



3. Respondents neither admit nor deny the Findings of Fact or Conclusions of Law contained herein, nor do they admit to liability, wrongdoing or violation of Pennsylvania insurance laws.

### **FINDINGS OF FACT**

4. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- a. Respondent Stanley Costello (“Costello”) is licensed as a Pennsylvania resident insurance producer under license # 337357 with an expiration date of May 10, 2008. Costello is the president and owner of Respondent AllStaffing, Inc. (“ASI”).
- b. Respondent ASI is a professional employer organization (“PEO”) organized under the laws of Tennessee and doing business in Pennsylvania. ASI’s home office is located at 100 West Ridge St., Lansford, Pennsylvania 18232.
- c. At no time has ASI been licensed to transact insurance in the Commonwealth as an insurer, a producer, or in any other capacity.
- d. ASI provides administrative services for various unrelated Pennsylvania employers (“participating employers”), such as payroll services and collecting contributions for health plan coverage.

- e. ASI's participating employers consist of unrelated and diverse businesses, such as landscaping, dry cleaning, metal fabricating, medical services, and any other business entities.
- f. ASI does not exercise common law control over its participating employers, i.e., it does not exercise day-to-day control over their activities, nor does it have the right to hire, fire, transfer, suspend, lay off or discipline employees of participating employers.
- g. As part of its services, ASI has solicited and enrolled participating employers into its group accident and health plan.
- h. Up until 1997, ASI's health plan was fully insured through Aetna US Healthcare, a Pennsylvania licensed insurer.
- i. On or around January of 1997, ASI discontinued coverage through Aetna US Healthcare and self-insured its accident and health plan for its participating employers by collecting contributions monthly and paying claims through a third party administrator.
- j. Effective July 1, 2003, Respondents solicited and enrolled ASI's participating employers and collected and forwarded contributions from its participating

employers for a group health plan offered through Nassau Services Inc., Nassau Employees Benefits Trust (“NEBT”) and/or Nassau Benefits Consultants (“NBC”).

- k. At no time has Nassau Services Inc., NEBT nor NBC ever been licensed to transact insurance in the Commonwealth as insurers, or in any other capacity.
- l. Thereafter, in 2004, Respondents and Pegasus Health Care LLC (“Pegasus”) solicited and enrolled ASI’s participating employers in the Pegasus Health Plan, which provided accident and health benefits to those employers.
- m. At no time has Pegasus been licensed as an insurer, or licensed to transact insurance, in Pennsylvania.
- n. In 2005, Pegasus, Nassau, NEBT and NBC and their claims administrator, Health Choice, Inc., had insufficient funds to cover ASI’s participating employers’ claims liabilities.
- o. Since that time, Pennsylvania consumers have incurred unpaid claims that remain unfunded and unreimbursed to date.
- p. Since that time, Nassau, NEBT, NBC and Pegasus have failed and refused to pay legitimate claims incurred by Pennsylvania consumers under ASI’s group plan.

## CONCLUSIONS OF LAW

5. 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. Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.
- b. By soliciting and enrolling employers into ASI's self-insured health plan from 1997 until 2003, collecting contributions and paying claims, Respondent Costello operated Respondent ASI as an unlicensed insurer in violation of 40 P.S. §§46 and 47.
- c. By soliciting and enrolling ASI's participating employers and collecting and forwarding contributions to Nassau, NBC, NEBT and Pegasus (all unlicensed insurers) for payment of claims, Respondent Costello violated 40 P.S. §§310.11(2) and (20) which prohibit a producer from engaging in any of the following acts:

(2) violating the insurance laws or regulations of this Commonwealth and;

(20) demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of

licensure.

- d. By soliciting and enrolling ASI's participating employers in, and collecting and forwarding contributions to, Nassau, NBC, NEBT and Pegasus, all unlicensed insurers, Respondent Costello violated 40 P.S. §47 which prohibits a person from negotiating or soliciting any policy of insurance or suretyship in this Commonwealth, collecting or forwarding premium or delivering policies for any company to which a certificate of authority has not been granted.
  
- e. For each violation of 40 P.S. §310.11, Respondents may be subject to the following penalties under 40 P.S. §310.91(d): denial, suspension, refusal to renew or revocation of the license, a civil penalty of \$5,000 for each violation, an order to cease and desist and any other conditions as the commissioner deems appropriate.
  
- f. For each violation of 40 P.S. §§46, 47, Respondents may be subject to a \$10,000 penalty under 40 P.S. §47.
  
- g. Respondents' activities described above constitute engaging in this Commonwealth in a trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance in violation of Sections 4 and 5 of the Unfair Insurance Practices ("UIPA") (40 P.S. §§1171.4, 1171.5).

**h.** Respondents' violations of Sections 4 and 5 of the UIPA (40 P.S. §§1171.4, and 1171.5) may be punishable under 40 P.S. §§1171.9, and 1171.11 by the following:

- (1) an order requiring Respondents to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of the UIPA, suspension or revocation of Respondents' license(s);
- (2) commencement of an action against Respondents for the following civil penalties:
  - (i) for each method of competition, act or practice defined in Section 5 and in violation of the UIPA which Respondents knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;
  - (ii) for each method of competition, act or practice defined in Section 5 and in violation of the UIPA which Respondents did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period.

## ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the **Deputy Insurance** Commissioner orders and Respondent consents to the following:

- a) Respondents shall cease and desist the activities and violations described above and any further violations of Pennsylvania insurance laws.
- b) Respondent Costello's insurance licenses/certificates are hereby revoked effective as of the date of this Order.
- c) Respondents shall fully cooperate with the Department and any and all other state or federal authorities in any civil, criminal, or regulatory investigation, inquiry, hearing and any other action or proceeding against any person or entity identified in this Consent Order, their principals, or any other person or entity related to any of the matters addressed herein. Cooperation includes but is not limited to providing any testimony or documentary evidence that is requested by the Department or other state or federal authority.
- d) Should Costello ever be licensed in the future, his license(s) may

be immediately suspended by the Department following its investigation and determination that he has not complied with any term of this Order or that any complaint against Costello is accurate and a statute or regulation has been violated. The Department's right to act under this paragraph is limited to a period five (5) years from the date of relicensure.

- e) Costello 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 Costello 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 his written request.
- f) At the hearing referred to in paragraph 6(e) of this Order, Costello shall have the burden of demonstrating that he is worthy of an insurance license/certificate.
- g) In the event Costello's licenses(s)/certificates(s) are suspended pursuant to paragraph 6(d) above, and the Costello either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that it is worthy of a license, Costello's suspended

license(s) shall be revoked.

h) Nothing in this Order is intended to, nor shall it, absolve Costello or ASI from civil liability, if any, for unpaid claims.

7. 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, he may, in his discretion, pursue any and all legal remedies available to him, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. 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 provisions of law.

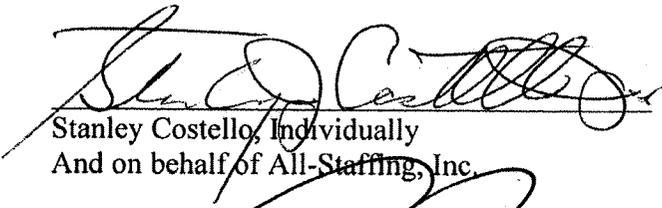
9. In any such enforcement proceeding, Respondents may contest whether a breach of the provisions of this Order has occurred but may not contest the

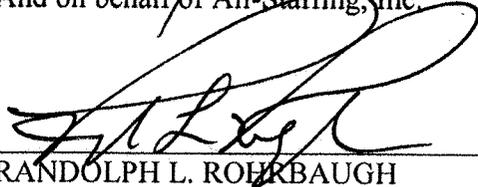
Findings of Fact and Conclusions of Law contained herein.

10. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. 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.

12. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or her 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 her duly authorized Deputy Insurance Commissioner. The penalties, if any, imposed by this Order are not effective until execution by the Insurance Commissioner or her duly authorized Deputy Insurance Commissioner.

  
Stanley Costello, Individually  
And on behalf of All-Staffing, Inc.

  
RANDOLPH L. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania