

RECEIVED  
INSURANCE DEPARTMENT  
2014 SEP 23 AM 10:45  
ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
MICHELE ANN HAPPY : 40 P.S. §§ 310.11 (7), (17), (20)  
5531 Buffalo Road : 1171.5(a)(2) and 1171.5(a)(12)  
Erie, PA 16510 : :  
Respondent. : Docket No. CO14-08-013

CONSENT ORDER

AND NOW, this 23<sup>rd</sup> day of September, 2014, 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 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 Insurance Department finds true and correct each of the following

Findings of Fact:

- (a) Respondent is Michele Ann Happy and maintains her address at 5531 Buffalo Road, Erie, PA 16510.
- (b) Respondent is, and at all times relevant hereto has been, a licensed resident insurance producer.
- (c) In May 2013, Respondent was terminated from a Nationwide Insurance Company Agency and became employed at an Allstate Insurance Company Agency.
- (d) Between May 2013 and January 2014, Respondent placed approximately thirty (30) telephone calls to the Nationwide Insurance Company Service Center and misrepresented herself as approximately twenty six (26) Nationwide Insurance Company policyholders.
- (e) Respondent misrepresented herself as Nationwide Insurance Company policyholders in order to obtain privileged policyholder information including

policy numbers, premium amounts, deductible amounts, renewal dates and types of vehicles insured.

- (f) Respondent, through recorded telephone calls to the Nationwide Insurance Company Service Center, made false statements to Service Center employees while misrepresenting herself as Nationwide Insurance Company policyholders in order to obtain desired privileged policyholder information.
- (g) Respondent requested that the insurance declaration pages of Nationwide Insurance Company policyholders be faxed to her at the Allstate Agency at least seventeen (17) times.
- (h) Respondent used the privileged policyholder information she obtained through deceptive means to provide quotes for insurance from Allstate Insurance Company.
- (i) Respondent received over \$1600 in commissions from Allstate Insurance Company, as a result of the new business obtained from approximately seventeen (17) former Nationwide Insurance Company policyholders she misrepresented.
- (j) Respondent, while misrepresenting herself as Nationwide Insurance Company policyholders, requested the discontinuation of electronic funds transfers for

Nationwide Insurance Company premium payments approximately five (5) times.

- (k) Respondent called the Nationwide Service Center and misrepresented herself as a co-worker without the co-worker's knowledge or consent.

#### 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.
- (c) Respondent's activities described above in paragraphs 3(b) through 3(k) violate 40 P.S. § 310.11(7).

- (d) 40 P.S. § 310.11(17) prohibits a licensee or an applicant from committing fraud, forgery, dishonest acts or an act involving a breach of fiduciary duty.
- (e) Respondent's activities described above in paragraphs 3(c) through 3(k) violate 40 P.S. § 310.11(17).
- (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(k) violate 40 P.S. § 310.11(20).
- (h) 40 P.S. § 1171.5(a)(2) prohibits persons from making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading.
- (i) Respondent's activities described above in paragraphs 3(d) through 3(k) constitute making, issuing, publishing or circulating in any manner an advertisement, announcement or statement containing any representation or statement with respect to the business of insurance or with respect to any

person in the conduct of his insurance business which is untrue, deceptive or misleading and violate 40 P.S. § 1171.5(a)(2).

- (j) 40 P.S. § 1171.5(a)(12) prohibits agents from making false or fraudulent statements or representations on or relative to an application for an insurance policy.
  
- (k) Respondent's activities described above in paragraphs 3(d) through 3(k) constitute making false or fraudulent statements or representations on or relative to an application for an insurance policy and violate 40 P.S. § 1171.5(a)(12).
  
- (l) Respondent's violations of Sections 310.11(7), (17) 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.

(m) Respondent's violations of 40 P. S. §§ 1171.5(a)(2) and 1171.5(a)(12), are punishable by the following, under 40 Purdons Statutes, Sections 1171.8, 1171.9, and 1171.11:

(i) an order requiring Respondent 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 this Act, suspension or revocation of Respondent's license(s);

(ii) commencement of an action against Respondent for the following civil penalties:

(1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent 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;

(2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent 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;

- (3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).

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 immediately surrender all licenses 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 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 issuance of such 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 5(d) of this Order, Respondent shall have the burden of demonstrating that she 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 she 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.

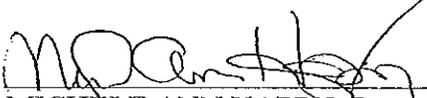
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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 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:

  
MICHELE ANN HAPPY, Respondent

  
COMMONWEALTH OF PENNSYLVANIA  
By: ARTHUR F. MCNULTY  
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 10 day of March, 2014, Arthur F. McNulty,  
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.



Michael F. Consedine  
Insurance Commissioner

