

INSURANCE DEPARTMENT

2016 SEP -7 PM 12:40

ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
DANIEL CUESTA	:	40 P.S. §§310.3(a), 310.11(7), (17), (20)
350 Church Lane Road	:	and 1171.5(a)(2)
Reading, PA 19606	:	
	:	
Respondent.	:	Docket No. CO16-06-002

CONSENT ORDER

AND NOW, this 7th day of SEPTEMBER, 2016, 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 Daniel Cuesta, and maintains his address at 350 Church Lane Road, Reading, PA 19606.
- (b) Respondent is a licensed Pennsylvania resident insurance producer and obtained his license on March 1, 2016, with lines of authority of Accident and Health, and Life and Fixed Annuities.
- (c) Respondent had been an employee of National Brokers of America, Reading, Pennsylvania, since approximately November of 2014 until June of 2016.
- (d) Respondent, at the direction of National Brokers of America, sold, solicited and negotiated numerous contracts of insurance in Pennsylvania and various other states without holding a producer license from around November of 2014 and continuing through December 2015.
- (e) Respondent misrepresented that he was licensed to prospective policyholders.

- (f) Respondent, at the direction of National Brokers of America, made false statements and misrepresentations to prospective policyholders and engaged in other dishonest acts to include; misrepresenting he was employed by the National Enrollment Center rather than National Brokers of America; he will search every database in the country to provide the best rates; and embellished the qualifications of himself and co-workers in order to generate sales for National Brokers of America.

- (g) On January 4, 2016, Respondent was interviewed and admitted to selling insurance without holding a producer license; making various misrepresentations and untrue statements to prospective policyholders in order to generate sales for National Brokers of America.

- (h) Respondent told the Department he voluntarily terminated his employment with National Brokers of America because he was uncomfortable with sales practices, including false statements and misrepresentations being made to prospective policyholders by employees; and being directed by managers at National Brokers of America to sell insurance policies to customers with disqualifying health conditions or conditions which would not be covered.

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. §310.3(a) prohibits a person from acting as a producer unless the person is licensed as an insurance producer for the line of authority under which the contract is issued.
- (c) Respondent's activities described above in paragraphs 3(d) and 3(g) constitute acting as an insurance producer without a certificate of qualification, in violation of 40 P.S. §310.3(a).
- (d) 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.
- (e) Respondent's activities described above in paragraphs 3(d) through 3(g) violate 40 P.S. §310.11(7).

- (f) 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.
- (g) Respondent's activities described above in paragraphs 3(d) through 3(g) violate 40 P.S. §310.11(17).
- (h) 40 P.S. §310.11(20) prohibits a licensee or an applicant from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure.
- (i) Respondent's activities described above in paragraphs 3(d) through 3(g) violate 40 P.S. §310.11(20).
- (j) Respondent's violations of Sections 310.3(a), 310.11(7), (17) and (20) 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.

- (k) 40 P.S. §1171.5(a)(2) prohibits persons from making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading.
- (l) Respondent's activities described above in paragraph 3(f) constitute making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading and violate 40 P.S. §1171.5(a)(2).
- (m) Respondent's violations of 40 P. S. §1171.5(a)(2), are punishable by the following, under 40 Purdons Statutes, Sections 1171.8, 1171.9, and 1171.11:
- (i) an order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);
 - (ii) commencement of an action against Respondent for the following civil penalties:

- (1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;

- (2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;

- (3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

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) Respondent shall assist to the best of his ability the Pennsylvania Insurance Department in conducting investigations and prosecution of any licensed or unlicensed entity performing the business of insurance including, but not limited to, any public adjuster, insurance producer, company, etc., their employees and officers, including but not limited to testifying as a witness relative to any of the aforesaid entities, their employees and officers in any civil or administrative action involving same.

- (c) Respondent's 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 confirmed 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 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 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.

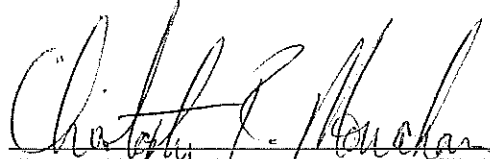
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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.

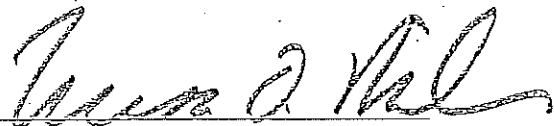
BY: 
DANIEL CUESTA, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: CHRISTOPHER R. MONAHAN
Deputy Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: The Act of April 9, 1929, P.L. 177, No. 175, known as The
Administrative Code of 1929

AND NOW, this 13th day of November, 2015, Christopher R. Monahan,
Deputy Insurance Commissioner, is hereby designated as the Commissioner's duly
authorized representative for purposes of entering in and executing Consent Orders. This
delegation of authority shall continue in effect until otherwise terminated by a later Order
of the Insurance Commissioner.



Teresa D. Miller
Insurance Commissioner

