

INSURANCE DEPARTMENT
2019 DEC -5 PM 12:16
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
SCOTT M. DIEMERT	:	40 P.S. §§(7) and (20)
8700 Perry Highway	:	
Pittsburgh, PA 15237	:	
	:	
Respondent.	:	Docket No. CO16-06-004

CONSENT ORDER

AND NOW, this 5th day of December, 2019, 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. Respondent neither admits nor denies the Findings of Fact or Conclusions of Law contained herein.

FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following

Findings of Fact:

- (a) Respondent is Scott M. Diemert and maintains his address with the Pennsylvania Insurance Department as 8700 Perry Highway, Pittsburgh, PA 15237.
- (b) Respondent is, and at all times relevant hereto has been, a licensed resident producer.
- (c) Respondent, prior to representing insurance consumers, failed to execute a written agreement including disclosure of any fee charged on their behalf to obtain a personal umbrella policy.
- (d) Respondent told employees to add an additional \$250.00 fee to the \$620.00 total premium selected on the indication.
- (e) Respondent on or about November 6, 2015, directed an Affolder & Associates, Inc., customer service representative to send the insureds Umbrella Indication 2776601, for Annual Premium of \$870.00, and a letter

instructing the insureds to return the signed indication with an \$870.00 payment.

- (f) Respondent, on November 30, 2015, in response to questioning from an insured, mistakenly sent two reply e-mails claiming the payment amount increase was a result of premium rates charged by the insurance companies.
- (g) After receiving a copy of the declaration page for the personal umbrella liability policy, a customer service representative for Affolder & Associates, Inc, altered the page by typing in "250.00," "ADMIN FEE" and "870.00" for the "Total Amount."
- (h) Respondent on January 11, 2016, replied to an email from one of the named insureds questioning the "ADMIN FEE" stating the \$250.00 fee was based on the total premium with Affolder & Associates, Inc. and was reasonable considering the work and effort to find coverage.
- (i) Respondent Refunded the \$250.00 fee upon the complaint being made to him by the insured.

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(7) prohibits a licensee or an applicant 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 paragraphs 3(c) through 3(h) violate 40 P.S. §310.11(7).
- (f) 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.
- (g) Respondent's activities described above in paragraphs 3(c) through 3(h) violate 40 P.S. §310.11(20).

- (l) Respondent's violations of Sections 310.11(7) and (20) 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.
- (b) Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the PA Insurance Department, Commonwealth of Pennsylvania. Payment should be directed to Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but

must be paid in any event no later than thirty (30) days after the date of the Consent Order.

- (c) 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 confirmed 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 one (1) year from the date of this Order.
- (d) 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.
- (e) At the hearing referred to in paragraph 5(d) of this Order, Respondent shall have the burden of demonstrating that he is worthy of an insurance license.
- (f) 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.

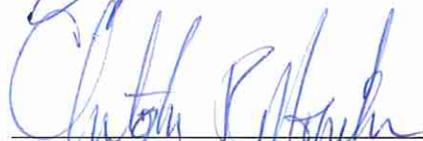
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized 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:



SCOTT M. DIEMERT, Respondent



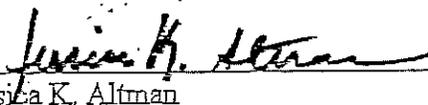
COMMONWEALTH OF PENNSYLVANIA

By: CHRISTOPHER R. MONAHAN
Deputy Insurance Commissioner

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 28th day of March, 2018, Christopher R. Monahan,
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.



Jessica K. Altman
Insurance Commissioner

