

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

RECEIVED
INSURANCE DEPARTMENT
2011 MAR 24 PM 3:19
ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:
: :
BRIAN J. BERGLUND : 40 P.S. §§ 310.11(1), (2), (3), (6),
9043 North Crown Ridge : (7), (8), (16), (20) and 310.78(a)
Fountain Hills, AZ 85268-6411, and :
: :
BERGLUND ENTERPRISES, INC. :
5625 East Indian School Road :
Phoenix, AZ 85018-6102 :
: :
Respondents. : Docket No. CO10-11-006

CONSENT ORDER

AND NOW, this *24th* day of *MARCH*, *2011*, 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) Respondent is Brian J. Berglund and maintains his address at 9043 North Crown Ridge, Fountain Hills, AZ 85268-6411.
- (b) Respondent is, and during all times relevant herein was, a licensed non-resident insurance producer with license #310705 that expires on August 31, 2012.
- (c) Respondent is doing business as Co-Respondent Berglund Enterprises, Incorporated, effective June 12, 1998.
- (d) Co-Respondent maintains a business address at 5625 East Indian School Road, Phoenix, AZ 85018-6102, and holds a non-resident producer agency license #55732 that expires on June 22, 2012.

- (e) Respondent is the Designated Licensee of Co-Respondent, effective December 16, 2003.
- (f) Respondent, on March 26, 2009, entered into Consent Order No. 09A-044-INS with the Arizona Insurance Department (hereinafter, Arizona) against Respondent's resident producer individual license for improperly retaining unearned commission which resulted in a civil penalty of \$1,500.00.
- (g) Respondent failed to notify the Department of the Arizona action described in (f) above within 30 days, as required.
- (h) Respondent, on August 8, 2009, reported the Arizona action described in (f) above to the Department.
- (i) Respondent, on August 21, 2009, entered into Stipulated order, Docket No. 4022-SO, with the Kansas Insurance Department (hereinafter, Kansas) against Respondent's non-resident producer individual license due to Respondent's failure to report the Arizona action described in (f) above to Kansas, which resulted in a \$250 civil penalty.
- (j) The Kansas Order described in (i) above became final on September 8, 2009.

- (k) Respondent failed to report the Kansas action described in (i) above to the Department.
- (l) Respondent, on his non-resident producer individual license renewal application, dated February 24, 2010, answered "No" (untruthfully) to the question asking, "Since the last renewal or initial application in this state, have you 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?"
- (m) On March 3, 2010, the Delaware Insurance Department (hereinafter, Delaware) issued a Final Decision and Order, Docket No. 1309-2009 (Default Judgment) revoking Respondent's non-resident producer individual license and assessing a civil penalty of \$500 for Respondent's failure to report the Arizona action described in (f) above.
- (n) Respondent failed to report the Delaware action described in (m) above to the Department.
- (o) Respondent, on the non-resident producer agency license renewal application for Co-Respondent dated June 22, 2010, Respondent answered "No" (untruthfully) to the question asking "Since the last renewal or initial

application in this state, has the business entity, or the owners, officers, partners or any designated licensee of the business entity been subject to an administrative action, penalized or fined, had an insurance license or other financial services license or its equivalent refused, suspended or revoked by a Government entity or is any such action now pending?"

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(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) Respondents' activities described above in paragraphs 3(l) and 3(o) violate 40 P.S. § 310.11(1).

- (d) 40 P.S. § 310.11(2) prohibits a licensee or an applicant from violating the insurance laws or regulations of this Commonwealth or a subpoena or order of the commissioner or of another state's insurance commissioner.
- (e) Respondents' activities described above in paragraphs 3(f) through 3(o) violate 40 P.S. § 310.11(2).
- (f) 40 P.S. § 310.11(3) prohibits a licensee or an applicant from obtaining or attempting to obtain a license through misrepresentation or fraud.
- (g) Respondents' activities described above in paragraphs 3(l) and 3(o) violate 40 P.S. § 310.11(3).
- (h) 40 P.S. § 310.11(6) prohibits a licensee or an applicant from committing any unfair insurance practice or fraud.
- (i) Respondents' activities described above in paragraphs 3(f) through 3(o) violate 40 P.S. § 310.11(6).
- (j) 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.

- (k) Respondents' activities described above in paragraphs 3(f) through 3(o) violates 40 P.S. § 310.11(7).
- (l) 40 P.S. § 310.11(8) prohibits a licensee or an applicant from having a producer license or other financial services license denied, suspended or revoked by a governmental entity.
- (m) Respondents' activities described above in paragraph 3(m) violate 40 P.S. § 310.11(8).
- (n) 40 P.S. § 310.11(16) prohibits a licensee or an applicant from committing a violation of subarticle B.
- (o) Respondents' activities described above in paragraphs 3(f) through 3(o) violate 40 P.S. § 310.11(16).
- (p) 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.

- (q) Respondents' activities described above in paragraphs 3(f) through 3(o) violate 40 P.S. § 310.11(20).
- (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) Respondents' activities described above in paragraphs 3(g), 3(k) and 3(n) violate 40 P.S. § 310.78(a).
- (t) Respondents' violations of Sections 310.11(1), (2), (3), (6), (7), (8), (16), (20), and 310.78(a) 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 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) 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 this section 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 Respondents' 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.

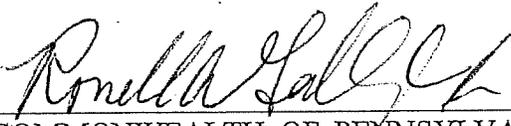
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

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:

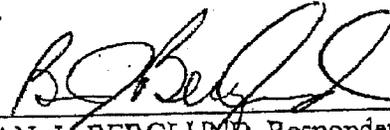
BRIAN J. BERGLUND, Respondent,
individually and on behalf of
BERGLUND ENTERPRISES, INC.,
Co-Respondent



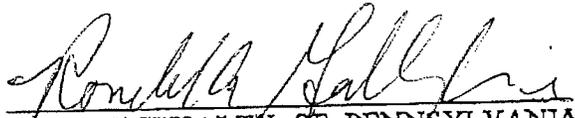
COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner

contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY:



BRIAN J. BERGLUND, Respondent,
individually and on behalf of
BERGLUND ENTERPRISES, INC.,
Co-Respondent



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