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HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
EMMA J. DESTAN	:	Section 611-A(2), (4), (7), (17) and
355 King Street	:	(20), and 642-A of Act 147 of 2002
Pottstown, PA 19464, Trading As	:	(40 P.S. §§ 310.11 and 310.42)
	:	
JAMES E. CHRISTMAN & Son	:	
12 South Hanover Street	:	
Pottstown, PA 19464	:	
	:	
Respondent	:	Docket No. CO04-08-034

CONSENT ORDER

AND NOW, this *2nd* day of *November*, 2004, 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 she has received proper notice of her 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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is Emma J. Destan, and maintains her address at 355 King Street, Pottstown, Pennsylvania 19464.
- (b) Respondent , at all relevant times herein, has been a licensed insurance producer with Certificate of Qualification #345210 that expires on February 1, 2005.
- (c) Respondent trades as James E. Christman & Son, 12 South Hanover Street, Pottstown, Pennsylvania 19464.

- (d) On April 15, 2003, Respondent's agent contract with the Peerless Insurance Company (hereinafter, Peerless) was terminated.
- (e) Peerless failed to terminate Respondent's appointment with the Department until July 2, 2004.
- (f) Respondent, between April 15, 2003 through present, placed numerous telephone calls to Peerless employees, offering those employees money to reinstate Respondent's contract and/or to place policies with Peerless.
- (g) On December 22, 2003, Respondent completed a Peerless binder for a homeowners insurance policy for insured Paulette Hill, and gave Hill a copy of the binder.
- (h) On December 22, 2003, Respondent accepted \$213.00 in cash from Hill as a premium payment on the above Peerless homeowners binder, and gave Hill a handwritten receipt for the payment.
- (i) Respondent failed to remit either the above-referenced binder or premium payment to Peerless Insurance Company.
- (j) In March, 2004, Hill suffered damage to her home as a result of a broken water pipe.

- (k) In March, 2004, Peerless refused to settle Hill's claim, citing Respondent's termination as referenced in (d) above.
- (l) In July, 2004, Peerless elected to pay Hill's claim as a result of failing to terminate Respondent's appointment with the Department as referenced in (e) above.
- (m) Respondent, in July, 2004, remitted to Peerless the \$213.00 premium payment.
- (n) In August, 2004, Peerless settled Hill's claim in full.

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(2) of Act 147 of 2002 prohibits a licensee from violating the insurance laws of this Commonwealth (40 P.S. § 310.11).

- (c) Respondent's activities described above in paragraphs 3(c) through 3(n) violates Section 611-A(2) of Act 147 of 2002.
- (d) Section 611-A(4) of Act 147 of 2002 prohibits a licensee from improperly withholding, misappropriating or converting money or property received in the course of doing business (40 P.S. § 310.11).
- (e) Respondent's activities described above in paragraphs 3(c) through 3(n) violates Section 611-A(4) of Act 147 of 2002.
- (f) Section 611-A(7) of Act 147 of 2002 prohibits a licensee from using fraudulent, coercive or dishonest practices or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of doing business in this Commonwealth or elsewhere (40 P.S. § 310.11).
- (g) Respondent's activities described above in paragraphs 3(c) through 3(n) violates Section 611-A(7) of Act 147 of 2002.
- (h) Section 611-A(17) of Act 147 of 2002 prohibits a licensee from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty (40 P.S. § 310.11).

- (i) Respondent's activities described above in paragraphs 3(c) through 3(n) violates Section 611-A(17) of Act 147 of 2002.

- (j) 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).

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

- (l) Section 642-A of Act 147 of 2002 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 (40 P.S. § 310.42).

- (m) Respondent's activities described above in paragraphs 3(c) through 3(n) constitutes theft, in violation of Section 642-A of Act 147 of 2002 (40 P.S. § 310.42).

- (n) Respondent's violations of Sections 611-A(2), (4), (7), (17), (20) and 642-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (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 each 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 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 shall surrender all licenses/certificates to conduct the business of insurance within the Commonwealth of Pennsylvania as of the date of this Consent Order.
- (c) If Respondent should ever become licensed in the future, her 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.

- (d) Respondent specifically waives her 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.
- (e) At the hearing referred to in paragraph (d) of this Order, Respondent shall have the burden of demonstrating that she is worthy of an insurance certificate and license.
- (f) 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 she is worthy of a certificate and 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:

Emma J. Destan, Resp.
Adopted P.A.

EMMA J. DESTAN, Respondent

R. L. R.
RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania