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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:
: :
THOMAS CUSHMAN : 40 P.S. §§ 310.11(5), (6), (11)
171 Speigletown Road : (20) and 310.71(b)
Troy, NY 12182 :
: Respondent. : Docket No. CO13-06-012

CONSENT ORDER

AND NOW, this *17th* day of *September*, 2013, 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 Cushman, and maintains his address at
171 Speigletown Road, Troy, NY 12182.
- (b) Respondent is, and at all times relevant hereto has been, a licensed insurance
producer.
- (c) During October or November, 2012, Respondent met with a non-resident
producer Derek A. Siewert, Jacksonville, Florida, regarding the solicitation of
a Pittsburgh based union to enroll their members as insureds into a program
named the Legacy Life Insurance Program.
- (d) The Legacy Life Insurance Program involved establishing two irrevocable
trusts, both effective November 30, 2012, to provide life coverage to members
of two union lodges.
- (e) The trusts were vehicles used by third party investors (i.e., entities unknown
to the lodges, their members or even Respondent himself) to pay premiums to
Sagicor Life Insurance Company for purported individual life insurance

policies that would be issued on the lives of insureds who were members of the lodges.

- (f) The trusts were non-grantor trusts, such that all assets of the trust would be subject to the management and control of a third party trustee.
- (g) The grantors, also known as the settlors in the trust documents, were the respective union lodges.
- (h) Over the years, Respondent has worked closely with, represented, and been compensated by, the two lodges and their members on other insurance needs.
- (i) In late 2012, Respondent represented the two lodges and their members in the Legacy Life Insurance Program but he did not possess any written agreements with the lodges or their members.
- (j) Respondent assisted non-resident producer Derek A. Siewert in making presentations during December 2012 and February 2013 that promoted the sale of life insurance through the Legacy Life Insurance Program to the lodges' leadership and members.
- (k) The presentations under the Legacy Life Insurance Program asserted to lodge members that they would each have a death benefit of \$249,999, such that,

upon the death of an insured member, their personal beneficiary would receive \$100,000, the respective lodge would receive \$25,000, and the remainder (\$124,999) would be paid to the third party investors, minus fees and administrative costs.

- (l) The Legacy Life Insurance Program and the associated trusts included arrangements for all premiums to be paid by the trust, but none to be paid by the insureds or from the lodges. In other words, the plan was to provide a \$125,000 death benefit to the beneficiaries and the lodges at no cost to either of them (i.e., the plan was solicited as providing death benefits “at no cost” to members).

- (m) The plan became operative as of November 30, 2012, the date that the lodges signed the trust documents. At no time prior to the inception of the plan did Respondent ever adequately review the trust or review any of the funding documents to ensure that trusts guaranteed death benefits that were promised to the lodges’ members. Likewise, Respondent inadequately reviewed the trust documents to ensure that arrangements for the funding of the trusts were made through the trusts and Derek A. Siewert, although Siewert provided no documents or details on the identities of the investors associated with the trusts.

- (n) Arrangements for the submission of applications for insurance of the lodge members under the Legacy Life Insurance Program were coordinated with Sagicor Life Insurance Program by Derek A. Siewert and non-resident producers.
- (o) Applications for coverage through the Legacy Life Insurance Program were taken by producers at Voluntary Employee Benefits Advisors and forwarded to Sagicor Life Insurance Company although Respondent did not adequately review the contents of the applications or the information provided by the lodge members.
- (p) Respondent understood that the applications were submitted telephonically by lodge members from Pittsburgh or Allegheny County to producers working at the Voluntary Employee Benefits Advisors offices.
- (q) Subsequently, in May of 2013 Respondent reviewed applications that were submitted to Sagicor Life Insurance Company by Voluntary Employee Benefits Advisors, at which time he acknowledged that the applications misrepresented that the applicants were designated as “employees” of the respective trusts and that the applications were signed in New Jersey.
- (r) Respondent asserted that although he reviewed the trusts, he was not aware that they gave the trustee total authority over disposition of the members’ life

policies, including any subsequent reassignment of beneficiaries and the disposition of death benefits.

- (s) Although Respondent was to receive 25% net commissions through Sagicor Life Insurance Company's disposition through Derek A. Siewert, Respondent asserts he never received any commissions.
- (t) Respondent did not perform due diligence to ascertain the nature of the funding, the accuracy of the members' information on the applications, that the entirety of the arrangement would actually guarantee that the members would receive the promised death benefits, or that those funding the plan and benefitting from the plan (i.e., third party investors) had the requisite insurable interest as required under Pennsylvania law.
- (u) Although the lodges' correspondence to members alluded to \$149,999 in death benefits being used to recoup the premium and administrative costs, at no time did Respondent disclose to members that, upon each member's death, third party investors would receive a \$124,999 death benefit, and that the lodges themselves would receive a \$25,000 death benefit.
- (v) Respondent had previously been involved in a plan to issue coverage to two Pennsylvania lodges without the requisite insurable interest in 2006. *See; In Re Thomas Cushman, docket #CO06-09-025.*

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. § 310.11(5) prohibits a licensee or an applicant from intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (c) Respondent's activities described above in paragraphs 3(n) through 3(v) violate 40 P.S. § 310.11(5).
- (d) 40 P.S. § 310.11(6) prohibits a licensee or an applicant from committing any unfair insurance practice or fraud.
- (e) Respondent's activities described above in paragraphs 3(c) through 3(v) violate 40 P.S. § 310.11(6).

- (f) 40 P.S. § 310.11(11) prohibits a licensee or an applicant from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer.

- (g) Respondent's activities described above in paragraphs 3(o) and 3(r) violate 40 P.S. § 310.11(11).

- (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(c) through 3(v) violate 40 P.S. § 310.11(20).

- (j) 40 P.S. § 310.71(b) requires an insurance producer acting on behalf of or representing an insurance consumer to execute a written agreement with the insurance consumer prior to representing or acting on their behalf that:
 - (1) delineates the services to be provided; and
 - (2) provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer.

- (k) Respondent's activities described above in paragraphs 3(i) and 3(j) constitute transacting business within this Commonwealth without written agreement with the insurance consumer as required by the Act and violate 40 P.S. § 310.71(b).

- (l) Respondent's violations of Sections 310.11(5), (6), (11), (20) and 310.71(b) 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.

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. In no event may Respondent have any involvement whatsoever in any insurance or insurance-

related plan involving life insurance and any individual or group trust; this includes but is not limited to a prohibition of the sale, solicitation, design, or providing any form of consulting services for such plan or plans or potential plan or plans.

- (b) Respondent's producer licenses are hereby revoked for a minimum period of five years.
- (c) In the event that Respondent should ever become relicensed, 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 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 any such relicensing.
- (d) Respondent will 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.

- (e) If, in the sole discretion of the Commissioner, Respondent should be determined to have violated paragraph 5(d) of this Order, his license(s) may be immediately suspended.
- (f) Respondent specifically waives his right to prior notice of such 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.
- (g) At the hearing, Respondent shall have the burden of proof and the hearing is to be limited to the issue of whether the Department's conclusion under paragraph 5(f) of this Order is reasonably supported by the evidence.
- (h) 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.

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

(j) 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: 
THOMAS CUSHMAN, Respondent


COMMONWEALTH OF PENNSYLVANIA
By: RONALD A. GALLAGHER, JR.
Deputy Insurance Commissioner