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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
GARY J. ORVIETO 421 General Washington Road Wayne, PA 19087	:	Section 611-A(20) of 147 of 2002 (40 P.S. § 310.11)
	:	
	:	Section 1609 of the Surplus Lines Act, Act of May 17, 1921, P.L. 682, added by the Act of December 18, 1992, P.L. 1519 (40 P.S. § 991.1609)
	:	
	:	Title 31, Pennsylvania Code, Section 124.5(1)(i)
	:	
Respondent.	:	Docket No. CO04-08-023

CONSENT ORDER

AND NOW, this 27th day of January, 2005, this Order is hereby issued by the Deputy Insurance Commissioner 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.A. §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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

(a) Respondent is Gary J. Orvieto and maintains his address at 421 General Washington Road, Wayne, Pennsylvania 19087.

(b) Respondent, at all relevant times herein, has been a licensed insurance producer.

(c) During 2003, Respondent procured two surplus lines insurance policies for Pennsylvania risks without validating that a diligent search was made of admitted (licensed) insurers that would issue the type of coverage sought.

(d) The two surplus lines insurance policies were issued by Lloyd's London for homeowners coverage: William Whitaker, Darby, Pennsylvania, policy #858H011277, effective May 22, 2003, and Liza Nicholas, Philadelphia, Pennsylvania, policy #8585H011279, effective May 22, 2003.

(e) Respondent's due-diligence affidavits, filed by his own agency, showed that he had not contacted any admitted insurers before procuring the insurance in the surplus lines market.

(f) On July 9, 2004, Respondent confirmed the aforementioned information.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:

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

(b) Section 611-A(20) of Act 147 of 2002 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 (40 P.S. § 310.11).

(c) Respondent's activities described above in paragraphs 3(c) through 3(f) violate Section 611-A(20) of Act 147 of 2002.

(d) Respondent's violations of Section 611-A(20) of Act 147 are punishable by the following, under Section 691-A of Act 147 of 2003 (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.

(e) Section 1609 of the Surplus Lines Act requires that within forty-five (45) days after insurance has been placed in an eligible surplus lines insurer, the surplus lines licensee shall file with the Department a written declaration of his lack of knowledge of how the coverage could have been procured from admitted insurers (40 P.S. § 991.1609).

(f) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute failure to file a written declaration of lack of knowledge of how the coverage could have been procured from admitted insurers within forty-five (45) days after insurance has been placed.

(g) Respondent's violations of Section 1609 of the Surplus Lines Act are punishable by the following, under Section 1625(b) of the Insurance Company Law (40 P.S. § 991.1625):

(i) imposition of a penalty not exceeding $1,000 for the first offense and $2,000 for each succeeding offense.

(h) Title 31, Pennsylvania Code, Section 124.5(1)(i), which requires the producing broker to execute and forward to the surplus lines licensee a written statement, in a form prescribed by the Department, declaring that a diligent effort to procure the desired coverage from admitted insurers was made. The diligent effort by the producing broker to procure the desired coverage from admitted insurers shall have been made if the producing broker declares on the prescribed form that at least three admitted insurers which are writing, in this Commonwealth, coverage comparable to the coverage being sought have declined to insure the particular risk..

(i) Respondent's activities described above in paragraphs 3(c) through 3(f) violates Title 31, Pennsylvania Code, Section 124.5(1)(i).

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner 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's certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) any other terms of this Order have not been complied with, or (ii) any 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 three (3) years from the date of this Order.

(c) 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.

(d) At the hearing referred to in paragraph 5(c) of this Order, Respondent shall have the burden of demonstrating that he is worthy of a license.

(e) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(b) 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 certificates and licenses shall be revoked.

6. In the event the Deputy Insurance Commissioner 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 Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner 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 Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY: _____
GARY J. ORVIETO, Respondent

_____
RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

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 29 day of April, 2002, Randolph L. Rohrbaugh, 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.

M. Diane Koken
Insurance Commissioner