RECEIVED
INSURANCE DEPARTMENT
2008 SEP 10 AM 11:26
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: TODD B. GARRY 16 Heather Court Newtown, PA 18940 Respondent.	VIOLATIONS: Sections 611-A(20) of Act 147 of 2002 (40 P.S. § 310.11) 40 Purdons, Section 625-3 Title 31, Pennsylvania Code, Section 37.42 Docket No. CO08-04-016

CONSENT ORDER

AND NOW, this 10th day of September, 2008, 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 Todd B. Garry, and maintains his address at 16 Heather Court, Newtown, Pennsylvania 18940.

(b) At all relevant times herein, Respondent has been a licensed producer, with license #402337 that expires on May 24, 2010.

(c) During 2003 through 2005, Respondent traded as American Family Legal Plan, maintained a business address at 670 Woodbourne Road, Suite 1000, Langhorne, Pennsylvania 19047, however that name was not registered with the Department as a Fictitious Name and/or Agency.

(d) During 2003 and 2004, Respondent represented himself as an "estate planner" with American Family Legal Plan when he contacted Elmer and Adonna Potteiger of Mechanicsburg, Pennsylvania.

(e) Respondent utilized a living trust from American Family Legal Plan to sell the Potteigers a National Western product with the following features: Minimum Guaranteed Certificate Value, Minimum Guaranteed Interest Rate, First Year 3% premium bonus, years 2 through 5 – 3% premium bonus, and a first year asset fee rate.

(f) On four occasions during the above transaction, Respondent sent the Potteigers letters regarding cancellation of insurance policies and transferring funds from various other policies, while utilizing an address for American Family Legal Plan.

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) 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).

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

(d) Respondent's violations of Section 611-A(20) 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.

(e) 40 Purdons, Section 625-3, prohibits producers from representing themselves, either directly or indirectly, to the public as a financial planner, investment adviser, consultant, financial counselor or other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when that person is engaged only in the sale of life or annuity insurance.

(f) Respondent's activities described above in paragraphs 3(c) through 3(f) violate 40 Purdons Statutes, Section 625-3.

(g) Respondent's violation of 40 Purdons, Section 625-3, is punishable by the following, under Section 625-10:

(i) issue a cease and desist order, or suspend or revoke or refuse to issue the certificate of qualification or license of the offending party or parties.

(ii) impose a civil penalty of not more than five thousand dollars ($5,000) for each violation.

(h) Title 31, Pennsylvania Code, Section 37.42 requires certificates and licenses to accurately reflect the name of the individual producer and indicate if fictitious names in which the producer transacts insurance are on file with the Department. Fictitious names used by a producer shall be registered with the Department of State and will be provided by the Department upon request.

(i) Respondent's activities described above in paragraphs 3(c) through 3(f) violate Title 31, Pennsylvania Code, Section 37.42.

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's 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 this section is limited to a period of five (5) years from the date of this Order.

(c) 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.

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

(e) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(b) 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 certificates and 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: ______________________
TODD B. GARRY, Respondent

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