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INSURANCE DEPARTMENT

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ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
MICHAEL D. BART : 40 Purdons Statutes, Sections
123 Brader Drive : 310.11(4), (7), (14), (17) and (20),
Wilkes-Barre, Pennsylvania 18705 : 310.42, 310.78(b) and 910-24.2
: :
: :
Respondent. : Docket No. CO09-01-008

CONSENT ORDER

AND NOW, this *27th* day of *February*, 2009, 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 Michael D. Bart, and maintains his address at 123 Brader Drive, Wilkes-Barre, Pennsylvania 18705.
- (b) Respondent at all times relevant, was licensed as a Title Agent.
- (c) On November 30, 2007, the Respondent, as a licensed title agent, transacted a closing for Stephen and Ruth Ann Weiner of Benton, Pennsylvania.
- (d) Respondent did not remit the required mortgage payoff for the Weiners in the amount of \$166,485.60.
- (e) Respondent was subsequently investigated and arrested by the U.S. Attorney's Office in September 2008.
- (f) Respondent failed to notify the Department of the charges.
- (g) Respondent was convicted of wire fraud on November 6, 2008, totaling \$713,000.00.

- (h) Respondent is currently waiting sentencing for his conviction.
- (i) Respondent has agreed to revocation of his expired title agent license via Consent Order.
- (j) Respondent has not made restitution.

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 Purdons Statutes, Section 310.11(4) prohibits producers from improperly withholding, misappropriating, or converting money or property received in the course of doing business.

- (c) Respondent's activities described above in paragraph 3(d) constitute improperly withholding, misappropriating, or converting money or property received in the course of doing business, in violation of 40 Purdons Statutes, Section 310.11(4).

- (d) 40 Purdons Statutes, Section 310.11(7) prohibits a licensee 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 paragraph 3(d) violate 40 Purdons Statutes, Section 310.11(7).

- (f) 40 Purdons Statutes, Section 310.11(14) prohibits a licensee from committing a felony or its equivalent.

- (g) Respondent's activities described above in paragraph 3(d) violate 40 Purdons Statutes, Section 310.11(14).

- (h) 40 Purdons Statutes, Section 310.11(17) prohibits a licensee from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.

- (i) Respondent's activities described above in paragraph 3(d) violate 40 Purdons Statutes, Section 310.11(17).
- (j) 40 Purdons Statutes, Section 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.
- (k) Respondent's activities described above in paragraphs 3(c) through 3(g) violate 40 Purdons Statutes, Section 310.11(20).
- (l) 40 Purdons Statutes, Section 310.42 prohibits any producer from fraudulently appropriating, taking, disposing of, withholding, lending, investing or otherwise using any money received in the capacity of an insurance producer without the consent of the insurer.
- (m) Respondent's activities described above in paragraph 3(d) constitute theft, in violation of 40 Purdons Statutes, Section 310.42.
- (n) 40 Purdons Statutes, Section 310.78(b) requires that within 30 days of being charged with criminal conduct, a licensee shall report the charges to the Department. The licensee shall provide the Department with a copy of the criminal complaint, information or indictment, a copy of the order resulting from any pretrial hearing, and a report of the final disposition of the charges.

- (o) Respondent's activities described above in paragraph 3(f) violate 40 Purdons Statutes, Section 310.78(b).
- (p) Respondent's violations of Sections 310.11(4)(7)(14)(17)(20), 310.42 and 310.78(b) are punishable by the following, under 40 Purdons Statutes, Section 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.
- (q) 40 Purdons Statutes, Section 910-24.2 requires that agents shall assume financial responsibility for all of the acts which the agent was appointed to perform by the title insurance company.
- (r) Respondent's activities described above in paragraph 3(d) violate 40 Purdons Statutes, Section 910-24.2.
- (s) Respondent's violations of 40 Purdons Statutes, Section 910-24.2 are punishable under Section 910-48: Imposition of a penalty of not more than

\$500 for each violation, or a penalty of not more than \$5,000 for each willful violation, in addition to any other penalty provided by law.

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) All licenses/certificates of Respondent to do insurance business are hereby revoked.
- (c) If Respondent should ever apply for licensure in the future, Respondent will be required to prove that all outstanding restitution has been paid.
- (d) If Respondent should ever become licensed in the future, his 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 Respondent is accurate and a statute or regulation has been violated. The Department's right to act under (ii)

above is limited to a period of five (5) years from the date of issuance of such certificates and licenses.

(e) 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.

(f) At the hearing referred to in paragraph (d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance certificate and license.

(g) In the event Respondent's certificates and 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 certificate and license, Respondent's 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.

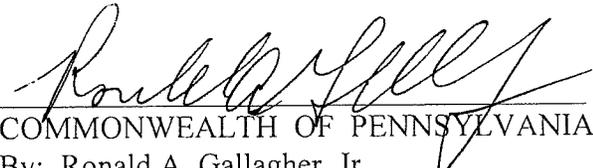
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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 delegate 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 delegate.

BY: 
MICHAEL D. BART, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: Ronald A. Gallagher, Jr.
Deputy Insurance Commissioner