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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

RECEIVED  
Insurance Dept.

APR 11 2017

Bureau of Licensing & Enforcement  
Licensing Division

IN RE:

THOMAS A OLAVIANY  
570 Campground Road  
Harrisburg, PA 18702-7904

VIOLATION:

40 P.S. § 310.11(20)

Respondent.

Docket No. C016-06-016

CONSENT ORDER

AND NOW, this 21<sup>st</sup> day of APRIL, 2017, 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 Thomas A. Olaviany, and maintains his address at 570 Campground Road, Harding, PA 18702-7904.
- (b) Respondent is, and at all times relevant hereto has been, a licensed resident producer.
- (c) Producer A was the producer of record for a life insurance policy owned by an insured from Hop Bottom, Pennsylvania (the "Insured"), which was issued by EquiTrust Life Insurance Company ("EquiTrust").
- (d) Producer A affirmed that Respondent was never given authorization by her to act on her behalf as producer of record of the insured's life insurance policy, including the use of her personal and specific agent number with EquiTrust.
- (e) The insured died on March 19, 2015, and the death benefit was to be paid to her son as the sole beneficiary.
- (f) Respondent was contacted by the insured's daughter who requested that he assist in managing the proceeds of insured's policies.

- (g) Insured's daughter provided Respondent with a Short Certificate of Letters Testamentary ("Short Certificate") and Respondent provided the Short Certificate to EquiTrust.
- (h) Between April 8 and June 4, 2015, Respondent made telephone calls to EquiTrust and misrepresented himself to be calling on behalf of Producer A, at one point agreeing that he was Producer A's "go to guy".
- (i) Respondent's stated purpose on the telephone calls was to have EquiTrust provide him with details on the value of the death benefit and have the proceeds forwarded to the beneficiary through him in lieu of Producer A.
- (j) During the telephone calls by Respondent to EquiTrust, EquiTrust refused to provide information on the policy and processing of the death benefit because Respondent was unable to provide the agent number assigned to Producer A.
- (k) Respondent subsequently acquired Producer A's agent number by obtaining a copy of the insured's application that identified the agent number and misrepresented himself to EquiTrust as being authorized by Producer A to process the death benefit to the beneficiary.

- (l) Telephone conversations between Producer A and EquiTrust on July 16 and 23, 2015, that were recorded affirmed that Producer A was the sole contact on the policy, that she had not given the Respondent authority to use her agent number and that EquiTrust had erred in processing the death benefit through the Respondent.
- (m) On April 26, 2016, Respondent affirmed that he had contacted EquiTrust and misrepresented himself to be acting on behalf of Producer A by use of her agent number.
- (n) Respondent affirmed that it was his voice on recorded telephone calls to EquiTrust that were played for him during the interview.
- (o) On April 7, 2016, the beneficiary's attorney affirmed that the proceeds of the policy had been paid to the beneficiary by EquiTrust.

#### CONCLUSIONS OF LAW

4. In accordance with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Laws:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

- (b) 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.
- (c) Respondent's activities described above in paragraphs 3(d) through 3(o) constitutes two separate violations 40 P.S. § 310.11(20).
- (d) Respondent's violations of Section 310.11(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) 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) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
  
- (b) Respondent shall pay a civil penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than fourteen (14) days after the date of the Consent Order.
  
- (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 violation. 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 Respondents 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 Agent 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 proceedings, 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.

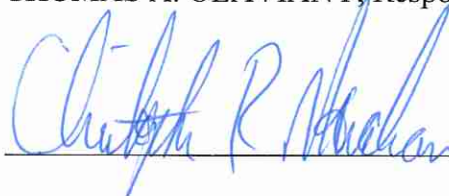
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all parties hereto.

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:



THOMAS A. OLAVIANY, Respondent



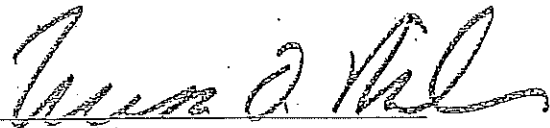


COMMONWEALTH OF PENNSYLVANIA  
By: CHRISTOPHER R. MONAHAN  
Deputy Insurance Commissioner

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 13<sup>th</sup> 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

