

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT
2009 DEC -9 AM 11: 4
ADIAN HERRILL'S OFFICE

IN RE: : VIOLATIONS:
: :
KATHERINE M. WEBB and : 40 P.S. §§ 310.11(4) and (20)
PREFERRED TRANSPORTATION : :
INSURANCE, INC. : :
620 Old Mill Road : :
Erie, PA 16505 : :
: :
Respondents : Docket No. CO09-10-010

CONSENT ORDER

AND NOW, this *9th* day of *December*, 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.

FINDINGS OF FACT

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

Findings of Fact:

- (a) Respondents are Katherine M. Webb and Preferred Transportation Insurance, Inc., and maintain an address at 620 Old Mill Road, Erie, Pennsylvania 16505.
- (b) Respondent Webb is the Designated Licensee for Respondent Preferred Transportation Insurance, Inc., and at all times relevant hereto, both have been licensed insurance producers.
- (c) During 2008 and 2009, Respondents, acting as retail producers, collected approximately \$167,305.46 in premiums from policyholders but failed to remit them to associated wholesale producers and insurers.
- (d) The two wholesale producers which represented various insurers as program managers, were Swett & Crawford of Media, PA, and W.N. Tuscano Agency of Greensburg, PA.

- (e) On September 16, 2009, Swett & Crawford provided documentary evidence and statements that indicated Respondents collected \$154,509.46 during 2008 that was not remitted for insurance procured for policyholders.
- (f) The documents provided by Swett & Crawford included insurance contracts and copies of premium payment checks from policyholders that were paid to, and converted by, Respondents.
- (g) Swett & Crawford provided a copy of a settlement agreement, dated March 3, 2008, signed by Respondent Webb, which affirmed that \$154,509.46 in premiums was to be paid in 13 installments.
- (h) Swett & Crawford asserted, and Respondents did not provide evidence otherwise, that Respondents paid the premiums to Swett & Crawford under the terms of the settlement agreement.
- (i) Swett & Crawford stated that it was making policyholders whole upon proof of premium payment to the Respondents.
- (j) Respondents failed to provide evidence that premiums were remitted to Swett & Crawford or the associated insurers.

- (k) During September 2009, W.N. Tuscano Agency claimed that during 2009, Respondents were not remitting premiums and the Agency provided documentary evidence and statements showing Respondents had failed to remit approximately \$12,796.00.
- (l) W.N. Tuscano Agency stated that its efforts to obtain the premiums from Respondents were unsuccessful.
- (m) W.N. Tuscano Agency stated that it was making policyholders whole upon proof of premium payment to the Respondents.
- (n) Respondents failed to provide evidence that premiums were remitted to Swett & Crawford or to the associated insurers.
- (o) On September 17, 2009, Respondent Webb was interviewed and affirmed that she was still engaged in the business of insurance, but limited her activities to issuing certificates of insurance as requested by policyholders for commercial trucking verification.
- (p) Respondent Webb stated that she maintained both premium escrow and general accounts and used funds from the premium escrow account for payroll, agency and personal expenses.

- (q) Respondent Webb affirmed that the wholesale producers who were owed premiums were Swett & Crawford and W.N. Tuscano Agency.
- (r) Respondent Webb stated that she attempted to offset the amount of premiums owed to the wholesale producers by reducing, and then refusing, any commissions.
- (s) Respondent Webb affirmed that she entered into a settlement agreement with Swett & Crawford on March 3, 2009 for \$154,509.46 in outstanding premiums, which included stipulations for her to make 13 monthly installments of \$11,885.34, commencing March 20, 2009.
- (t) Respondent Webb provided no evidence that restitution was made to Swett & Crawford or W.N. Tuscano Agency.
- (u) When queried, Respondent Webb stated that she lacked the wherewithal to make restitution of any premiums.

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) Respondents are 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) Respondents' activities described above in paragraphs 3(c) through 3(u) 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(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.
- (e) Respondents' activities described above in paragraphs 3(c) through 3(u) violate 40 P.S. § 310.11(20).
- (f) Respondents' violations of Sections 310.11(4) and (20) are punishable by the following, under 40 P.S. § 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

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents 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) If Respondents should ever become licensed in the future, the 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 Respondents 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.

(d) 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 Respondent's written request.

(e) At the hearing referred to in paragraph 5(d) of this Order, Respondents shall have the burden of demonstrating that they are worthy of an insurance certificate and license.

(f) In the event Respondents' certificates and licenses are suspended pursuant to paragraph 5(c) 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.

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.

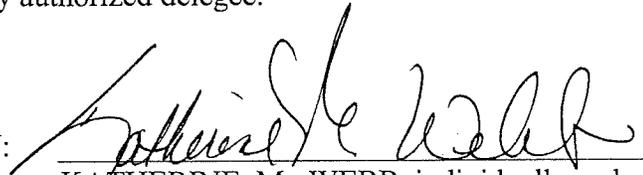
8. In any such enforcement proceeding, Respondents may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

9. Respondents hereby expressly waive 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:



KATHERINE M. WEBB, individually and on behalf of PREFERRED TRANSPORTATION INSURANCE, INC., Respondents



COMMONWEALTH OF PENNSYLVANIA

By: Ronald A. Gallagher, Jr.
Deputy Insurance Commissioner