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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : Pursuant to the Act of June 17, 1998,  
Appeal of: : P.L. 464, No. 68 § 1 (40 P.S. §§  
**Brian Torres** : 991.2001-991.2013)  
605 Paper Mill Road :  
Oreland, PA 19075 :  
:  
File No. 14-188-158687 :  
:  
NATIONWIDE AFFINITY :  
INSURANCE COMPANY OF :  
AMERICA :  
Policy No. 5837E435126 : Docket No. **P14-03-013**

**ADJUDICATION AND ORDER**

In this adjudication, the Commissioner must decide whether Nationwide Affinity Insurance Company of America properly canceled automobile insurance policy number 5837E435126 issued to Brian Torres. The insured requested that the Pennsylvania Insurance Department, Bureau of Consumer Services review this policy termination. After investigating the cancellation, the Insurance Department issued an investigative report on March 10, 2014 dismissing the request as untimely under the guidelines of the law governing nonrenewal of automobile insurance policies.<sup>1</sup> The insured appealed the Insurance Department decision.

Upon receipt of the request for hearing, a Presiding Officer was appointed and a

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<sup>1</sup> Act of June 17, 1998, P.L. 464, No. 68 § 1, 40 P.S. §§ 991.2001-991.2013 ("Act 68").

hearing was scheduled for May 8, 2014 at 9:00 a.m. Notice of the hearing was served by certified mail on both parties, as evidenced by the return receipts contained in the docket file. Although the start of the hearing was delayed by at least 15 minutes, Nationwide Affinity Insurance Company of America failed to have a representative appear for the scheduled hearing and failed to communicate with the hearings office concerning its nonappearance. The insured appeared and presented evidence on the timeliness of the review request.

Act 68 grants an insured the right to a review by the Insurance Commissioner of a private passenger automobile policy termination provided the insured makes a written request for review within thirty days of receipt of the notice of termination. The Insurance Department's investigative report held that the review request made on February 6, 2014 was two-hundred-ten (210) days from issuance of the cancellation notice.

Generally, when an insurer is present at the hearing and produces competent evidence that the cancellation notice was mailed, the insured then bears the burden of overcoming the presumption of receipt which is created by that evidence. Mere denial of receipt does not overcome the presumption. *Lingenfelter/Erie*, P02-09-018 (2003); *Moshons/Hartford*, PH03-02-007 (2003); *Turchi/One Beacon*, PH02-07-026 (2003).

In the present case, the insurer failed to attend the hearing and produce any evidence concerning the mailing of the cancellation notice. Without such evidence no presumption of receipt can be established. *Greer/Nationwide*, P95-01-062 (1996); *Moshons/Hartford*, PH03-02-007 (2003).

Furthermore, the insured credibly denied receipt of a cancellation notice. As a result the request for review is deemed timely and the Commissioner has jurisdiction to consider the merits of the propriety of the termination.

In an Act 68 proceeding, the insurance company has the initial burden of establishing that the termination of the policy did not violate the Act. *McDonnell v. Ins. Dep't.*, 503 A.2d 1042 (Pa. Cmwlth. 1986). This burden includes establishing both procedural and substantive compliance with the statute. *McKenzie/Valley Forge Ins. Co.*, PI92-08-01 (1994); *Good/Allstate*, P02-11-006 (2003); *Heinbach/USAA*, PH02-07-021 (2003). When a company fails to appear for the hearing, it cannot meet its burden and the insured does not need to present any evidence. *Moshons/Hartford*, PH03-02-007 (2003). Additionally, the company will be found in violation of Act 68. [*Id.*].

An insurer which does not appear at the hearing and is found in violation of Act 68 may be subject to a fine. 40 P.S. § 991.2013; 40 P.S. § 991.2013; *Amarnick/Federal Insurance Company*, PH92-01-18 (1992) (insurer fined \$2,000); *Solomon/Hartford*, PH94-08-014 (1994) (insurer fined \$2,000); *Moser/USF&G*, PH94-01-24 (1995) (insurer fined \$2,000); *Jones/Newark*, P00-03-016 (2000) (insurer fined \$500); *Hughes/AAA*, PH00-09-025 (2000) (insurer fined \$2000, reduced to \$750 upon reconsideration); *Hattersson/Hartford*, PH01-09-009 (2001) (insurer fined \$500); *Rivers/Hartford*, PH02-02-003 (2002) (insurer fined \$1,000).

Consequently, the Commissioner finds that Nationwide Affinity Insurance Company of America has failed to meet its burden in proving that its termination of the subject policy was not in violation of Act 68, and that the imposition of a civil penalty is warranted.

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AMERICA	:	
Policy No. 5837E435126	:	Docket No. <b>P14-03-013</b>

**ORDER**

**AND NOW**, this 20<sup>th</sup> day of May, 2014, considering the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The March 10, 2014 determination issued by the Insurance Department of the Commonwealth of Pennsylvania which dismissed as untimely Brian Torres's request for review of Nationwide Affinity Insurance Company of America's cancellation of his automobile insurance policy No., 5837E435126 is **VACATED**.

2. Nationwide Affinity Insurance Company of America's cancellation of automobile insurance policy No. 5837E435126 **VIOLATED** Act 68.

3. Nationwide Affinity Insurance Company of America shall cease and desist

from terminating Brian Torres's automobile insurance policy No. 5837E435126 on the basis of the July 9, 2013 Notice of Cancellation.

4. Within **30 days** of the date of this order, Nationwide Affinity Insurance Company of America shall offer to Brian Torres an automobile insurance policy with types and limits of coverage at least equal to those of the canceled policy No. 5837E435126. The offer shall include coverage without lapse from the effective date of policy termination to the date on which the insured purchased his replacement policy.

5. Within 30 days of receipt of an offer of reinstatement, Brian Torres must notify Nationwide Affinity Insurance Company of America in writing of his election to accept or reject said offer from Nationwide Affinity Insurance Company of America. In the absence of a response the offer shall be deemed rejected.

6. Within 30 days of receipt of this order, Nationwide Affinity Insurance Company of America must give notice of the rescission of its cancellation to all public and private agencies which it is aware that have record of its notice of cancellation or any resulting lapse in coverage. This shall be a continuing obligation for agencies which subsequently are discovered to have record of the cancellation or resulting lapse.

7. Nationwide Affinity Insurance Company of America shall notify the Administrative Hearings Office at the time it complies with all the terms of this order.

8. **Within thirty (30) days from the date of this order**, and pursuant to 40 P.S. § 991.2013, Nationwide Affinity Insurance Company of America is directed to **pay a civil penalty of \$1,000.00** payable to the Commonwealth of Pennsylvania and directed to April Phelps, Bureau of Licensing and Enforcement, Pennsylvania Insurance

Department, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120.

9. This Order is effective immediately.



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MICHAEL F. CONSEDINE  
Insurance Commissioner