contributionship and Infinity insurance companies during 2007, and paid premiums of approximately \$747.13 to Respondent.

- (j) Pertinent to the fourth policyholder, Respondent established a premium finance contract, #AHI010125 with Arizona Premium Finance Company on or about February 15, 2008, including finance charges.
- (k) The fourth policyholder stated the premium finance contract with Arizona Premium Finance Company was done without his knowledge or consent.
- (l) The two aforementioned insurers cancelled the fourth policyholder's insurance after being advised by Arizona Premium Finance Company that it had not received full payments paid by the policyholder to Respondent.
- (m) The fourth policyholder provided evidence claiming Respondent owed him \$263.34 in restitution.
- (n) Premium Payment Plan, one of the above premium finance companies, provided evidence that Respondent owed it approximately \$51,036.98 in loans to eight policyholders.
- (o) The restitution due Premium Payment Plan by Respondent totaled \$51,036.98: \$2,946.24 under contract #454402; \$471.96 under contract #457417; \$25,718.55 under contract #4656845; \$2,679.00 under account #459961;

\$3,766.50 under account #457070; \$5,999.04 under account #466477;
\$1,237.04 under account #457557; \$7,830.88 under account #464410.

- (p) The total identified restitution owed to the two premium finance companies and the separately identified policyholder equaled \$55,488.08.
- (q) On February 26, 2008, Respondent was contacted but declined to make a statement, acknowledging that his personal Pennsylvania insurance license was inactive due to nonrenewal.

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) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) 40 Purdon's Statutes, Section 310.11(4) prohibits producers from improperly withholding, misappropriating, or converting money or property received in the course of doing business.

- (c) Respondents' activities described above in paragraphs 4(d) through 4(p) constitute improperly withholding, misappropriating, or converting money or property received in the course of doing business, in violation of 40 Purdons Statutes, Section 310.11(4).
- (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.
- (e) Respondents' activities described above in paragraphs 4(d) through 4(p) violate 40 Purdons Statutes, Section 310.11(7).
- (f) 40 Purdons Statutes, Section 310.11(17) prohibits a licensee from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (g) Respondents' activities described above in paragraphs 4(d) through 4(p) violate 40 Purdons Statutes, Section 310.11(17).
- (h) 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.

(i) Respondents' activities described above in paragraphs 4(d) through 4(p) violate 40 Purdons Statutes, Section 310.11(20) .

(j) Respondents' violations of Sections 310.11(4), (7), (17) and (20) 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 Respondents consent to the following:

- (a) Respondents 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 Respondents to do the business of insurance are hereby revoked.

- (c) Respondents shall make restitution to the policyholders and in the amounts listed in the Findings of Fact, for a total of \$55,488.08. Respondents shall make restitution to persons other than if the Deputy Commissioner identifies such persons and determines that restitution is owed to them by Respondents. Proof of restitution payment shall be provided to the Insurance Department by Respondents.
- (d) If Respondents should ever become licensed in the future, their 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.
- (e) Respondents specifically waive the 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 Respondents 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 Respondents' written request.

(f) At the hearing referred to in paragraph (e) of this Order, Respondents shall have the burden of demonstrating that they are worthy of an insurance certificate and license.

(g) In the event Respondents' certificates and licenses are suspended pursuant to paragraph 6(e) above, and Respondents either fail to request a hearing within thirty (30) days or at the hearing fail to demonstrate that they are worthy of a certificate and license, Respondents' 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, Respondents 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. Respondents hereby expressly waive 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:



KENNETH M. SMARON, individually and
on behalf of SMARON INSURANCE
AGENCY, INC., Respondents



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