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INSURANCE DEPARTMENT

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BEFORE THE INSURANCE COMMISSIONER HEARINGS OFFICE
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
EMPIRE FIRE & MARINE	:	Sections 611-A(11) and 671-A(a)
INSURANCE COMPANY	:	of Act 147 of 2002 (40 P.S.
1400 American Lane	:	§§ 310.11 and 310.71)
Schaumburg, IL 60196	:	
	:	
Respondent.	:	Docket No. CO06-03-002

CONSENT ORDER

AND NOW, this *20th* day of *June*, 2006, 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 it has received proper notice of its 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.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent specifically denies that it violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

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

- (a) Respondent is Empire Fire and Marine Insurance Company and maintains its address at 1400 American Lane, Schaumburg, Illinois 60196.
- (b) At all relevant times herein, Respondent has been a licensed insurance company in Pennsylvania.

- (c) Between June 2001 and September 2004, Respondent issued 41 commercial insurance policies to Pennsylvania policyholders through two producing agencies that were either not licensed or appointed.
- (d) Respondent's managing agency was Aeon Insurance Group, Incorporated, Morgan Hill, California, which did not obtain a Pennsylvania non-resident producer license until April 21, 2004 and did not have an appointment with Respondent until February 1, 2005.
- (e) Respondent's managing agency, Aeon Insurance Group, Incorporated, entered into a Broker Contract with Giancola & Associates, Inc. wherein Giancola & Associates, Inc. was given authority to bind insurance on behalf of Respondent, although the producer did not possess an appointment with Respondent.
- (f) Respondent received applications that were accepted and signed by producer David C. Giancola, Giancola & Associates, Inc., through Aeon Insurance Group, although the producer did not possess an appointment with Respondent.
- (g) The applications that Respondent received from producer David C. Giancola were accepted by him from the policyholders and signed by him as the producer.

- (h) David C. Giancola accepted the insurance applications from the policyholders and signed them as Respondent's producer.
- (i) Giancola & Associates, Inc. bound policyholder insurance policies on behalf of Respondent.
- (j) Giancola & Associates, Inc. bound policyholder insurance policies as Respondent's producer.

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) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Section 611-A(11) of Act 147 of 2002 prohibits a licensee from knowingly accepting insurance business which was sold, solicited or negotiated by a person who is not licensed as an insurance producer (40 P.S. § 310.11).

- (c) Respondent's activities described above in paragraphs 4(c) through 4(j) violate Section 611-A(11) of Act 147 of 2002.

- (d) Section 671-A(a) of Act 147 of 2002 states an insurance producer shall not act on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed (40 P.S. § 310.71).

- (e) Respondent's activities described above in paragraphs 4(c) through 4(j) violate Section 671-A(a) of Act 147 of 2002.

- (f) Respondent's violations of Sections 611-A(11) and 671-A(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

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) 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 Twenty Thousand Dollars (\$ 20,000.00) to the Commonwealth of Pennsylvania. Payment of this penalty shall be made by certified check or money order, payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of 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 shall make appropriate restitution including refunds of unearned premiums and payments of valid claims to those Pennsylvania policyholders in accordance with the terms of the policies referred to in paragraph 4(c) of the Findings and Facts, and where based upon a reasonable factual inquiry, it is determined that the policy coverage by Respondent had terminated due to the improper conduct of the producer David C. Giancola.

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, 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.

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 provision of law.

9. 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.

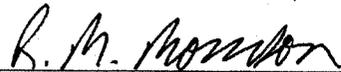
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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 the parties hereto.

12. 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:

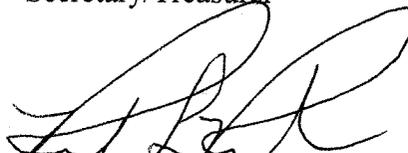
EMPIRE FIRE & MARINE INSURANCE
COMPANY Respondent



President/Vice President



Secretary/Treasurer



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania